

Report of the

District Level Workshop on

**'Laws Related to Rehabilitation of Offenders in
Criminal Justice'**

Organised by

The District and Sessions Court, Thane

&

Prayas

(A Field Action Project of the Centre for Criminology and Justice)

Tata Institute of Social Sciences

Held At

'Manthan', Wonder Mall, Ghodbunder Road

Thane (w)

February 2006

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Hon'ble Shri Khsatriya, Add. Dist. Judge & Add. Sessions Judge, Thane
Hon'ble Shri D.G. Murumkar, Chief Judicial Magistrate, Thane
Shri D. Shivanandan Commissioner of Police - Thane
Late Shri M.R. Gondhali, Superintendent, Probation Offenders Act, Maharashtra
Shri Sanjay Bagal, District Women and Child Development Officer, Thane
Shri Patil, Registrar, District and Sessions Court, Thane
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ABOUT PRAYAS

Established: 1990

9/1 B.D.D. Chawls, Worli, Mumbai

Prayas is a field action project of the Centre for Criminology and Justice, Tata Institute of Social Sciences working in the criminal justice system towards the protection of legal rights and rehabilitation of vulnerable groups.

Objectives:

- Demonstrate the need for social work intervention in the criminal justice system viz. at police stations, prisons, criminal courts and institutions for women and minors.
- Work towards the rehabilitation of persons coming out of or vulnerable to crime or prostitution.
- Provide support to families of persons in crime/prostitution, especially children to counter negative influences and prevent criminalization.
- Improve access of citizens in the criminal justice system to their legal rights enshrined in the Constitution and promote the use of correctional laws towards rehabilitation of vulnerable groups such as women, youth and children.
- Increase awareness in government and society about issues related to the rehabilitation of persons affected by crime or prostitution towards law and policy change.
- Generate knowledge in the field of social work, criminology and corrections through the analysis of field experiences.

Programmes and Intervention:

- Prison: Work with women and young males (18 to 23 years) through offering a range of services such as legal literacy, family contact, support to families, especially children, counseling, vocational activities, and networking with NGOs and government departments such as police, women and child development, health and the judiciary towards custodial care, pre-release preparation and post-release rehabilitation issues.
- Police station: Counselling, referral and follow-up services to vulnerable groups such as women, children, youth and psychologically/emotionally disturbed to prevent trafficking, or their entry into crime, prostitution or other negative lifestyles.
- Criminal court: Legal guidance and referral services to persons approaching the courts - complainants, accused or their families.
- Protective Institutions for Women: Counselling, vocational activities and networking with NGOs and government departments such as police, women and child development, health and the judiciary towards custodial care, pre-release preparation, repatriation and post-release rehabilitation issues.
- Contact-cum-Rehabilitation Unit: Providing a range of services for women, youth and/or their families approaching Prayas after their release from prison/custodial institution or referred by clients, ex-clients, police/prison/institutional staff, judiciary, NGOs/CBOs or

members of the community. Services include counseling, legal guidance, arranging shelter, family support, financial support for emergencies, arranging for medical treatment or hospitalization, vocational training, educational support, information about government schemes, access to citizenship rights, and connecting with the NGO sector towards rehabilitation and mainstreaming.

- **Research and Documentation:** Conducting studies and documentation of services provided and issues in the field towards increasing knowledge in the field of criminology and correction for teaching, training and intervention.
- **Policy and Advocacy:** Taking up field issues with government departments concerned Le. police, prison, law and judiciary, women and child development, home, youth affairs and education both at the State and Central level. Lobbying with national and state level bodies such as NHRC, NCW, SHRC and SCW to create a climate conducive to rehabilitation of vulnerable groups in criminal justice. Involvement in PILs both at the Supreme Court and the Mumbai High Court on issues related to prison conditions, trafficking, children of prisoners, rehabilitation of victims of commercial sexual exploitation, etc.

BACKGROUND NOTE

Prison populations have remained at the margins of welfare and social work intervention and have never been viewed as in need or deserving of social services. With the development of criminology as a subject of enquiry, a gradual shift has taken place, whereby the individual alone is no more held responsible for his/her norm or law breaking behaviour. This shift in perspective has led to the development of an understanding of crime causation, which includes psychological, social, economic and political factors as being responsible for deviant behaviour in human beings.

The development of psycho-social services for custodial populations is a direct consequence of this paradigm shift in the understanding of crime. The shift has included a gradual policy shift away from capital punishment, torture and debilitating forms of punishment, imprisonment as and not for punishment, more humane custodial conditions, protection of legal and human rights, and finally a focus on retraining and rehabilitation.

A Brief history of Probation and Borstal Schools

Probation is a term coined by John Augustus, From the Latin verb "probare" - to prove, to test

The origins of probation can be traced to English criminal law of the Middle Ages. Harsh punishments were imposed on adults and children alike for offenses that were not always of a serious nature. Sentences such as branding, flogging, mutilation and execution were common. During the time of King Henry VIII, for instance, no less than 200 crimes were punishable by death, many of which were minor offenses.

This harshness eventually led to discontent in certain progressive segments of English society concerned with the evolution of the justice system. Slowly, yet resolutely, in an effort to mitigate these inhumane punishments, a variety of measures were devised and adopted. Royal pardons could be purchased by the accused; activist judges could refrain from applying statutes or could opt for a lenient interpretation of them; stolen property could be devalued by the court so that offenders could be charged with a lesser crime. Also, benefit of clergy, judicial reprieve, sanctuary, and abjuration offered offenders a degree of protection from the enactment of harsh sentences.

Eventually, the courts began the practice of "binding over for good behavior," a form of temporary release during which offenders could take measures to secure pardons or lesser sentences. Controversially, certain courts in due time began suspending sentences.

In the United States, particularly in Massachusetts, different practices were being developed. "Security for good behavior," also known as good abeyance, was much like modern bail: the accused paid a fee as collateral for good behavior. Filing was also practiced in cases that did not demand an immediate sentence. Using this procedure, indictments were "laid on file" or held in abeyance. To mitigate unreasonable mandatory penalties, judges often granted a motion to quash based upon minor technicalities or errors in the proceedings. Although these American practices were genuine precursors to probation, it is the early use of recognizance and suspended sentence that are directly related to modern probation.

Two names are most closely associated with the founding of probation: Matthew Davenport Hill, an 18th century English barrister and judge, and John Augustus, a 19th Century Boston boot-maker.

As a young professional in England, Hill had witnessed the sentencing of youthful offenders to one-day terms on the condition that they be returned to a parent or guardian who would closely supervise them. When he eventually became the Recorder of Birmingham, a judicial post, he used a similar practice for individuals who did not seem hopelessly corrupt. If offenders demonstrated a promise for rehabilitation, they were placed in the hands of generous guardians who willingly took charge of them. Hill had police officers pay periodic visits to these guardians in an effort to track the offender's progress and to keep a running account.

John Augustus, the "Father of Probation," is recognized as the first true probation officer. Augustus was born in Woburn, Massachusetts, in 1785. By 1829, he was a permanent resident of Boston and the owner of a successful boot-making business. It was undoubtedly his membership in the Washington Total Abstinence Society that led him to the Boston courts. Washingtonians abstained from alcohol themselves and were convinced that abusers of alcohol could be rehabilitated through "understanding, kindness and sustained moral suasion, rather than through conviction and jail sentences.

In 1841, John Augustus attended police court to bail out a "common drunkard," the first probationer. The offender was ordered to appear in court three weeks later sentencing. He returned to court a sober man, accompanied by Augustus. To the astonishment of all in attendance, his appearance and demeanor had dramatically changed.'

Augustus thus began an 18-year career as a volunteer probation officer. Not all of the offenders helped by Augustus were alcohol abusers, nor were all prospective probationers taker under his wing. Close attention was paid to evaluating whether or not a candidate would likely prove to be a successful subject of probation. The offender's character, age and the people, places and things apt to influence him/her were all considered.

Augustus was subsequently credited with founding Investigations, one of three main concepts of modern probation, the other two being Intake and Supervision. Augustus, who kept detailed notes on his activities, was also the first to apply the term "probation" to this process of treating offenders.

By 1858, John Augustus had provided bail for 1,946 men and women, young and old. Reportedly, only ten of this number forfeited their bond, a remarkable accomplishment when measured against any standard. His reformer's zeal and dogged persistence won him the opposition of certain segments of Boston society as well as the devotion and aid of many Boston philanthropists and organizations. The first probation statute, enacted in Massachusetts shortly after this death in 1859, was widely attributed to his efforts.

Following the passage of that first statute, probation spread gradually throughout the United States and subsequently to many other countries. The juvenile court movement contributed greatly to the development of probation as a legally recognized method of dealing with offenders.

The Borstal Schools Act

The Borstal Schools Act owes its origins to England - a movement towards reform and rehabilitation of youthful offenders by separating them from adult prisoners and starting reformatory schools for young offenders with an emphasis on education, vocational training and reform, rather than on punishment and sentencing. The Act was passed in India in 1929 as opposed to the Probation of Offenders' Act, which was passed in 1958. Most States in the country established Borstal Schools to treat youthful offenders differently from adult and hardened offenders. Maharashtra established its first Borstal School in Kolhapur and this was later shifted to Nasik, where it presently exists. It has a capacity of around 250 youthful offenders and the superintendent of the institution is called the principal. The School provides for a range of vocational training facilities and ITI approved certificate courses in carpentry, wiremanship, and a host of other vocations.

The Probation of Offenders Act and the Borstal Schools Act are among the earliest legislations passed in India which have a clearly correctional perspective. These acts were passed with the objective of focusing on youthful offenders to 'reclaim' this section of society from the world of crime and negative influences and re-integrate them into the mainstream. There is often a misconception about these legislations that they are 'soft' and amount to showing leniency towards the offender, and therefore can only be considered in petty offences or where the offender is very young. However, the true objective of probation is the Scientific application of criminological and punishment theories to certain categories of offenders - those who can be corrected and 'reclaimed' without being imprisoned. It is based on the premise that every offender does not need to be sentenced to imprisonment and can be improved through a community based supervised-process. It can also be a more cost effective method of crime prevention than imprisonment - in certain category of offences.

Rationale of the Workshop

A large number of under trial prisoners have weakened family supports or lack a helping hand outside prison. As a result, they remain in prison for longer periods (inspite of a majority of them having been granted bail). Many are not produced regularly before the courts due to lack of police escorts and most are not aware of their legal rights. This situation makes them vulnerable to criminalizing influences whereby hard-core criminals lure them or they languish for long periods in prison in minor offences.

As per sections 3 and 4 of the Probation of Offenders Act, 1958, many of the above mentioned prisoners could be considered for release on probation (on admonition or on probation of good conduct).

Those offenders who are below 21 years of age can be considered for probation under section 6 of the Probation of Offender's Act, 1958.

A study was undertaken by Prayas in two prisons in January 2002 to study the scope and potential of the PO Act. The data for the study was collected from Mumbai Central (Youth and Women's Sections) and Byculla District Prison. The attempt was to find out number of prisoners who are entitled to get benefit of probation. The data collected was based on the records available in the judicial section of the prisons and in some cases, further information was collected from the inmates.

Analysis of Data

Mumbai Central Prison (Youth Barrack)

- Out of the 53 inmates whose records were checked, 47 were charged with IPC sections, 4 under the Bombay Police Act and 2 under the Passport Act.
- Most of those booked under IPC sections were arrested under 324, 379, 380 and 457. This makes them eligible to be considered for probation under sections 3 and 4 of the P.O. Act.
- Out of 53 prisoners contacted, 51 (96%) were below the age of 21 years. This makes them eligible to be considered for probation under section 6 of the P.O. Act.
- 29 prisoners (55%) had roots in the city of Mumbai, i.e. they either had family support of some kind, or friends/employers outside prison to back them. This makes them eligible to be considered for probation under section 4 and 5 of the P.O. Act.

Byculla District Prison (BDP)

- Out of the total population of 187 who were surveyed in BDP, 135 were booked under IPC sections (72%), 25 were arrested under the Railways Act (13%), 24 under Bombay Police Act (13%) and 3 under the Criminal Procedure Code. All these prisoners can be considered for benefit of probation, under section 3 and 4 of the Act
- 136 inmates were below 21 years of age i.e.72%. These inmates can be considered for probation under section 6 of the Act.
- 64 prisoners were local residents of Mumbai (34%) i.e. they may have some kind of support outside, thereby becoming eligible for release on probation of good conduct under sections 4 and 5 of the Act.

Byculla District Prison (Youth Barrack)

- Out of the 32 prisoners surveyed in the Youth Barrack, 25 prisoners (78%) were charged under IPC offences, 4 (12.5%) under the Bombay Police Act and 3 (9.5%) under the Passports Act. As majority of them were charged under those offences under which the benefit of probation is available, they could be considered for probation under section 3 and 4 of the Act.
- 31 inmates (97%) were below 21 years of age, thereby eligible for probation under section 6 of the Act.
- 14 out of the 32 inmates (44%) were found to be residents of Mumbai which makes them a preferred group for benefit of probation under sections 4 and 5 of the Act.

Summary of Findings

Out of the total 272 prisoners surveyed:

- 207 (76%) were charged under IPC sections such as theft, house breaking, causing hurt, etc.
- 25 inmates (9%) were charged under Railways Act.
- 32 prisoners (12%) were charged under Bombay Police Act.
- 3 of the prisoners were charged under Criminal Procedure Code.

This implies that a total of 270 out of 272 prisoners studied, are entitled to get benefit of probation if they are not restricted by any other provisions in the law and in their case.

218 prisoners (80%) studied were below 21 years of age, which makes them eligible to be considered under section 6 of the P.O. Act.

107 of the inmates surveyed (39%) consisted of local residents of Mumbai. This implies that they may have some kind of support available like family or friends.

Conclusion

The study showed that the majority of the prisoners are charged under Indian Penal Code, Railways Act, Bombay Police Act and Criminal Procedure Code offences. A substantive number of prisoners are local residents of Mumbai. They are young and below 21 years of age. In this situation the section 3, 4 and 6 of the P.O. Act, 1958 allows the prisoner to avail the benefit of probation instead of languishing in prison in minor offences.

If convicted, these under trials could be considered for release on probation and this would help reduce overcrowding in prisons. It would also ensure that first time and youthful offenders who get the benefit of probation will get an opportunity to re-integrate in society and kept away from the criminalizing influences of hardcore offenders.

It has been observed that one of the reasons for non-implementation of the provisions of the PO Act and the Borstal Schools Act is the lack of interaction among the members of the judiciary and the probation officers and social workers who work with prisoners to discuss and address the problems related lack of proper implementation of the Acts. There are a lot of misconceptions, lack of awareness and understanding about the ground level realities which could be solved if there exists a platform to discuss and sort out the issues concerning the implementation of these correctional laws.

The main objective of organizing a workshop between members of the judiciary and probation officers, prison officials and social workers is to create platform for discussion to address the implementation problems related to the PO Act and the Borstal Schools Act.

INAUGURAL SESSION

Welcome to Participants and Guests of Honour

Shri Sunil Mhaske, Social Worker, Prayas, welcomed all participants on behalf of Prayas to the workshop. He thanked the speakers and resource persons for having agreed to come and share their experiences with the participants of the workshop. He mentioned that it was the objective of Prayas to promote dialogue among the various stakeholders of the criminal justice system, to improve coordination among them, with a view to identify and fill gaps in implementation of laws and procedures related to rights and rehabilitation of citizens in the criminal justice system. He expressed his gratefulness, on behalf of Prayas, to Hon'ble Shri Dholakia and Hon'ble Shri Nirgude for having consented to organize the workshop and for all their support and cooperation in organizing the same.

Keynote Address

The Workshop was inaugurated by the District and Sessions Judge, Hon'ble Shri Dolakia Hon'ble Shri Dhoiakia, while inaugurating the Workshop emphasised the importance of correctional laws such as the Probation of Offenders Act and the Borstal Schools Act in the rehabilitation of youth offenders, first-time offenders, women offenders and those who could be returned to the community in lieu of imprisonment. He stressed the role of probation officers in implantation of these acts and need for coordination between the judiciary and the probation department in this connection. It was in this context that the District and Sessions Court of Thane had decided to organize this one day workshop for all judges and magistrates in the district. The objective of the workshop was to create awareness among the members of the judiciary about these legislations and also to create a platform for sharing of problems regarding the implementation of the P.O. Act.

He began his inaugural address by saying that he was at the 'receiving end' at the workshop - to receive information and guidance about the two Acts around which the seminar had been organized i.e. the Probation of Offender's Act 1958 and the Bombay Borstal Schools Act 1929. The main purpose of the workshop was to increase the referral of cases under these Acts to the Probation Officers, as an alternative to awarding punishments of imprisonment. The main purpose of these Acts was reformative.

Hon'ble Shri Dhoiakia added that he would like to give a piece of his mind to the organizers with apologies to them, that it all depends on the nature of the offence, the offender himself, his background and also the need to make the victim feel that the said victim's grievances has been redressed. Apart from this, he agreed in advance, especially since our prisons were over crowded, that the judiciary should try to avoid, wherever possible, sending the convicts to prisons. There are several judgments of our own High Court, as well as the apex court, in which they have appealed for more and more use of the provisions of Probation Offenders Act. He mentioned that recently, he had come across a judgment in which, even the in case of sentence under Section 307 IPC, the High Court had given the benefit of this Act.

He ended his address by exhorting the participant judges to take the benefit of the resource persons and speakers of the workshop, and know from them how best one could utilize the provisions of the PO Act and the Bombay Borstal School Act. He also congratulated Prayas for having this workshop, in collaboration with the Thane District and Sessions Court.

PAPER PRESENTATIONS

Speaker: Shri Dilip Thombre, Lecturer, Mahatma Gandhi Training Institute, Department of Women and Child Development, Govt. of Maharashtra, Pune

अपराधी परिविक्षा अधिनियम, १९५८

पाठ्यभूमी:

ह्या कायद्याचा जनक जॉन ऑगस्टस आहे. सन १८४१ साली मा. न्यायालयापुढे परिविक्षा पध्दतीची कल्पना मांडण्यात आली.

कायद्याची व्याख्या: Probation म्हणजे काय?

Probation हा लॅटीन शब्द Probato पासून आला आहे. Probation म्हणजे तुरुंगवासाची अशी पर्यायी व्यवस्था की ज्यात अपराध्यांना शिक्षेचे निलंबन करून त्याला सुधारण्याची व समाजामध्ये जीवन जगण्याची दिलेली संधी विशिष्ट मुदतीत चांगली वर्तणूक ठेवली हे सिध्द करणारा काळ.

कायद्याची वैशिष्ट्ये:

- १) ह्या कायद्यामध्ये १ ते १९ कलमे आहेत.
- २) जन्मठेप किंवा फाशीच्या शिक्षेला पात्र नसलेल्या व्यक्तीस अपराध केल्यावरून दोषी ठरविण्यात येईल अशा व्यक्तीला Probation चा फायदा देण्यात येतो.
- ३) ह्या कायद्यामध्ये १८ ते २१ वयोगटातील आरोपींच्या केसेस परिविक्षा अधिकारन्याया चौकशीसाठी देणे बंधनकारक आहे. (Mandatory)
- ४) न्यायालयीन प्रक्रियेमध्ये सतत चालणारा महत्वाचा कायदा
- ५) मा. मुंबई उच्च न्यायालय क्रिमिनल मॅन्युअल १९८० प्रकरण ११ मध्ये नमूद आहे की २१ वर्षांच्या वर व २१ वर्षांच्या खालील अपराध्यांचा प्रारंभिक चौकशी अहवाल केसच्या कोणत्याही Stage ला मागवू शकतात किंवा अपराध्याचा चार्ज फेम करताना सुध्दा मा. न्यायालय मागवू शकते.
- ६) प्रोबेशन ही सिलेक्टीव मेथड आहे.
- ७) ज्या आरोपीला प्रोबेशनचा फायदा दिलेला नाही असा २१ वर्षाखालील आरोपीला व परिविक्षा अधिकारी यांना निकालाविरुध्द अपील करता येते.
- ८) प्रोबेशन ही उपचार पध्दती आहे. अपराध्यांमध्ये सुधारणा व पुनर्वसन करणारी आहे.

कायद्याचे स्वरूप:

अपराध्याचा गुन्हा न्यायालयात सिध्द झाल्यावर न्यायालय परिविक्षा अधिकारी यांच्याकडून प्राथमिक चौकशी अहवाल मागविते. त्यांत अपराध्यांचे वय, शिक्षण, चारित्र्य, व्यवसाय, आर्थिक, सामाजिक, मानसिक, स्थिती, कुटुंबाची व सभोवतालची परिस्थिती, अपराध्याच्या गुन्हाबाबत पूर्वइतिहास व ज्या परिस्थितीमध्ये गुन्हा केला आहे ती परिस्थिती.

कायद्यातील महत्वाची कलमे:

- १) कलम ३ - मा. न्यायालय अपराध्यास ताकीद/समज देवून सोडू शकते.
- २) कलम ४(१) - अपराध्यास चांगला वर्तनाच्या बंधपत्रावर सोडणे १ वर्ष ते ३ वर्ष पर्यंत एखाद्या आरोपींनी स्वतःहून मा. न्यायालयात गुन्हा कबूल केला असेल तर अशावेळी परिविक्षा अधिकारी यांचा प्रारंभिक चौकशी अहवाल मागवून त्याला अ.प.अ. १९५८ च्या कलम ४ (१) चा फायदा दिला जाऊ शकतो.
- ३) कलम ४(१)(३) - आरोपी याचा गुन्हा सिध्द झाल्यावर त्याला शिक्षा न देता परिविक्षा अधिकाऱ्याकडून चौकशी अहवाल मागविला जातो व त्या अहवालातील शिफारशीनुसार मा. न्यायालय त्याला चांगल्या वर्तनाच्या बंधपत्रावर मुक्त करून १ वर्षापासून ते ३ वर्षापासून परिविक्षा अधिकारी यांच्या देखरेखीखाली ठेवण्यात येते.
- या कायद्यात देखरेखीला महत्व देण्यात आले असून देखरेख हा आत्मा आहे. देखरेखीच्या काळात अपराध्याने गुन्हेगारीकडे न वळता चांगला नागरिक होणे महत्वाचे असते म्हणून त्याला मार्गदर्शन करणे, वर्तनात बदल घडवून आणणे, नोकरीसाठी प्रयत्न करणे, सामाजिक स्थिती प्राप्त करून देणे, त्याला आर्थिक पायावर उभे राहण्यासाठी उद्योग धंद्याकरिता अनुदान देणे. त्याचे पुनर्वसन करणे हा महत्वाचा उद्देश त्याच्या पाठीमागे आहे. (preventive major) त्यामुळे परिविक्षा अधिकारी हा नुसता अधिकारी नसून त्याचा मित्र, उपदेशक, व तत्वतेला असतो. याबाबतची ठाणे जिल्ह्यातील मी आपल्यापुढे मांडतो.
- म्हात्रे नावाच्या अपराध्याची मा. सत्र न्यायालयात ३९५, ३९७, ४५० भा.द.वि. कायद्याखाली केस सुरु होती. परिविक्षा अधिकारी याचा अहवाल मागवून त्याला ३ वर्षासाठी देखरेखीखाली ठेवण्यात आले होते. परिविक्षा अधिकाऱ्याच्या देखरेखीखाली आल्यानंतर मी स्वतः त्याच्या पुनर्वसनाबाबत नियोजन तयार केले व त्यानुसार त्याने गुन्हेगारीकडे वळू नये म्हणून त्याच्या वर्तनात बदल घडविण्याचा प्रयत्न केला. त्याची आर्थिक स्थिती खराब होती, त्याला नोकरी नव्हती, तो अशिक्षित असल्यामुळे नोकरी मिळणे कठीण होते. अशावेळी तो काही उद्योगधंदा करू शकेल का असे विचारले असता त्याने चहाचा स्टॉल चालविण्याबाबत विचार बोलून दाखविला व त्याअनुषंगाने त्याच्याकडून चहाच्या स्टॉलला लागणाऱ्या सर्व वस्तूंची यादी तयार करून त्याचे प्रकरण महिला व बालविकास आयुक्तालय, पुणे - १ यांचेकडे पाठविण्यात आले व त्यांनी त्याला अनुदान मंजूर केले. त्याचा चहाचा स्टॉल सुरु असून रु. १५० ते २०० मिळत असतात. जर त्याला योग्य मार्गदर्शन किंवा आर्थिक सहाय्य केले नसते तर कदाचित तो मोठा गुन्हेगार झाला असता, आज तो समाजात चांगला नागरिक म्हणून जीवन जगत आहे. या अशा बऱ्याच आरोपींचे पुनर्वसनाबाबत उदाहरण सांगता येऊ शकतील.
- ४) कलम ५ - फिर्यादीस नुकसान भरपाई देणे. (फिर्यादी जखमी किंवा त्याचे आर्थिक नुकसान झाले असेल तर)
- ५) कलम ६ - २१ वर्षाखालील अपराध्यांना शिक्षा ठोठावणार नाही तर परिविक्षा अधिकाऱ्याचा प्राथमिक चौकशी अहवाल मागविणे बंधनकारक केले आहे. अहवाल गोपनीय असतो.
- ६) कलम ११ - आरोपी १८ ते २१ वयोगटातील, त्यांना कलम ३ व ४ फायदा न दिल्यास अशा आरोपींना, परिविक्षा अधिकारी यांना अपील करता येते.

केस नं. ५६३/९४

Ayodhyasingh Thakur

V/s.

State of Maharashtra

A.T. Bhangale

Additional Session Judge

७) कलम १२ - Removal of Disqualification

मा. न्यायालयाने अपराध्यास या कायद्याचा फायदा दिल्यास तो शासकीय सेवेत किंवा इतर ठिकाणी अपात्र ठरत नाही.

उदा. अंधेरी कोर्ट-मा श्री. ठिपसे न्यायाधीश यांची केस - Bank of India (State)

अपराधी परिविक्षा अधिनियम १९५८ च्या कायद्याची अंमलबजावणी करताना वेणाऱ्या अडचणी

- १) मा. न्यायालय यांनी P.O. Act कलम ६ चा वापर करावा कारण तो Mandatory आहे.
- २) काही जिल्ह्यांमध्ये मा. न्यायालय Cr.Pc. मधील ३६० कलमाचा वापर करून अपराध्याला सद्द्वर्तनाच्या शर्तीवर सोडतात. त्याऐवजी त्यांनी अपराधी परिविक्षा अधिनियम १९५८ च्या कायद्याचा वापर करावा.
- ३) काही. मा. न्यायालयाचा समज आहे की फक्त १८ ते २१ वर्षाखालील आरोपींचा अ.प.अ. कायद्याखाली अहवाल मागवावा. परंतु अ.प.अ. कायदा १९५८ च्या कलम ४(१) मध्ये त्याचा उल्लेख नाही. तसेच Bombay High Court Criminal Manual 1980 Chapter ११ मध्ये २१ वर्षाखालील किंवा २१ वर्षावरील आरोपींचा अहवाल कोणत्याही स्थळी मागवू शकते, चार्ज फेम करताना देखील असे Directions आहेत पण वापर होत नाही.
- ४) मा. मुंबई उच्च न्यायालय यांनी काढलेले परिपत्रक दि. ४/३/२००५ त्यानुसार अ.प.अ. १९५८ खाली केसेस मागविण्यात याव्यात व परिविक्षा अधिकारी/जिल्हा परिविक्षा अधिकारी साठी भेटीचे रजिस्टर ठेवण्याबाबत कार्यवाही करावी.
- ५) कारागृहामध्ये १८ ते २१ वर्षाखालील असणारे कच्चे कैदी यांची यादी जर तुल्य अधिकारी यांनी दिली तर परिविक्षा अधिकारी हा संबंधित मा. न्यायालयाशी चर्चा करून त्या आरोपी संबंधीचा चौकशी अहवाल देऊन त्यांना Bond देता येणे शक्य होईल. तसेच गर्दी कमी होईल व शासनाची खर्चाची बचत होईल.
- ६) मा. जिल्हा व सत्र न्यायाधीश यांनी त्यांच्या अधिपत्याखाली असणाऱ्या न्यायाधिकाऱ्यांच्या मासिक सभेच्या वेळी जिल्हा परिविक्षा अधिकारी यांना बोलावून अपराधी परिविक्षा अधिनियम कायद्याचा आढावा घ्यावा.

मुंबई दारुबंदी कायदा, भ्रष्टाचार प्रतिबंधक कायदा, शस्त्रविषयक कायदा, अन्न व भेसळ प्रतिबंधक कायदा, लष्करी कायदा आणि नैतिक अपराधाचे गुन्हे सोडून सर्व गुन्हाकरिता हा कायदा लागू होतो.

Speaker: Shri B.D. Khatri, Retired District Probation Officer, Nasik

Role of the Court

Magistrates and Judges may exercise a wise discretion in making a liberal use of the Act by releasing the offender on probation. Unless cases are referred by the Court, the Probation Officer will not be able to render his services to the probationer. It is a joint venture of the Judges and Probation Officers. Greater cooperation and coordination between the court and the Probation Officer breeds greater understanding. The P.O. should have direct access to the Judges at mutually convenient time to exchange ideas on specific cases. Magistrates and Judges should take sympathetic interest in the Probation Officer's work. The Court should support and encourage the Probation Officer, when he is right. In short, Judges and Probation Officers are participants in the process of providing adequate security and treatment to the offender.

"Sentencing an accused is a sensitive exercise of discretion and not a mechanical prescription acting on hunch"

(Ved Prakash V/s State of Maharashtra, 1981 - SCC (Cri) P-182 AIR 1981-Sc.643)

Before selection of cases on Probation, Judges must try to answer several questions, such as:

- 1) Was the offence committed without pre-mediation or after due deliberation?
- 2) Whether there is hope of ever reclaiming him from being a menace to the society?
- 3) Is he a person who is patently amenable to reformation?
- 4) Will an order of Probation have the effect of redeeming the offender? .

After considering these and related issues, the Court is expected to seek assistance of Probation Officer by making a reference to a particular case.

The role of the Magistrate is described by the Hon'ble Justice V.R. Krishana Iyer as follows:

"Pivotal role of the magistracy in implementing intelligently and compassionately a comprehensive programme of Probation involves new learning, new technique, new responsibility and new area of decision making"

Role of the Probation Officer

The offender is released on Probation by the court, on the basis of the report submitted by the Probation Officer. While writing the pre-sentence inquiry report, the real portrait of the offender should be displayed before the court. Report of the Probation Officer should be accurate and relevant. Continuity and clarity is also another characteristic of the Pre-Sentence Enquiry Report. Secondly, another important feature of the work of the PO is the supervision by the PO. Supervision means placing and offender in the supervision of the P.O. so as to abide by the conditions put on him during a supervision period. At the same time, the P.O. is supposed to mould his character to a desired level. Supervision has two aspects 1) Prevention of crime and 2) Rehabilitation of the Offender.

When the offender is released on Probation and kept in the supervision of the Probation Officer, greater responsibility lies on him. The Probationer has to abide by the conditions laid down by the courts. In case of breach of conditions by the probationer the report is made to the court by the Probation Officer for revocation of probation order. In case the Probationer

does not show any progress in **his** behaviour, he has to act as a protector of the society. The Probation Officer **and the Court should** strike a balance between the risk to the society and welfare of the offender.

Moreover, the Probation Officer has to accept the Probationer as he is, i.e. with all his defects. He must be able to understand the various categories of the Probationers. However, it is not easy to change the attitude of the offender. Mutual respect and confidence, and understanding of each other's role and functions, would create the conditions to induce behavioural change in the individual. In this process, the Probation Officer has to work with the family of the offender and also **with** community.

Probation is a process of treatment. Probation treatment is not a single act or event. It is a process a series of actions and re-actions, which go on over a period of time. What is Probation treatment? It includes:

- 1) To re-direct his emotions to healthier channels.
- 2) To give him psychological support
- 3) To give him encouragement
- 4) To show him sympathy
- 5) To render him guidance and advice
- 6) To give him re-assurance (Re-assurance includes relief from fear or anxiety through comforting words)
- 7) To change his environment
- 8) To provide/create recreational activities in a more constructive way.
- 9) To render him psychiatrist treatment, if necessary.
- 10) To provide him financial assistance through bank or Govt. funds or from any other social agency.

Section 360 Cr.P.C. and Provisions of P.O. Act, 1958

- 1) Sec. 360 Cr.P.C. is inapplicable in States where the P.O. Act is in force. It is a misconception that both the provisions can co-exists and made applicable alternatively.

State of Himachal Pradesh v/s Lat Singh (1990) Cr. L.J., Pg - 723

- 2) After the new code of Cr.P.C. came into force, Sec. 19 of the P.O. Act was not suitably amended, so as to substitute Sec. 360 for Sec. 562

Pushkar Raj v/s State of Punjab (1981) Cr. L.J. 1910 (P & H)

- 3) In Gurbachan Singh's case, with the aid of Sec. 8 of the General Clauses Act, the divisional bench held that legislative intent is clearly remarked, and Sec. 360 has to be read with Sec. 19 of the P.O. Act in place of old Sec. 562 Cr.P.C.

Guru Bachan Singh V/s State of Punjab (1980) Cr. L.J., Pg 417.

- 4) It is a misconception on the part of the magistrates that they can resort to Sec. 360 instead of the provisions of P.O. Act (wherever PO Act is in force).

“However, if the Act is applied but not in force, they can apply Sec. 360” (Justice Krishna Ayer)

Ved – Prakash V/s. State of Haryana (A.L.R. 1981, SC, Pg 743)

5) Provisions of P.O. Act. will override the provisions of Sec. 360 for the reasons mentioned below:

- a) Court cannot apply Sec. 360, when P.O. Act, is in force and in operation.
- b) Sub-section 10 of Sec. 360 itself clearly states that provisions of P.O. Act will not be affected.
- c) P.O. Act is a special law, where as Cr. P.C. is a procedural law. In case of conflict, the special law shall prevail.
- d) There is no justifying reason for not utilizing the provisions of P.O. Act.
- e) The ‘supervision’ element is absent in Sec. 360. Violations of conditions may not be known to the court.
- f) A non-obstinate clause is used in a provision to indicate that provision should prevail, despite, anything, contrary in any provision.

पुनर्वसनाची अनेक उदाहरणे देता येतील, परंतु मी आपल्यापुढे फक्त दोनच उदाहरणे ठेवतो.

१. औरंगाबादच्या C.J.M. मा. हिरुडकर साहेबांनी आमच्या कार्यालयाकडे दोन तरुण मुलांच्या केसेस पाठविल्या. त्या मुलावर दागिने चोरी करण्याचा आरोप होता. त्यांचा हा पहिलाच गुन्हा होता. परिस्थितीच्या दबावामुळे व वाईट संगतीमुळे त्यांचे हातून गुन्हा घडला, नंतर त्यांना त्याबद्दल पश्चातापही वाटू लागला. त्यांचे वय, गुन्हाची पार्श्वभूमी व चारित्र्य यांचा विचार करून त्यांना परिविक्षेचा फायदा देण्यात आला. प्रामाणिकपणे कष्ट करून जगण्याची त्यांची इच्छा व जिद्द पाहून आमचे कार्यालयाने स्टेट बँकेतर्फे, पुंडलिक ह्यास चहाचा स्टॉल चालविण्यासाठी रु. ३०००/- व रमेश यास सायकल दुरुस्तीसाठी (दुकानासाठी) रु. ४,४००/- कर्ज उपलब्ध करून दिले.
२. मच्छिंद्र ह्या नगर जिल्ह्यातील एका मुलाला, चुलत्याच्या घरी जावून रेडिओ चोरल्याबद्दल ४ महिने शिक्षा झाली. त्याचे वय २१ वर्षांचे आत असल्यामुळे, आम्ही सत्र न्यायालयात परिविक्षा अधिनियम कायदा, कलम ११ (३) खाली रिव्हिजन अर्ज दिले. (अपील केले) न्यायालयाने सर्व परिस्थितींचा विचार करून त्याला जिल्हा परिविक्षा अधिकाऱ्याच्या देखरेखीखाली कलम ४ (३) नुसार सोडण्यात आले. त्याच्या पुनर्वसनासाठी कार्यालयाने बरेच प्रयत्न केले, त्याला पंजाब नॅशनल बँक, यांच्या सहकार्याने पान टपरीसाठी रु. ४,३००/- चे कर्ज उपलब्ध करून दिले. अशाप्रकारे त्याचे यशस्वी पुनर्वसन करण्यात आले. विशेष म्हणजे सदर कर्जाचा धनादेश त्यावेळचे सन १९८८ ते जिल्हा सत्र न्यायाधीश श्री अनंतराव माने, यांचे शुभहस्ते प्रदान करण्यात आला.

“Probation is a process of treatment” an example

: वसंता :

अजंठा परिसरात ग्रामीण भागात राहणाऱ्या एका १८ वर्षे युवकाची ही एक सत्यकथा. घरी आई वडील व ३ लहान बहिणी असा परिवार, ४/५ एकर जिरायत शेती होती. परंतु त्यात भागत नसे. वसंता हा घरात सर्वांचा लाडका आईच्या तर त्याच्याबद्दल जास्तीच अपेक्षा होत्या. वसंता दहावी पास झाल्यावर तर त्यांच्या आईच्या अपेक्षा फारच उंचावल्या. आपल्या मुलाला आता मोठी नोकरी लागेल मग आपली परिस्थिती खूपच सुधारेल अशी स्वप्न ती रंगवू लागली परंतु दुर्दैवाने वसंताला नोकरी कुठेच लागू शकली नाही. परिस्थितीचे रडगाणे चालूच होते. कधीकधी उपाशी पोटी दिवस काढवे लागत असे. दसऱ्याच्या सणाच्या दिवशी गावातील मुले-मुली नवीन कपडे घालून मिरवित होती. घरोघर चुली पेटल्या होत्या पुरणपोळीचा खमंग वास आजूबाजूस दरवळत होता. परंतु वसंताच्या घरी मात्र चूल धंड होती. नवे कपडे नाही, गोडधोड खायला नाही. धाकट्या बहिणीचे चेहरे पाहून तो गलबलून गेला. इतके शिकून आपल्या बहिणीसाठी कुटूंबासाठी आपण काहीच करू शकत नाही ही गोष्ट मनाला लागून गेली. स्वतःचीच त्याला लाज वाटली स्वतःबद्दल तिरस्कार निर्माण झाला. अशा परिस्थितीत त्याने तिरमिरीतच घरात असलेली विषारी पावडर खाल्ली. तो बेशुध्द झाला परंतु घरात कुटुंबियांचे त्याचेकडे लक्ष गेले. त्यांनी ताबडतोब हॉस्पिटलमध्ये त्याला पोहचविले तातडीने उपचार केले. डॉक्टरांच्या प्रयत्नांमुळे त्याचा जीव तर वाचला परंतु आत्महत्याचा प्रयत्न केल्याबद्दल पोलीसांनी गुन्हा दाखल केला. केस कोर्टात गेल्यावर कोर्टाने परिविक्षा अधिकाऱ्याचा अहवाल मागितला. अहवालाच्या आधारे आरोपीचे वय, चारित्र्य व गुन्हाचे स्वरूप लक्षात घेवून त्याला परिविक्षा अधिनियमाचा फायदा देवून परिविक्षा अधिकाऱ्याच्या देखरेखीखाली १ वर्षासाठी सोडले. परिविक्षा अधिकाऱ्याने सतत १ वर्षभर त्याच्या घरी भेटी दिल्या. वसंताही दर महिन्यास कार्यालयात येवून मनमोकळी चर्चा करीत असे. अधिकाऱ्याने कुटुंबाशी जवळीक साधली. त्यांचा विश्वास संपादन केला. वसंताला आम्ही विचारले “तुझा जो प्रश्न आहे तो आत्महत्येने सुटला का?” वसंताला आपली चूक समजली नंतर परिविक्षा अधिकाऱ्याने त्याच्या आईशी संपर्क साधला तिच्या वसंताबद्दल गैरवाजवी व चुकीच्या अपेक्षा होत्या याची जाणीव करून दिली. त्याच्या आईला परिविक्षा अधिकाऱ्याचे म्हणणे पटले. त्यानंतर परिविक्षा अधिकाऱ्याने त्यांच्याशी संपर्क साधून बँकेचे कर्ज त्याला मिळवून दिले. त्या पैशातून त्याने एक म्हैस खरेदी केली. आता रोख पैसा त्याच्या हातात खेळू लागला. गावातील सरपंचाशी परिविक्षा अधिकाऱ्याने संपर्क साधला. त्याच्या मदतीने गावातील सोसायटीमध्ये सहायक सचिव म्हणून १५०/- पगाराची नोकरी त्याला मिळवून देण्यात आली व वसंताच्या आर्थिक उत्पन्नात भर पडली. हळूहळू त्याच्यामधील नैराश्याची भावना कमी होत गेली. आत्मविश्वास वाढू लागला. आलेल्या परिस्थितीला सामोर जाण्याची व्यवहारिक दृष्टी त्याला लाभली. त्याचा जगाकडे पाहण्याचा दृष्टीने बदलला.

Why is the Report of the Probation Officer Necessary?

During the process of trial, the magistrate is concerned with the alleged suit of offender. Apparently, the magistrate does not know about the personality, circumstances or capacity of the offender for future adjustment. It is after receipt of the report from P.O. that the real portrait of the offender can be known to the Magistrate. Therefore, report from the P.O. is absolutely necessary so as to make a suitable disposition of the case. When there is machinery of probation system available to assist the court, while dealing with the offender u/s 3 or 4, there seems no reason for not utilizing the services rendered by the Probation Officer.

The P.O. is in a better position to know about the character and antecedents of the accused, otherwise, this important material would not have been available to the court.

In appropriate cases, the P.O. will be able to solve the problem of the offender placed under supervision by the court and intensive help or services be rendered to rehabilitate him so that he would become a useful citizen of society. He would prove as an asset instead of liability to society. This is only possible if courts take keen interest in the probation system.

In case of breach of condition by the offender released under supervision of the Probation Officer, it can be communicated to the concerned court, so that further action can be taken by the court. But in case the court releases the offender on probation without calling report from P.O., it is difficult to know if he committed the breach of conditions of the bond.

Though calling of a report from the P.O. u/s 4(1) of the Act is not a condition precedent, for making an order u/s 4(1) of the P.O. Act, it is very essential that such a report should ordinarily be called from the P.O. Calling for a report from the P.O. is therefore absolutely in the interest of the offender and the society, and the same should be considered by the court before it releases the offender on probation of good conduct. Releasing the offender on probation without proper enquiry as regards the character and antecedents of the accused would be exposing the society to the risk of the offender repeating the unlawful act and bring the whole scheme of probation into discredit.

The P.O. is an important officer in the machinery of implementation of the Act. The post is created to assist the courts in the matter of probation. There is, therefore no reason why his services should not be availed of before the order of probation is passed. It is essential that his services be utilized, otherwise important material relevant to be considered will not be available to the court at all.

It is therefore very essential that the courts should not, in order to hasten the disposal of the cases, be inclined to dispense with the calling for a report and give the benefit of Section 4 to the accused, without there being sufficient material on record before them.

State of Maharashtra V/s Bodya Ramji Patil (1978), Cr.L.J. 411.

Calling for Report from Probation Officer:

In Gouranga Charan Bhol V/s State of Orissa, it was laid down that in absence of a report from the P.O., the court has no authority to release the accused on probation. This view is supported by Mysore High Court in the case of State of Mysore V/s Saib Gunda (1964) Cr. L.J. 460.

Section 4 and 6 of the Act indicate the procedure requiring the court to call for a report and from the P.O. and consideration of a report and any other information available relating to character and physical and mental condition of the offender. These facts are of primary importance before the court can pass an order under the P.O. Act (Ramsingh V/s. State of Haryana 1971 (3) SCC - 914).

"The word 'shall' makes it a mandatory condition and the expression 'if any' can in the context only cover a case where notwithstanding such requisition, the P.O. for one reason or the other has not submitted a report. "The report from me P.O. is a condition precedent for the exercise of the power under Sec. 6(1) of the Act by the Court" (Rattanlal V/s. State of Punjab A.I.R. 1965 SC 444)

In the Goa Case, it was held that the language of Section 4(2) manifests that the calling for report of the P.O. is mandatory and without considering the report of the P.O., no order under sub-section (1) can be made. Unless and until the report is called for, the question of consideration of the report will arise (State V/s, Vagush A.I.R. 1970 Goa 49).

ठाणे जिल्ह्यातील परिविक्षा कार्य

- श्रीमती रेणुका चौधरी, जिल्हे परिविक्षा अधिकारी

महाराष्ट्र राज्यांतील अन्य जिल्ह्यांच्या तुलनेत ठाणे जिल्ह्यांत अपराधी परिविक्षा अधिनियम १९५८ चे कार्यक्षेत्र बरेच मोठे आहे. ठाणे जिल्ह्यात एकूण १५ तालुके असून संपूर्ण देशांतील सर्वात मोठे औद्योगिक क्षेत्र असलेल्या "नवी मुंबई" (ठाणे-बेलापूर औद्योगिक पट्टा) हा प्रभाग आहे. तसेच संपूर्ण शहरीकरण झालेले ५ प्रकारची जन वैशिष्ट्ये असलेला हा जिल्हा आहे. संपूर्ण राज्यांत सर्वात जास्त म्हणजे ६ महानगर पालिका असलेला हा जिल्हा आहे. जिल्ह्यातील १५ तालुक्यांपैकी १२ तालुक्यांमध्येच न्यायालये आहेत आणि परिविक्षा अधिनियमांचे काम चालते असे एकूण ४३ न्यायालये आहेत. ठाणे जिल्हा भारतातील सर्वात मोठी उद्यम नगरी मुंबईला जोडून व मुंबईचे प्रवेशद्वार आहे. त्यामुळे संपूर्ण देशालून मुंबईकडे येणाऱ्या सर्व प्रवासी मार्गांचा महत्वाचा टप्पा ठाणे जिल्ह्यातच आहे. ठाणे जिल्ह्यातील कल्याण हे मध्य रेल्वेचे महत्वाचे स्थानक देशाच्या उत्तर दक्षिण व पूर्व भागाशी लोहमार्गाने जोडलेले असून विरार, वसई हे रेल्वे स्थानक देशाच्या पश्चिम व उत्तर भागाशी जोडलेले आहे. त्यामुळे कल्याण लोहमार्ग न्यायालय व वसई, विरार लोहमार्ग न्यायालय असे २ लोहमार्ग न्यायालय या जिल्ह्यांत असून त्यामध्येही अपराधी परिविक्षा अधिनियमांचे काम चालते. अशाप्रकारे या जिल्ह्यांत एकूण ४५ न्यायालयामधून अपराधी परिविक्षा अधिनियमांचे काम चालते.

त्याचप्रमाणे या जिल्ह्यांत मध्यवर्ती कारागृह असून वर्ग-१ स्तराचे जिल्हा कारागृह आहे. या दोन्ही कारागृहांत मिळून प्रतिदिन बंदी संख्या सरासरी ४००० एवढी असते. त्यापैकी "बाबागट" (१८ ते २१ वर्ष वयोगट) सुमारे ५०० पर्यंत असून महिला बंदीचे सुमारे २०० असे प्रमाण आहे.

जिल्ह्यातील अपराधी परिविक्षा अधिनियमांचे कामकाज स्वरूप:

जिल्हा परिविक्षा अधिकारी अन्य ३ परिविक्षा अधिकाऱ्यांचे मदतीने या जिल्ह्यांतील अपराधी परिविक्षा अधिनियमांचे कामकाज चालवितात. जिल्हा परिविक्षा अधिकाऱ्यांचेसह प्रत्येक परिविक्षा अधिकाऱ्यास सामान्यतः ३ तालुके (जिल्हास्तरावरील न्यायालये वगळून) व प्रत्येकी सुमारे ११ न्यायालयांचा कार्यभार सोपविण्यात आलेला आहे. एप्रिल २००५ ते डिसेंबर २००५ या दरम्यान जिल्ह्यांतील विविध न्यायालयांकडून एकूण १२१ प्रकरणे प्रारंभिक चौकशी करिता उपलब्ध झालेली आहेत. जिल्ह्यांतील न्यायालयांकडून प्रतिमहा सरासरी २५ प्रारंभिक चौकशी प्रकरणे उपलब्ध होतात तसेच सरासरी २ परिविक्षाधीन अपराधी परिविक्षेची नवीन प्रकरणे देखरेखीसाठी नोंदविली जातात व सरासरी २० प्रकरणे नियमित देखरेखीसाठी असतात. सध्या एकूण २५ देखरेख प्रकरणांचे नियमित देखरेख चालू आहे. देशांतील विविध कारागृहांमधील सिध्द अपराध बंदीच्या कौटुंबिक व वैधानिक वैयक्तिक संपर्काची प्रतिमाह सरासरी ८ प्रकरणे नोंदविली जातात. मुक्तबंदी पुनर्वसन योजनेद्वारे पुनर्वसन करण्याचे प्रयत्न करणे आवश्यक आहे असे जिल्ह्यातील दोन्ही कारागृहांतून प्रतिमाह सुमारे १० बंदी मुक्त होतात.

ठाणे जिल्ह्यांतील अपराधी परिविक्षा अधिनियम १९५८ अंतर्गत चालणाऱ्या कामाचे सांख्यिकी माहिती:

| अ.क्र. | अपराधी परिविक्षा अधिनियमांतर्गत विभाग | सन २००४-२००५ मधील प्राप्त प्रकरण संख्या | ०१ एप्रिल २००५ ते ३१ डिसेंबर २००५ अखेर प्राप्त प्रकरणे |
|--------|---------------------------------------|---|--|
| १. | प्रारंभिक चौकशी प्रकरणे | २२७ | १२१ |
| २. | देखरेख प्रकरणे | १४ | १४ |
| ३. | संपर्क प्रकरणे | ४६ | २३ |

ठाणे जिल्ह्यांत अपराधी परिविक्षा अधिनियम १९५८ या फायदा दिल्यामुळे पुनर्वसित झालेली काही प्रकरणे.

१. एका शासकीय कर्मचाऱ्यावर आपल्या पत्नीस मानसिक व शारीरिक त्रास देऊन छळ करित असल्याच्या आरोपाचे प्रकरण मा. न्यायालयासमोर आले. या प्रकरणाची अपराधी परिविक्षा अधिनियमांतर्गत प्रारंभिक चौकशी करून अहवाल सादर करणे बाबत मा. न्यायालयाने आदेशित केले होते. संबंधित परिविक्षा अधिकाऱ्यांनी आरोपीची सखोल केली असता पुढील माहिती समोर आली.

अ) आरोपी विरुद्ध त्यांच्या पत्नीने तक्रार केली होती.

ब) आरोपीला दारुचे आत्यंतिक व्यसन होते.

क) आरोपीच्या आई-वडीलांनी आरोपीस घराबाहेर काढले होते. परंतु आरोपीची पत्नी व मुले मात्र आरोपीच्या आईवडीलांसमवेत राहत होती.

ड) आरोपीची पत्नी व आरोपीची दोन मुले यांना आरोपीबाबत आत्यंतिक जिद्दळा होता.

इ) आरोपी ज्या ठिकाणी राहत होता त्या सर्व परिसरांत आरोपी बदलून आदरभावना आणि सहानुभूती होती.

फ) आरोपी बाबत सन. २०००.२. मध्ये तक्रार नोंदविण्यात आली होती आणि चौकशीचे आदेश सन २००४ मध्ये देण्यात आले होते. चौकशीचे वेळेस आरोपीचे पत्नी गंभीररित्या आजारी होती. त्या कालावधीत आरोपी आपली तहानभूक विसरून आपल्या पत्नीची सर्व प्रकारची सेवा करिता होती आणि त्यामुळे त्यांची पत्नी या गंभीर आजारातून बरी होण्यास मदत झाली होती.

परिविक्षा अधिकाऱ्याने वरील माहितीचा अभ्यास करून आरोपी विरुद्ध तक्रारीचे कारण शोधले असता आरोपीच्या व्यसनाधीनतेमुळे त्यांच्या वर्तनाच्या चांगल्या बाजू झाकोळल्या होत्या. म्हणून आरोपीच्या पत्नीने आरोपीचे व्यसन सुटवे या उद्देशाने आरोपी विरुद्ध तक्रार केली होती. परंतु त्यामुळे आरोपी आपल्या कौटुंबिक स्वास्थ्यास मुकला, त्याचे पर्यायाने तो आणखीनच व्यसनाच्या आहारी गेला.

अशा परिस्थितीत आरोपीला त्याचे कौटुंबिक स्वास्थ, पत्नीचे आरोग्य या सर्व बाबींवर आरोपीच्या व्यसनाधीनतेमुळे होणारा परिणाम याबाबत परिविक्षा अधिकाऱ्यांनी समुपदेशन केले. थसेच आरोपीला कुटुंबापासून दूर केल्यामुळे त्याच्या व्यसनात वाढ झाली आहे. हे आरोपीच्या कुटुंबियांच्या निदर्शनास आणले. त्याचा परिणाम होऊन आरोपी व त्याचे कुटुंबिय हे एकत्रित बैठकीस तयार झाले. परिविक्षा अधिकाऱ्यांनी आपल्या समुपदेशन कौशल्याचा वापर करून आणि आरोपीच्या कौटुंबिक प्रेम या भावनेचा आधार घेऊन पती पत्नीमध्ये सुसंवाद घडवून आणला. तसेच सर्व कुटुंबाच्या एकूण चार एकत्रित बैठकी घडवून आणल्या त्याचा योग्य तो परिणाम झाला. आरोपीचे व्यसन सुटले व आरोपी आपल्या कुटुंबात परत गेला. परिविक्षा अधिकाऱ्यांनी या सर्व घटनांचा मा. न्यायालयास सविस्तर अहवाल सादर केला. आरोपीची शासकीय नोकरी असल्यामुळे त्याला शिक्षा झाल्यास त्याची नोकरी जाऊ शकते व त्याचा थेट परिणाम त्याचा कुटुंबियांवर होऊ शकतो. या सर्व बाबी मा. न्यायालयाने आरोपीस अपराधी परिविक्षा अधिनियमांचा फायदा देऊन या अधिनियमांच्या कलम -- ३ अन्वये आरोपीस केवळ ताकीद देऊन आरोपातून मुक्त केले.

थोडक्यात या अधिनियमांमुळे आरोपीचा तुरुंगवास व पर्यायाने त्याचा वरील तुरुंगवासाचा शिवका बसणे टाळता आले. आरोपीला आपली चूक सुधारण्याची संधी मिळाल्यामुळे त्याला त्याच्यावर अवलंबून असणाऱ्या कुटुंबियांची काळजी घेणे शक्य होईल आणि त्यामुळे भविष्यात त्याच्या कुटुंबाची जी परवड झाली असती ती थांबविणे शक्य झाले हा या अधिनियमांमुळे होणारा एक महत्वाचा फायदा आहे.

२. एका सुशिक्षित सुसंस्कृत २३ वर्षीय तरुणावर लोहमार्ग न्यायालयांत भारतीय रेल्वे कायदा १४५ (क) अनुसार प्रकरण दाखल करण्यात आले होते. आरोपीवर लोकल ट्रेनमध्ये पत्ते खेळण्याचा आरोप होता. आरोपीबाबत सखोल चौकशी करून अहवाल सादर करण्याचा मा. न्यायालयाने आदेश दिला होता. त्यानुसार परिविक्षा अधिकाऱ्यांनी आरोपीची सखोल चौकशी केली असता पुढील गोष्टी निदर्शनास आल्या.

अ) आरोपीचे वडील आरोपी लहान असतानाच व्यसनामुळे मरण पावले होते. त्यांचा मृत्यू संशयास्पद परिस्थितीत व अपघाताने झालेला होता.

ब) आरोपीच्या आईने अत्यंत हल अपेक्षा काढून आपल्या सर्व मुलांना उत्तम शिक्षण व वर्तनाचे धडे दिले होते.

क) आरोपीच्या आईचा स्वभाव संशयी, हेकेखोर व करारी होता.

ड) आरोपी आईच्या अतिशिस्त प्रियतेमुळे एक्कल कोंडा, निरिच्छ, अकाली ग्रीढ झाला होता. परंतु आरोपीस आपल्या आईबद्दल आत्यंतिक प्रेम, आदर व अभिमान होता.

इ) आरोपीस अभिनय क्षेत्राची प्रचंड आवड होती आणि आरोपी मूलभूत मनमोकळा व समूहप्रेमी स्वभावाचा होता. परंतु आईचा स्वभाव व घरातील वातावरण यामुळे आरोपीस कोणीही मित्र नव्हते.

फ) आरोपीस नुकतीच एक नोकरी लागल्यामुळे आरोपी लोकल ट्रेन प्रवास करू लागला होता. नियमित एकाच ट्रेने जावे लागत असल्यामुळे आरोपीची सहप्रवाशांशी ओळख झाली व त्यांचा एक गट तयार झाला. प्रवासातील विरंगुळा म्हणून पत्ते खेळण्यास सुरुवात झाली.

ग) लोकल ट्रेनमध्ये पत्ते खेळणे हा रेल्वे कायदा १४५ (क) अनुसार अपराध आहे हे आरोपीस माहीत नव्हते.

घ) चौकशीच्या वेळेस चौकशी अधिकाऱ्यांनी आरोपीच्या आईला क्लेश होतील अशा प्रकारे चौकशी करू नये अशी आरोपीने मा. न्यायालयास विनंती केली होती.

परिविक्षा अधिकाऱ्यांनी आरोपीच्या विनंतीप्रमाणे प्रथम भेटीत आरोपीच्या आईकडे आरोपीबाबत जुजबी चौकशी केली आणि आरोपीच्या आईला विश्वासात घेऊन हळूहळू त्यांच्या शिस्तप्रियतेमुळे, घरातील अस्वस्थ वातावरणामुळे आरोपीवर अनिष्ट परिणाम होत आहे याची जाणीव करून दिली. आरोपीला त्याच्या मूळ स्वभावाप्रमाणे वायता न आल्यामुळे तो आपल्या आवडीच्या क्षेत्रात नैपुण्य मिळवू शकला नाही. त्यामुळे आरोपीचा मानसिक कोंडमारा झाला आणि त्याचा आरोपीच्या मानसिक व शारिरिक स्वास्थ्यवर विपरित परिणाम होत आहे हे आरोपीच्या आईच्या निदर्शनास आणले. आरोपीला आईकडूनच जाचक नियमावलीतून सुटका मिळाल्यामुळे आरोपीने लोकल ट्रेनमधील आपला समाज विघातक गटाशी असलेला संबंध तोडून टाकला.

आरोपीचे वय, त्याची कौटुंबिक पार्श्वभूमी आणि त्याचे कायद्याविषयीचे अज्ञान या गोष्टी मा. न्यायालयाचे निदर्शनास आणण्यात आल्या. आरोपी सध्या सुशिक्षित उमदा तरुण न्यायालयीन शिक्षेमुळे वाहवत जाऊ नये म्हणून आरोपीस सुधारण्याची एक संधी द्यावी अशी मा. न्यायालयास विनंती करण्यात आली. मा. न्यायालयाने परिविक्षा अधिकाऱ्यांनी केलेली विनंती मान्य करून आरोपीस चांगल्या वर्तणुकीच्या बंधपत्रावर व परिविक्षा अधिकाऱ्यांच्या एक वर्षभर संपर्कात राहण्याच्या अटींवर अपराधी परिविक्षा अधिनियमाचे कलम ४ (१) चा आरोपीस फायदा देऊन मुक्त करण्याचा आदेश दिला.

परिविक्षा अधिकाऱ्यांनी आरोपीची अभिनय क्षेत्रातील आवड लक्षात घेऊन त्याला या क्षेत्रातील योग्य व्यक्तींचे मार्गदर्शन मिळेल अशी व्यवस्था केली. त्याचप्रमाणे आरोपीस अभिनय क्षेत्रातील प्रशिक्षणांसाठी प्रवेश मिळवून देण्यास मदत केली. त्यांचे फल स्वरूप आरोपी आज दूरदर्शन वरील विविध वाहिण्यांमध्ये विविध कार्यक्रमांत आपल्या अभिनय कलेमुळे अनेक अवघड भूमिका साकारताना दिसतो.

थोडक्यात परिविक्षा पध्दतीमुळे आरोपीला तरुण वयात होणारा तुरुंगवास व पर्यायाने त्याच्यावर बसणारा तुरुंगवासाचा शिक्का बसणे टाळता आले. तसेच परिविक्षा अधिकाऱ्यांच्या मार्गदर्शनाने समाजात पुनर्वसित होण्याची संधी मिळाली.

ठाणे जिल्ह्यांत अपराधी परिविक्षा अधिनियम १९५८ चे अंमलबजावणीस घेणाऱ्या अडचणी:

- १) ठाणे जिल्ह्यांत अपराधी परिविक्षा अधिनियमाचे चालू शकणाऱ्या मा. न्यायालयांची संख्या व या. मा. न्यायालयात या अधिनियमाच्या अंमलबजावणीचे पूर्णवेळ काम करणाऱ्या परिविक्षा अधिकाऱ्यांची संख्या यामध्ये प्रचंड तफावत आहे. अपराधी परिविक्षा अधिनियम अंमलबजावणी प्रभाषेच जिल्हास्तरावरील अन्य योजनांच्या अंमलबजावणीचीही जबाबदारी या परिविक्षा अधिकाऱ्यांवर असल्यामुळे जिल्ह्यांतील प्रत्येक न्यायालयास व प्रत्येक कारागृहांस महिन्यातून किमान एकदा भेट देणेही या परिविक्षा अधिकाऱ्यांचा लाभ देण्यास लायक असलेल्या प्रकरणांसाठी वेळ देणे शक्य होत नाही. त्यामुळे असे अपराधी या अधिनियमांच्या लाभापासून वंचित राहतात.
- २) मागास व दुर्गम विभाग, सर्वसामान्य आणि अतिप्रगत असा त्रिस्तरीय ठाणे जिल्हा आहे. त्यामुळे प्रकरणांची सर्वकष चौकशी करण्यात अडथळे येतात. प्रकरण चौकशीस पुरेसा कालावधी न मिळाल्यामुळे प्रकरणांची सखोल चौकशी न झाल्यामुळे मा. न्यायालयास परिपूर्ण अहवाल सादर करणे शक्य होत नाही.
- ३) तालुका पातळीवरील मा. न्यायालयांमधून प्रकरणे उपलब्ध होत नाहीत. या न्यायालयांना जेव्हा परिविक्षा अधिकारी भेट देतात तेव्हा जी प्रकरणे त्यांना उपलब्ध होतात तेवढ्याच प्रकरणांचा या कायदान्वये दिवाचर करण्यात येतो त्यामुळे योग्य प्रकरणांना या अधिनियमांचा फायदा देता येत नाही.
- ४) या कायद्याचा मूळ हेतू म्हणजे राष्ट्रातील तरुण पिढीस अभावीतपणे घडलेल्या गुन्ह्यांचे फलस्वरूप कारावास न देऊ त्यांना सुधारण्याची संधी उपलब्ध करून देणे हा आहे. तथापि, १८ ते २१ या वयोगटातील सर्व प्रकरणांचे बाबतीत या अधिनियमाच्या अंतर्गत प्रकरणबाहुल्यामुळे चौकशीचे आदेश दिले जात नाहीत त्यामुळे काही वेळेस योग्य प्रकरणांचे बाबतीत या अधिनियमांतर्गत चौकशीचे आदेश न झाल्यामुळे ते आरोपी या अधिनियमांच्या लाभापासून वंचित राहतात.
- ५) अपराधी परिविक्षा अधिनियमांबाबत मा. न्यायदंडाधिकारी आणि मा. कारागृह अधिकारी यांचा उदासीन दृष्टीकोन.

अपराधी परिविक्षा अधिनियम १९५८ च्या प्रभावी अंमलबजावणीकरिता आवश्यक असलेले प्रयत्न:

- १) अपराधी परिविक्षा अधिनियम १९५८ अंतर्गत परिविक्षा अधिकाऱ्यांकडे चौकशीसाठी पाठवावयाची प्रकरणे चौकशीसाठी पुरेसा कालावधी (सुनावणीच्या आधी किमान पंधरा दिवस) मिळाल्यास अपराध्याची जास्तीत जास्त माहिती मिळवून मा. न्यायालयास परिपूर्ण अहवाल सादर करणे शक्य होईल.
- २) सध्या काही निव्वळ मा. न्यायालयांकडून थेट पध्दतीने प्रकरणे उपलब्ध होतात. बाकी इतर न्यायालयांमध्ये परिविक्षा अधिकारी जेव्हा भेट देतात त्यावेळेस जी प्रकरणे उपलब्ध असतात. त्याचप्रकरणांमधून काही प्रकरणे निवडण्यात येतात त्यामुळे इतर दिवशी जी प्रकरणे या अधिनियमांतर्गत चौकशी होणे आवश्यक असतात ती या अधिनियमांच्या लाभापासून वंचित राहतात. म्हणून या अधिनियमांतर्गत येऊ शकतील अशी प्रकरणे ज्या मा. न्यायालयासमोर येतात त्या मा. न्यायालयानी स्वयंप्रेरणेने अशी प्रकरणे परिविक्षा अधिकाऱ्यांकडे प्राथमिक चौकशीसाठी पाठविल्यास या अधिनियमांचे अंमलबजावणी अधिक प्रभावीपणे करणे शक्य होईल.
- ३) १८ ते २१ वयोगटातील आरोपींचेबाबत मुक्तता करताना या वयोगटातील ज्या आरोपींबाबत सुधारण होण्याची गरज आहे असे मा. न्यायालयास जाणवल्यास अशा आरोपींबाबत परिविक्षेचा पर्याय उपलब्ध झाल्यास अशा आरोपींन प्रशिक्षित अधिकाऱ्यांचे मार्गदर्शन उपलब्ध होऊन ते चांगले नागरिक होण्यास मदत होऊ शकते.
- ४) ज्या कारागृहात बंदी दाखल होतात त्या बंदीना कारागृहांमार्फत काही प्रशिक्षण देण्यात येते. अशा प्रशिक्षित बंदीदखल आणि त्यांच्या वर्तनामध्ये सुधारण झाली असल्याबाबत त्या बंदींच्या मुक्तता दिनांकाआधी किमान एक महिना कारागृहाने परिविक्षा अधिकाऱ्यांना माहिती दिल्यास या विभागाकडून देण्यात येणारे सहाय्यक अनुदान अशा बंदींना उपलब्ध करवून देऊ शकते त्यामुळे त्यांचे योग्य पुनर्वसन होण्यास मदत होईल.

Speaker: Shri Silvin Kale, Legal Resource Person, Prayas

Rules of Probation of Offenders Act, 1958: A Critique

Introduction

The concept of "Probation" has been imported from the British Criminal Justice System, where it has shown very positive results till some time back and now in the process of decline. Highly developed countries like UK, USA and Canada have invested large amount of funds in their Criminal Justice System e.g. London city has 500 Probation officers beside numerous numbers of Prison Social Workers, Psychologists and Psychiatrists. But is also a fact that their crime rate is fifteen times higher than our country. In contrast, Mumbai city has only 6 Probation officers and 107 courts. This itself shows the apathetic view of our State and society towards offender groups. The provisions as well as the State Rules are not updated since its inception in the year of 1958.

Some important features of the Rules:

1. Part-time Probation Officer - Almost all the Indian States has this radical provision of Part-time Probation Officer. Maharashtra Rules provides SSC pass as educational qualification. But this innovative provision has not been used to address the problem of shortage of staff.
2. Female Probation officer - Rule 14 provides that when there is a male probationer, a female PO shall not ordinarily be appointed for supervision. This rule could be reexamined. Experience of Prayas while working with the under trial prisoners and released youth prisoners, has some times shown that a strong female role model can be helpful in shaping the behavior of the male offenders. This could be especially true in cases where clients have had negative experiences with their mothers.
3. Probation Hostel and Institutions - There are states like Jammu and Kashmir, Rajasthan and Uttar Pradesh, which has this provision in their Rules. In Mumbai city there was a Probation Hostel in Matunga. In Mumbai Central Prison, 50% population of Youth barrack is from other states. This up country category comes to prison in serious crimes and many of them are repeaters. They cannot and do not want to go back to their families as failures. Once they come here to try their luck, life for some takes a turn leading to landing up in prison, without any social support and vulnerable to the criminal world. Such a group needs shelter for temporary period in order to change their life style. Without any kind of shelter, they live with their criminals friends or on the railway stations or on the street and become victims of the criminal surroundings.
4. The Special Probation officer - Even though there are provisions of Special PO in all the State Rules, none of the rules give a clear picture of how to appoint them. Section 13 C of the P.O. Act provides that the Magistrate can appoint any fit person as a Special P.O. in special circumstances of the case. Such person could be a police officer or employer or any relative of the probationer or community leader or member representative of any social organization or NGO - any person whom the probationer has some kind of respect. This will also solve the problem of lack of full-time POs.

5. **Grant to Welfare Organisation** - In Maharashtra, Navjeevan Mandal of Nashik and Pune are the only two welfare organizations that have been so far recognized under the Maharashtra Rules. The State should recognize more NGOs and also fund them to do the work of rehabilitation of offenders.
6. **Probation Committee** - Only the Bihar and Karnataka States Rules have the provision to set up Probation Committee consisting District Magistrate, District Probation Officer, District Judge, Addl. Session Judge, Inspector of Schools, Civil Surgeon, Sub. Div. Magistrate, Suptd. Of Police, Suptd. of Dist. Jail and Five Non-Official members. This is an ideal structure to deal the issue of reformation and rehabilitation of offenders. Whether the above-mentioned States have appointed such committees is not known but such a set up is very much required in every state. This committee may play the vital role of implementing the Probation Act.
7. **Reasonable Conditions that may be imposed on the Probationer** - Almost all the States Rules are silent on the conditions that may be imposed by the Court. The sole objective of the Probation is to give a chance to the offender by suspending his sentence so he would reform and not engage himself in crime. The Court can impose such conditions which would restrain his further criminalization or to destroy the reasons responsible for his criminal behavior. In Canada, they have Rules such as to abstain from alcohol or drug and to take the treatment to give up the habit or a condition that the Probationer would support his family or spouse. We have an innovative provision introduced in the Juvenile Justice (Care and Protection) Act, 2000, of Community Service. The Court can while giving the benefit either under Section 3 or 4 of the PO Act, also order the Probationer to do community-service according to his interest or capacity or thus pay back to society. Some examples could be asking the Probationer to take care of old and injured people in govt. hospital, service to institutions for children or oldage homes, or regulate traffic or become a volunteer to serve in natural disaster situations. Then only we can achieve the real objective of probation initiated by John Augustus through the Probation of Offenders Act, 1958.

अपराधी परिविक्षा अधिनियम, १९५८ च्या अंमलबजावणीसाठी महत्वाचा रोल आहे, परिविक्षा अधिकारी हा काम करेल पण त्याला काम देणारे कोणीतरी पाहिजे. ही महत्वाची जबाबदारी न्यायाधीशांची आहे आणि ती तुमच्या विभागाकडून झाली पाहिजे. तरच अंमलबजावणीसाठी आणि अधिनियमाच्या प्रभावी अंमलबजावणीसाठी मदत होणार आहे. आता याकरिता कार्यरत असणाऱ्या स्वयंसेवी संस्थांची देखील भूमिका महत्वाची आहे आताच प्रयासने सांगितल्याप्रमाणे स्वयंसेवी संस्थांची भूमिका प्रभावी होण्याकरिता आम्हीदेखील जास्तीत जास्त प्रयत्नशील आहोत. त्यांच्यासाठी जसे बाकीच्या अधिनियमांतर्गत काम करणाऱ्या स्वयंसेवी संस्थांना प्रोत्साहनपर साहज्यक अनुदान मिळते त्याचपध्दतीने अपराधी परिविक्षा अधिनियमांतर्गत काम करणाऱ्या स्वयंसेवी संस्थांना सुध्दा त्यांच्या केलेल्या कामाच्या मोबदल्यात प्रोत्साहन मिळाले पाहिजे. स्वयंसेवी संस्थांचा सहभाग वाढला पाहिजे आणि शासनाच्या धोरणांतर्गत स्वयंसेवी संस्थांचा सहभाग कार्यरत झाला पाहिजे याप्रमाणे आम्ही प्रयत्न करीत आहोत. त्यांच्याकरिता आम्ही एक नवीन योजना प्रस्तावित करीत आहोत आणि ती लवकरच शासनाने मंजूर केली तर आम्ही कार्याला सुरवात करीत आहोत. आताच अपराधी परिविक्षा अधिनियमांतर्गत काम करीत असताना काही परिविक्षा अधिकाऱ्यांनी न्यायालयांकडे संपर्क न झाल्यामुळे नाराजी झाली असेल. विभागात काही कर्मचारी सेवानिवृत्त झाल्यामुळे कर्मचाऱ्यांची संख्या कमी झाली आहे. बऱ्याच रिक्त जागा असून शासनाच्या धोरणामुळे त्या भरू शकत नाही. त्यामुळे बऱ्याच अडचणी निर्माण झालेल्या आहेत. पदेन्वती देऊन अडचणींचे निराकरण करण्याचे प्रयत्न करीत आहोत. आता नवीन आलेल्या परिविक्षा अधिकारी, जिल्हा परिविक्षा अधिकारी यांनी प्रशिक्षणाची व्यवस्था केली आहे आणि अधिनियमाच्या प्रभावी अंमलबजावणीसाठी जास्तीत जास्त प्रयत्नशील आहोत. आपल्या सहकार्याची जास्तीत जास्त अपेक्षा करीत आहोत. प्रयास-टाटा सामाजिक विज्ञान संस्थेचा प्रकल्प आणि मा. जिल्हा सत्र न्यायाधीश यांनी हा कार्यक्रम आयोजित केला. आम्हाला अधिनियमाच्या प्रभावी अंमलबजावणीकरिता आपले सहकार्य मिळेल अशी खात्री वाटते आणि अधिनियमाच्या अंमलबजावणीकरिता प्रभावी कार्याला सुरवात करू.

OPEN HOUSE DISCUSSIONS

- An issue was raised that most speakers had addressed the audience about the various judgments of the Hon'ble HCs and the apex court and about Section 360 of Cr.P.C. The study material circulated to the participants shows that 76% of the convicts who are undergoing the sentence had committed the offence like theft, house breaking, causing, assaulting etc., who were otherwise entitled to get the benefit of the Probation of Offenders Act. It is agreed that it is the mandatory on part of the courts to invite reports from the Probation Officers. His experience was that reports of POs were not thorough and mis one was one of the reasons why they could not extend the benefit of probation to convicts
- The point was also made that if the benefit is not granted, the Probation Officer has the power either to prefer revision or to prefer an appeal. If this was the position, then why have POs not preferred appeals in the higher courts? If there is an express power to that extent, and if 76% of the convicts have not been extended the benefit of this Act, then what prevented the officers for making appeals against such decisions? Secondly, under Section 360 Cr.P.C, if the magistrates do not want to give the benefit of Section 360 to the convicts, the court has to record the reasons. Out of the 76%, how many cases would be there in which the court has recorded the reasons to refuse grant of probation?
- Clarifications about the Prayas study on this issue were made. The study was done in two prisons of Mumbai, Thane and Kalyan prisons almost five years back. The study was done with under trials and not convicts, whose cases were still going on in courts. The objective behind doing the study was to see the percentage of UTs inside prison that could be eligible under the Probation Offenders Act. Their cases had not yet been decided. It was found through the study that almost 76% of the under trial population in prison in the Women's and Young Male Adult Sections were eligible for release on probation under the PO Act. The outcome of these cases is not known - whether they were granted probation finally or not.
- Field experiences very clearly point to the fact that most people in prison in Mumbai, Thane and Kalyan are under trials. A large percentage of them have been granted bail, but are unable to go out because of sureties not being available. This is especially true of under trials arrested for not so serious offences. This is also true to some extent, for those who are in for session triable cases. There are large numbers of women under trials as well as the male youth in the age group 18-23 years who are arrested for not so serious offences and bail been granted, but many of them do not have the fixed place of residence, or they do not have any proof of residence, or a person to get them out on bail. This number is increasing and it causes the overcrowding.
- In this connection, a suggestion was made that if the magistrates could call for report of the probation officer and keep it in advance, the report could be taken into consideration for release on probation by the magistrate if the case ends up in conviction. The experience is that very little time is given by the magistrates to the probation officers to file the report. There have been cases where two days time was given to file the PO's report.

- It is not feasible for the Probation Officer to conduct a social inquiry - delving into the personality, psychological status, family situation, economic condition and chances of rehabilitation - in such a short time, especially if one wants probation officers to do a good job. Reasonable time has to be given so that the probation officer can make one or two visits to the prison to interview the under trial prisoner or the accused out on bail, meet his family, neighbors, employer (if necessary), etc. to file the PO's report. The distances between destinations in a rural area or in a city like Mumbai are very far, and the probation officers do not have vehicles at their disposal. They have to travel by the public transport, and all this requires time.
- The suggestion would be that whenever a trial starts and the case nears the the judgment time, and if in the opinion of the magistrate or judge, the accused could be given the benefit of probation, his case could be referred to the P.O. in advance. The report could be kept sealed and opened if and when the case ends in conviction.
- A large number of cases from up country areas do not have any fixed place of residence in jurisdiction of court, and this becomes a disqualification for grant of Probation. In such cases, the role of a voluntary organisation can be introduced, which is willing to come forward to take the responsibility for the rehabilitation of the accused. This organisation could be considered as surety even where the family is absent.
- There is scope for the probation department; the judiciary and the NGOs to work together towards implementation of the Act e.g. NGOs visiting prisons could refer cases suitable for probation to the probation department. The POs could approach the magistrates suo moto requesting such cases be referred to them for the social enquiry report. Magistrates could also refer cases to the PO suo moto or on the request of social workers visiting prisons.
- Magistrates could encourage probation officers to take suo moto cognizance of cases eligible under the PO Act. But the point to be kept in mind is that the conviction rate in our country is very low. The PO Act comes into effect only at the conviction stage, and therefore, its scope gets limited to only those cases that end up in conviction.
- The issue of advance filing of the PO's report was raised by one of the participant magistrates. In response, it was pointed out that that there is a High Court Circular, which says that as soon as the chargesheet is framed, the PO's report shall be called and kept sealed. It should not be opened until the accused has been found guilty. This ensures that there is no prejudice against the accused at the trial stage.
- A recent judgement of 2005 of Supreme Court says that court is bound to call for the PO's report before sentencing, though court is not bound to accept it. But calling for the report is mandatory. It is true that the judiciary faces difficulties in meeting the norms for disposal, and after finding an accused guilty, there is a hurry to pass final judgement. But at the same time, there was an agreement that reasonable time should be given to the POs to file their reports.
- In the light of the heavy workload of magistrates, and the lack of time to identify cases and call for the reports from POs, it was suggested that POs should visit the courts regularly and with the permission of the courts, identify cases, which are eligible for release on probation under the Act. The days and timing of the POs should be fixed and intimated to the magistrates by putting up a board at a prominent place in the court premises.

- Probation Officers responded to this feedback by saying that they were already working as per this suggestion, but they do not have a fixed place to sit and there is no system or referral of cases to them put in place. A suggestion was made to refer at least three cases by magistrates to the POs every month who are eligible under the PO Act.
- The Probation Department, Maharashtra State had issued a notification that the district probation officer should distribute the days and the dates of the visits to each court so that court could refer cases in greater numbers to them.
- It was mentioned that there are two social workers visiting from Prayas - one visiting Thane and other visiting Kalyan prison. If cases come to their notice, they could be brought to the notice of the magistrates, and then the magistrates could refer them to probation department for calling the social enquiry report. To do this, the social workers of Prayas should be allowed to meet magistrates directly. It was mentioned that the judiciary was not aware of such efforts. There should be a liaison between the prisons, the courts, the probation department and the NGOs.
- One participant pointed out that the PO Act is legislation for the betterment of the society. It casts a duty upon the courts to refer cases to the probation officers. But he also alluded to the fact that during his tenure for last three years in Vasai, he had never had the occasion to meet any probation officer. However, that did not justify magistrates shirking from their responsibilities. He further added that it was the joint responsibility of the judiciary and the probation officers to ensure that maximum numbers of accused persons were extended the benefit of this Act, to achieve the objective of correction and rehabilitation.
- It was pointed out that that there were only six POs in Mumbai and three in Thane to cover the entire districts. The number of courts are totaled more than hundred, as against the number of POs. It was therefore, not possible to cover all the work. In this context, it was urged that magistrates to use Section 13 of the Act, and appoint any fit person as a voluntary probation officer in specific cases.
- A suggestion was also made to use the Bombay Borstal Schools Act. There may be many cases where the magistrate may feel that the person cannot be given the benefit of probation, but he could be sent to the Borstal School for reformation and rehabilitation.
- The Borstal School in Nasik has a capacity of 250 but the current population is around 20. It is the only prison in the Maharashtra, which is tremendously under crowded as compared to other prisons. It has vocational training facilities and the inmates are sent outside the institution to do ITI certificate courses. The superintendent of the Borstal School is known as Principal and the deputy superintendent is known as Vice Principal. The entire attitude of the Borstal School is to reform the person. The convicted person needs to be between the age of 16 to 21 years and he can be sent there for one to three years. Even those tried under the Juvenile Justice Act - if they are above 16 years of age - can also be referred to the Borstal School.
- An opinion was expressed that the PO Act was an injustice to the victim. It was pointed out that the report of the probation officer was usually in favor of the accused. The report recommended benefit of probation as being given having regard to nature of the offence

and the character of the offender. There was no description or the details about the nature of the offence in which the benefit should be given and in which the benefit should be refused. Normally the presiding officers are competent to decide under which circumstances the report can be refused, but in the absence of any laid down guidelines, there was scope for doubt and confusion.

- The PO Act has to be understood in the present context of reformatory theory of crime. The focus is on preventing crime. The report is not given in favor of the accused but it is based on the chances of his reform and the social integration.
- Whether the benefit of the probation is to be given or not is the sole discretion of the court. The duty of the Probation Officer is limited to submission of the report. But the report is very important based on which the court decides the case. When the PO recommends a case, he has to check the following checklist - the tender age of the accused, his friend circle, significant others in his life, psychological aspects, addiction, family situation, etc.
- A participant thanked the organizers for organizing the workshop. He expressed his regret that the probation system, which was in existence since the 19th century in the US, and was in operation for than fifty years in India, was yet to take firm roots in the country. He referred to the fact that 1974 was named as the year of Probation in the country and the Supreme Court had had time and again regretted the underuse of this system by the judiciary. As per the wordings of the apex court, "No body can claim a benefit as a matter of right under this act" but that does not absolve the judiciary from applying the provisions of the Act to various categories of offenders. He suggested that as per the circular of the High Court, magistrates should identify cases at the time of framing charge - four or five a month - and refer them to probation officers for their reports.

RECOMENDATIONS

For the Probation Department

- In cases where probation is refused by the magistrate/judge inspite of a favourable report by the probation officer, he has the power either to prefer revision of the order or to prefer an appeal to a higher court.
- Voluntary organizations willing to come forward to take the responsibility of the rehabilitation of probationers could be considered as surety where the family is absent
- NGOs visiting prisons can refer cases to probation officer, which are suitable for probation. The probation department could approach then magistrates suo moto to request magistrates to call for the report of the PO in those cases.
- The officers from probation department should visit the courts and with the permission of the court, identify cases that are eligible for probation.
- All the courts should refer at least three cases per month calling for the POs report in those cases.
- Probation officers should be available at each court on specific days so that magistrates are aware how and when to refer cases to them.
- The Department of Women and Child Development has issued a notification that the district probation officer should distribute the days and the dates of the visits to each court so that court could refer cases more in numbers.
- There are two social workers from Prayas visiting Thane and Kalyan prisons regularly. If cases come to their notice, which according to them could get the benefit of probation, such cases could be brought to the notice of the magistrates, who could refer them to probation department calling for their social investigation report.

For the Judiciary

- Magistrates should use section 6 of the P.O. Act, which makes it mandatory on their part to call for reports from probation officers, in cases where the accused is less than 21 years of age.
- Magistrates could call for reports of the probation officer in advance and kept sealed so that if the case ends up in conviction, they could consider the case for release on probation. There is already a circular issued by the High Court to this effect.
- Reasonable time should be given for the probation officers to file their reports. Ideally speaking, P.O. should get at least two weeks time to file a social investigation report.
- NGOs visiting prisons should refer cases to magistrates when they come across any case which they feel is suitable for release on probation.
- If magistrates refer cases to probation officers fit for giving the benefit of probation, work could proceed more efficiently.
- There should be liaison between the prison authorities, court and the probation department for better implementation of the P.O. Act.

- In the co-text of the increasing crime rate and over load of cases in courts, the use of section 13. of appointing any fit person as voluntary probation officers by the court, must be taken in to consideration. This would help spread the concept of **probation** - employers, senior citizens, voluntary organizations and social workers could be appointed by the courts as voluntary probation officers in this section of the Act.
- The use of the Bombay Borstal Schools Act could be tried in cases where the magistrate may feel that the person cannot be given the benefit of the probation but may be considered for being sent to the Borstal School for reformative purposes.
- There should be regular workshops for magistrates and probation officers at district level to increase awareness among the judiciary about the P.O. Act.

For Voluntary **Organisations**

- Voluntary organizations working in prisons should network with the probation department at the district level to refer cases for release on probation under the Act.
- Voluntary organization should make regular presentations before the judiciary to increase awareness about their presence in prisons, towards implementation of the Act.
- Voluntary organizations should attend the District IDC Sub-Committee-meetings chaired by the district judge and present problems faced by prisoners in the meetings.
- Voluntary organizations should work towards getting recognized under the P.O. Act State rules to improve the implementation of the Act and provide aftercare services to released prisoners and probationers.
- Voluntary organizations should come forward as sureties for those accused who are otherwise eligible for release on probation, but miss out due to lack of local sureties.

**List of participants in the workshop held on 25th March 2006
On Implementation of Probation of Offenders Act 1958.**

| No. | Name | Designation |
|-----|--|--|
| 1. | Hon'ble Shri. A. J. Dholkiya | District & Session Judge, Thane |
| 2. | Hon'ble Shri. A.V. Nirgude | Joint District Judge and Additional Judge Thane |
| 3. | Hon'ble Shri. S.K. Shinde | Extra Joint District & Additional Session Judge |
| 4. | Hon'ble Smt. N.V. Bhaid | 3 rd Add. Dist. Judge & Add. Session Judge, Thane |
| 5. | Hon'ble Shri A. M. Kshatriya | 4 th Add. Dist. Judge & Add. Session Judge, Thane |
| 6. | Hon'ble Shri M. R. Aglawe | Add Dist Judge & Add sessions Judge Kalyan |
| 7. | Hon'ble Shri D. S. Purohit | Add. Dist. Judge & Add. Sessions Judge, Palghar |
| 8. | Hon'ble Shri S. A. Dwivedi | 1 st Ad-hoc, Additional District Judge Additional Sessions Judge, Thane |
| 9. | Hon'ble Shri A.P. Waghmare | 2 nd Ad-hoc, Additional District Judge Additional Sessions Judge, Thane |
| 10. | Hon'ble Shri S. B. Jagtap | 3 rd Ad-hoc, Additional District Judge Additional Sessions Judge, Thane |
| 11. | Hon'ble Shri. J. T. Utpat | 4 th Ad-hoc, Additional District Judge Additional Sessions Judge, Thane |
| 12. | Hon'ble Shri V. S. Mundhe | 1 st Ad-hoc, Additional District Judge Additional Sessions Judge, Kalyan |
| 13. | Hon'ble Shri. R.V. Jatale | 2 nd Ad-hoc, Additional District Judge Additional Sessions Judge, Kalyan |
| 14. | Hon'ble Shri P. H. Mali | 3 rd Ad-hoc, Additional District Judge Additional Sessions Judge, Palghar |
| 15. | Hon'ble Shri A. B. Mahajan | 1 st Ad-hoc, Additional District Judge Additional Sessions Judge, Palghar |
| 16. | Hon'ble Shri V. S. Paul | 2 nd Ad-hoc, Additional District Judge Additional Sessions Judge, Thane |
| 17. | Hon'ble Shri J. M. Vyas | 3 rd Ad-hoc, Additional District Judge Additional Sessions Judge, Thane |
| 18. | Hon'ble Shri. V. D. Pise | Joint Civil Judge, Senior Division, Thane |
| 19. | Hon'ble Shri. P. N. Nair | 2 nd Joint Civil Judge, Senior Division, Thane |
| 20. | Hon'ble Shri. J.C. Hausale-Ghodegaonkar. | 3 rd Joint Civil Judge, senior Division, Thane |
| 21. | Hon'ble Shri. D.G. Murumkar | Chief Judicial Magistrate |
| 22. | Hon'ble Smt.R.C. Bapat-Sarkar | Civil Judge, Senior Division, Kalyan |
| 23. | Hon'ble Shri W. V. Gughane | Joint Civil Judge Division Kalyan |
| 24. | Hon'ble Shri. A. N. Sontakke | Joint Civil Judge, J.D. & J.M.F.C., Thane |
| 25. | Hon'ble Shri S.G. Adake | 4 th Joint Civil Judge, J.D. & J.M.F.C, Thane |
| 26. | Hon'ble Smt V.V. Malkalpatte | 6 th Joint Civil Judge, J.D. & J.M.F.C, Thane |
| 27. | Hon'ble Shri A.J. Bafana | 7 th Joint Civil Judge, J.D. & J.M.F.C, Thane |
| 28. | Hon'ble Shri K. N. Shinde | 8 th Joint Civil Judge, J.D. & J.M.F.C, Thane |

| No. | Name | Designation |
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| 29. | Hon'ble Shri S.H. Salunkhe | 9 th Joint Civil Judge, J.D. & J.M.P.C, Thane |
| 30. | Hon'ble Shri P.B. Pore | 10 th Joint Civil Judge, J.D. & J.M.F.C, Thane |
| 31. | Hon'ble Shri S.S. Shinde | 11 th Joint Civil Judge, J.D. & J.M.F.C, Thane |
| 32. | Hon'ble Shri D.L. Nikam | Civil Judge, J.D. & J.M.F.C., Vashi |
| 33. | Hon'ble Shri V.B. Gavhane | Joint Civil Judge, J.D. & J.M.F.C , Vashi |
| 34. | Hon'ble Shri D.A. Shrisundar | Joint Civil Judge, J.D. & J.M.F.C , Kalyan |
| 35. | Hon'ble Shri S.G. Thube | 2 nd Joint Civil Judge, J.D. & J.M.F.C, Kalyan |
| 36. | Hon'ble Shri S.P. Agarwal | 3 rd Joint Civil Judge, J.D. & J.M.F.C, Kalyan (1st Court) |
| 37. | Hon'ble Shri P.P. Abhang | 4 th Joint Civil Judge, J.D. & J.M.F.C, Kalyan |
| 38. | Hon'ble Shri C.V. Marathe | Judicial Magistrate F.C, (Railway), Kalyan |
| 39. | Hon'ble Shri C.B. Havelikar | Civil Judge, J.D. & J.M.F.C, Ulhasnagar |
| 40. | Hon'ble Shri C.R. Pande | Joint Civil Judge, J.D. & J.M.F.C, Ulhasnagar |
| 41. | Hon'ble Shri S.N. Jadhav | 2 nd Joint Civil Judge, J.D. & J.M.F.C, Ulhasnagar |
| 42. | Hon'ble Shri R.V. Bhakta | 3 rd Joint Civil Judge, J.D. & J.M.F.C, Ulhasnagar |
| " 43." | Hon'ble Shri P.P. Pokale | 4 ^m Joint Civil Judge, J.D. & J.M.F.C, Ulhasnagar |
| 44. | Hon'ble Shri S. S. Saste | 5 th Joint Civil Judge, J.D. & J.M.F.C, Ulhasnagar |
| 45. | Hon'ble Kum. K.F.M. Khan | 6 th Joint Civil Judge, J.D. & J.M.F.C, Ulhasnagar |
| 46. | Hon'ble Shri V.V. Patil | 7 th Joint Civil Judge, J.D. & J.M.F.C, Ulhasnagar |
| 47. | Hon'ble Shri S.H. Bodakhe | Civil Judge, J.D. & J.M.F.C, Murbad |
| 48. | Hon'ble Shri H.H. Varale | Civil Judge, J.D. & J.M.F.C, Shahapur |
| 49. | Hon'ble Shri C.W. Meshram | Civil Judge, J.D. & J.M.F.C, Bhiwandi |
| 50. | Hon'ble Shri P.L. Amale | Joint Civil Judge, J.D. & J.M.F.C, Bhiwandi |
| 51. | Hon'ble Shri N.K. Chavan | 2 nd Joint Civil Judge, J.D. & J.M.F.C, Bhiwandi |
| 52. | Hon'ble Shri S.R. Pawar | 3 rd Joint Civil Judge, J.D. & J.M.F.C, Bhiwandi |
| 53. | Hon'ble Shri M.A. Shinde | 4 th Joint Civil Judge, J.D. & J.M.F.C, Bhiwandi |
| 54. | Hon'ble Shri S.N. Yadav | Civil Judge, J.D. & J.M.F.C, Vasai |
| 55. | Hon'ble Shri R.S. Sarkale | Joint Civil Judge, J.D. & J.M.F.C, Vasai |
| 56. | Hon'ble Shri U.J. More | Judicial Magistrate F.C. (Railway), Virar |
| 57. | Hon'ble Shri N.G. Shukla | 2 nd Joint Civil Judge, J.D. & J.M.F.C, Palghar |
| 58. | Hon'ble Shri Sanjay Balkrishnan | Joint Civil Judge, J.D. & J.M.F.C, Dahanu |
| 59. | Hon'ble Shri D.D. Kurulkar | Civil Judge, J.D. & J.M.F.C, Jawhar |
| 60. | Hon'ble Shri V.P. Shelke | Civil Judge, J.D. & J.M.F.C, Wada |
| 61. | Smt. Renuka Choudhary | District Probation Officer - Thane |
| 62. | Smt. Jyoti Gafane | Suprintendent, Sp. Home for girls, Ulhasnagar |
| 63. | Srnt. U.A. Bodawale | Shaskiya Apang Balgruha, Ulhasnagar |
| 64. | Shri J. R. Joshi | Probation Officer, Govt. Children Home. U'Nagar |
| 65. | Shri Y. M. Sonawane | Probation Officer, Thane |

Programme Schedule**Venue for the Workshop**

Manthan, Police Training Centre, Cine Wonder Conference Hall, Ghodbunder Road, Thane (W)

| Topics | Resource Person |
|---|---|
| Registration of Participants | |
| Inauguration and Inaugural Address | Hon'ble Shri Dholakia, District and Sessions Judge, Thane |
| Introduction to the Workshop & Objectives | Shri Vijay Raghavan, Faculty, Centre for Criminology and Justice, TISS and Project Director, Prayas |
| Probation of Offenders Act, 1958 : An Introduction | Shri Thombre, Principal, Mahatma Gandhi Training Institute, Department of Women and Child Development, Pune. |
| Implementation of P.O. Act in Thane District | Smt. Renuka Choudhari, District Probation Officer - Thane |
| Tea Break | |
| Role of Court and POs in Implementation of the Probation of Offenders Act | Shri B .D. Khatri, Retired District Probation Officer, Nasik |
| Role of NGOs in Implementation of PO Act | Shri Silvin Kale, Legal Resource Person and Social Worker, Prayas |
| Lunch | |
| Panel Discussion - | Chaired by Shri Nirgude, Addl District Judge Panelists: Shri B. D. Khatri and Shri Gondhali |
| Vote of thanks | Shri Vikas Kadam |
| Tea and Informal discussions | |