

Unforgotten Value of Probation, a Golden Treasure — Law and Reality

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I. Tracing the Foot Prints:

Within the broader concept of humanizing criminal justice, a wide range of sentencing alternatives have been suggested to appropriately replace imprisonment in some cases; certain types of offences should be decriminalized and de-penalized³; settlement or compromise techniques should be developed and promoted, particularly in relation to compensation of, and restitution to, victims; and a rational selection of discharge provisions should be put into place⁴. Underlying reasons for noncustodial measures are efficacy, humanitarian principles, and economics⁵.

Prison terms do not appear to be more effective than noncustodial sentences in terms of preventing individuals from re-offending during the years following release. However, there is no hard evidence that custodial sentences exert a greater preventive effect on individual offenders than other penal sanctions, if reconvictions are taken as a measure of effectiveness. Studies on the relationship of prison and recidivism conclude that prison not only fails to

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 - 3 For example, prostitution and drug use have been decriminalized in some jurisdictions e.g. Netherlands as they are referred to as 'crimes without victims'.
 - 4 See, e.g., Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders: Report Prepared by the Secretariat 84-86, U.N. Doc. A/CONF.121/22/Rev.1 (1986); Sixth United Nations Congress on the Prevention of Crime and the Treatment of Offenders: Report Prepared by the Secretariat 11-14, U.N. Doc. A/CONF.87/14/Rev.1 (1980); Fifth United Nations Congress on the Prevention of Crime and the Treatment of Offenders: Report Prepared by the Secretariat 21-22, 32-33, U.N. Doc. A/CONF.56/10 (1976).
 - 5 Andrew Ashworth, *Sentencing and Penal Policy* ch. 10 (1983); Advisory Council on the Penal System, Great Brit., *The Length of Prison Sentences* (1977); Malcolm M. Feeley et al., *Between Two Extremes: An Examination of the Efficiency and Effectiveness of Community Service Orders and Their Implications for the U.S. Sentencing Guidelines*, 66 S. Cal. L. Rev. 155 (1992), in YashVyas, *Alternatives to Imprisonment in Kenya*, 1995, 6 Crim. L.F. 73
 - 6 Thomas Mathieson, *Prison on Trial* 47 (1990) (analyzing empirical studies of rehabilitation programs, social scientific studies of the organization of prisons, and

rehabilitate but “in fact dehabilitates”⁶. Prisons are also inhumane in many countries⁷.

Etymologically probation means “I prove my worth” derived from the Latin word *probatus* meaning “tested or proved”. It is a procedure by which a convicted person is released by the court without imprisonment subject to conditions imposed by the court. It is a part of decision making process of judges at the time of sentencing⁸, during which the individual on probation lives in the community and regulates his own life under conditions imposed by the court and is subject to supervision by a probation officer. Length of probation varies, and is determined by the court⁹. It is a method of penal non-institutional treatment of offenders developed as an alternative to imprisonment out of a realisation that short term sentences were not only ineffective, but also harmful, as these brought young offenders/petty criminals in contact with the confirmed criminals/recidivists in prisons and most of all, removed their fear of the unknown, viz., prisons. Probation is one more step in the progressive realisation that sentence should fit

sociological studies of prison life); see also Nigel Walker, *Sentencing: Theory, Law, and Practice* 145-46 (1985) (noting that a subsequent period of imprisonment for an offender who has already experienced custody entails a higher risk of recidivism than does probation); S.R. Frager, *The Prison System*, 7 *Prison Serv. J.* 11 (1973) (estimating that 75 percent of male inmates in British prisons have already served five sentences); James Robison & Gerald Smith, *The Effectiveness of Correctional Programs*, 17 *Crime & Delinq.* 67, 71-72 (1971) (noting that longer custodial sentences may result in a higher rate of reconviction than do shorter ones), in YashVyas, *Alternatives to Imprisonment in Kenya*, 1995, 6 *Crim. L.F.* 73

- 7 Prison conditions, policies and practices usually fall below the level of decency, from torture to degrading conditions and abuse by guards or other inmates invariably without recourse or remedy. Prisons damage mental and physical health of prisoners, they serve as schools for crime: prisoners typically acquire from each other ideas, techniques, and personal contacts that lead them into subsequent offences. Moreover, the stigma of having been in prison may make it difficult for the offender to lead an honest and industrious life on release.
- 8 Don M. Gottfredson, in *Encyclopedia of crime and justice*, Ed. S.H.Kadish, The Free Press, 1983 Vol. III, p 1247 as quoted in N.K. Chakrabarti ed., *Administration of Criminal Justice-The Correctional Services, Probation services*, New Delhi, Deep and Deep Publications, 1997, Vol. 3, p.20
- 9 The US Advisory committee on Penal Institutions, Probation and Parole to the National Commission of Law and Enforcement, in Burton C. William, *Legal Thesaurus*, p.408 as quoted in .K. Chakrabarti ed., *Administration of Criminal Justice-The Correctional Services, Probation services*, New Delhi, Deep and Deep Publications. 1997, Vol. 3, p.21
- 10 Sutherland, Edwin H., *Principles of Criminology*, p. 383. see also N.K. Chakrabarti ed., *Administration of Criminal Justice-The Correctional Services, Probation*

the offender and not the offence¹⁰. Probation is a combination of treatment and punishment. It includes counselling, rehabilitation and educational services in the community, so as to improve the offender's adjustment to society; this sanction is punitive as a number of restrictions are placed on the probationer¹¹. It is a method of quasi-penal, extra-mural processing of the offender as an alternative to the conventional infliction of punishment in the shape of imprisonment¹².

The legal concept of probation as a criminal justice system is conditional suspension of sentence. Judges often combine probation term with a suspended sentence, under which the judge sentences a defendant to prison or jail and then suspends the sentence in favour of probation. In this way, the jail or prison term has been legally imposed but is held in abeyance to be reinstated if the offender fails to abide by the probation conditions. Offenders are presumed to be motivated to comply with conditions of probation knowing what awaits them if they fail to do so¹³. The suspension of sentence under probation serves the dual purpose of deterrence and reformation. It provides necessary help and guidance to the probationer in his rehabilitation and at the same time the threat of being subjected to unexhausted sentence acts as a sufficient deterrent to keep him away from criminality¹⁴.

Probation conditions form a contract between the offender and the court. The probation officer is the contract's "enforcer", responsible for notifying the court when the contract is not being fulfilled. Should a defendant violate a probation condition the court may, revoke probation and impose any other sentence that was available at the initial sentencing (e.g., prison or jail)¹⁵.

John Augustus a Boston Cobbler is credited as the first probation officer. He persuaded the Judge of Boston police court in 1841 that he would assist offenders if they are released to his care. He investigated, screened, interviewed, and supervised those released he also provided services such as employment, relief and education¹⁶. Mathew Davenport Hill, a judge in Britain is credited with

services, New Delhi, Deep and Deep Publications, 1997, Vol. 3, p.64-5

11 Yash Vyas, *Alternatives to Imprisonment in Kenya*, 1995, 6 *Crim. L.F.* 73

12 V.R. Krishna Iyer, "Probation System an Overview", in N.K. Chakrabarti ed., *Administration of Criminal Justice-The Correctional Services, Probation services*, New Delhi, Deep and Deep Publications, 1997, Vol. 3, p.34

13 Joan Petersilia, *Probation in the United States*, 22 *Crime & Just.* 149, 1997

14 www.legalserviceindia.com/articles/pro_bat.htm, accessed on 20th September 2011, see also *The American Correctional Association* (1995), see also supra note 11, supra note 10

15 Supra note 11

16 N.K. Chakrabarti ed., *Administration of Criminal Justice-The Correctional Services, Probation services*, New Delhi, Deep and Deep Publications, 1997, Vol. 3, p.25

17 Ibid

18 James p. Levine et.al., *Criminal Justice A Public Policy Approach*, Harcourt Brace

starting the practice of voluntary supervision in 'suspended-sentence' cases in 1820. He introduced two elements of probation: (i) lessening of punishment, and (ii) supervision¹⁷. Previously it was a humanitarian strategy. Supervision was done by volunteer workers. Later it also came to be considered as a sentence by itself¹⁸.

In India the most significant development occurred when the Jail Manual Committee under the Stewardship of Dr. Walter Reckless was formed by the Government of India to review the working of jails and make recommendations for reforms. The recommendations of the Committee led to the passing of the Probation of Offenders Act, 1958 by the central government which brought uniformity to probation laws in India¹⁹.

When probation emerged a century ago it was grafted onto a criminal justice system with well-established prisons²⁰. Historically custodial measures (imprisonment) have been held to be the only way to curb crime. Modern Penological approach balances the needs of the community and interests of the accused. The contemporary view of corrections embraces strategies and services that hold offenders accountable for their criminality, provides cost-effective alternatives to incarceration, and recognizes the importance of public safety in the near and long-term²¹. Since imprisonment has not been able to rehabilitate offenders²², and is costly²³ probation is receiving much more focus.

Jovanovicinc., 1980, ISBN 0-15-516094-X, p. 332

19 Ahmed Siddique's, *Criminology and Penology*, 6th Edn, Lucknow, Eastern Book Co., 2009, p.217

20 Restructuring NOMS and reducing cultural divides between prisons and probation: a cautionary note, Philip Whitehead, *Criminal Justice Matters*, Vol. 77, Iss. 1, 2011

21 The American Probation & Parole Association, *Probation And Parole's Growing Caseloads And Workload Allocation: Strategies For Managerial Decision Making*, Matthew T. DeMichele, May 4, 2007, <http://www.appa-net.org/eweb/docs/appa/pubs/SMDM.pdf>, accessed on 10th September 2011

22 *Supra* 9, See Thomas Mathieson, *Prison on Trial* 47 (1990) (analyzing empirical studies of rehabilitation programs, social scientific studies of the organization of prisons, and sociological studies of prison life); see also Nigel Walker, *Sentencing: Theory, Law, and Practice* 145-46 (1985) (noting that a subsequent period of imprisonment for an offender who has already experienced custody entails a higher risk of recidivism than does probation); S.R. Frager, *The Prison System*, 7 *Prison Serv. J.* 11 (1973) (estimating that 75 percent of male inmates in British prisons have already served five sentences); James Robison & Gerald Smith, *The Effectiveness of Correctional Programs*, 17 *Crime & Delinq.* 67, 71-72 (1971) (noting that longer custodial sentences may result in a higher rate of reconviction than do shorter ones)

23 Walter C. Reckless, *The Crime Problem*, 4th Edn., New York, Meredith Publishing Co., 1967, P. 684. Also according to Attorney-General Wako, in 1992 each prisoner cost the Kenyan government 279.10 Kenyan shillings a day, while a probationer would cost only 13.10 shillings a day, *YashVyas, Alternatives to Imprisonment in Kenya, 1995, 6 Crim. L.F.* 73. It has been observed that it costs anywhere from 10-13

Prisons are overcrowded, hence haven't lived up to their role of reforming convicts²⁴. Due to incarceration young offenders ripen into confirmed criminals with the infectious association of hardened repeaters whom they come across in jail²⁵, instead of turning a new leaf by re-education²⁶. Probation technology includes many tools techniques which help in reforming the offender²⁷.

The ultimate aim of probation is re-establishment of the offender in the community²⁸. The philosophy underlying probation is that all men are inherently good. Probation is a compromise between the twin objectives of punishment; the protection of the community and the rehabilitation of the criminal²⁹.

There is no precise formula to determine when and when not the benefit of probation can be given. Even though no mathematical rule is given, the general intention of the legislature is to give the benefit of probation as much as possible³⁰. When deciding whether to order probation, the courts must, take account of the youth, character, antecedents, home surroundings, and health or mental condition of the offender, as well as the nature of the offense and any extenuating circumstances³¹. Indian Courts have accepted the applicability of probation for many kinds of offences, for example; theft³², disqualifications³³, pick pocketing³⁴,

times more to maintain a person in prison than to put him or her in probation. *Cost is one reason why the courts are turning more and more into probation and other methods of punishment*, as quoted in James p. Levine et.al., *Criminal Justice A Public Policy Approach*, Harcourt Brace Jovanovicinc., 1980, ISBN 0-15-516094-X, p. 331, see also Supra note 11

24 The Indian prison population has burgeoned to an extent that is unacceptable, S.P. Srivastava, 'Probation Service in India Critical Appraisal' in N.K. Chakrabarti ed., *Administration of Criminal Justice-The Correctional Services, Probation services*, New Delhi, Deep and Deep Publications, 1997, Vol. 3. P. 57, http://www.prisonstudies.org/info/worldbrief/wpb_country.php?country=94, accessed on 27th sep.2011, <http://news.bbc.co.uk/2/shared/spl/hi/uk/06/prisons/html/n2page1.stm>, accessed on 27th sep.2011

25 Supra note 10

26 Ibid p.39

27 Ibid

28 Coffey, Alan R., *Administration of Criminal Justice—A Management System Approach*, p. 236

29 Supra 14 p.35-6

30 *Jugal Kishore Prasad vs State of Bihar*, 1972 AIR 2522, 1973 SCR (1) 875, the Supreme Court observed that the object of the Probation of Offenders Act

31 Supra 9

32 Dalip Singh Vs. State, MANU/DE/0139/1979, ILR 1980 Delhi 90-

33 *Kehar Singh v. Regional Employment Officer, Chandigarh*, 1967 Serv LR 527, *Trikha Ram V. V.K. Seth* AIR 1988 SC 285

34 *Abdul Qayum vs. State of Bihar*, 1972 AIR 214, 1972 SCR (2) 381

35 In *Isher Dasv. The State of Punjab*, A.I.R. 1972 S.C. 1295

36 Supra 21 P. 690

food adulteration³⁵, etc.

Probation can be revoked if one violates probation terms in any one of the following ways namely; violation of a condition(s) of probation, commission of a new offence, or by absconding³⁶.

II. Attempts of Codification:

II. I. Code of Criminal Procedure:

Section S.562 of the Code of Criminal Procedure (Cr.P.C) 1898, is the earliest law to have dealt with probation. It was amended in 1973 and inserted as S.360 of The Code of Criminal Procedure, 1973³⁷: S.361 makes it mandatory for the judge to declare the reasons for not awarding the benefit of probation. Therefore section 360 creates a positive duty on the Judge for awarding probation. It is a statutory obligation on the part of the Judge to award probation if the defendant meets the criteria met out in the Act. It is therefore in exceptional circumstances that the accused should not be awarded probation; for which the Judge shall record reasons for inability. Probation is to be awarded after the accused has been found guilty. Until and during trial the accused is innocent, after been adjudged guilty is when the accused can avail benefit of probation i.e after conviction but before sentencing.

II. II. Scheme of Probation of Offenders Act 1958:

Section 4 of the Act provides for probation, it gives Power to the Courts to release certain offenders on probation of good conduct³⁸, S. 5 provides for released offenders to pay compensation and costs³⁹. It is one of a few Acts that provides compensation to victims. S. 6 of the Act provides for restrictions on imprisonment of offenders under twenty-one years of age, (young offenders) and if the court passes any sentence of imprisonment on the offender, it shall record its reasons for doing so. S.7. states that the report of probation officer should be confidential. The pre-sentence report of the Probation Officer is the fundamental document for the guidance of the Court whether to grant the benefit of probation to the accused or not. Where the offender fails to observe bond conditions, court can issue warrant and impose penalty. if offender does not pay he can be sentenced for original offence⁴⁰. The Act also provides for removal of disqualification⁴¹ attaching to conviction if dealt under section 3.or

37 See S.360 of The Code of Criminal Procedure, 1973

38 See S. 4 Probation of Offenders Act 1958

39 Probation of Offenders Act 1958, S. 5

40 The Probation of Offenders Act, 1958, S. 9. (3 b), (4)

41 *Union of India and Ors vs Bakshi Ram* 1990 AIR 987, 1990 SCR (1) 760

42 Probation of Offenders Act, 1958, S. 12

43 Probation of Offenders Act, 1958, S. 14

section 4⁴². It also provides duties for Probation officers⁴³. The Act provides for recognition of probation officers as public servants⁴⁴, protection for Acts done in good faith⁴⁵, gives the State and Central government power to make rules⁴⁶ though nothing in the Act affects S. 31 of the Reformatory Schools Act 1897, Prevention of Corruption Act 1947, or any law in any State relating to juvenile offenders or borstal schools⁴⁷.

S.17 of the Probation of Offenders Act, 1958 provides for the procedural rules which uphold and carry out aims and objectives of the Act which directs States to maintain proper functioning of the Act. The Act provides for operating executive machinery through subordinate legislation under section 17 of the Act. Maharashtra State has framed Maharashtra Probation of Offenders Rules, 1966 to further the goals and objects of the Act.

Pre-sentence investigation/report (PSI/PSR) provides law enforcement agencies and the courts with necessary information to make key processing decisions⁴⁸. A typical PSI contains background information on the defendant such as educational status, employment, and familial relationships, information on the seriousness of the crime, the defendant's risk, the defendant's circumstances, and a summary of the legally permissible sentencing options. In addition, the PSI contains a recommendation from the probation officer indicating the sentence that the officer believes is most appropriate for the defendant⁴⁹, and the conditions to be imposed⁵⁰. Therefore, the PSI is a very important

44 Probation of Offenders Act, 1958, S. 15

45 Probation of Offenders Act, 1958, S. 16

46 Probation of Offenders Act, 1958, S. 17

47 Reformatory Schools Act, 1897 (8 of 1897), or sub-section (2) of section 5 of the Prevention of Corruption Act, 1947 (2 of 1947), 1[, or of any law in force in any State relating to juvenile offenders or borstal schools.

48 Supra note 11

49 Probation officers' recommendations and final sentencing outcomes, Tina L. Freiburger, Carly M. Hilinski, Journal of Crime and Justice, Vol. 34, Iss. 1, 2011, see also (Cohn and Ferriter 1990 & Cohn, A. W. and Ferriter, M. M. 1990. The presentence investigation report: an old saw with new teeth. *Federal Probation*, 54: 15-25.

50 The judge's (and probation officer's) required conditions usually fall into one of three realms. *Standard conditions* imposed on all probationers include such requirements as reporting to the probation office, notifying the agency of any change of address, remaining gainfully employed, and not leaving the jurisdiction without permission. *Punitive conditions* are usually established to reflect the seriousness of the offense and increase the intrusiveness and burdensomeness of probation. Examples are fines, community service, victim restitution, house arrest, and drug testing. *Treatment conditions* are imposed to force probationers to deal with a significant problem or need, such as substance abuse, family counseling, or vocational training. Supra note 11

51 Tina L. Freiburger, Carly M. Hilinski, Probation officers' recommendations and final sentencing outcomes, Journal of Crime and Justice, Vol. 34, Iss. 1, 2011

document at the time of sentencing⁵¹.

II. III. Practical Hurdles in Probation:

Some of the criticisms levelled against probation are; Probation is viewed as leniency towards offenders rather than a selective device for the treatment of offenders. It is not seen as a sound penal policy as it places undue emphasis on individual offender at the cost of societal insecurity. Others view it as undue interference of non-legal agencies in the judicial work thereby hampering the cause of justice. When used arbitrarily, without resorting to objective grounds, the rich take undue advantage and abuse the therefore it is counter-productive⁵².

The country-wide (India) statistics of probational releases make it clear that only lip service is being done to probation. Probation departments have for long been the victim of administrative neglect and inaction⁵³. Research conducted by N. K. Chakrabarti has observed that probation department's ailments and ill-health is not sufficiently publicized. Probation supervision is seen not only as ineffective, but as a farce in many cases. The pre-sentence investigation reports are sketchy and irrelevant⁵⁴. There is no scientific process of rehabilitation and the Probation Officers aren't adequately trained. There is no in-service training and occasional refresher courses. Lack of properly qualified personnel, want of adequate supervision and excessive casework load are attributed as the three major causes of inefficiency of the probation-staff.

The probation officers are disenchanted because of unfavourable service conditions, poor salary scales, and nearly non-existent promotion prospects hence they do not seem to put their heart into the service. Their functioning lacks force and vitality largely because the system is poorly staffed, miserly budgeted and casually administered. Judicial officers do not desire to get reports (PSI/PSR) from the probation officers, nor do the probation officers feel it obligatory on their part to submit their reports to the courts. The lower judiciary in India has not awarded probation often. In an umpteen number of cases the accused had to move the High Court and even the Supreme Court to get the relief of probation. This defeats the whole purpose of the Act⁵⁵. Probation services are underfunded relative to prisons.

Therefore the main obstacles to granting of probation are: Judges are overburdened with cases and want to dispose of more cases and if they resort to

52 Supra 12

53 S. P. Srivastava, 'Probation Service in India Critical Appraisal' in N.K. Chakrabarti ed., *Administration of Criminal Justice-The Correctional Services, Probation services*, New Delhi, Deep and Deep Publications, 1997, Vol. 3. P. 57-8

54 Ibid P. 58-9

55 Ibid P. 59-61

56 Albonetti (1991) 1. Albonetti, C. A. 1991. An integration of theories to explain judicial discretion. *Social Problems*, 38: 247-266., see also 1987 Rush, C. and Robertson, J.

awarding probation this takes much more of their time. Judges are often forced to make decisions with limited time and information. The pre-sentence report is the fundamental document for guiding the Court whether to award probation to the accused or not⁵⁶. But the pre-sentence report does not describe the accused fully.

The general understanding of working of lower courts reveals that lawyers are not well read therefore, they have limited concern of Human Rights of their clients hence, they do not apply for probation for their clients. Finally, due to ignorance of the accused they do not plead for probation. This therefore makes the Act not to be effective in its entirety as only a few resort to it.

In spite of the shortcomings and limitations, probation as such has inherently certain positive consequences that can enable the legal system to fall in line with modern universally accepted human rights oriented Penological perspectives.

The fear of incarceration in case of violation of probation guidelines has a psychological effect on the offender. It deters him from law breaking during the period of probation. Probation indirectly prevents an offender from adopting a revengeful attitude towards the society. Serving a prison sentence carries a social stigma which makes rehabilitation harder. Probation seeks to socialize the criminal, by training him to take up an earning activity that enables him to pick up life-habits necessary for a law-abiding member of the community. Thereby inculcating a sense of self-sufficiency, self-control and self-confidence in him, i.e. the essential attributes of a free-life. The Probation Officer guides the offender on rehabilitating himself and weans him away from such criminal tendencies. During the probation period, the offender is trained for a profession which can secure a livelihood for himself and his dependants as one is sent to various educational, vocational and industrial institutions enabling one to stand on his own two feet after his probation period. As a probationer, he contributes to the national economy as the government does not pay for his upkeep, food, security etc. therefore, he no longer remains a burden on the society. Further, correctional task of probation staff requires closer contact with inmates during period of probation. This helps the probation supervisor to get a deeper insight into the real causes of crime and can suggest solutions to eradicate the same. The probation system ensures that all members of society are served thereby playing a positive role as probationers play a positive role by seeking their self-rehabilitation and

1987. Presentence reports: the utility of information in the sentencing decision. *Law and Human Behavior*, 11(2): 147-155. Liebermann *et al.* (1971 Liebermann, E., Schaffer, S. and Martin, J. 1971. *The Bronx Sentencing Project: an experiment in the use of the short-form presentence report for adult misdemeanants*, New York: Vera Institute of Justice.

57 Supra note 11

58 Supra note 10

therefore preserves social solidarity by keeping the law-breakers well under control. If properly designed and implemented, probation programs can reduce recidivism and drug use⁵⁷. Probation is quite beneficial to the offender as it prevents/restricts one from indulging in crime without undergoing the degrading experience of being incarcerated in jail. For the society at large it's advantageous as probationer does not have bitter feelings/pent up anger for being locked up. Therefore, probationer is not revengeful and refrains from committing any crime as is afraid of being incarcerated if he commits crime or violates rules of his probation⁵⁸.

III. Concluding Remarks:

Though probation has many advantages it has some drawbacks, such as it suffers from a "soft on crime" image, hence, it doesn't receive a lot of funding⁵⁹. Due to inadequate funding, many serious offenders are unsupervised⁶⁰. High risk offenders, are also been sentenced to probation⁶¹, data concerning probation system is loosely scattered⁶².

The object of the criminal justice system is to punish, deter and reform the offender. Incarceration is not the only way to achieve the above objects but other alternative sentencing measures such as probation can be employed, for reforming the offender. For probation to be effective there should be cooperation and coordination between judiciary and administration i.e. [Magistrate (or) Judge and the Probation Officer]. In India due to overcrowding and human rights violations in prisons probation is the need of the hour. Successful probation programs should combine treatment and surveillance and should be targeted toward appropriate offender subgroups. Citizens need to be educated that probation sanctions are punitive and that only truly violent offenders need to be in prison⁶³.

If probation is to be successful certain standards must be met. Only qualified personnel must be selected to do probation work. They should be qualified in terms of personality, education and experience. Thereafter there is need to develop, define and improve probation standards and goals by preparing a comprehensive Probation Manual enunciating policies and procedures. The government must also raise the morale of probation officers, by increasing budgets

59 Supra note 11

60 Ibid

61 Probation Officers and Sex Offenders: An Examination of Personality Traits, Kari Haffner, Janice Ahmad, Alejandro del Carmen, Criminal Justice Studies, Vol. 18, Iss. 2, 2007

62 Ibid

63 Supra note 11

64 Supra 14 p.62-3

65 Supra note 10 p.40

for probation departments so as to be able to recruit more probation personnel, conduct refresher courses, improve probation staff training, increase promotion avenues, improve pay and perks etc.⁶⁴ If possible there should be *an all-India exchange of experience, ideas, seminars and thought on probation, where failures and shortcomings are highlighted, and achievements can be shared and replicated for adoption in other States so as to make probation successful.*⁶⁵ There should be adoption of Information Technology (ICT) tools for managing the database (State to National Level) of probation personnel as well as probationers, the tools and techniques used or being developed. This can lead to more efficient monitoring and replication of successful models.

Judicial trend in lower judiciary does not seem to grant probation often and the advocates do not seem to ask for the same. There are judges who do not believe in probation at all, and others who use it selectively for certain crimes and not others, though both are entitled to probation. Therefore, there is need to educate on philosophy and function of probation not only to judges but to lawyers, law students and society at large.

There is a law on juvenile delinquents/children in conflict with law but Probation of Offenders Act, 1958 is the only law that specifically deals with young offenders. Young offenders are vulnerable due to the many social and psychological influences. They can be easily swayed or tempted to commit crimes due to peer pressure, spirit of adventure, temptations etc. Due to this there is no need to resort to incarcerating these young offenders as these makes them graduate into professional criminals. It is prudent to sentence them to probation thereby giving them chance of reforming and reduce the social stigma of going to jail. S. 6 of the Probation of Offenders Act, 1958 directs that sending young offenders to jail should be the exception and not the norm and also reasons (e.g. a grave crime) should be stated by the Judge of why they are not resorting to probation.

The new trends and thoughts have accelerated changes in alternative sentencing. For example, the Malimath committee report has proposed adopting some good features of the inquisitorial system, it also the suggested adoption of plea bargaining. If plea bargaining is effective then the conviction would certainly go up from the present 5%. If it were to increase then the prisons would not cope with the increase in convicts hence need to revamp probation system, as this would reduce the pressure on prisons and the exchequer as well as afford more reformation avenues for the accused.