Probation System in Assam: Institutional Decline and a Reform Agenda

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This exploratory study examines the functioning of the probation system in Assam and the role of various stakeholders. It assesses the system against five benchmarks: the enforceability of the Probation of Offenders Act, 1958; the application of probation laws by courts; stakeholders' views on enforceability and application; judicial trends; and the institutional framework. The study finds that the Probation of Offenders Act, 1958, has not been extended to the entire state and remains applicable only in 6 of 31 administrative districts. Despite this, courts have been granting the benefit of probation in specific cases under the provisions of the erstwhile Code of Criminal Procedure. Further, no probation officer is currently working under the Probation of Offenders Act, and, except for juvenile offenders, the subject of probation is not under the administrative control of any government department. The study concludes that while community engagement can strengthen probation, it can only supplement, not supplant, institution-based probation. An effective probation system, therefore, necessitates a revamped institutional framework by the State Government in Assam.

Key words: Corrections, Probation, Rehabilitation, Reformation, Reintegration

INTRODUCTION

The principle of reformation of offenders was highlighted by the India Jails Committee Report of 1919-1920, and subsequently two important developments after independence i.e. the visit of UNO subject expert on prisons reforms, W.C. Reckless, in 1951, and the All India Conference of Inspectors General of Prisons in Mumbai in 1952, were milestones towards the making of a specific law on probation in India. While the Report on 'Jail Administration in India' by Dr. Walter C. Reckless, a UN Expert on Correctional Work (1951-52), recommended transforming prisons into reformation centers, setting up full-time probation and revising boards for aftercare services etc., the All-India Conference of the Inspectors General of Prisons took a resolution (Resolution No.26) on 'Probation, Parole, and Aftercare' as "The Uttar Pradesh First Offenders Act should be

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introduced in all the States, and the provision of the Act should be made applicable to all prisoners regardless of age, and an Act on the lines of the Uttar Pradesh Prisoners Release on Probation Act should also be adopted by the States. Probation officers should be appointed in every district in all the states. It was generally agreed that the appointment of probation officers would result in a considerable saving to the state governments in as much as the release of prisoners under probation would avoid expenditure on the maintenance of prisoners in jails." The All-India Jail Manual Committee (1957-59) in their report also recommended the use of probation, and in this regard the report says that "Probation should be more extensively used than at present in respect of delinquent children and adolescent offenders; to facilitate this, each state should organize a wide network of probation services.' As a result of all these developments, the Probation of Offenders Act, 1958, came into being along with the Children Act, 1960, and the Central Bureau of Correctional Services, 1961 (now called the National Institute of Social Defence).

Unfortunately, in India today, we do not have any comprehensive statistics pertaining to probation being compiled by any agency either at the national level or at the state level. The National Crime Records Bureau (NCRB) also does not record statistics of persons released on probation as part of its publication 'Crime in India'. Therefore, in the absence of quantitative statistics, qualitative changes in the lives of those beneficiaries who have availed of the benefit of probation are difficult to measure. Thus, any objective impact assessment of a probation system has to rely on exploring the key benchmarks of an effective probation system and, accordingly, find out the extent to which those benchmarks are present in the probation system under study. In so doing, the present study seeks to find answers to the following specific research questions:

i. How is the implementation of probation laws in Assam?
ii. What is the institutional framework of the probation system in Assam, and how is it working?
iii. How is the possibility of community engagement in the probation system in the state?

LEGAL FRAMEWORK OF PROBATION IN INDIA

The legal framework on probation in India includes the Code of Criminal Procedure, the Probation of Offenders Act, 1958, as well as other laws and judicial precedents of the Supreme Court and various High Courts.

Section 562 of the CrPC, 1898, was the earliest provision and, in fact, the first statutory expression of the penal system reflecting probation philosophy. According to the same, probation implied

release on probation for the first-time offenders at the discretion of the court for minor offences up to 2 years of imprisonment. Section 562 of the CrPC, 1898, the first recognition of the probation philosophy in Indian Law, was followed by the Children Act, 1908, which allowed the release of certain types of offenders on probation. Presently, Section 360 of the CrPC,1973, deals with release on probation of good conduct or after admonition upon judicial discretion. Another important section under CrPC, 1973, is Section 361[339], which requires special reasons to be given for not granting benefits under Section 360 and under the Probation of Offenders Act, 1958.However, the most comprehensive law relating to probation in India is the Probation of Offenders Act, 1958, a central legislation for the purpose of probation in India that may be made applicable to a state by the state government. It has the objective of reformation and rehabilitation of the offender as a useful and self-reliant member of society without subjecting him/her to the deleterious effects of jail life. To that end, the Act provides for the release of offenders on probation or after due admonition and for matters connected therewith. Moreover, the application of Section 360 Cr PC is barred u/s 19 of the Act to the States or parts thereof in which the Act is brought into force.

There are also other laws in India containing provisions on probation. For instance, it is mentioned in the Central Excise Act, 1944, that Section 562 of the CrPC 1898, or the Probation of Offenders Act, 1958, shall have no application to an offender convicted of an offence under this Act unless he/she is under eighteen years of age. The Customs Act, 1962, also has a similar provision worded in the same manner. Under the NDPS Act, 1985, when a person is convicted, he/she cannot be given the benefit of probation either under Section 360 of the Cr.P.C, 1973, or as per the Probation of Offenders Act,1958,unless the person is under eighteen years of age or the offence for which convicted is punishable under section 26 or 27 of the Act i.e., punishments for certain acts by licensee or his servants and punishment for consumption of any narcotic drug or psychopathic substance. The Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, does not extend the benefit of probation to an accused unless he/she is below the age of eighteen years, as per section 19 of the said Act.

The Supreme Court of India has also been deciding on cases related to probation, both under the general and the specific laws, in a manner that has espoused the philosophy of reformation for

[339] Section 361 Cr PC: Special reasons to be recorded in certain cases-where in any case the Court could have dealt with-

a) An accused person under section 360 or under the provisions of the Probation of Offenders Act,1958(20 of 1958), or
b) A youthful offender under the Children Act,1960(60 of 1960), or any other law for the time being in force for the treatment, training or rehabilitation of youthful offenders, but has not done so, it shall record in its judgment the special reasons for not having done so.

suitable offenders. Cases being decided by the apex court in the last five decades reflect the fact that a wider interpretation of the laws related to probation causes greater justice to the beneficiaries. For instance, the apex court in the case of *Lakhbir Singh vs. State of Punjab ((2021)* categorically emphasized that the benefit of probation is an injunction for courts to follow for offenders below 21 years of age. Recently, the Supreme Court *in Re: Policy Strategy for Grant of Bail, 2022,* also suggested effectuating the provisions relating to plea bargaining, compounding of offences, and the Probation of Offenders Act on the aspect of disposal of criminal cases. The Hon'ble High Court at Gauhati, also pronounced many judgments affording the benefit of probation to suitable cases.

Thus, it appears that the existing legal framework of India provides for a wide range of opportunities for the application of the benefit of probation to an offender in India. On perusal of all such laws, it is evident that what the court considers is the nature and gravity of the offence to determine suitability for release on probation. Another aspect for consideration is the character and antecedents of the offender. Notably, the Code of Criminal Procedure, 1973, also contains an analogous provision in Section 360, which empowers a court to release an offender on probation of good conduct or after admonition. But the CrPC does not provide for any probation officer to be appointed for purposes viz. supervision of probationers, assisting the court in determining the most suitable method of dealing with offenders, submitting reports to the court, etc., which the Act provides. In cases of special laws, it is seen that probation is not granted in socio-economic offences generally, but the children are not barred from such benefit.

PROBATION SYSTEM IN ASSAM: THE PRESENT STUDY

Research Methodology

The present study is an empirical work being carried out by following an exploratory research design to understand the impact of the present probation system in Assam and what is required to be done to make it effective and liberal. There is very meager literature available in this area of research, and therefore, the researcher followed the inductive method to explore new ideas for the betterment of the existing system.

Primary data was collected through semi-structured interviews with different stakeholders, Judicial Officers, Practising advocates, Prison Officials, Probation Officers, Jail inmates etc. by adopting a purposive sampling method. Secondary data was obtained from National Library, Kolkata, Judicial Academy, Assam, Assam State Legal Services Authority, District Legal Services Authority, Inspectorate General of Prisons and Department of Women and Child Development, Govt. of Assam. Apart from that, tertiary sources included Digital Archives of Gauhati High Court and

District Courts, Digital Library of Assam and Online resources like Manupatra and SCC online, etc.

The details of the primary respondents of this study are mentioned in the table given below:

Sl.nos.	Respondent category	Total nos.
1.	Judges/Judicial Officers	7 nos.
2.	State Government senior officials	5 nos.
3.	Inspectorate General of Prisons	4 nos.
4.	Practicing Advocates	5 nos.
5.	Prison Personnel	18 nos.
6.	Probation Officers	4 nos.
7.	Legal cum Probation Officers	4 nos.
8.	Civil Society Representatives	2 nos.
9.	Jail Inmates	22 nos.
Total		71 nos.

Major findings from the present Study

In line with the research objectives, the major findings are thematically analysed into three groups:

1. Enforceability and application of probation laws
2. Institutional framework of the probation system
3. Community engagement in the probation system

Enforceability and application of probation laws in Assam:

The probation system in Assam can be said to have its inception in the year 1962, when the Governor of Assam made the Assam Probation of Offenders Rules, 1962, in pursuance of the powers vested with him under sub-section (I) of Section 17 of the Probation of Offenders Act, 1958. The Assam Probation of Offenders Rules were published in the Assam Gazette on July 18,

1962. This was a major milestone in the implementation of the Probation of Offenders Act, 1958 as it provided an operational framework within which the Act ought to operate.

1. Enforceability of the Probation of Offenders Act

Section 1, sub- section (3), of the Act contemplates that the Probation of Offenders Act, 1958 shall into force in a State on such date as the State Government may, by notification in the Official Gazette appoint, and different dates maybe appointed for different parts of the State. Further, as per Rule 2. (e), of the Assam Probation of Offenders Rules, 1962, "Probation district" means a district or a bigger or smaller area as may be specified bythe State Government. The Act has come into force in Kamrup and Nowgong on July 16, 1962[340], Sibsagar, Darrang and Cachar on June 1, 2063[341], United Khasi-Jaintia Hills, Goalpara and Lakhimpur on September16, 1963[342]. In the aforesaid Gazette notifications, Sibsagar, Darrang andCachar, United Khasi- Jaintia Hills, Goalpara and Lakhimpur have been specified as Probation districts, Kamrup and Nowgong are not. In the absence of similar notifications for the rest of the State, it appears that the Probation ofOffenders Act, 1958, is not yet enforced in entire Assam except in the six districts mentioned above. This may be regarded as the first reason for underutilization of the benefit of the Act in Assam.

2. Application of Probation laws by courts

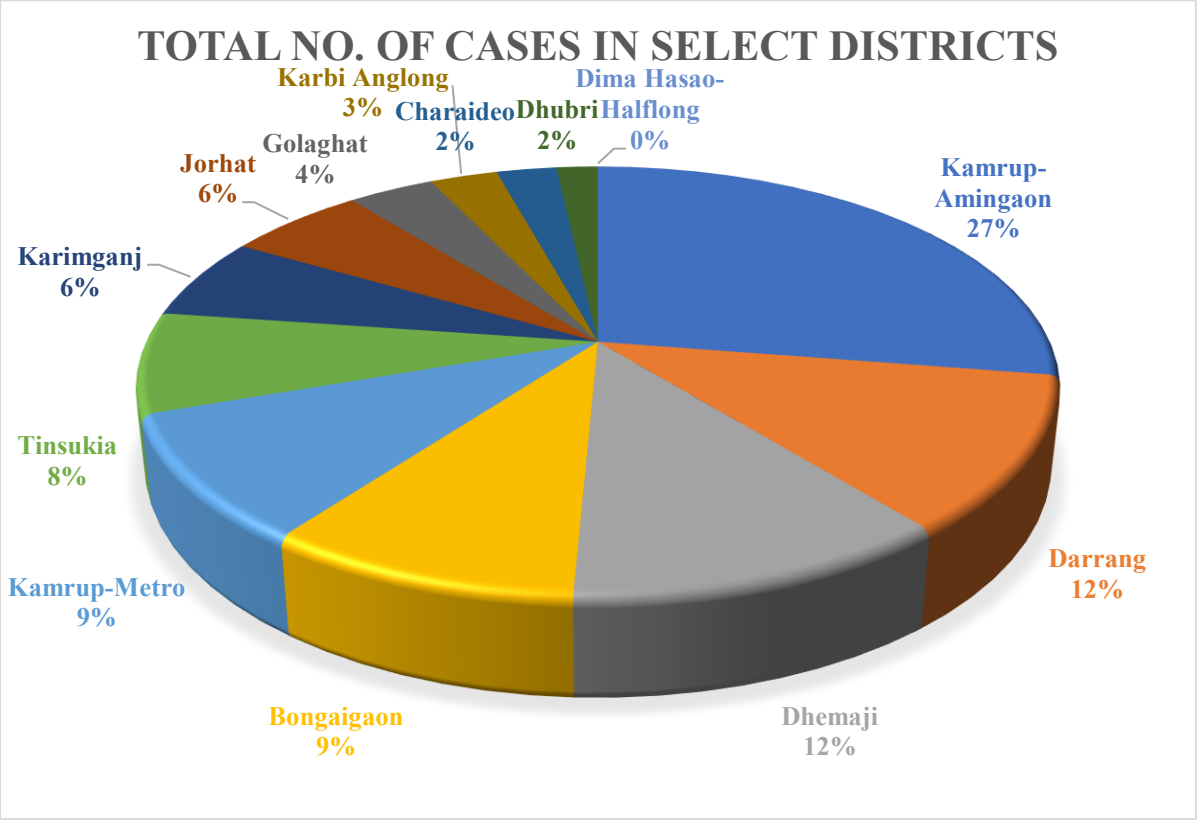
District-court-wise data on cases dealt with under the Probation of Offenders Act, 1958, and/or S.360 Cr.PC. of the **last twenty years** was received from 13 District Legal Services Authorities in Assam. Major findings are stated below:

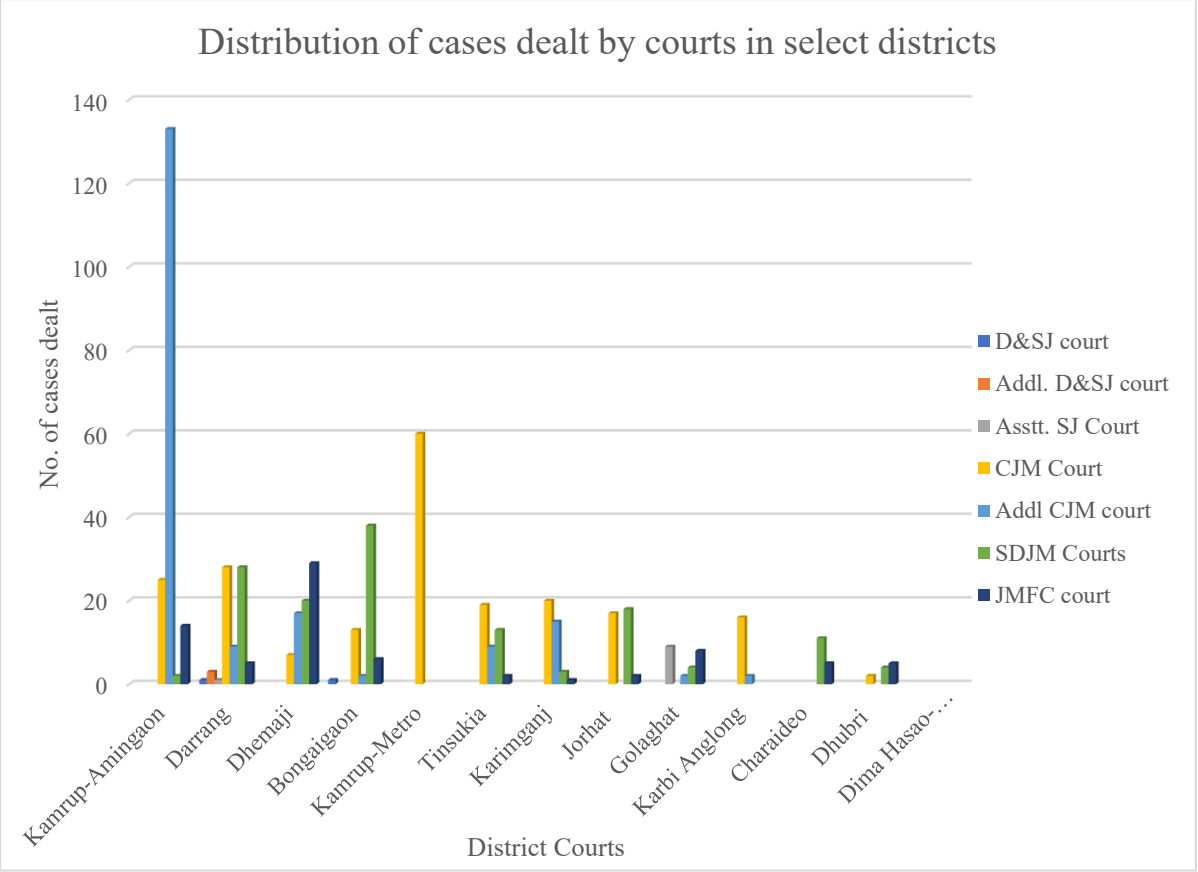
[340] Vide Assam Gazette no. DSW(G) 24/60/119, dated June 29, 1962, date of publication July 4, 1962.

[341] Vide Assam Gazette no. DSW (G)36/62/99, dated May 3, 1963, date of publication May 15, 1963.

[342] Vide Assam Gazette no. DSW (G) 36/62/154, dated September 14,1963, date of publication September 25, 1963.

(Figure 1)





(Figure 2)

1. 2 districts, i.e., Kamrup-Amingaon and Darrang, in which the Probation of Offenders Act has been brought into force by government notifications, the number of cases is comparatively higher than the rest of the districts. Kamrup-Amingaon district has the highest number of cases, i.e., 174, followed by Darrang district with 74 cases.
2. Dhemaji district is also remarkable in terms of the number of cases dealt in this regard. The total number of cases in Dhemaji district is 73.
3. Incidentally, Kamrup (Metro), where the Act is in force, has only 60 nos. of cases, all cases dealt under the Probation of Offenders Act.
4. Dima-Hasao-Halflong, a newly established district court in 2017, has nil cases dealt under provisions of probation law. Dhubri district, which was part of the erstwhile Goalpara district where the Act was brought into force in 1963 itself, has only 11 cases pending under the provisions of probation law.
5. Most cases dealt with under probation law are those punishable under the IPC. However, it is found that the benefit of probation has also been extended in a few cases punishable under the POCSO Act, the Arms Act, the Assam Excise Act, and the Indian Railway Act.
6. The data is indicative of cases dealt under Section 3 i.e., admonition, and Section 4 i.e., probation under the Probation of Offenders Act in Karbi Anglong. Similarly, in Karimganj district court data specifies cases released on probation bond. However, none of the district courts has specified if the report of the probation officer was called for or court-ordered supervision by the probation officer during the period of probation in any of the cases.
7. The total number of cases in 13 districts is 633 in the last twenty years. On average, there are 49 cases in one district court, which come to 3 cases a year in a district. This figure reflects that the benefit of probation has not been properly extended.
8. Districts such as Karbi Anglong, where the Act has not been brought into force, have also applied the Act in appropriate cases.

3. Respondents' views on Enforceability and Application of Probation Laws in Assam

The Judicial Academy, Assam, also confirmed the fact that some districts have not been brought within the purview of the Probation of Offenders Act in Assam, as the state government has not notified them to that effect[1]. Notifications are available for Kamrup, Nowgong,

[1] Supra

Sibsagar, Darrang, Cachar, Goalpara, and Lakhimpur only[2]. In districts where the Probation of Offenders Act is not notified, Section 360CrPC is followed. According to a District and Sessions Judge (Retd.), practically all courts in Assam are not resorting to Section 360 and Section 361 of the CrPC. Wherever applicable on A case-to-case basis, the provisions of the PO Act for releasing the young offenders on probation are being followed or implemented. Another serving judicial officer (anonymous) also seconded the same opinion. However, the actual implementation of the Act is a matter of research or survey-both of them stated.

Advocates also have given their opinions about the enforceability of the probation law in Assam, such as

- ✓ Section 360 Cr PC is not relied upon regularly by the courts, and in fact, courts are not inclined towards invoking the provisions under CrPC or the Probation of Offenders Act.
- ✓ Section 360 of Cr.PC should be deleted from the book of statute, as probation legally cannot happen without supervision of the probation officer.
- ✓ The conviction rate is so low in Assam that courts very rarely invoke Section 360 of the CrPC and courts may also have an apprehension that such practices send the wrong signal to the society.
- ✓ Never seen any implementation of the Probation of Offenders Act in this region and, probation officers are not appointed, and, as such, courts take their own course and release the offenders with some conditions.
- ✓ No institutional mechanism to supervise the fulfillment of conditions imposed on a convict by the court.
- ✓ Wherever court deems expedient and necessary, section 360 Cr.P.C is applied and not the Probation of Offenders Act.
- ✓ Courts in Assam apply probation, both under CrPC as well as under the Probation of Offenders Act, in suitable cases at their discretion, etc.

4. Application of Probation Laws in Assam---Judicial Trends

The Hon'ble High Court at Gauhati, the jurisdiction under which the present study is being carried out, however, has pronounced many judgments affording the benefit of probation to suitable cases. Unless otherwise impossible, the judicial trend is seen to be more in favour of probation at the Gauhati High Court. In *Atum Lengmei and Ors. Vs. Respondent: Manipur*

[2] Supra

Administration[3]*,* for instance, both the offenders were below the age of 21 years and were convicted by the trial court under Sections 395/397 and 342 of the IPC. One of the key questions for determination for the High Court was the applicability of the Probation of Offenders Act without designated Probation Officers being appointed for the purpose of the Government. The Hon'ble High Court in this regard held that 'The question therefore arises what should be clone in the present case. Section 6(2) provides that for satisfying whether it would not be desirable to deal with the appellants under Section 3 or 4, the Court shall call for a report from the Probation Officer and consider the report and any other information available to it relating to the character or physical or mental condition of the offender. Thus, before sentencing the petitioner for the conviction under Section 342, it is necessary that a report should be called for from the Probation Officer. But I understand from the Advocate appearing for the State that no probation officer has been appointed in the Union Territory of Manipur under Section 13 of the Probation of Offenders Act. Thus, it is not possible to call for a report from the Probation Officer. It will be better that the Administration of this Territory appoints a Probation Officer under Section 13(1)(a) of the Act immediately or at least designates a person provided for the purpose by a Society recognised in that behalf by the Administration as provided under Section 13(1)(b) of the Act. The sooner this is done the better it will be. Otherwise the purpose of the Probation of Offenders Act will be nullified'.

Institutional framework of Probation System in Assam

There are two institutional frameworks-the probation Officer and the department in the state government--overseeing the matters pertaining to the Probation of Offenders Act. Discussed below are the workings of these two institutional machineries ever since the time the law was brought into force in Assam.

1. Probation Officer

According to the respondents of the present study, in the past, District Social Welfare Officers discharged their responsibilities as Probation Officers. In fit cases, Magistrates used to call for a report from the probation officer. The practice of District Social Welfare Officers discharging the duty of Probation Officer continued till 1989-90, when 17 persons were recruited by the Assam Public Service Commission to be appointed as Probation Officers in the Social Welfare Department. However, since then, people appointed to the said positions

[3] MANU/GH/0011/1961

have been working only for the Juvenile Justice Act. But the fact that cannot be ascertained is whether the positions were created under the Probation of Offenders Act, 1958, or the Juvenile Justice Act, 1986, since no gazette notification related to the appointment of the probation officer could be traced. It is also worth mentioning here that the probation officers of 16 districts were redesignated as Probation Officer cum District Child Protection Officer with the launching of ICPS by the Govt. of India[4]and subsequent signing of an MoU with the State Government for the creation of a District Child Protection Unit. Presently there are also Legal - cum-Probation Officers in Assam[5]. But both Probation Officers as well as Legal-cum-Probation Officers in Assam, at present, implement the Juvenile Justice Act and not the Probation of Offenders Act.

2. Departmental Control of PO Act

The Assam Probation of Offenders Rules 1962 mentions the Directorate of Social Welfare to be the controlling department on matters related to the PO Act, 1958. As per record, the Directorate of Social Welfare was created by Govt. of Assam in 1960 and made permanent in 1965, and a full-fledged Social Welfare Department came in 1965. However, the erstwhile Social Welfare Department does not exist now and, instead of that, there are two departments, namely, the Department of Women and Child Development and the Department of Social Justice and Empowerment[6]. Presently, the Directorate has two sectors -Women and Child Development and Social Justice and Empowerment. The former focuses on improving nutritional status of children, adolescent girls, pregnant & lactating mothers, capacity building through skill development for women, welfare of senior citizen, and improving

[4] The Ministry of Women and Child Development has introduced in 2009-10, the Integrated Child Protection Scheme (ICPS) for implementation throughout the country with the objective of creating a safe and secure environment for children in conflict with law as well as children in need of care and protection. This scheme is being implemented from the financial year 2009-10 through the State Governments/ Union Territory Administrations. All States/ UTs have signed the MOU for implementation of the scheme. Total 589 District Child Protection Units were established as an outcome of this. (Available at https://pib.gov.in/newsite/PrintRelease.aspx?relid=101786 last visited May 8, 2023).

[5] Section 2. sub clause (48) of the Juvenile Justice Act (Care and Protection of Children) Act, 2015- probation officer as an officer appointed by the State Government as a probation officer under the Probation of Offenders Act, 1958 or the Legal-cum-Probation Officer appointed by the State Government under District Child Protection Unit.

[6] By a notification, dated Dispur, the 31st of August, 2022[25], of the Governor of Assam, the Social Welfare Department was bifurcated into two new departments, namely, Department of Women and Child Development and the Department of Social Justice and Empowerment. Accordingly, the Directorate of Social Welfare (Women and Child Development Sector) was renamed as Directorate of Women and Child Development and placed under the administrative control of the Department of Women and Child Development. The Directorate of Social Welfare (Social Justice and Empowerment Sector) was renamed Directorate of Social Justice and Empowerment and placed under the administrative control of the Department of Social Justice and Empowerment.

socio-economic status of persons with disabilities. Whereas the latter has the objectives of Empowerment and Mainstreaming of Persons with Disabilities, rehabilitation programmes for drug addicts, alcoholism etc., health care, social and financial security for senior citizens. Importantly, Probation of Juvenile Offenders is kept as an independent function of the Department of Women and Child Development, along with 11 other functions, including the Juvenile Justice (Care and Protection of Children) Act. The aforesaid bifurcation indicates that offenders above 18 years are not under the administrative control of the Department of Women and Child Development, and there is no institutional machinery in the state for departmental control of probation officers as stipulated in Part II of the Assam Probation of Offenders Rules, 1962. The present Directorate of Women and Child Development, Govt. of Assam, in writing, also confirmed that the Probation of Offenders Act does not relate to the Directorate of Women and Child Development, Assam.

3. Detailed functioning of the Probation System in Assam

In the year 1989-90, recruitment was made by the Assam Public Service Commission towards filling the positions of Probation Officer in the Social Welfare Department. But the fact that could not be ascertained is whether the positions were created under the Probation of Offenders Act, 1958, or the Juvenile Justice Act, 1986. The Juvenile Justice Act (JJ Act, 1986), published on 1st December 1986, came into force throughout India, except in Jammu and Kashmir, on October 2, 1987[7]. The Juvenile Justice (Assam) Rules, 1989, were also notified vide no. TAD/SW/352/87/9 dated 27th January 1989. There is a definition of Probation Officer given in the JJ ACT, 1986, but the JJ (Assam) Rules, 1989, are silent about qualifications, appointment, and conditions of service etc. of Probation Officer unlike the Probation of Offenders Act,1958. Section 2. (q) of the JJ Act, 1986 defines Probation Officer – ‘’means an officer appointed as a probation officer under this Act or under the Probation of Offenders Act,1958”. Nevertheless, it was confirmed by three persons who served as Probation Officer cum District Child Protection Officer in districts that all sixteen plus one Probation Officers were discharging their duties[8] under the Juvenile Justice Act, 1986 only. It is also worth mentioning here that the Probation Officers of 16 districts were redesignated as Probation Officer cum District Child Protection Officer with the launching of ICPS by Govt. of India[9]

[7] Gazette of India, Part III, and Section 3(i) dated 13.08.1987.
[8] Rule 44 of the Juvenile Justice (Assam) Rules, 1989-Duties of Probation Officer:
[9] The Ministry of Women and Child Development has introduced in 2009-10, the Integrated Child Protection Scheme (ICPS) for implementation throughout the country with the objective of creating a safe and secure environment for children in conflict with law as well as children in need of care and protection. This scheme is being implemented from the financial year 2009-10 through the State Governments/ Union Territory

and subsequent signing of MoU with the State Government for the creation of District Child Protection Unit.

It is evident from the above analysis that the Probation Officer appointed under the Probation of Offenders Act, 1958, could act as Probation Officer for the purposes of the Juvenile Justice Act, 1986 [10]. But vice versa is not possible, as rule[11] does not permit the same. On perusal of the Assam Children Act, 1970, it was found that there are provisions for appointment of Probation Officer [12] and making rules[13] pertaining to qualifications, duties, recruitment, training etc. of Probation Officer. The Assam Children Rules, 1976, empowers the State Govt. under Rule 3 clause (3) to appoint Probation Officer[14].

The new Juvenile Justice Act (Care and Protection of Children) Act, 2015 defines[15] probation officer as an officer appointed by the State Government as a probation officer under the Probation of Offenders Act, 1958 or the Legal-cum-Probation Officer appointed by the State Government under District Child Protection Unit. Legal -cum-Probation Officers are working in every district of Assam at present and therefore a separate cadre of Probation Officers ought to be there for the implementation of the Probation of Offenders Act, 1958. The Directorate of Social Welfare, Government of Assam could not give the details of the same in the first instance.

COMMUNITY ENGAGEMENT IN THE PROBATION SYSTEM: A WAY FORWARD:

Apart from institutional based probation, there are also various models of community-based probation working in different parts of the world and in some parts of India. Community-based probation is a concept wherein there is the involvement of the community in the working of the probation system. Community involvement or civil society engagement in criminal justice

Administrations. All States/ UTs have signed the MOU for implementation of the scheme. Total 589 District Child Protection Units were established as an outcome of this. (Available at https://pib.gov.in/newsite/PrintRelease.aspx?relid=101786 last visited May 8, 2023)

[10] Section 2. (q) of the JJ Act, 1986 defines Probation Officer – ''means an officer appointed as a probation officer under this Act or under the Probation of Offenders Act,1958".

[11] Rule 3(1), Assam Probation of Offenders Rules, 1962- The State Government may appoint for each probation district such number of persons as it thinks fit to be probation officers for the purposes of the Act.

[12] Section 53 clause (1), the Assam Children Act, 1970

[13] Section 59 clause (2), the Assam Children Act, 1970

[14] Rule 3 -The State Government may for the purpose of the enforcement of the Act and these Rules appoint the following officer, clause (3) Superintendent, Assistant Superintendent and such other officers as may be necessary.

[15] Section 2. sub clause (48) of the Juvenile Justice Act (Care and Protection of Children) Act, 2015

was highlighted for the first time in the Gladstone Committee Report of 1895, which was set up in the United Kingdom to look into the conditions of British prisons and give recommendations. According to Harding (1988)[16] this report was welcomed as 'the beginning of a beneficent revolution ' and is conveniently used to identify a shift away from a rigid penal approach to a more 'reformative' system of imprisonment. The Gladstone Committee Report, inter-alia recommended that the community outside prisons should help to train prisoners, and society should maintain a sense of responsibility towards discharged prisoners for their social rehabilitation. The Canadian Committee Report on Corrections[17] (1969,) which elaborately deals on Probation, mentions that Probation should not be seen as leniency but as a form of treatment selected after an objective assessment of the situation. In fact, many offenders find probation more difficult than prison since responsibility for his own actions rests on him more heavily while he is on probation. The Committee, therefore, recommended that probation should be expanded by adopting new techniques and facilities such as Probation Hostels, Use of volunteers, Attendance-Centers and Group Work Methods. In the Indian context, three developments in this connection may be noted- The Report of the All-India Committee on Jail Reforms under the chairmanship of Mr. Justice A. N. Mulla (Mulla Committee Report,1983), The Report of the National Expert Committee on woman prisoners under chairmanship of Justice Krishna Iyer of 1987, and the Model Prison Manual, 2016. The Mulla Committee[18] categorically talked about a two-pronged approach to tackle the problem of crime and treatment and rehabilitation of offenders—to counter socioeconomic conditions that contribute to crime and to extend all possible help to released prisoners to resettle in society. Moreover, the committee recommended the creation of community-based treatment programs and the involvement of the community with institutional, aftercare, and rehabilitation of offenders. Similarly, the Justice Krishna Iyer Committee Report as well as the Model Prison Manual, 2016, also advocated for the involvement of community and civil society organizations to cater to the rehabilitation needs of prisoners.

Replicable Community-based model of Probation in Assam

[16] Harding, C. (1988). The inevitable end of a discredited system? The origins of the Gladstone Committee Report on Prisons, 1895. Historical Journal, 31(3, Sept.), 591–608. Retrieved from http://www.jstor.org/stable/2639758.
[17] Towards Unity: Criminal Justice and Corrections (Queens Printers, Ottawa).

[18]Mulla Committee Report,1983, (Vol 1 Chap 21).

Community based probation may be relevant in Assam because majority of the population live in rural areas, there is a strong community feeling among rural people, people have a natural affinity towards their own communities, and chances of reintegration may be greater with community-led systems rather than institutional-based mechanisms. There are also various socio-cultural agencies at the community level to which people's allegiance and obedience are more than institutions created by law. There are indigenous inhabitants in the region, both in hills and plains, who are still adapted to conciliatory practices of dispute resolution rather than adversarial systems. Customary laws prevail in the sixth-schedule areas even today. It is generally observed that there is a kind of skepticism towards the established system of law enforcement, and people prefer to avoid them even for redress of their genuine concerns. Therefore, it is imperative to look for a model suitable to the context that can supplement the efforts of the regular probation system.

It is in this context that Japan's community-based model of probation needs a mention here. Japan, an Asian country, is well known for the involvement of citizen volunteers in the Probation System. Such a system got statutory recognition with the enactment of the Volunteer Probation Officer Act, 1950. The Probation System is managed by Professional Probation Officers and Voluntary Probation Officers. Probation officers are full-time government officials and VPOs are part-time government officials, but they are not paid any salary as such. However, they may, under the provisions of a Ministry of Justice ordinance and within the limits of the budget, be paid the whole or part of the expenses needed for the performance of their duties[19]. The voluntary probation officers as well as any other such private sector initiative in rehabilitation and correctional practices in Japan is a matter of statutory recognition under the Offenders Rehabilitation Act, 2007. Since the Assam Probation Rules, 1962, also has a provision for appointment of probation officer by the government and as well as a voluntary probation officer designated by the government, a Japan like arrangement is a possibility in the region.

In India, two similar community-based models of Probation could be identified. First is the Prayas Model. Prayas is an initiative of the Mumbai based Tata Institute of Social Sciences started in the year 1990. Prayas has a consistent engagement with the Probation System in terms of helping the Probation Officers in the rehabilitation of probationers' cases. Social Workers with Prayas who are trained in correctional work not only help the Probation Officers in effective rehabilitation of persons released on probation but also in identifying potential cases

[19] Article 9(2), Volunteer Probation Officers Act 1950.

for probation in prisons and courts. There is not always adequate no. of regular Probation Officers. Professional Social Workers of Prayas work in collaboration with Probation Officers in supervision cases to ensure that proper supervision is not denied due to less no. and multiple engagements of Probation Officers. Through their expertise in working with individuals and counselling, Prayas has been able to positively affect many people who are being processed through the Criminal Justice System in general and the Probation System in particular. Second is the Kerela Model in which Nervazhi Project being implemented in the State under the aegis of the Social Justice Department, Government of Kerela which aims at facilitating effective implementation of the probation system in the State. Towards that end in view, identification of eligible offenders, undertaking comprehensive investigation reports of offenders to ascertain their amenability for correction, psychological support for those in need and supportive supervision for re-integration are some of the initiatives being undertaken at present. It may not be out of place to mention here that the paralegal volunteers[20] , if oriented properly, may act as an alternative support system for offenders and provide effective probation services. Community-level rehabilitation of offenders will be successful with the involvement of such volunteers. The Community Liaison Model, prevalent in Pennsylvania (USA), is like a paralegal volunteer scheme in India. Under the Community Liaison Model, the Community Liaison Officer mandatorily develops and maintains effective working relationships with the local leaders of the community,law enforcement, victim services and other associated agencies such as neighborhood crime watch organizations. The officers try to develop and maintain such partnerships with different employers for the future engagement of the juveniles so that they can lead a civilized life in society. The officer also has an added responsibility to educate the community in its significant role for the balanced and restorative juvenile justice system.

In Pennsylvania (USA) there is another prominent model of community-based probation called as the Community Supervision Model. Under this model, community-based probation officer carries a caseload consisting of juveniles under informal adjustment, consent decree and probation supervision. He/ she also emphasizes more on the restoration and reparation of crime victims and the community.The Community Supervision Model of Pennsylvania is yet another possibility in Assam with the involvement of customary forums. For example, *Kebang* and

[20] The National Legal Services Authority (NALSA) initiated a scheme called the Para-Legal Volunteers Scheme to expand legal services in the far and distant areas. It is in furtherance of the objective of NALSA i.e. policy for access to justice for all. Trained Para Legal Volunteers undertake number of duties to bridge the gap between the community and the judiciary.

Bane Kebang[21]is a beautiful exposition of self-governance in matters pertaining to criminal justice administration among tribal communities and is comparable to Panchayat in non-tribal localities. *Kebang,* the significant institution among the Mishing community, is a model under whose guarantee and supervision offenders can be released on probation in the absence of designated probation officers. Similarly, the village council "*ME"*[22] which also plays an important role in the socio- religious life of people, is yet another model of handling non-serious or petty offenses like in cases of probation. This institution lost its past glory because of the modern system of justice delivery by the courts, as simple tribal people fear legal consequences for default. However, places of religion like temples, mosques, and churches should not have any role in probation- related services, as it can lead to communal problems, according to the respondents of the study.

CONCLUSION

In conclusion, it can be said that the Probation of Offenders Act, 1958, is not yet enforced in the entire State, except in 6 out of 31 administrative districts in Assam. Currently, the institutional framework of Probation in Assam is also so weak that there is no effective departmental structure for the adult probation supervision and there is also no probation officer currently working under the Probation of Offenders Act. Even the no. of probation cases here are also very small. The total number of cases in 13 districts has been 633 in the last twenty years, i.e. on average, there are 49 cases in one district court, which comes to 3 cases a year in a district. This implies that the benefit of probation has not been properly extended.

In view of the above, greater community involvement to strengthen the existing system assumes significance given its workability in different parts of the country. Though there may be concerns about the accountability and credibility of such community-based initiatives, with the statutory mandate given in the Probation of Offenders Act and the rules framed thereunder for such engagements, this can be given a fair trial in Assam. Moreover, in this State and also

[21] The popular institution for the *Mishing* Community in Assam This is Village Council for the entire community where all matters of common interest are decided upon including disputes which are resolved through it.
[22] The traditional forum for dispute resolution among the Karbis. Composed of all the elderly male membersof the village and presided by the Sarthe or Goanbura (village headman), ME used to resolve village disputes of non-serous and not very grave in nature. It has an important role in regulating socio-economic and religious life among Karbis.

many other States in the North East, customary forums have been successful in similar endeavours and so with probation also, it looks promising.

While community engagement can strengthen probation, it can only supplement, not supplant, institution-based probation. As such, it is suggested that the Probation Act should be brought into force in the districts where it is still not in force and eventually specify districts as probation districts, as required under the Rules. It is also suggested that Probation officers appointed against sanctioned posts are to be assigned duties and responsibilities as laid down under the Rules. If there are not sufficient Probation Officers for all districts, there may be also designated Probation Officers as per the Act. In so doing, it is hoped that the system will eventually be revamped in Assam.