

# The Probation of Offenders Act- An Analysis

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The object of Criminal Law is more inclined towards the reformation of the offender than to punish him. Instead of keeping an accused with hardened criminals in a prison, the court can order personal freedom on promise of good behaviour and can also order a period of supervision over an offender. This is the concept behind 'probation'. Black's law dictionary defines 'probation' as 'allowing a person convicted of some minor offence (particularly juvenile offenders) to go at large, under a suspension of sentence, during good behaviour, and generally under the supervision or guardianship of a 'probation officer'.

It is believed that imprisonment decreases the capacity of an offender to readjust to the normal society after the release and association with professional delinquents often has undesired effects on him and his life thereafter. Probation is a socialized penal device which has come up as the result of modification, over a period of time, of the doctrine of deterrence into the principle of reformation; a development that paved the way to the introduction of clinical approach and the principle of individualization in the handling of offenders.

According to a report of the United Nations, Department of Social Affairs, 'Release of offenders on probation is a treatment device prescribed by the court for the persons convicted of offences against the law, during which the probationer lives in the community and regulates his own life under conditions imposed by the court or other constituted authority, and is subject to the supervision by a probation officer'. 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 criminality.

The Probation of Offenders Act, 1958, is based on the concept that young offenders can be saved from becoming habitual offenders by treating them amicably and providing them with a chance to reform rather than dumping them into jails. The probation officer insists on the problem or need of the offender and tries to solve his problem and sees to it that the offender becomes a useful citizen of the society.

## Statutory Provisions Dealing With Probation

The earliest provision to have dealt with probation was section S.562 of the Code of Criminal Procedure, 1898. After amendment in 1974 it stands as S.360 of The Code of Criminal Procedure, 1974. It reads as follows:- 'When any person not under twenty-one years of age is convicted of an offence punishable with fine only or with imprisonment for a term of seven years or less, or when any person under twenty-one years of age or any woman is convicted of an offence not punishable with death or imprisonment for life, and no previous conviction is proved against the offender, if it appears to the Court before which he is convicted, regard being had to the age, character or antecedents of the offender, and to the circumstances in which the offence was committed, that it is expedient that the offender should be released on probation of good conduct, the Court may, instead of sentencing him at once to any punishment, direct that he be released on his entering into a bond, with or without sureties, to appear and receive sentence when called upon during such period (not exceeding three years) as the Court may direct and in the meantime to keep the peace and be of good behaviour'.

The Probation of Offenders Act, 1958 and S.360 of the Code of Criminal Procedure, 1973 exclude the application of the Code where the Act is applied. The Code also gives way to state legislation wherever they have been enacted.

The object of S.360 CrPC is to prevent young persons from being committed to jail, where they may associate with hardened criminals, who may lead them further along the path of crime, and to help even men of more mature years who for the first time may have committed crimes through ignorance, or inadvertence or the bad influence of others and who, but for such lapses, might be expected to be good citizens. It is not intended that

this section should be applied to experienced men of the world who deliberately flout the law and commit offences.

The Hon'ble Supreme Court in **Jugal Kishore Prasad v. State of Bihar**[1], explained the rationale of the provision:

“The object of the provision is to prevent the conversion of youthful offenders into obdurate criminals as a result of their association with hardened criminals of mature age in case the youthful offenders are sentenced to undergo imprisonment in jail.”

While dealing with this Act, the three most important provisions that need to be highlighted are sections 3, 4 and 6. We will now see each of these sections one by one.

### **Section 3**

Power of court to release certain offenders after admonition.—When any person is found guilty of having committed an offence punishable under section 379 or section 380 or section 381 or section 404 or section 420 of the Indian Penal Code, (45 of 1860) or any offence punishable with imprisonment for not more than two years, or with fine, or with both, under the Indian Penal Code, or any other law, and no previous conviction is proved against him and the court by which the person is found guilty is of opinion that, having regard to the circumstances of the case including the nature of the offence, and the character of the offender, it is expedient so to do, then, notwithstanding anything contained in any other law for the time being in force, the court may, instead of sentencing him to any punishment or releasing him on probation of good conduct under section 4 release him after due admonition.

### **Section 4**

Power of court to release certain offenders on probation of good conduct.—(1) When any person is found guilty of having committed an offence not punishable with death or imprisonment for life and the court by which the person is found guilty is of opinion that, having regard to the circumstances of the case including the nature of the offence and the character of the offender, it is expedient to release him on probation of good conduct, then, notwithstanding anything contained in any other law for the time being in force, the court may, instead of sentencing him at once to any punishment direct that he be released on his entering into a bond, with or without sureties, to appear and receive sentence when called upon during such period, not exceeding three years, as the court may direct, and in the meantime to keep the peace and be of good behaviour.

Provided that the court shall not direct such release of an offender unless it is satisfied that the offender or his surety, if any, has a fixed place of abode or regular occupation in the place over which the court exercises jurisdiction or in which the offender is likely to live during the period for which he enters into the bond.

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

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

(4) The court making a supervision order under sub-section (3) shall require the offender, before he is released, to enter into a bond, with or without sureties, to observe the conditions specified in such order and such additional conditions with respect to residence, abstention from intoxicants or any other matter as the court may, having regard to the particular circumstances, consider fit to impose for preventing a repetition of the same offence or a commission of other offences by the offender.

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

### **Section 6**

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

(2) For the purpose of satisfying itself whether it would not be desirable to deal under section 3 or section 4 with

an offender referred to in sub-section (1) the court shall call for a report from the probation officer and consider the report, if any, and any other information available to it relating to the character and physical and mental condition of the offender.

## Important Case Laws on Sections 3, 4 & 6 of The Probation of Offenders Act

In **Keshav Sitaram Sali v. State of Maharashtra**[2], it was held by the Supreme Court that in a case of petty theft the High Court should have extended the benefit of either section 360 of the Code of Criminal Procedure or sections 3 and 4 of the Probation of Offenders Act to the appellant instead of imposing a sentence of fine on him.

In **Basikesan v. State of Orissa**[3], a youth of 20 years was found guilty of an offence punishable under section 380 of Indian Penal Code, 1860 and no previous conviction was proved against him. It was held by the court that the offence committed by the accused was not out of deliberate preparation or design but it was a fit case for application of section 3 and he be released after due admonition.

In **Daulat Ram v. State of Haryana**[4], it was held that the object of section 6 is to ensure that juvenile offenders are not sent to jail for offences which are not so serious as to warrant imprisonment for life, with a view to prevent them from contamination due to contact with hardened criminals of the jail. Therefore, the provision should be liberally construed keeping in view the spirit embodied therein.

The question of age of the person is relevant not for the purpose of determining his guilt but only for the purpose of punishment which he should suffer for the offence of which he is found guilty. Therefore, where a court found that offender was not under the age of 21 years on the date when court found him guilty, sub-section (1) of section 6 will not apply[5]

## Salient Features of The Probation of Offenders Act, 1958

The Probation of Offenders Act (Act No. 28 of 1958) contains elaborate provisions relating to probation of offenders, which are made applicable throughout the country. We will now observe the salient features of the Act:-

- The Probation of Offenders Act, 1958 is intended to reform the amateur offenders by providing rehabilitation in society and to prevent the conversion of youthful offenders into obdurate criminals under environmental influence by keeping them in jails along with hardened criminals.
- It aims to release first offenders, after due admonition or warning with advice, who are alleged to have committed an offence punishable under Sections 379, 380, 381, 404 or Section 420 of the Indian Penal Code and also in case of any offence punishable with imprisonment for not more than two years, or with fine, or with both.
- This Act empowers the Court to release certain offenders on probation of good conduct if the offence alleged to have been committed is not punishable with death or life imprisonment. However, he/she should be kept under supervision.
- The Act insists that the Court may order for payment by the offender such compensation and a cost of the proceedings as it thinks reasonable for loss or injury caused to the victim.
- The Act provides special protection to persons under twenty-one years of age by not sentencing them to imprisonment. However, this provision is not available to a person found guilty of an offence punishable with life imprisonment.
- The Act provides freedom to the Court to vary the conditions of bond when an offender is released on probation of good conduct and to extend the period of probation not to exceed three years from the date of original order.
- The Act empowers the Court to issue a warrant of arrest or summons to the offender and his sureties requiring them to attend the Court on the date and time specified in the summons if an offender released on probation of good conduct fails to observe the conditions of bond.
- The Act empowers the Court to try and sentence the offender to imprisonment under the provisions of this Act. Such order may also be made by the High Court or any other Court when the case comes before it on appeal or in revision.
- The Act provides an important role to the probation officers to help the Court and to supervise the probationers put under him and to advise and assist them to get suitable employment.
- The Act extends to the whole of India except the State of Jammu and Kashmir. This Act comes into force in a State on such date as the State Government may, by notification in the Official Gazette, appoint. It also provides

liberty to State Governments to bring the Act into force on different dates in different parts of that State.

## Duties of A Probation Officer

Sec 14 of the Act deals with the duties of a probation officer. It states:-

A probation officer shall, subject to such conditions and restrictions, as may be prescribed -

- (a) enquire, in accordance with any directions of a court, into the circumstances or home surroundings of any person accused of an offence with a view to assist the court in determining the most suitable method of dealing with him and submit reports to the court;
- (b) supervise probationers and other persons placed under his supervision and, where necessary, endeavour to find them suitable employment;
- (c) advise and assist offenders in the payment of compensation or costs ordered by the Court;
- (d) advise and assist, in such cases and in such manner as may be prescribed, persons who have been released under section 4;
- (e) perform such other duties as may be prescribed.

## Offences In Which Probation Cannot Be Granted

We will now deal with those cases where probation cannot be granted:-

1) In **Ahmed v. State of Rajasthan**[6], it was held that the benefit of this Act cannot be extended to a person who has indulged in an act which has resulted into an explosive situation leading to possibilities of communal tension.

2) In **State of Maharashtra v. Natverlal**[7], the Supreme Court declined to accord to the accused found guilty, the benefit of Probation of Offenders Act because smuggling of gold not only affects public revenue and public economy, but often escapes detection.

3) Again in **Smt. Devki v. State of Haryana**[8], it was held that the benefit of Section 4 would not be extended to the abominable culprit who was found guilty of abducting a teenage girl and forced her to sexual submission with commercial motive.

4) In 2015, a Supreme Court bench consisting of Justices Pinaki Chandra Ghose and Uday Umesh Lalit has ruled that the benefit of Probation of Offenders Act cannot be extended to accused involved in crimes against women[9] The accused, Sri Chand was alleged to have lured a 12 year old girl, who was grazing buffaloes in the jungle, and taking her into a room wherein she was forcibly undressed and the offense of rape was committed on her. The court while giving the judgment relied on cases like **Azhar Ali v. State of West Bengal**[10] and **State of Himachal Pradesh v. Dharam Pal**[11]

It is a settled law that nobody can claim benefit under the Act as a matter of right[12]. It was observed in **State of Sikkim v. Dorjee Sherpa And Ors**[13] that the Court should not take technical views in certain cases and should take into consideration some other aspects such as possibility of losing the job, for invoking the provisions of Probation of Offenders Act even in serious offences. It has further been contended that the Court should also take into consideration that the convicts belonging to middle class families without any criminal antecedent often become victim of circumstances because of undesirable company and other evil influences available to such young generation.

The provisions of Probation of Offenders Act, 1958 normally cannot be applied to:-

- ACB cases[14]
- Section 304 of the Indian Penal Code,
- NDPS Cases[15]
- Section 304-A[16] of the Indian Penal Code
- Section 325 of the Indian Penal Code
- Sections 409, 467, 471 of the Indian Penal Code[17]
- Kidnap and abduction[18]
- Habitual offenders[19].