

Probation of Offender Act, 1958

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Introduction

“Hate the crime and not the criminal”. You might have heard this a zillion times. This means that we need to eliminate crime and for this the elimination of criminals is not

required. The Criminal Law in India is more into reforming offenders rather than punishing them. It is true that punishment gives a sense of satisfaction to the society as well as to the victim, but this does not reform the criminals. Especially in the cases of imprisonment, once the person is out of prison, he is back to his old ways of infringement of rights. This is common in the cases of youth criminals. Their minds are not mature and get diverted when engaged with several criminals in jail.

Thus, instead of keeping the accused with hardened criminals in jail, the court may order personal freedom on the basis of good behaviour. The court can also grant a supervision period for the accused. The main aim behind the [Probation of Offender Act, 1958](#) is to give an opportunity to offenders to reform themselves rather than turning into hardened criminals. Section 562 of the Code of Criminal Procedure, 1898 (after amendment it stands as [Section 360 of the Code of Criminal Procedure, 1973](#)) provides that any person not below twenty-one years of age who may have not been convicted for an offence for imprisonment up to seven years or not convicted to death or imprisonment of life can be released on the basis of probation for good conduct.

The Act is based on a reformatory approach which has come over the years from the Doctrine of Deterrence. It has been observed that the offender's readjustment in society decreases after the release. They might also face problems while working with professional delinquents. This creates an undesired impact on the convicted and his/her life afterwards. The Probation of Offender Act, 1958 saves minor offenders from becoming regular criminals. This is done by providing them with a chance to reform themselves rather than getting into prison. The probation officer amicably reaches to the needs and difficulties of the accused and tries to solve the problem. This is done for the person convicted of minor crimes.

The Probation Officer is the key human being in the process of Probation management. He contacts the Probationer directly. He is responsible for upholding the provisions of the court's probation order. He carries out two primary functions which consist of the Probation offender presentence investigation and supervision of the offender. The Probation of Offender Act, 1958 aims at providing the release of the accused if he has been found not guilty of an offence not punishable with death or life imprisonment after due admonition. It has been enacted to provide the offenders with an opportunity to prove that they can improve their behaviour and can live in a society without harming them.

It is also to be kept in mind that reformation doesn't always work. Sometimes the crimes are so heinous and abhorrent and the criminals are so unrepentant that punishment of such crimes is important. For some cases, reformation is not useful and punishment is best to safeguard the society by locking them for life.

Scope and Background

The Act is a landmark in advancing the new liberal reform movement in the penology field. It is the result of the recognition of the doctrine that criminal law is more about reforming the individual offender than about punishing. Probation has its influence from the juvenile justice system of "positivism" which has its development from the ideologies of the criminal justice system. The origin of probation was traced in the early practices of the English law and experienced development in the 19th century. However, the development of probation

began in the early twentieth century, when various countries like Europe and North American began to initialize methods to reduce the consequence of severe punishments. Imprisonment became the most common mode of penal sanction.

From early 1800 to the present date, probation has tried to reform, remake, remould the offenders into honest, good and law-abiding citizens. In India, the main legal articulation to the reformatory framework for the probation theory is found in procedural code. Later the [Children Act, 1908](#) additionally enabled the court to discharge certain guilty parties waiting on probation because of their good conduct. The extent of arrangements of probation law was expanded further by the enactment in 1923 resulting in the [Indian Jails Committees Report \(1919-1920\)](#). In 1931 the Government of India arranged a Draft Probation of Wrongdoers Bill and flowed it to the then Provincial governments for their perspectives.

A Bill on Probation of Offenders was introduced in Lok Sabha on November 18, 1957. A Joint Committee was formed to consider the Bill allowing for the release of prisoners on probation or after proper admonition and related matters. On 25 February 1958, the Joint Committee delivered its report to Lok Sabha. In Parliament, the Probation of Offenders Act was adopted on the advice of the Joint Committee. Probation in India is used as an institutional method of treatment. The western does not allow the use of institutional methods for probation. They administer probation by voluntary organisations of sociologists and psychologists. They consider that the judges should not interfere with this.

The Indian system says that the judiciary should solely vest in the probationary laws. This is so because the power of probation will be vested upon the voluntary and extrajudicial agencies which lack judicial methods and techniques. This would create a serious problem as these organisations will have their own values and considerations. Sociologists and psychologists will be concerned only upon the reformations of the offender and not the legal implication of the reformatory measure. Probation is subjected to judicial review under [Article 226](#) of the Indian Constitution which will eventually allow the judges to bring it under judicial scrutiny.

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Aim and Objective of Probation

The main aim and objective of probation is to permanently reform the lawbreakers. It involves moulding the habits into constructive ways by rehabilitation and reformation. The objective is to give a chance to the anti-social person to willingly cooperate with society. This will also give him social protection and security. It is a substitution for imprisonment. Imprisonment will not always serve the purpose of eliminating crime. The object of Probation Law is more to reform the offender than to punish him. This is what we generally call Probation. Simply, it can be understood as the conditional release of an offender on the promise of good behaviour.

The aim of this Section was to reform the young offender who might have committed the crime under the influence of bad company or ignorance. The object is to remould and save them from the hardened criminals who might distract them to the path of crimes. This Section also helps the persons of mature age who may have committed the crime in influence. They are expected to be good citizens of the country.

Statutory provisions under the Act

The provision is broadly classified into procedural and substantive general laws dealing with probation of the offenders. The first provision to deal with probation was in Section 562 of the Code of Criminal Procedure, 1898. After the amendment in 1973, the probation was dealt with in [Section 360 of the Code of Criminal Procedure](#). This Section says that if:

1. Any person who is not below twenty-one years and is convicted of a crime for which the punishment is imprisonment for seven years or is convicted for an offence punishable with fine.
2. Or any person who is below twenty-one years or if any women convicted of an offence not punishable with imprisonment of life or death and no previous conviction is proved against the offender.
3. And appears before the court, regardless of the circumstances in which he has committed the offence, the court might release the offender on the promise of good conduct.

The court might release him on entering the bond for good conduct and peace instead of punishing the offender with imprisonment. In this case of *Jugal Kishore Prasad v. The State of Bihar*, the Supreme Court stated that the aim of the law is to deter the juvenile offenders from turning into obdurate criminals as a result of their interaction with seasoned mature-age criminals in case the juvenile offenders are sentenced to incarceration in jail. It is observed that the Act is in accordance with the present trend of penology, which says that effect should be made with accordance to change and remould the offender and not to retribute justice. Modern criminal jurisprudence recognises that no one is born criminal. A good number of crimes are a result of a socio-economic environment.

The Probation of the Offenders Act, 1958 excludes the application of Section 360 of the Code of Criminal Procedure, 1973 whenever the Act is applied. Section 3 to Section 12 of

the Probation of the Offender Act, 1958 deals with the procedures of the court to deal with the release of the offenders. The important aspects of the provisions are discussed in five ways:

Admonition

[Section 3](#) of the Probation of the Offenders Act, 1958 deals with the power of court to release the offender after admonition. An Admonition, in literal terms, means a firm warning or reprimand. Section 3 says how the offender is benefited on the basis of admonition after satisfying the following conditions:

- When any person is found guilty of committing an offence under [Section 379](#) or [Section 380](#) or [Section 381](#) or [Section 404](#) or [Section 420](#) of the Indian Penal Code, 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
- An offender should not previously be convicted for the same offence.
- The Court considers the nature of the offence and the character of the offender.
- The Court may release the offender on probation of good conduct applying [Section 4](#) of the Act, instead of sentencing him.
- The Court may release the offender after due admonition, instead of sentencing him.

Case laws

1. *Keshav Sitaram Sali v. The State of Maharashtra, AIR 1983 SC 291* – In this case, the appellant was an employee of the Railways at the Paldhi Railway Station. He abetted the execution of a charcoal theft crime committed by Bhikan Murad in the case before the Special Judicial Magistrate First Class (Railways), Bhusawal, on the charges of charcoal stealing. The learned Magistrate acquitted the appellant of that crime, and the State Government filed an appeal before the Bombay High Court against the acquittal judgment passed by the learned Magistrate. He was charged with a fine of Rs. 500 and in default of payment, rigorous imprisonment for two months. The subject matter of theft was a quantity of coal valued at Rs. 8. The Supreme Court held that in case of minor thefts, the High Court should extend the benefit of Section 3 or Section 4 of the Probation of Offenders Act, 1958 or Section 360 of the Code of Criminal Procedure, 1973 rather than imposing fines.
2. *Basikesan v. The State of Orissa, AIR 1967 Ori 4* – In this case, a 20-year-old was found guilty of an offence under Section 380 of the Indian Penal Code, 1860. It was held that the youth had committed the offence not deliberately and so the case must be applied for Section 3 of the Probation Act and be released after admonition.
3. *Ahmed v. The State of Rajasthan, AIR 1967 Raj 190* – In this case, the court said that the benefit of the Probation of the Offenders Act does not extend to anyone who has indulged in any activity that resulted in an explosive situation leading to communal tension.

Probation on good conduct

Section 4 of the Probation of the Offenders Act, 1958 talks about the release of the offender on the basis of good conduct. It is a very important Section of the Act. The important points that must be remembered for the application of this Section are:

- Section 4 of the Act is not applicable if the offender is found guilty of an offence with death or imprisonment for life.
- The Court has to consider the circumstances of the case including the nature of the offence and the character of the offender.
- The court may pass a supervision order to release the offender on probation of good conduct. The supervisory period is not to be shorter than one year. The probation officer must supervise the individual for such a span in such a situation. In the supervisory order, the name of the probation officer should be listed.
- The Court can direct the offender to execute a bond, with or without sureties, to appear and receive sentence when called upon during such period which should not exceed a period of three years. The court may release the offender on good behaviour.
- The Court may put appropriate conditions in the supervision order and the court making a supervision order explain to the offender the terms and conditions of the order. Such supervision order should forthwith be furnished to the offender.
- Probation officer's report is not compulsory to enforce this rule, but if the information is required on record, the Court shall take into account the probation officer's information before granting a probation order for good behaviour.

Case laws

1. *Smt. Devki v. The State of Haryana, AIR 1979 SC 1948* – In this case, it was observed that Section 4 would not be extended to the abominable culprit who was found guilty of abducting a teenage girl and forcing her to sexual submission with a commercial motive.
2. *Dalbir Singh v. The State of Haryana, AIR 2000 SC 1677* – In this case, the court took the opinion that it is appropriate for the defendant to be placed on probation for his good conduct, given that the facts of the situation are needed to be taken into account. One of the circumstances informing the aforementioned opinion which cannot be omitted is "the essence of the offence." Thus, Section 4 can be redressed where the court recognizes the circumstances of the situation, in particular the "character of the crime," when the court decides whether it is reasonable and necessary for the execution of a defined reason that the defendant should be released on the grounds of good conduct.
3. *Phul Singh v. the State of Haryana, AIR 1980 SC 249* – In this case, the court held that the provision of Section 4 should not be mistaken and applied easily in undeserving cases where a person in early twenties commits rape. The court, thus, refused the application of probation on such heinous nature of crime and convicted the person.

Cost and compensation

Section 5 of the Probation of the Offenders Act, 1958 says that if any person is released under Section 3 or Section 4 of this Act, even then the court might order:

- The offender to pay compensation to the victim for the loss or the injury occurred to him. Or
- Cost of the proceeding as the court may think reasonable.

Case laws

1. *Rajeshwari Prasad v. Ram Babu Gupta, AIR 1961 Pat 19* – The amount of compensation is purely on the discretion of the court to grant if it thinks it is reasonable in the case. Thus, deciding the amount of compensation, it is solely the court's discretion to require payment and costs where it finds.



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Offenders under 21 years of age

Section 6 of the Probation of the Offenders Act, 1958 talks about the restriction on the imprisonment of offenders under twenty-one years of age. This provision says that offenders who are under 21 years of age are not sent to prison where the offence is not so serious as to warrant imprisonment for life or death. Important points to be remembered before the application of Section 6:

- In cases where the accused is below 21 years of age, the Court shall call for the report of the Probation Officer. If the court's opinion is not desirable with offender either on the ground of admonition (Section 3) or on the ground of release on probation of good conduct (Section 4), the Court can pass sentence of imprisonment on the offender who is under 21 of years ago but the Court cannot sentence him without recording reasons for doing so. The Court has an obligation to see whether Section 3 or 4 of the Act applies or not. For this purpose, the Court must call for the report of the Probation Officer. Therefore, the report of the Probation Officer is mandatory when the offender is under 21 years of age.
- The court considers the nature of the offence and the character, physical and mental condition of the offender before making any decision.
- It is difficult for the court to come to a conclusion whether Section 3 or Section 4 applies or not unless the Court considers the report of the Probation Officer, therefore, the report of the Probation Officer is mandatory under Section 6 of the Act.
- On receiving a report, the Court peruses it and decides whether the offender can be released on admonition or probation of good conduct or not.
- After receiving the report, if the court orders that the offender shall not be released, applying Section 3 or Section 4 of the Act, the Court can pass sentence to the offender recording the reasons for doing so.

Case laws

1. *Daulat Ram v. The State of Haryana 1972 SC 2434* – In this case, it was held that the aim of this Section was to protect the youth. The juvenile offenders would not be sent to jail if their crime was not as serious as to punish them with life imprisonment or death. Therefore, the provision should be liberally construed keeping in view the spirit embodied therein.
2. *Ramji Nissar v. The State of Bihar; AIR 1963 SC 1088* – In this case, the Supreme Court observed that the object of the Act, 1958 is to prevent the turning of youthful offenders into criminals by their association with hardened criminals of mature age within the walls of a prison. The method adopted is to attempt their possible reformation instead of inflicting on them the normal punishment for their crimes. The person's age problem is important not for the purpose of assessing his or her guilt, but rather for the purpose of punishing the crime for which he or she is found guilty. Consequently, if a court determines that the defendant was not under the age of 21 on the day the court found him guilty, Section 6 does not apply.

Report of probation officers

[Section 7](#) of the Probation of the Offenders Act, 1958 deals with the clause that the report of the probating officer is kept confidential. No Probation Officer's report is necessary to apply Section 4 of the Probation of Offenders Act but such report is must under Section 6 of Probation of Offenders Act if the offender is under 21 years of age. However, if such a report is available on the record, under Section 4 of the Act, the Court shall not ignore it and that the Court shall take the report into consideration.

Salient features of the Act

The most important salient feature of the act is

1. The Probation of Offenders Act of 1958 is aimed at modifying novice prisoners by rehabilitating them in the society and avoiding the progression of juvenile offenders into obdurate criminals under environmental control by locking them in prison with hardened criminals.
2. This seeks to release first offenders, following proper admonition or notice with advice who are suspected to have committed an offence punishable under Section 379, Section 380, Section 381, Section 404 or Section 420 of the Indian Penal Code and even in case of any crime punishable with incarceration for not more than two years, or with fine, or both.
3. The Act demands that the Court can order such compensation and the costs of the prosecution for reimbursement by the accused as it finds fair for the damage or injury to the victim.
4. This Act empowers the Court to free those prisoners on probation in good behaviour if the crime supposedly perpetrated is not punishable by death or imprisonment for life. He will, therefore, be kept under control.
5. The Act gives the Judge the right to modify the terms of the bail after a prisoner is placed on probation with good behaviour and to prolong the probation period not to exceed three years from the date of the initial order.
6. The Act offers extra protection for people under the age of twenty-one to prevent sentencing him to prison. However, a person found guilty of a crime punishable by life imprisonment can not have this clause.
7. The Act empowers the Court to grant a warrant of arrest or summons to him and his guarantees compelling them to appear before the Court on the date and time stated in the summons if the defendant placed on bail refuses to comply with the terms of the bond.
8. Under the terms of this Act, the Act empowers the Judge to try and sentence the defendant to jail. The High Court or any other Court may even make such an order when the case is put before it on appeal or in revision.
9. The Act offers a significant function for probation officers to support the Court and oversee the probationers under its supervision and to guide and support them in seeking appropriate work.
10. The Act applies to India as a whole except for Jammu State and Kashmir. This Act shall come into force in a State on such date as the Government of the State may designate, by notice in the Official Gazette. It also gives state governments the right to put the Act into force on multiple dates in different parts of the State.

The offence for which probation cannot be granted under the Act

There are certain cases in which the Probation of the Offender Act is not applicable. In normal circumstances the Probation of the Offender Act is not applicable to:

- Section 409, 467 and 471 of the Indian Penal Code – these Sections deal with breach of trust by public servants, forgery of valuable security and will and documents used as a genuine forgery. In *Rev vs By Adv. Sri P.K.Ravisankar and State Of Gujarat vs V.A. Chauhan*, on 3 February 1983, the court did not grant release of the offenders on the basis of Section 3 and Section 4 of the Probation of the Offenders Act,1958.
- Probation of the Offenders Act,1958 does not grant the release on the grounds of kidnap or abduction. In the case of *Smt. Devki v. State of Haryana, AIR 1979 SC 1948* it was observed that Section 4 would not be extended to the abominable culprit who was found guilty of abducting a teenage girl and forcing her to sexual submission with a commercial motive.
- The Act refrains from providing release of habitual offenders. In the case of *Kamroonissa v. the State of Maharashtra, AIR 1974 SC 2117*, the appellant was charged with the theft of gold. She was punished by rigorous imprisonment. She was under 21 years of age. The probation officer thus requested the court to grant her the release under Sections 3 and 4 of the probation of the offender's Act. The court refused the claim by addressing that the appellant had been engaging in various crimes before and was arrested in 1971.
- Section 325 of the Indian Penal Code – This Section speaks about the violence that causes grievous hurt. Thus, the Probation of the Offender Act does not provide a release on this basis.
- *State of Sikkim v. Dorjee Sherpa And Ors*– In some cases, the Court does not take technical views and should take into account certain considerations, such as the risk of work losses, to invoke the provisions of the Probation of Offenders Act even in serious offences. This was also argued that the Court would also take into account that convicts belonging to middle-class families with no criminal record frequently become victims of situations due to the unwelcome business and other negative forces available to these young generations.

Pit-falls in Probation System in India

There are certain pitfalls in the probation system:

1. It is difficult in many situations to determine whether the criminal is a first offender or a recidivist. There is, therefore, a possibility that an offender who is otherwise recurrent may be admitted to probation and may not react favourably to this technique of correction.
2. Section 4 of the Probation of Offenders Act, a main provision of the Act, does not make it compulsory to supervise a person released on probation unless the court orders release a person on probation after entering into a bond with or without immunity. This is not in line with the probation philosophy which considers supervision important to the offender's interests
3. Section 6 of the Act allows the court to take into account the report of the probation officer when it is appropriate to take a decision to grant or deny probation to an offender under the age of 21, but many times court decisions are made without any report. Again, this goes against the spirit of morality that is enshrined in the Probation Act. This is basically because of the poor judiciary system.
4. The lack of real interest in social service among the probation personnel presents a major problem in selecting the right persons for this arduous job.

Conclusion

The benefit of probation can be usefully applied to cases where persons on account of family discord, destitution, loss of near relatives, or other causes of like nature, attempt to put an end to their own lives. Its aim is to reform the offender and to make him see the right path. It would be of great help to a country like India where the prisons are always overcrowded, with regular abuses of human rights that will harden a person's inside. Probation is the divine affirmation inside every being and it has to be given importance.

In order to accomplish the ultimate purpose of reclaiming all criminals back into organized society, the reform and recovery process must be carried out in the sense of the current social situation. Along with the juvenile justice system, probation has taken the human interests and socio-economic issues underlying the principles of crime and punishment to the forefront. It also helped to build positive views towards prisoners and expanded the role of enforcing criminal justice beyond standard sentencing.