

# The Probation of Offenders Act, 1958<sup>1</sup>

[Act 20 of 1958]

[16th May, 1958]

*An Act to provide for the release of offenders on probation or after due admonition and for matters connected therewith*

Be it enacted by Parliament in the Ninth Year of the Republic of India as follows:—

**Statement of Objects and Reasons.**—The question of release of offenders on probation of good conduct instead of sentencing them to imprisonment has been under consideration for some time. In 1931, the Government of India prepared a draft of Probation of Offenders Bill and circulated it to then Local Governments for their views. However, owing to preoccupation with other more important matters, the Bill could not be proceeded with. Later in 1934, the Government of India informed Provincial Governments that there was no prospect of Central legislation being undertaken at the time and there would be no objection to the Provinces undertaking such legislation themselves. A few Provinces accordingly enacted their own probation laws.

2. In several States, however, there are no separate probation laws at all. Even in States where there are probation laws, they are not uniform nor are they adequate to meet the present requirements. In the meantime, there has been an increasing emphasis on the reformation and rehabilitation of the offender as a useful and self-reliant member of society without subjecting him to the deleterious effects of jail life. In view of the widespread interest in the probation system in the country, this question has been re-examined and it is proposed to have a Central law on the subject which should be uniformly applicable to all the States.

3. It is proposed to empower Courts to release an offender after admonition in respect of certain specified offences. It is also proposed to empower Courts to release on probation, in all suitable cases, an offender found guilty of having committed an offence not punishable with death or imprisonment for life. In respect of offenders under 21 years of age, special provision has been made putting restrictions on their imprisonment. During the period of probation, offenders will remain under the supervision of probation officers in order that they may be reformed and become useful members of society. The Bill seeks to achieve these objects.

**CASE LAW ► Object.**—The Probation of Offenders Act, 1958 was enacted with a view to provide for the release of offenders of certain categories on probation or after due admonition and for matters connected therewith. The object of the 1958 Act is to prevent the conversion of offenders into obdurate criminals as a result of their association with hardened criminals. The above object is in consonance with the present trend in the field of penology, according to which, efforts should be made to bring about correction and reformation of the individual offenders and not to resort to retributive justice. Although, not much can be done for hardened criminals, considerable stress has been laid on bringing about reform of offenders not guilty of serious offences and of preventing their association with hardened criminals. The 1958 Act gives statutory recognition to the above objective. It is, therefore, provided that offenders should not be sent to jail, except in certain circumstances, *Yakub Abdul Razak Memon v. State of Maharashtra*, (2013) 13 SCC 1.

1. The Act has been extended to Dadra and Nagar Haveli by Regulation 6 of 1963, Section 2 and Schedule I to Goa, Daman and Diu by Regulation II of 1963, Section 3 and Schedule and to Pondicherry by Act 26 of 1958, Section 3 and Schedule.

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**1. Short title, extent and commencement.**—(1) This Act may be called the Probation of Offenders Act, 1958.

(2) It extends to the whole of India <sup>2</sup>[\* \* \*].

(3) It shall come into force in a State on such date as the State Government may, by notification in the Official Gazette, appoint, and different dates may be appointed for different parts of the State.

Sl. No.	Name of State	District or Area in which Act is enforced	Date on which it was enforced	Gazette reference
1	2	3	4	5
1	Andhra Pradesh	All the District of AP	—	A.P. Gaz. 29-5-1986, Pt. 1, Ext., p. 1 (No. 252).
2	Andaman and Nicobar Islands	...	20-9-1961	Andaman and Nicobar Gaz. 18-9-1961, Ext. (No. 43)
3	Assam	Districts of Barpeta, Kamrup and Nowgong	16-7-1962	Assam Gaz., 4-7-1962, Pt. II-A, p. 2462.
		Cochar, Darang and Sibsagar Districts.	1-6-1963	Ibid, 15-5-1963, Pt. II-A, p. 1329.
		Districts of United Khasi-Jaintia Hills Golpara and Lakhimpur.	16-9-1963	Ibid, 1963, Pt. II-A, p. 2507.
		Mizo Hill District	10-6-1965	Ibid, 1965, Pt. II-A, p. 1446.
4	Bihar	Whole State	15-6-1956	Bih. Gaz. 6-6-1959, Ext.
5	Delhi	Whole State	29-12-1960	Gaz. Ind., 23-12-1961, Pt. IV.
6	Goa, Daman and Diu	...	1-2-1964	Goa Gaz. 8-11-1963, St. I (N. 44), p. 33.
7	Haryana	Jind District	1-4-1968	Haryana Gaz., 1968, Pt. III, (L.S.), p. 183.
8	Himachal Pradesh	Whole area	15-7-1961	H.P. Gaz., 28-10-1961, Pt. I,
9	Kerala		15-7-1958	Ker. Gaz., 15-7-1958, Pt. I, p. 2186
10	Madhya Pradesh		2-10-1962	Madh. Pra. Gaz., 10-9-1962, Extra., p. 2654
11	Maharashtra	District of Aurangabad, Nanded, Bhir and Parbhani	1-11-1966	Man. Govt. Gaz., 13-10-1966, Pt. IV-A, p. 663.
		Districts of Greater Bombay, Poona, Nasik, Kolaba, Ratnagiri, Nagpur, Akola, Wardha and Amravati.	1-2-1970	Maha. Govt. Gaz., 22-1-1970, Pt. IV-A, p. 113.

2. The words "except the State of Jammu and Kashmir" omitted by Act 34 of 2019, Ss. 95, 96 & Sch. V (w.e.f. 31-10-2019).

		Districts of Osmanabad, Ahmednagar, Sholapur, Dhulia, Thana and Jaigaon.	1-10-1970	Maha. Govt. Gaz., 23-7-1970, PL IV-A, p. 825.
		Districts of Sangli, Satara, Kolhapur and Yeotmal, Buldhana, Bhandara and Chandrapur.	1-10-1970 15-8-1972	Ibid, 1971, Pt. IV-A, p. 538. Ibid, 1971, Pt. IV-A, p. 575.
12	Mysore	Whole State.	1-12-1960	Mys. Gaz., 1-10-1960, Pt. IV-2C(i), Ext., p. 271.
13	Orissa	Districts of Cuttack, Puri, Ganjam, Koraput, Balasore, Sambalpur and Mayurbhanja.	1-12-1962	Ori. Gaz. 7-12-1962.
		Districts of Bolangir, Dhenkanal, Keonjhar, Kalahandi, Sundergarh and Phulbari	1-9-1966	Ibid, 3-9-1966, Ext. (No. 1056).
14	Punjab	Districts of Kapurthala, Simla, Mohindergarh, Kangra, Ambala (except Rupar Tehsil), Gurgaon and Hoshiarpur.	1-9-1962	Punj. Gaz. 17-8-1962, Pt. III, p. 435.
		Districts of Hissar, Rohtak, Karnal, Jullunder, Patiala, Ludhiana, Bhatinda, Gurdaspur, Lahaul and Spiti and Rupar tehsil of Ambala, District.	1-5-1966	Ibid, 1967, Pt. III, Ext., P. 239.
15	Rajasthan	Whole State	1-1-1962	Raj. Gaz. 28-12-1961, Pt. IV (Ga), Ext., p. 261
16	Sikkim		2-10-1985	S.O. 529, dt. 22-7-1983 r/w S.O. 720(E), dt. 2-10-1985
17	Tamil Nadu	City of Madras and Chingleput District.	1-12-1962	Ft. St. Geo. Gaz., 14-11-1961, Pt. II, S. 1, p. 2179
18	Tripura	Whole area	15-7-1963	Tri. Gaz., 29-6-1963, Pt. I (No. 26) Cal. Gaz., 2-5-1960, Pt. I, Ext., p. 1053
19	Uttar Pradesh	Lucknow, Kanpur, Allahabad, Varanasi, Agra,	1-7-1980	U.P. Govt Gaz., 21-6-1980, Pt. I, p. 848.

		Hardol, Bareilly, Jhansi, Aligarh, Meerut, Gorakhpur, Bijnor, Faizabad, Nainital, Dehra Dun.		
		Banda, Bara Banki, Etawah, Gonda, Shahjahanpur, Moradabad, Basti, Saharanpur, Ballia, Mirzapur, Mathura, Ghazipur, Jaunpur, Deoria, Pratapgarh, Sultanpur, Bulandshahr, Hamirpur, Farrukhabad, Mainpuri, Unnao, Jalaun, Lakhimpur- Kheri, Rampur, Fatehpur, Mnzaaffaraagar, Sitapur, Azamgarh, Rae Bareli, Pilibhit, Etah, Ghaziabad, Lalitpur, Badaun, Bahraich.	1-5-1981	U.P. Govt. Gaz., 15-8-1981, Pt. I, p. 2493
		Districts of Alraora,- Pithoragarh, Chamoli, Uttar Kashi, Tehri Garhwal, Pauri Garhwal.	1-1-1984	U.P. Govt. Gaz., 11-2-1984, Pt. I, p. 465
20	West Bengal	Town of Calcutta and its suburbs and the remainder of the District of 24 Parganas, Districts of Nadala, Howrah, Hugli, Burdwan and Midanapore.	2-5-1960	
		Cooch Behar, Jalpaiguri and Darjeeling	9-1-1975	Cal. Gaz., 30-1-1975, Pt. 1, p. 157
21	Dadra and Nagar Haveli (U.T.)		1-7-1965	Gaz. of Ind., 26-6-1965, Pt. II, S. 3(ii), p. 2197 (S.O. 1966).
22	U.T. of Pondicherry		24-5-1969	Vide Act 26 of 1968, S. 3 and Sch

**CASE LAW ► Object of the Act.**—Probation of Offenders Act is a reformatory measure and its object is to reclaim amateur offenders who can be usefully rehabilitated in society. The Act recognises the importance

of environmental influence in the commission of crimes and prescribes a remedy whereby the offenders can be reformed and rehabilitated in society. *Arvind Mohan Sinha v. Mulya Kumar Biswas*, 1974 SCC (Cri) 391.

The object of the Act 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. *Jugal Kishore Prasad v. State of Bihar*, 1973 SCC (Cri) 48; *Ramnaresh Pandey v. State of M.P.*, 1973 SCC (Cri) 1030.

► **Interpretation/construction.**—Expression “shall not suffer disqualification, if any, attaching to a conviction of an offence under such law” does not bar infliction of departmental punishment for misconduct which led to his conviction. Section 12 deals with the sentence to be imposed by court, the stigma of the conviction remains unaffected, *Union of India v. Bakshi Ram*, (1990) 2 SCC 426 : 1990 SCC (L&S) 288.

► **Offences for which minimum sentence is prescribed.**—The fact that out of the various offences which the minimum sentence is prescribed, only the offence under sub-section (2) of Section 5 of the Prevention of Corruption Act has been mentioned in Section 18 of the Probation of Offenders Act and not the other offences for which the minimum sentence is prescribed, shows that in case of such other offences the provisions of Probation of Offenders Act can be invoked. *Ishar Das v. State of Punjab*, (1973) 2 SCC 65 : 1973 SCC (Cri) 708. See also (1979) 2 SCC 279.

**2. Definitions.**—In this Act, unless the context otherwise requires,—

- (a) “Code” means the Code of Criminal Procedure, 1898 (5 of 1898);
- (b) “probation officer” means an officer appointed to be a probation officer or recognised as such under Section 13;
- (c) “prescribed” means prescribed by rules made under this Act;
- (d) words and expressions used but not defined in this Act and defined in the Code of Criminal Procedure, 1898 (5 of 1898), shall have the meanings respectively assigned to them in that Code.

**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.

*Explanation.*—For the purposes of this section, previous conviction against a person shall include any previous order made against him under this section or Section 4.

**CASE LAW ► Applicability.**—Where provisions of the 1958 Act apply resort to Section 360 CrPC not to be made. Enforcement of the 1958 Act in some particular area excludes the applicability of the provisions of Sections 360 & 361 CrPC in that area. Distinguishing provisions of Section 360 CrPC from those of the 1958

Act, held, the two statutes (i.e the 1958 Act and CrPC) with such significant differences could not be intended to coexist at the same time in the same area. Such coexistence would lead to anomalous results, *Gulzar v. State of M.P.*, (2007) 1 SCC 619 : (2007) 1 SCC (Cri) 395.

For offences punishable under Essential Commodities Act, beneficial provisions of the Probation Act not available, *Precious Oil Corpn. v. State of Assam*, (2009) 15 SCC 752 : (2011) 2 SCC (Cri) 434.

► **Heinous crime.**—Benefit of Probation of Offenders Act, 1958 cannot be extended to convict aged about 16 yrs at time of commission of offence found guilty of outraging modesty of woman under Section 354 IPC, considering heinous crime that he had committed and social conditions prevailing in society, *Ajagar Ali v. State of W.B.*, (2013) 10 SCC 31 : (2013) 3 SCC (Cri) 794.

► **Who can invoke.**—Nobody can claim the benefit of Sections 3 and 4 as a matter of right. It is the court which has to pass appropriate orders in the facts and circumstances of the case and having regard to the relevant factors, *Commandant, 20th Battalion, ITB Police v. Sanjay Binjola*, (2001) 5 SCC 317 : 2001 SCC (Cri) 897.

► **Benefit of probation.**—Section 3 would have no application taking into consideration the nature of offences. However, Section 4 could come to the aid of the appellants as none of the offences committed, of which they were found guilty, is punishable with death or imprisonment for life. Further, court being concerned with the appellants who were under 21 yrs of age on the date of the offence and not on the date of conviction, Section 6 would not come to their aid, *Lakhvir Singh v. State of Punjab*, (2021) 2 SCC 763.

► **Distinction between provisions of the 1958 Act and Section 360 CrPC.**—Distinction is that under the 1958 Act, the Court is required to seek report from the Probationary Officer before allowing an offender the benefit of probation apart from satisfying other conditions, whereas there is no such limitation while exercising the powers under Section 360 CrPC, *Lakhanlal v. State of M.P.*, (2021) 6 SCC 100.

**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) is made, 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), 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 or 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.

**CASE LAW ► Applicability.**—Section 4 contains a non obstante clause. Provisions of Section 4 hence, would have an overriding effect and shall prevail if other conditions prescribed therein are fulfilled. Conditions under Section 4, enumerated, *Yakub Abdul Razak Memon v. State of Maharashtra*, (2013) 13 SCC 1.

Causing death by rash and negligent driving does not require offenders to be released on probation. However, in some cases, such approach may appear to be very harsh. Whether offenders needed to be released on probation or not depends upon facts of each case, *State v. Sanjiv Bhalla*, (2015) 13 SCC 444 : (2016) 1 SCC (Cri) 631.

Criminal courts cannot treat nature of offence under Section 304-A IPC as attracting benevolent provisions of Probation of Offenders Act, 1958. One of the prime considerations in determining quantum of sentence for offence of causing death or injury by rash and negligent driving of automobiles should be deterrence. For lessening high rate of motor accidents due to careless and callous driving of vehicles, courts are expected to consider all relevant facts and circumstances bearing on question of sentence and proceed to impose a sentence commensurate with gravity of offence, *State of Punjab v. Balwinder Singh*, (2012) 2 SCC 182 : (2012) 1 SCC (Cri) 706.

When plea regarding applicability of 1958 Act not raised before any of the three courts below, it cannot be entertained, *Nagaraj v. Union of India*, (2019) 16 SCC 255.

**► Applicability of the Act when minimum mandatory sentence is provided for in statute concerned.**—1958 Act would prevail over statutory provisions providing for a minimum mandatory sentence enacted prior to the 1958 Act, except for the exceptions provided for in Section 18 of the 1958 Act. On the other hand, statutory provisions providing for a minimum mandatory sentence enacted after the 1958 Act and containing a provision providing for overriding effect of the same, would prevail over the 1958 Act. Thus, held, benefit of probation not excluded in respect of offence under Section 397 IPC, despite it providing for a minimum statutory sentence, *Lakhvir Singh v. State of Punjab*, (2021) 2 SCC 763.

► **Inapplicability.**—Inapplicability of 1958 Act, not applicable to offenders convicted under Prevention of Corruption Act, 1988, *State v. Sanjiv Bhalla*, (2015) 13 SCC 444 : (2016) 1 SCC (Cri) 631.

► **Interpretation/construction.**—Word “shall” occurring in is mandatory, *MCD v. State of Delhi*, (2005) 4 SCC 605 : 2005 SCC (Cri) 1322.

► **Conviction under Prevention of Food Adulteration Act, 1954.**—Provisions of the Probation of Offenders Act will not apply to a person who has been convicted of an offence under the Prevention of Food Adulteration Act unless that person is under 18 years of age (see Section 20-AA of Prevention of Food Adulteration Act, 1954).

No doubt the rehabilitary purposes of the Act is pervasive enough technically to take within its wings an offence even under the Prevention of Food Adulteration Act but the court should not lightly resort to the provisions of the Act in food adulteration cases. *Pyarali K. Tejani v. Mahadeo Ramchandra Danga*, 1974 SCC (Cri) 87. See also *Ishar Das v. State of Punjab*, (1973) 2 SCC 65 : 1973 SCC (Cri) 708; *Ram Prakash v. State of H.P.*, (1972) 4 SCC 46 : 1973 SCC (Cri) 119; *Prem Ballabh v. State of Delhi*, 1977 SCC (Cri) 78.

Whether the benefit of the Act should be extended in any particular case must depend on the circumstances of that case. In the present case the Supreme Court refused to release a probation of offender who was convicted for adulterating ‘Patisa’ by using a non-permitted coal tar dye. *Jai Narain v. Municipal Corporation, Delhi*, (1972) 2 SCC 637 : 1973 SCC (Cri) 52.

Where the accused who was a young man, merely happened to be present in the shop accidentally as his father had gone to some other place and he sold the adulterated articles to the Food Inspector, the benefit of the Act was given to him by the Supreme Court. *Sita Ram v. State*, 1979 SCC (Cri) 623.

► **Conviction under Rules 126-P(2)(ii) of Defence of India Rules, 1962.**—Sections 3, 4 and 6 of the Act being inconsistent with Rule 126-P(2)(ii) of the Defence of India Rules, 1962 the latter will prevail over the former in view of Section 43 of the Defence of India Act, 1962. Hence a convict under that rule cannot avail provisions of the Probation of Offenders Act. Bar to availability of benefit under the Act is not removed on the expiry of the Defence of India Act. Superintendent, *Central Excise v. Bahubali*, (1979) 2 SCC 279 : 1979 SCC (Cri) 447.

► **Contravention of Customs Act and Gold Control Rules contained in Part XII-A of D.I.R.**—The Act applies to offences consisting of contravention of the Customs Act or the Gold Control Rules contained in Part XII-A of the Defence of India Rules, 1962. Where the trial court called the report of the Probation Officer and it was on the basis of that report that the accused persons were on probation and the discretion exercised by the trial court was upheld by the High Court, the Supreme Court did not interfere with the factual evaluation of the circumstances of the case. *Arvind Mohan v. Amulya Kumar*, 1974 SCC (Cri) 391.

► **Conviction for sale of obscene pictures.**—The offences of corrupting the internal fabric of the mind have to be treated on the same footing as the cases of food adulterators and the court should not show any leniency. *Uttam Singh v. State*, 1974 SCC (Cri) 626.

► **Abductor.**—The Supreme Court refused to give benefit of the Act to an abductor who showed sufficient expertise in the art of abduction, seduction and sale of girls. *Devki v. State of Haryana*, 1979 SCC (Cri) 861.

► **Conviction under Section 325, IPC.**—Where the accused was found guilty of having committed the offence of causing grievous hurt punishable under Section 325 IPC he was released on probation of good conduct for a period of one year. *Hansa v. State*, 1977 SCC (Cri) 550.

► **Age of the offender.**—Sub-section (1) of Section 4 of the Act makes no distinction between persons of the age of more than 21 years and those of the age of less than 21 years. On the contrary, the said sub-section is applicable to persons of all ages subject to certain conditions which have been specified therein. Once these conditions are fulfilled and the other formalities which are mentioned in Section 4 are completed with, power is given to the court to release the accused on probation of good conduct. *Ishar Das v. State of Punjab*, (1973) 2 SCC 65 : 1973 SCC (Cri) 708.

► **Previous convict.**—Where the accused, a young girl of under 21 years of age, was a previous convict and she herself stated before the Probation Officer that she had committed similar thefts on two occasions but those thefts went undetected, the Supreme Court refused to release her on probation. *Kamaonissa v. State of Maharashtra*, 1974 SCC (Cri) 880.

► **Appellate court's jurisdiction to interfere with trial court's order.**—When the trial Magistrate released the accused on probation of good conduct even though he had been found guilty of the graver offence under Part II of Section 506, IPC the appellate court should not deprive him of that benefit without some cogent grounds when he had partly allowed the appeal and found him guilty of a lighter offence. *Ramnaresh Pandey v. State of H.P.*, 1973 SCC (Cri) 1030.

► **Exercise of power.**—Court must keep in view the nature of offence and conditions incorporated in Section 4 of Probation of Offenders Act, 1958 as well as precedents of Supreme Court on said subject, *Mohd. Hashim v. State of U.P.*, (2017) 2 SCC 198 : (2017) 1 SCC (Cri) 698.

► **Release on probation.**—Where legislation, though prescribes a minimum sentence, grants discretion to court to award a lower sentence or not award a sentence of imprisonment, held, such discretion includes discretion not to send the accused to prison, *Mohd. Hashim v. State of U.P.*, (2017) 2 SCC 198 : (2017) 1 SCC (Cri) 698.

Prescription of minimum sentence in Section 4 of Dowry Prohibition Act with a discretion to court to award even a lower sentence cannot be construed as a minimum sentence. Minimum sentence means a sentence which must be imposed without leaving any discretion to court, i.e. a quantum of punishment which cannot be reduced below the period fixed. A provision that gives discretion to court not to award minimum sentence cannot be equated with a provision which prescribes minimum sentence without any discretion, and consequently, it has different implication with respect to applicability of PO Act, *Mohd. Hashim v. State of U.P.*, (2017) 2 SCC 198 : (2017) 1 SCC (Cri) 698.

► **Offence under Section 326 IPC.**—Accused convicted for offence under Section 326 IPC which is punishable with life imprisonment is not entitled to benefits of the Act, *State of Rajasthan v. Kailash Chandra*, 1995 SCC (Cri) 249.

► **Smuggler.**—Benefit given under to a smuggler, aged 24 years, caught with substantial gold, held, not proper, *State of Maharashtra v. Kapur Chand Kesarimal Jain*, (1981) 2 SCC 458 : 1981 SCC (Cri) 491.

► **Discretion of court.**—Parliament has clearly authorised court to form an opinion as to whether it is expedient to release the offender on probation, in view of the circumstances, including the nature of the

offence. Unless the court forms such an opinion the section cannot be resorted to, *Dalbir Singh v. State of Haryana*, (2000) 5 SCC 82.

► **Age restriction.**—Section 4(1) does not specify any age restriction for the offender and hence Section 4(1) applies also to a person above 21 years of age, *Roshanali Burhanali Syed v. State of Gujarat*, 1981 Supp SCC 42 : 1981 SCC (Cri) 678.

► **Grant of probation.**—Extension of benefit regarding retention/continuation of service is not permissible. Even in a case where the High Court grants benefit of probation to the accused, held, court has no jurisdiction to pass an order that the employee be retained in service/or grant benefit of continuation in service, *State of M.P. v. Man Singh*, (2019) 10 SCC 161.

► **Report of Probation Officer.**—Requirement of fixed abode is mandatory to obtain report of Probation Officer and to verify requirement of fixed abode under Section 4 proviso, *State of M.P. v. Man Singh*, (2019) 10 SCC 161.

**5. Power of court to require released offenders to pay compensation and costs.**—(1) The court directing the release of an offender under Section 3 or Section 4, may, if it thinks fit, make at the same time a further order directing him to pay—

- (a) such compensation as the court thinks reasonable for loss or injury caused to any person by the commission of the offence; and
- (b) such costs of the proceedings as the court thinks reasonable.

(2) The amount ordered to be paid under sub-section (1) may be recovered as a fine in accordance with the provisions of Section 386 and 387 of the Code.

(3) A civil court trying any suit, arising out of the same matter for which the offender is prosecuted, shall take into account any amount paid or recovered as compensation under sub-section (1) in awarding damages.

**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 other information available to it relating to the character and physical and mental conditions of the offender.

**CASE LAW ► Scope and applicability.**—Section 6 places restrictions on the court's power to sentence a person under 21 years of age for the commission of offences mentioned therein unless the court is satisfied that it is not desirable to deal with the offender under Sections 3 and 4 of the Act. The court is also required

to record reasons for passing sentence of imprisonment on such offender. *Daulat Ram v. State of Haryana*, 1973 SCC (Cri) 31.

While in case of offenders who are above the age of 21 years absolute discretion is given to the court to release them after admonition or on probation of good conduct, in the case of offender below the age of 21 years an injunction is issued to the court not to sentence them to imprisonment unless the court is satisfied that it is not desirable to deal with them under Sections 3 and 4 of the Act. *Ram Prakash v. State of H.P.*, 1973 SCC (Cri) 119; *Rattan Lal v. State of Punjab*, AIR 1965 SC 444; *Ramji Missar v. State of Bihar*, AIR 1963 SC 1088; *Satrabhan Kishore v. State*, 1972 SCC (Cri) 540; *Abdul Qayum v. State*, (1972) 1 SCC 103 : 1972 SCC (Cri) 106.

Section 6 of the Act deals specifically with persons under twenty-one years of age convicted by a court for an offence punishable with imprisonment other than imprisonment for life. In such a case an injunction is issued to the court not to sentence the young offender to imprisonment, unless the court is of the view 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 release him after admonition under Section 3 or on probation of good conduct under Section 4 of the Act. *Ishar Das v. State of Punjab*, (1973) 2 SCC 65 : 1973 SCC (Cri) 708.

The inhibition on the power of the court to impose a sentence of imprisonment applies not only at the stage of trial court but also the stage of High Court or any other court when the case comes before it on appeal or revision. *Mohamed Aziz Mohamed Nasir v. State of Maharashtra*, 1976 SCC (Cri) 148.

Requirement of the report of the probation officer under sub-section (2) may be dispensed with where antecedent history of accused is on record. *Mohamed Aziz Mohamed Nasir v. State of Maharashtra*, 1976 SCC (Cri) 148.

Date on which age of offender to be reckoned is the date on which punishment is to be imposed by trial court and not date of commission of offence. Principles applicable under the Juvenile Justice Acts of 1986 and 2000 are not applicable, as the latter statutes and 1958 Act are not in pari materia, *Sudesh Kumar v. State of Uttarakhand*, (2008) 3 SCC 111 : (2008) 1 SCC (Cri) 634.

This section applies when offenders are under 21 yrs of age on date of conviction, and not when they are under 21 yrs of age on date of offence. *Lakhvir Singh v. State of Punjab*, (2021) 2 SCC 763.

► **Application of, by courts emphasised.**—The provisions of Section 6 are mandatory. The court should make wise use of these provisions which is necessary to protect the younger generation from becoming professional criminals and, therefore, a menace to society. *Musa Khan v. State of Maharashtra*, 1977 SCC (Cri) 164.

► **Court.**—The word 'court' in Section 6(1) includes an appellate court as well as a revisional court. *Rattan Lal v. State of Punjab*, AIR 1965 SC 444.

Courts exercising appellate or revisional jurisdiction are empowered to exercise the jurisdiction conferred on courts not only under Sections 3 and 4 but also under Section 6. *Ramji Missar v. State of Bihar*, AIR 1962 SC 1088.

► **Plea raised for the first time in Supreme Court.**—Question of applicability of Section 6(1) can even be raised for the first time in the Supreme Court if not pleaded before the lower courts. *Mohamed Aziz Mohamed Nasir v. State of Maharashtra*, 1976 SCC (Cri) 148.

Plea under the Act can be entertained in the Supreme Court for the first time. But where there was no evidence on record showing that the accused persons were less than 21 years of age when the offence was

committed and in the absence of such plea the trial court did not verify the age of the accused the Supreme Court did not give benefit of the Act to the accused persons. *Voduraj Singh v. State of C.P.*, 1976 SCC (Cri) 604.

Where the material relevant to the offence committed is on the record the Supreme Court can grant benefit of the Act to the accused but in the absence of such material the Supreme Court may disallow such a prayer to be made for the first time on appeal by special leave. *Jagdish Deo v. State of Punjab*, 1973 SCC (Cri) 977.

► **Date on which age of accused has to be seen.**—The Supreme Court has held that the age referred to in Section 6(1) should be that when the court is dealing with the offender that being the point of time when the court has to choose between the two alternatives which the Act in supersession of the normal penal law vests in it, viz. sentence the offender to imprisonment or to apply to him the provisions of Section 6(1) of the Act. *Ramji Missar v. State of Bihar*, AIR 1963 SC 1088 : (1963) 2 Cri LJ 173, Para 6. See also *Yaduraj Singh v. State*, 1976 SCC (Cri) 604. Reference may be made to the decision of the Supreme Court in *Dershan Kumar v. Secretary, Municipal Corporation*, AIR 1973 SC 906. In that case the birth certificate of the accused showed that he was below 21 years of age at the time of the commission of the offence. The Supreme Court remanded the case to the High Court with a direction to make an order under Section 6 of the Act. But it is not clear from the above judgment whether the accused was below or above 21 years at the time when the trial court had to deal with him. In the above case the Supreme Court has followed its earlier decision in *Rattan Lal v. State*, AIR 1965 SC 444 : (1969) 1 Cri LJ 360. Where the age of the accused was below 21 years not only at the time of commission of the offence but also at the time when the trial court had to deal with him.

In the following cases it has been held that the date on which the age of the accused has to be seen is the date when the court is dealing with the offender. *Nagar Mahapalika, Lucknow v. P. Gurnami*, (1978) 1 FAC 108 : 1978 Cri LJ 53 (All); *Karnail Singh v. State of Punjab*, 1976 CLR 79 : 1976 Cri LT 690 (Punj & Har); *Gian Chand v. State of Haryana*, 1974 CLR 349 (Punj & Har); *Sri Ram v. State*, 1973 Cri LJ 1443; *Paras Ram v. State of Haryana*, (1973) 75 PLR 246 : 1973 CLR 654 (Punj & Har); *Ganesharam v. State of Rajasthan*, 1968 Cri LJ 1672 : 1968 Raj LW 496. See also 1975 FAJ 358 : 1974 FAC 295 (Del); *Jai Gopal v. State*, 1975 Cri LJ 921 (Punj & Har).

But in the following cases it has been laid down that the age of the accused at the time of the commission of the offence shall be taken into consideration for giving him the benefit of the Probation of Offenders Act. *Jai Bhagwan v. State of Haryana*, (1978) 2 FAC 9 (Punj & Har); *Yashwant Singh v. State of Rajasthan*, (1978) Cri LR 366 (Raj); *State of Rajasthan v. Hansia*, 1978 Cr LR 557 (Raj); *Surinder Kumar Gandhi v. State*, 1978 CLR 16 (Del); *Miss Jayashree Bhaskar v. State of Maharashtra*, 1978 Mah LR 498 : 1978 Cr LR 420 (Mah).

► **Offences punishable with life imprisonment.**—Section 6 cannot be invoked by a person who is convicted for an offence punishable with imprisonment for life. The fact that imprisonment for a lesser term can also be awarded for the offence could not take it out of the category of offences punishable with imprisonment for life. *Jugal Kishore v. State of Bihar*, 1973 SCC (Cri) 48.

An offence punishable under Section 326, IPC or under Section 326 read with Section 34, IPC being punishable with imprisonment for life does not fall within the ambit of the Act. *Jagder Singh v. State of Punjab*, 1973 SCC (Cri) 977.

**7. Report of probation officer to be confidential.**—The report of a probation officer referred to in sub-section (2) of Section 4 or sub-section (2) of Section 6 shall be treated as confidential:

Provided that the court may, if it so thinks fit, communicate the substance thereof to the offender and may give him an opportunity of producing such evidence as may be relevant to the matter stated in the report.

**8. Variation of conditions of probation.**—(1) If, on the application of a probation officer, any court which passes an order under Section 4 in respect of an offender is of opinion that in the interests of the offender and the public it is expedient or necessary to vary the conditions of any bond entered into by the offender, it may, at any time during the period when the bond is effective, vary the bond by extending or diminishing the duration thereof so, however, that it shall not exceed three years from the date of the original order or by altering the conditions thereof or by inserting additional conditions therein:

Provided that no such variation shall be made without giving the offender and the surety or sureties mentioned in the bond an opportunity of being heard.

(2) If any surety refuses to consent to any variation proposed to be made under sub-section (1), the court may require the offender to enter into a fresh bond and if the offender refuses or fails to do so, the court may sentence him for the offence of which he was found guilty.

(3) Notwithstanding anything hereinbefore contained, the court which passes an order under Section 4 in respect of an offender may, if it is satisfied on an application made by the probation officer, that the conduct of the offender has been such as to make it unnecessary that he should be kept any longer under supervision, discharge the bond or bonds entered into by him.

**9. Procedure in case of offender failing to observe conditions of bond.**—(1) If the court which passes an order under Section 4 in respect of an offender or any court which could have dealt with the offender in respect of his original offence has reason to believe, on the report of a probation officer or otherwise, that the offender has failed to observe any of the conditions of the bond or bonds entered into by him, it may issue a warrant for his arrest or may, if it thinks fit, issue a summons to him and his sureties, if any, requiring him or them to attend before it at such time as may be specified in the summons.

(2) The court before which an offender is so brought or appears may either remand him to custody until the case is concluded or it may grant him bail, with or without surety, to appear on the date which it may fix for hearing.

(3) If the court, after hearing the case, is satisfied that the offender has failed to observe any of the conditions of the bond or bonds entered into by him, it may forthwith—

- (a) sentence him for the original offence; or
- (b) where the failure is for the first time, then, without prejudice to the continuance in force of the bond, impose upon him a penalty not exceeding fifty rupees.

(4) If a penalty imposed under clause (b) of sub-section (3) is not paid within such period as the court may fix, the court may sentence the offender for the original offence.

**10. Provision as to sureties.**—The provisions of Sections 122, 126, 126-A, 406-A, 514, 514-A, 514-B and 515 of the Code shall, so far as may be, apply in the case of bonds and sureties given under this Act.

**11. Courts competent to make order under the Act, appeal and revision and powers of courts in appeal and revision.**—(1) Notwithstanding anything contained in the Code or any other law, an order under this Act may be made by any court empowered to try and sentence the offender to imprisonment and also by the High Court or any other court when the case comes before it on appeal or in revision.

(2) Notwithstanding anything contained in the Code, where an order under Section 3 or Section 4 is made by any court trying the offender (other than a High Court), an appeal shall lie to the court to which appeals ordinarily lie from the sentences of the former court.

(3) In any case where any person under twenty-one years of age is found guilty of having committed an offence and the court by which he is found guilty declines to deal with him under Section 3 or Section 4, and passes against him any sentence of imprisonment with or without fine from which no appeal lies or is preferred, then, notwithstanding anything contained in the Code or any other law, the court to which appeals ordinarily lie from the sentences of the former court may, either of its own motion or on an application made to it by the convicted person or the probation officer, call for the examine the record of the case and pass such order thereon as it thinks fit.

(4) When an order has been made under Section 3 or Section 4 in respect of an offender, the Appellate Court or the High Court in the exercise of its power of revision may set aside such order and in lieu thereof pass sentence on such offender according to law:

Provided that the Appellate Court or the High Court in revision shall not inflict a greater punishment than might have been inflicted by the court by which the offender was found guilty.

**CASE LAW ► Nature of power under Section 11(1).**—The power conferred on appellate or other courts by Section 11(1) is of the same nature and characteristics and subject to the same criteria and limitation as that conferred on the courts under Sections 3, 4, and 6. Appellate Court cannot claim any unfettered discretion in dealing with case that comes before it. *Ramji Missar v. State of Punjab*, AIR 1963 SC 1088.

Section 11(1) does not circumscribe the jurisdiction of an appellate court to make an order under the Act only in a case where the trial court could have made the order. The phraseology used therein is wide enough to enable the Appellate Court or the High Court to make such an order. *Rattan Lal v. State of Punjab*, AIR 1965 SCC 444.

► **Appeal against sentence.**—Where Magistrate releases accused on probation under Section 4 of U.P. First Offenders' Probation Act, 1938, appeal will lie before Sessions Court under Section 11(2) and not before High Court under Section 377(1) CrPC, *State of U.P. v. Nand Kishore Misra*, 1991 Supp (2) SCC 473.

► **Appeal.**—Appeal can also be filed by the complainant in addition to the accused and the State, *Prithvi Raj v. Kamlesh Kumar*, (2004) 8 SCC 303.

► **Interference in appeal.**—There is no scope for altering nature of offence and for directing that the accused shall be convicted for another offence, *Prithvi Raj v. Kamlesh Kumar*, (2004) 8 SCC 303.

**12. Removal of disqualification attaching to conviction.**—Notwithstanding anything contained in any other law, a person found guilty of an offence and dealt with under the provisions of Section 3 or Section 4 shall not suffer disqualification, if any, attaching to a conviction of an offence under such law:

Provided that nothing in this section shall apply to a person who, after his release under Section 4, is subsequently sentenced for the original offence.

**CASE LAW ► Scope.**—Section 12 protects only from other laws providing for disqualification on account of conviction and not from departmental punishment. Hence, where the sentence of imprisonment was substituted by an order under Section 12, held, the authorities could, after considering the effect of such modification, pass an order of departmental punishment under or de hors Section 12 of CRPF Act, *Addl. D.I.G of Police, Hyderabad v. P.R.K Mohan*, (1997) 11 SCC 571.

► **Interpretation/construction.**—The order of dismissal from service consequent upon a conviction is not a "disqualification" within the meaning of Section 12. The word 'disqualification' is used in Section 12 in the sense in which certain statutes provide that persons who are convicted for certain offences shall incur certain disqualifications (e.g. Chapters III and IV of the Representation of the People Act, 1951, *Shankar Dass v. Union of India*, (1985) 2 SCC 358 : 1985 SCC (L&S) 444 : 1986 SCC (Cri) 242.

► **Exercise of power.**—Criminal courts do not have jurisdiction to make observations concerning civil consequences arising out of conviction of accused, *Girraj Prasad Meena v. State of Rajasthan*, (2014) 13 SCC 674 : (2014) 5 SCC (Cri) 794.

**13. Probation officers.**—(1) A probation officer under this Act shall be—

- (a) a person appointed to be a probation officer by the State Government or recognised as such by the State Government; or
- (b) a person provided for this purpose by a society recognised in this behalf by the State Government; or
- (c) in any exceptional case, any other person who, in the opinion of the court, is fit to act as a probation officer in the special circumstances of the case.

(2) A court which passes an order under Section 4 or the District Magistrate of the district in which the offender for the time being resides may, at any time, appoint any probation officer in the place of the person named in the supervision order.

**Explanation.**—For the purposes of this section, a presidency town shall be deemed to be a district and Chief Presidency Magistrate shall be deemed to be the District Magistrate of that district.

(3) A probation officer, in the exercise of his duties under this Act, shall be subject to the control of the district magistrate of the district in which the offender for the time being resides.

### STATE AMENDMENTS

#### Gujarat

In Section 13, *renumber* the existing Explanation as Explanation I and *insert* thereafter the following—

“*Explanation II.*—For the purposes of this section, the City of Ahmedabad, as defined in clause (2) of Section 2 of the Ahmedabad City Courts Act, 1961 (Guj. Act 19 of 1961), shall be deemed to be a District and the Chief Magistrate appointed under that Act shall be deemed to be District Magistrate of that District.”—Guj. Act 33 of 1964, Section 2 (18-12-1964).

#### Maharashtra

In sub-section (1) of Section 13, in clause (a), after the words “Probation Officer by the State Government”, *insert* the words “or by such officer as the State Government may, subject to such restrictions and conditions (if any) as it may impose, by order, authorise in this behalf.”—Mah. Act 31 of 1969, Section 2 (13-6-1969).

**14. Duties of probation officers.**—A probation officer shall, subject to such conditions and restrictions, as may be prescribed,—

- (a) inquire, 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; and
- (e) perform such other duties as may be prescribed.

**15. Probation officers to be public servants.**—Every probation officer and every other officer appointed in pursuance of this Act shall be deemed to be public servants within the meaning of Section 21 of the Indian Penal Code (45 of 1860).

**16. Protection of action taken in good faith.**—No suit or other legal proceeding shall lie against the State Government or any probation officer or any other officer appointed under this Act in respect of anything which is in good faith done or intended to be done in pursuance of this Act or of any rules or orders made thereunder.

**17. Power to make rules.**—(1) The State Government may, with the approval of the Central Government, by notification in the Official Gazette, make rules to carry out the purposes of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

- (a) appointment of probation officers, the terms and conditions of their service and the area within which they are to exercise jurisdiction;
- (b) duties of probation officers under this Act and the submission of reports by them;
- (c) the conditions on which societies may be recognised for the purposes of clause (b) of sub-section (1) of Section 13;
- (d) the payment of remuneration and expenses to probation officers or of a subsidy to any society which provides probation officers; and
- (e) any other matter which is to be, or may be, prescribed.

(3) All rules made under this section shall be subject to the condition of previous publication and shall, as soon as may be after they are made, be laid before the State Legislature.

**18. Saving of operation of certain enactments.**—Nothing in this Act shall affect the provisions of Section 31 of the Reformatory Schools Act, 1897 (8 of 1897), or sub-section (2) of Section 5 of the Prevention of Corruption Act, 1947 (2 of 1947) <sup>3</sup>[\* \* \*] or of any law in force in any State relating to juvenile offenders or borstal schools.

**CASE LAW ► Prevention of Corruption Act, 1947.**—Application of the 1958 Act in relation to a case under Section 5(2), Prevention of Corruption Act, 1947, clearly ruled out by Section 18, *N. Bhargavan Pillai v. State of Kerala*, (2004) 13 SCC 217 : 2005 SCC (Cri) 142.

**19. Section 562 of the Code not to apply in certain areas.**—Subject to the provisions of Section 18, Section 562 of the Code shall cease to apply to the States or parts thereof in which this Act is brought into force.

#### STATE AMENDMENTS

##### Gujarat

After Section 19 *insert* the following:

“20. *Repeal of Bombay Act XIX of 1938.*—In the area in which the Act comes into force (hereinafter referred to as “the said area”),—

- (1) if the said area forms part of the Bombay area of the State of Gujarat, the Bombay Probation of Offenders Act, 1938 (Bom. Act XIX of 1938);
- (2) if the said area forms part of the Saurashtra area of the State of Gujarat, the Bombay Probation of Offenders Act, 1938 (Bom. Act XIX of 1938) as adapted and applied to the said Saurashtra area; and
- (3) if the said area forms part of the Kutch area of the State of Gujarat, the Bombay Probation of Offenders Act, 1938 (Bom. Act XIX 1938), as applied to Kutch area.

shall stand *repealed* with effect on and from the date on which the Act comes into force in the said area:

Provided that such repeal shall not affect—

- (a) the previous operation of any law so repealed or anything duly done or suffered thereunder,

3. Words “or the Suppression of Immoral Traffic in Women and Girls Act, 1956”, omitted by Act 46 of 1978, S. 20 (w.e.f. Oct. 2-1-1979).

- (b) any right, privilege, obligation or liability acquired, accrued or incurred under any law so repealed, or
- (c) any penalty, forfeiture or punishment incurred under any law so repealed in respect of any offence, or
- (d) any investigation, legal proceeding or remedy in respect of such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid,

and any such investigation, legal proceeding or remedy may be instituted, continued, enforced and any such penalty, forfeiture or punishment may be imposed as if this Act had not come into force:

Provided further that anything done or any action taken (including any appointment made, recognition given or rule or order made) under the provisions of any law so repealed under this section and in force immediately before the said date shall be deemed to have been done or taken under the corresponding provisions of this Act, and shall continue in force, until superseded by anything done or any action taken under the provisions of this Act."—Guj. Act 33 of 1964, Section 8 (18-12-1964).

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