CHAPTER 3
Constitutional Provisions & Statutory Provisions Regarding Probation Law

3.1 Introduction

The role of the executive and the legislative branch, the judiciary, the police, prison service and probation including relevant social service agencies should be clearly defined and roles and relationships established.

It is especially important that it be made clear that probation has an integrated and integrative role within the criminal justice system delivery program.

• Courts are instruments and interpreters of criminal justice policy.
• At the point of sentence, a professionally and lawfully guided judicial selection occurs, that is based on moral as well as legal criteria.

It should be established that this selection can be enhanced by the provision of relevant, socio-psychological, and economic information and other data relevant to the offender, and that this is the role of social workers/probation officer.

When we think about the probation system in India, our attention goes to reformative theory of punishment because this theory believes only rehabilitation of the offenders and not in favors of to punish those who are innocently or circumstantially involves in crimes in this context our constitution provides more chance to prove their innocence against that offence which is triable against them.
3.2 Constitutional provisions

3.2 (a) Constitutional Provisions

Law of probation belongs to some provisions of Indian constitution which are under the following:

(i) treatment of offenders in the Directive Principles of the State Policy embodied in Part IV of the Constitution of India;

(ii) Provisions for probation law, it has inclusion of the subject of prisons and allied institutions in the Concurrent List of the Seventh Schedule to the Constitution of India; and

(iii) Provisions for probation law to Enactment of uniform and comprehensive legislation embodying modern principles and procedures regarding reformation and rehabilitation of offenders. (Art.21)

(iv) There shall be in each State and Union Territory a Department of Prisons and Correctional Services dealing with adult and young offenders – their institutional care, treatment, aftercare, probation and other non-institutional services. (Art. 45)

(v) The State shall endeavour to evolve proper mechanism to ensure that no under trial prisoner is unnecessarily detained. This shall be achieved by speeding up trials, simplification of bail procedures and periodic review of cases of under trial prisoners. Under trial prisoners shall, as far as possible, be confined in separate institutions. (Art.47), Article 21.

(vi) Since it is recognized that imprisonment is not always the best way to meet the objectives of punishments the government shall Endeavour to provide in law new alternatives to imprisonment such as community service, forfeiture of property, payment of compensation to victims, public censure, etc under clause (3) of Article 15, clauses (e) and (f) of Article 39, Articles 45 and 47 imposes in Indian constitution.
According to the Constitution of India

The Constitution of India contains the following provisions about child policy of the Nation-

1. Article 24 of the Constitution provides that no child below the age of 14 years shall be employed to work in any factory or mine or engaged in any other hazardous employment.

2. Article 39 (f) provides that the State shall direct its policy towards securing that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against normal and material abandonment.

3. Article 45 provides that State shall endeavor to provide free and compulsory education for all children until they complete the age of fourteen years.

4. The Constitution of India under clause (3) of Article 15, clauses (e) and (f) of Article 39, Articles 45 and 47 imposes on the State a primary responsibility of ensuring that all the needs of children are met and their basic human rights are fully protected.

Constitutionality of an Act:

Mahendra Lal Jaini v. State of Uttar Pradesh\(^1\) declares it to be “absolutely elementary that the constitutionality of an Act must be judged on the basis of the constitution as it was on the date the act was passed, subject to any retrospective amendment of the constitution”. There is no reason why the same principles should not apply when the question is of constitutionality of virus of a statutory order.\(^2\)

There is a general presumption in favor of constitutionality of a statute. If any party challenges the constitutionality of any provision, it is for him to show it as unconstitutional.\(^6\) It is a well settled principle that a

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\(^1\) A.I.R. 1963 S.C. 1019.


statutory interpretation which will sustain the constitutional validity of the provisions should be favored, wherever possible.\(^7\)

It is settled law that where two constructions of a legislative provision are possible, one consistent with the constitutionality of the measure impugned and the other offending the same, the Court will lean towards the first if it be compatible with the object and purpose of the impugned Act, the mischief which it sought to prevent ascertaining from relevant factors its true scope and meaning.\(^8\)

The rule of construction that a Court construing a provision of law must presume that the intention of the authority making it was not to exceed its power and to enact it validly is well settled. Where, therefore two constructions are possible, that one which sustains its validity must be preferred.\(^9\)

**Construction of the provisions of the constitution:**

It is well settled that the provision of the Constitution should not be cut down to a narrow and technical construction, but considering the magnitude of the subjects with which they purport to deal in a very few words, they should be given a large and liberal interpretation so that the Central Legislature to a great extent, but within certain fixed limits, may be mistress in her own house as the State Legislature to a great extent but again within certain fixed limits, are mistresses in theirs. Hence, the entries in the lists should be given a large and liberal interpretation, the reason being that the allocation of the subjects in the list is not by way of scientific definition, but by way of a mere simples enumeration of particular categories.\(^5\)

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Correct meaning of the various provisions of the act

The correct meaning of the various provisions of the Act could only be properly understood in the light of the intent gathered from the provisions, viewed as a whole, together with the purpose of the enactment which has to be considered where the language of the enactment itself is not clear. It is necessary, in such cases, to keep in mind the malady which an enactment was designed to cure. It was said long ago, in Haydon’s case:

"And then the office of all the Judges is always to make such construction as shall suppress the mischief and advance the remedy, and to suppress subtle inventions and the evasions for the continuance of the mischief and pro private commode, and to add force and life to the cure and remedy according to the true intent of the markers of the Act pro bono publico."  

The doctrine that where a power is given to do a certain thing all that may be reasonably necessary for the exercise of that power is too well established to be capable of being questioned.

3.3 Law of Probation in code of Criminal Procedure, 1898

Position and relevance of Sec. 360(3) of the code of Criminal Procedure and this section: The offences referred to in this section are the same as those which were covered by Sec. 562 of the old Code of Criminal Procedure, 1898 and the circumstances to be taken into consideration are practically the same. The power given is to release the accused after due admonition, instead of passing sentence. There must first be a finding of conviction. The sub-section is clearly not intended to be used as an alternative to giving the accused the benefit of the doubt. Powers under sub-section (3) are exercisable by all Courts.

Under sub-section (1-A) of Sec. 562 of the old Code of Criminal Procedure, 1898 [corresponding to sub-section (3) of Sec. 360 of the Code - (71)
of Criminal Procedure, 1973] it was permissible to release a first offender after an admonition only in the case of certain offences punishable under the Indian Penal Code.

The power to release first offender after admonition is now also available under this section in respect of other laws also instead of being confined to offences under the Indian Penal Code.₁

3.4 **Reformatory School Act, 1897**

For the benefit of probation law to young offenders this act has provided many provisions for betterment of such offenders like Probation of offenders act, 1958. There are some important provision in Reformatory school act, 1897 which are being given under the following heads: -

1. **Power of courts to direct youthful offenders to be sent to reformatory schools** -

(1) Whenever any youthful offender is sentenced to transportation or imprisonment and is in the judgment of the court by which he is sentenced, a proper person to be an inmate of a Reformatory School, the Court may, subject to any rule made by the State Government direct that, instead of undergoing his sentence, he shall be sent to such a school, and be there detained for a period which shall be not less than three or more than seven years.

(2) The powers so conferred on the court by this section shall be exercised only by (a) the High Court, (b) a Court of Session, (c) a District Magistrate, and (d) any Magistrate specially empowered by the State Government in this behalf, and may be exercised by such courts whether the case comes before them originally or on appeal.

₁ F.3. (2) 55 L.C., Pt. II, S.No. 17 (N.C. Chatterjee, Ghose Lane, Calcutta).
(3) The state government may make rules for -
(a) defining what youthful offenders should be sent to reformatory Schools, having regard to the nature of their offences or other considerations, and
(b) regulating the periods for which youthful offenders may be sent to such schools according to their ages or other considerations.

2. **Procedure where Magistrate is not empowered to pass an order under sec. 8** -

(1) When any Magistrate not empowered to pass an order under the last foregoing section is of opinion that a youthful offender convicted by him is a proper person to be an inmate of a reformatory School, he may without passing sentence, record such opinion, and submit his proceedings, and forward the youthful offender to the district Magistrate to whom he is subordinate.

(2) The Magistrate to whom the proceedings are so submitted may make such further inquiry (if any) as he may think fit, and pass such sentence and order for the detention in a reformatory School of the youthful offender, or otherwise, as he might have passed if such youthful offender had been originally tried by him.

3. **Power of Magistrate to direct boys under sixteen sentenced to imprisonment to be sent to Reformatory School** - The officer in charge of a prison in which a youthful offender is confined, in execution of a sentence of imprisonment may bring him, if he had not then attained the age of fifteen years, before the District Magistrate within whose jurisdiction such prison is situated; and such Magistrate may, if such youthful offender appears to be a proper person to be an inmate of a Reformatory School, direct that, instead of undergoing the residue of his sentence, he shall be sent
to a Reformatory School and there detained for a period which shall be subject to the same limitations as are prescribed by or under Sec. 8, with reference to the period of detention thereby authorised.

4. **Preliminary enquiry and finding as to age of youthful offender**—

1. Before directing and youthful offender to be sent a Reformatory School under Sec. 8, Sec. 9, or Sec. 10, the Court of Magistrate shall inquire into the question of his age, and after taking such evidence (if any) as may be deemed necessary shall record a finding thereon, stating his age as nearly as may be.

2. A similar inquiry shall be made and finding recorded by every Magistrate not empowered to pass an order under Sec. 8 before submitting his proceedings and forwarding the youthful offender to the District Magistrate as required by Sec. 9, sub-section (1).

5. **Government to determine reformatory Schools to which such offender shall be sent**— Every youthful offender directed by a Court or Magistrate to be sent to a Reformatory School shall be sent to such reformatory school as the State Government may, by general or special order, appoint for the reception of youthful offenders so dealt with by such court or Magistrate:

Provided that, if accommodation in a Reformatory School is not immediately available for such youthful offender, he may be detained in the juvenile ward or such other suitable part of a prison as the Local Government may direct -

1. until he can be sent to a Reformatory School, or
2. until the term of his original sentence expires, whichever event may first happen.

Should the term of his original sentence first expire, he shall thereupon be released but, should be sent to a Reformatory School,
then the period of detention previously undergone shall be treated as detention in a Reformatory School.

6. **Persons found to be over eighteen years not be detained in Reformatory Schools** -

   (1) If at any time after a youthful offender has been sent to a Reformatory School it appears to the Committee of Visitors or board of Management, as the case may be, that the age of such youthful offender has been misunderstood in the order for detention and that he will attain the age of eighteen years before the expiration of the period for which he has been ordered to be detained, they shall report the case for orders of the State Government.

   (2) No person shall be detained in Reformatory School after he has been found by the State Government to have attained the age of eighteen years.

**Comments:-**

Penalty for introduction or removal or supply of prohibited articles and communication with youthful offenders - Wherever, contrary to any rule made under Sec.26, introducers or attempts by any means whatever to introduce into or remove from any Reformatory School, or supplies or attempts to supply outside the limits of any Reformatory School to any youthful offender under order of detention therein, any prohibited articles.

And every officer or person in charge of a Reformatory School who, contrary to any such rule, knowingly suffers any such articles to be introduced into or removed from any Reformatory School, to be possessed by any youthful offender detained therein, or to be supplied to any such youthful offender outside its limits.

And whoever, contrary to any such rule, communicates or attempts to communicate with any such youthful offender.
And whoever abets any offence made punishable under this section, shall on conviction before a Magistrate, be liable to imprisonment for a term not exceeding six months, or to fine not exceeding two hundred rupees, or to both.

Whoever abets an escape, or an attempt to escape, on the part of a youthful offender from a Reformatory School, or from the employer of such youthful offender, shall be punishable with imprisonment for a term which may extend to six months, or with fine not exceeding two hundred rupees, or with both.

A police officer may, without orders from a Magistrate and without a warrant, arrest any youthful offender sent to a Reformatory School under this Act, who has escaped from such school or from his employer, and take him back to such school or to his employer.

It has been provided under this section that a police officer may arrest any escaped youthful offender. He can arrest him without any warrant and he may send to a Reformatory School who has escaped from such school or from his employer. It is not necessary that he should seek a warrant from a Magistrate.

3.5 Law of Probation in Indian Penal Code, 1860

For the beneficial attitude towards the offenders under Probation of offenders Act, 1958, there are some penal statute or sections where accused can take benefit of probation law under probation act and researcher has focused some penal statute where offenders had been released on probation by the court in different way and researcher describes some circumstances under I.P.C. where accused had taken benefit of Probation Law.
Benefit of probation granted in offences under Secs. 325 and 323 of the I.P.C.

Section 5 of the Probation of Offenders Act, 1958 specially authorises the Trial Court to direct compensation to be paid by the accused to any person who suffers any loss or injury. Since the order of the learned Magistrate even though compensation is not fine and a default sentence for non-payment therefore could not have been passed. Section 5 itself states mode by which the compensation if not paid is to be recovered. Hence the only defective part of the order was the direction for the default sentence and the learned Sessions judge would have done well in only setting aside that part of the order.

The conviction in the instant case inter alia was under Secs. 323 and 325 of the Indian Penal Code. Petitioner No. 1 was found to have suffered a fracture. There was also injury sustained by the wife of the informant. The direction for compensation on such account hence cannot be said foreign to the concept of Sec. 5. As a manner of fact, considering the question of Sec. 357 (3) of the Code of Criminal Procedure, the Supreme Courts observed in Hari Kishan v. Sukhbir Singh,\(^3\) that have seldom invoked it, Perhaps due to ignorance of it, it empowers the Court to award compensation to victims while passing the judgment of conviction. This power is intended to do something to re-assure the victim that he or she is not forgotten in the criminal justice system.\(^4\)

Dealing with a case under Sec. 323 of the Indian Penal Code, the Rajasthan High Court observed that in the case of Delhi Domestic Working Women’s Forum v. Union of India,\(^5\) the Supreme Court has stressed the need for victim oriented attitude and favoured the shift in penological thinking, reflecting principles can be given effect to by

\(^4\) Maniketan Sanapati v. State of Orissa, 1994 (2) Crimes 745 at 0, 746 (Orissa).
\(^5\) 1995 S.C.C. (Cr.) 72.
ordering the payment of compensation to the victim. This has been done by the Apex Court in the case of Sarup Singh v. State of Haryana,\textsuperscript{6} though that case related to the offence under Sec. 304, Part II of the Indian Penal Code.\textsuperscript{7}

None of the offences for which these three appellants have been convicted and the conviction is upheld, are punishable with life imprisonment or death sentence. The maximum punishment provided there under is of 3 years' imprisonment and a fine. They are agriculturists and there are peculiar circumstances of the case that erupted in the unfortunate serious incident and, accordingly, when no previous conviction of any of these accused appellants is proved, regard being had to the age, character, antecedents of the offenders and to the circumstances in which the offences of which they were convicted, it is expedient that the appellants be released on probation of good conduct as also envisaged by the provisions of Sec. 4(1) of the Probation of Offenders Act, 1958 instead of being sentenced immediately specially when each of them has already undergone one month’s rigorous imprisonment. It is expedient in the interest of justice that these three vicariously liable therefore, they be released on probation of good conduct instead of being immediately sentenced. However, the High Court felt it expedient to order for payment of compensation under the provisions Sec. 5 of the Probation of Offenders Act, 1958 and, accordingly, each of these three appellants are required to pay a sum of Rs. 4000/- as compensation to the widow and children of the deceased Roopa Ram.\textsuperscript{8}

In examination under Sec. 313 of the Code of Criminal Procedure accused Vishnu in the instant case has shown his age about 22 years and therefore, the finding of learned Trial Judge is correct that at the

\textsuperscript{6} A.I.R. 1995 S.C. 2452.
\textsuperscript{7} Koja Ram v. State of Rajasthan, 1996 Cr. L.R.231 at p. 232 (Raj.)
\textsuperscript{8} Kesara Ram v. State of Rajasthan, 1999 Cr. L.J. 1451 at p.1470 (Raj.)
time of incident Vishnu was aged 18 years. Under the circumstances as accused exceeded right of self defence the benefit of Probation of Offenders Act, 1958 has already been extended, but the learned Judge failed to take into consideration Sec. 5 of the Probation of Offenders Act, 1958, which provides that the Court directing the release of an offender under Sec. 3 or Sec. 4 of the Probation of Offenders Act, 1958, may if it thinks fit, make at the same time a further order directing him to pay such compensation as the offence and such costs of the proceedings which the Court thinks reasonable. Therefore, in this case the learned judge ought to have directed payment of compensation to the wife and son of deceased Buddha ram under Sec. 5 of the Probation of Offenders Act, 1958.9

There is no legal flow in the approach adopted by the lower Appellate Court while directing the appellant to pay compensation as under Sec. 5 of the Probation of Offenders Act, 1958, the Court while releasing an offender under Sec. 3 or 4 of the Probation of Offenders Act, 1958, if it thinks fit can also direct the offender to pay compensation to the injured for loss or injury caused to any person for the commission of the offence and at the same time the costs of the proceedings as the Court thinks reasonable can also be imposed for that purposes. The victim can otherwise be compensated under Sec. 357 of the Code of Criminal Procedure, 1973. The order thus passed by the learned Additional Sessions Judge, Ropar directing the appellant to pay the compensation within a stipulated period failing which his appeal is to be dismissed in Toto does not suffer from any illegality or infirmity on any count.10

**Compensation under this section can be awarded in appeals too -**

It is well-settled that appeal is a continuation of the trial and the Appellant Court can exercise all the powers which the Trial Court has.

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9 State of M.P. Shivnarain, 1996 Cr. L.R. 44 at p. 48 (M.P.)
10 Darshan Singh v. state of Punjab, 2004 (1) R.C.R.(Cri) 979 (P. & H.)
The Court in its appellate power is not barred from exercising power under Sec. 5 of the Probation of Offenders Act, 1958 while confirming the order of power under Sec. 5 of the Probation of Offenders Act, 1958 while confirming the order of the trial Court releasing the accused on probation or after admonition.\textsuperscript{11}

Admittedly, at the time of commission of the offence under Secs. 323/34 of the Indian Penal Code accused No. 1 Subhash was about 23 years of age and accused No. 2 Chandras alias Mono Pagi was 25 years of age. Admittedly also no previous conviction has been proved against them nor they have been shown to be bad character. The accused, probably, had some sort of animosity against the complainant and for that reason, they acted in the manner they did, but their actions cannot be justified on the count.

Considering the background, the facts of the case, and the age of the accused, this should be a fit case to release both the accused on admonition under Sec. 3 of the Probation of Offenders Act, 1958 but not without invoking the power under Sec. 5 of the said Act. Both the accused, therefore, are hereby directed to pay to the complaint compensation of Rs. 1000/- each under Sec. 5(1)(a) of the said Act. The said compensation, if not paid, before the learned Judicial Magistrate, First Class, Canacona, within a period of fifteen days, the same shall be recovered as fine as contemplated under sub-section (2) of Sec. 5 of the Probation of Offenders Act, 1958. The said compensation, if paid or recovered, shall be paid to the said injured P.W. 2 Shelvo Pagi.\textsuperscript{12}

\textbf{Direction for payment of compensation is not enhancement of punishment}

This amount of Rs. 6000/- which being the amount to be paid under Sec. 357 of the Code of Criminal Procedure by way of

\textsuperscript{12} State v. Subhash Pagi, 2004 (4) Crimes 343 at pp. 352, 353 (Bom.)
compensation will not mean to be an additional punishment inflicted on the accused. It is also pertinent to note that in fact Sec. 5 of the Probation of Offenders Act, 1958, also provides for the powers of the Court to require the offender to pay the compensation and costs. Having taken into consideration the provisions of this section also it would be appropriate if certain compensation is directed to be paid to the applicant by the respondent No. 2. This would not in any way amount to be paid to the sentence or punishment awarded to be alleged accused.

Learned counsel for the petitioner submits that injured petitioner has suffered as many as seven injuries at the hands of the accused respondents. Though on being examined by the Radiologists, there was no bone injury, however, looking to the nature of the injuries and the period of treatment undertaken by the petitioner complainant, while extending the benefit under Sec. 4(1) of the Act, the Trial Court ought to have taken care of the injuries suffered by the victim of the case and under Sec. 5 of the Act and a reasonable compensation ought to have been granted.

Keeping in view the facts and circumstances of the case in view of the High Court the injured petitioner is entitled for compensation under Sec. 5 of the Act. In the result, while maintaining the order impugned to the extent of convicting the respondent Nos. 2 to 4 and releasing them on probation under Sec. 4(1) of the Act with direct to furnish the bail bonds, it is directed that each of the accused respondents shall deposit a sum of Rs. 3000/- each as compensation totalling to Rs. 9000/- before the Trial Court within a period of three months and on such deposit, a sum of Rs. 9000/- be paid to the injured petitioner Smt. Anshi Devi as compensation.13

Compensation may be awarded by mutual consent - If the matter could be settled by payment of certain compensation, it would be

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13 Anshi Devi v. State of Rajasthan, 2008 (1) R.C.C. 55 at pp. 56, 57 (Raj.).
possible even to relieve the parties of further unnecessary botheration of attending the court and to face trial again. The parties, therefore, agree that the accused would pay by way of compensation of Rs. 6,000/- to the complainant and so that there would not be any necessity to remand the matter. The order of the Trial court was modified accordingly.\textsuperscript{14}

Whether direction for payment of costs and compensation can be given when benefit is given under Sec. 360, Cr.P.C. - A bare reading of the provisions of Probation of Offenders Act, 1958 shows that direction to pay costs and compensation under Sec. 5(1) of the Probation of Offenders Act, 1958 can be given only when an offender is released under Sec. 3 or 4 of given to the petitioners under Sec. 360 of the Code of Criminal Procedure and not under Probation of Offenders Act, 1958, direction of payment of costs could not be given. In an order to pay expenses and compensation such cases could be passed under Sec. 357 of the Code of Criminal Procedure, 1973.\textsuperscript{15}

**Omission to award compensation - Whether an irregularity** - Section 5 confers a discretion on the Court to make an order directing the offender to pay the compensation and it is not correct to say the omission on the part of the Lower Court is not giving compensation is an irregularity which requires to be remedied by the Appellate Court.\textsuperscript{16}

**Recovery of compensation and costs** –

This section expressly provides that the provisions of Secs. 386 and 387 of the Code of Criminal Procedure, 1898 would apply to the recovery of amount of compensation and costs awarded under sub-section (1) of Sec. 5 of the present Act. The money ordered to be paid shall be recoverable as fine.

As the Code of 1898 has been repealed and the Code of Criminal Procedure, 1973 re-enacted by virtue of Sec. 8 of the General Clauses


\textsuperscript{15} Gopi v. State of Rajasthan, 1992(2) R.L.R. 491 at pp. 492, 493 (Raj.).

\textsuperscript{16} State of Maharashtra v. Baidya Ramji Patel, 1978 Cr.L.J. 411 at p. 423 (Bom.).
Act, 1897 the reference to Secs. 386 and 387 must be construed as references to Secs. 421 and 422 of the re-enacted Code of Criminal Procedure, 1973, which run as follows:

PROVIDED THAT, if the sentence directs that in default of payment of the fine, the offender shall be imprisoned, and if such offender has undergone the whole of such imprisonment in default, no Court shall issue such warrant unless, for special reasons to be recorded in writing, it considers it necessary so to do, or unless it has made an order for the payment of expenses or compensation out of the fine under Sec. 357.

The State Government may make rules regulating the manner in which warrants under Cl. (a) of sub-section (1) are to be executed, and for the summary determination of any claims made by any person other than the offender in respect of any property attached in execution of such warrant.

Where the Court issues a warrant to the Collector under Cl. (b) of sub-section (1), the Collector shall realize the amount in accordance with the law relating to recovery of arrears of land revenue, as if such warrant were a certificate issued under such law:

(i) **Cases of theft, extortion and robbery:**

(ii) **Thefts:**

With due respect, the grounds given by both the learned Courts below are wholly irrelevant for declining the benefit of probation to the petitioners. Simply because the petitioners belong to 'Kanjer' community, it can hardly be a ground to decline the benefit of probation when there is nothing on record the show that anyone of them is neither previous convict or has any bad antecedents. On the ground of a particular community, no person can be declined the benefit of probation otherwise it amounts to discrimination. The petitioners have been convicted under Sec. 379 of the Indian Penal Code and under Sec. 3 of the Probation of Offenders Act, 1958, they can be released even after admonition.
However, taking into consideration, all the facts and circumstances of the case, including the nature of the offence and the character of the offenders, it is expedient to release all the four petitioners on probation of good conduct, instead of sentencing them at once to any punishment.\footnote{Gordhan v. State of Rajasthan, 1990(1) R.L.W. 414 at p. 416.}

Perhaps in view of the previous order extending the benefit of the Probation of the Offenders Act, 1958, the Trial Court felt it proper and reasonable to place the two offenders on probation by passing a supervision order. Bonds for three years in a sum of Rs. 3,000/- with a surety were sought for and there is no allegation that even thereafter while under supervision order or while the bonds were in force, they detracted from the path of peaceful living and honest means. It is also not alleged that they were found to have committed any other offence. In the instant case, A-1 was 18 year of age and though A-2 was 28 years of age, he was found guilty only under Secs. 379 and 332 read with Sec. 34. In the instant case, therefore, when the Trial Court kept in view the avowed and salutary object of the Probation of Offenders Act, 1858 and extended its benefit to the two respondents accused persons, at this length of time when nearly five years have elapsed after that order was passed, the High Court did not find any good grounds to interfere with the discretion exercised by the Trial Court.\footnote{State of Karnataka v. Harijan Dharma, 1992 Cr. L.J. 2840 at pp. 2844, 2845 (Knt.).}

\textbf{(ii) Extortion}

In the instant case, the accused persons between 18 to 20 years of age groups were convicted for the offence under Sec. 382 of the Indian Penal Code. Neither they had criminal history nor there was previous conviction. They are entitled to the benefit of Probation of Offenders Act, 1958. The conviction of all the three petitioners under Sec. 382 of the Indian Penal Code is set aside and they are convicted for an offence under Sec. 411 of the Indian Penal Code. The sentence imposed upon
them is also set aside. Each of the three petitioners is directed to be released on a probation of good conduct on his entering into a bond in the sum of Rs. 500/- with one surety in the like amount, for one year, to appear and receive sentence as and when called upon during such period by the Court and in the meantime to keep peace and be of good behaviour. The amount of fine paid by the petitioner is converted as the costs of litigation payable to the State.\textsuperscript{19}

(iii) \textbf{Robbery:}

Nagarajan (A1), the petitioner was convicted in S.C. No. 226/91 on the file of the learned Assistant Sessions Judge, for the offence under Sec. 392 read with Sec. 397 of the Indian Penal Code and sentenced undergo Rigorous Imprisonment for 7 years with fine.

(iv) \textbf{Offences of kidnapping and concealment etc.:}

In \textit{Mukharam v. Emperor},\textsuperscript{20} a youth of 18 years age knowing a girl of 16 years of age who had been widowed for six years wished to marry her. He put the girl under the care of his sister and there she remained for some days. Her father eventually discovered her and took her home and brought a charge against the accused for abducting his daughter with the intention of forcing her to marry him. While they youth had kept this girl with the exception of being detained in the house, well treated and fed. No attempt was made by the youth to seduce her or ill-treated her in any way. The youth wished honourably to marry her. They were both of the same caste. It was held that the accused should be released on probation of good conduct.

It is an insulting stultification of the amelioratory legislation of Probation of Offenders Act to extend its considerate provisions to such anti-social, specialist criminals, who had shown sufficient expertise in

\textsuperscript{19} Ashok Kumar v. State of Union Territory of Chandigarh, 1997(3) R.C.R. (Cr.) 342 at p. 345 (P.&H.).
\textsuperscript{20} A.I.R. 1929 All. 930 at p. 931:31 Cr. L.J. 25.
the art of abduction, seduction and sale of girls to others who offer a tempting price.21

(vii) **Cases of cheating, forgery, using forged documents and criminal breach of trust, etc.:**

(i) **Cheating:**

In a case of conviction of a member of bar under Secs. 419 and 420 of the Indian Penal Code the Apex court refused to extend the benefit of probation to him and observed that by the words so couched in the sub-section (i), Parliament has taken care to emphasize that before the relief (envisaged in the provision) is granted Court must take into account the circumstances of the case, among which "the nature of the offence and the character of the offender" must have overriding considerations. After bestowing judicial consideration on those factors, the Court must form an opinion as to whether it would be appropriate in that case to release the particular accused therein an envisaged in the sub-section. This Court has observed time and again through various decisions that the benefits mentioned in Secs. 3 and 4 are subject to the limitation laid down in those provisions and that the word "may" in Sec. 4 of the Probation of Offenders Act, 1958 is not to be understood as "must".22

(ii) **Forgery and using as genuine a forged document:**

Benefit of Sec. 4 was granted in offences under Sec. 120-B and 420 of the Indian Penal Code due to old age of accused and protracted trial. The Delhi High Court found in the instant case that the accused Nathu Ram is above 70 years of age and Mange Ram in above 65 years of age. The incident took place in the year 1984 and since then the petitioners have already undergone the ordeal of trial for 20 years. Besides this they have already undergone 6 months of the sentence of imprisonment.

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In this case, the petitioners have suffered the agony of trial lasting for about twenty years and there is no allegation that the petitioners are previous convicts. Keeping these circumstances in mind and the fact that the offence of which the petitioners have been convicted is not punishable with life imprisonment, they deserve the benefit of probation under Sec. 4 of the Probation of Offenders Act, 1958.23

In a case of conviction of a pleader under Secs. 467, 471/467, 468 and 420 of Indian Penal Code, the Patna High Court has expressed its views thus: "As regards Sec. 4, I am of the opinion that this also cannot be called in aid of the appellant considering the serious nature of the offences found to have been committed by him, in the light of the further fact that they had been committed by one who was expected to have greater sense of responsibility being a member of the Bar. A serious view must be taken of such offences committed by a member of the Bar.24

The petitioner has suffered the agony of trial lasting for about 20 years. Besides that, he has already undergone some period of custody. There is no allegation that the petitioner being previous convict. The fact that the offence for which the petitioner has been convicted is not punishable with life imprisonment, he deserved the benefit of probation under Sec. 4 of the Probation of Offenders Act, 1958.25

Punjab and Haryana High Court was not inclined in the instant case to accept the contention of the petitioner convicted under Secs. 420, 465, 471 and 511 of the Indian Penal Code that benefit of probation should be extended to him. The petitioner has played a fraud upon a public office. He got unlawful gain to the tune of Rs. 64,079.40 and made an aortic attempt when he wanted to gain another amount of 38,000/-.26

23 Nathu Ram and Mange Ram v. State, 2004 Cr. L.J. 3109 at p. 3109 (Del.).
In such like situation when a citizen is trying to play a fraud upon the Government by forging a document, probation cannot be granted. Otherwise it will give a wrong signal to the society at large. However, the substantive sentence of the petitioner stands reduced to nine months each under Secs. 420, 465, 468 and 471 of the Indian Penal Code which shall run concurrently with the sentence awarded under Sec. 420 read with Sec. 511 of the Indian Penal code. The petitioner is further directed to pay a sum of Rs. 65,000/- to the department as it has been defrauded of his amount.26

Keeping in mind the circumstances in which the petitioner had committed the offence of altering the date of birth in the certificate, not punishable with death or imprisonment for life, coupled with the character of the petitioner, it is expedient to release him on probation of good conduct instead of sentencing him to the punishment as directed by the Trial Court and affirmed by the Appellate Court.27

Petitioner was convicted under Secs. 468 and 471 of the Indian Penal Code was not previous convict and taking into consideration the fact that the amount sought to be obtained by him on the basis of forged attendance certificates was not disbursed, it may be an appropriate case in which he should be released on probation.28

**Probation granted for offence under Secs. 420/511 & 471, I.P.C.:** In the instant case, report of Probation Office was called. It confirms that petitioner his three minor children, i.e., two daughters aged about 13 years, 10 years studying in 7th and 5th standard, and one son aged about 3 years. The economic condition of the petitioner is poor; father of petitioner is retired army personnel getting Rs. 3,000/- as pension. It is stated that the petitioner was running 'Kirana' shop. Taking into consideration the nature of the offence and report of Probation Officer...

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27 Basavantappa alias Basavant v. Stae by Police Sub-Inspector, 2009(3) Crimes 54 at p.55 (Knt.).
and the fact that the petitioner has suffered pain and agony of trial for about 12 years, a case for release of the petitioner on probation was made out.\(^{29}\)

**Accused convicted of offence under Sec. 406 of I.P.C. and sentenced to less than seven years - He is not a previous convict and had good behaviour - He can be given benefit of the Probation of Offenders Act** –

In the facts and circumstances of the case and taking into consideration, the nature of offence committed by the accused, the plight of the family members of the accused, the lapse of period during which the accused suffered mentally, physically and economically, and there being no previous conviction or adverse remark as to the character or antecedents of the accused, the Madras High Court was inclined to let off the accused on probation of good conduct as provided under Sec. 4(1) of the Probation of Offenders Act, 1958 assuring good conduct and behaviour for a period of two years.\(^{30}\)

**Accused convicted of offence under Sec. 408 of I.P.C. –**

*He repaid the alleged misappropriated amount and had been working in karkhana for 26 years - Benefit of Sec. 4 of the Act. proper* -

Under these circumstances, it would be in the fitness of things to give protection of Sec. 4 of the Probation of Offenders Act. It is to be noted here that said Act was passed with the sole object of granting probation to persons who are not hardened criminal or had committed an offence under peculiar circumstances. Facts and circumstances of this case clearly justify the protection which is given to the petitioner.\(^{31}\)

*Benefit of the Act to be extended to the accused who was facing the agony of trial for 8 years and he being the sole bread earner of his family - The factum of long trial, the petitioner being first offender, sole bread

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earner of family with four children to support are sufficient mitigating circumstances to extend the benefit of probation to the petitioner.\textsuperscript{32}

\textbf{Accused released on probation upon condition to compensate embezzled amount} - But in one other case, keeping in view that the petitioner has been facing agonies and uncertainties of the criminal trial for the last about 20 years, it was not felt desirable to send him in jail. Held, conviction recorded against him under Sec. 408 of the Indian Penal Code is maintained. Sentence of imprisonment passed upon him is set aside and he is called upon to execute bonds under the Probation of Offenders Act, 1958, in the serum of Rs. 5000/- for a period of one year whereby he will keep good behaviour and peace and he is further called upon to deposit a sum of Rs. 50,000/- in the account of the Society in five equal installments of Rs. 10,000/- each, half yearly. He shall deposit first installment any time between 15th March to 31st March, 1997, second installment any time between 15th September to 30th September and further on. In case, he fails to deposit any two installments within the stipulated time, he shall undergo the sentence passed upon him by the Magistrate and maintained by the Additional Sessions Judge, Hisar.\textsuperscript{33}

\textit{(viii) Offences against women:

(i) \textbf{Outraging the modesty of a woman (Sec. 354, I.P.C.)} -

Disapproving the release of an offender convicted under Sec. 354 of the Indian Penal Code in a rape case the Andhra Pradesh High Court observed that the learned Judge should have visualised the nature of the offence committed and also the intention of the Legislature in making the punishment more severe for the said offence and ought not have released the accused under the provisions of the Probation of Offenders Act, 1958. The Courts below should act with firm hand in awarding

\textsuperscript{32} Geja Singh v. State of Punjab, 2008(3) A.I.Cr.L.R. 847 at p. 848 (P.&H.).

\textsuperscript{33} Dilip Singh v. State of Haryana, 1997(3) A.I.Cr.L.R. 296 at p. 299 (P.&H.).
punishments where dealing with the cases under Sec. 354 of the Indian Penal Code in view of the subsequent amendment. The Courts below should not easily be carried away by some decision or other which may suggest leniency, as each case will have to be decided on its own merits. Simply because in a give case, the provisions of Probation of Offenders Act, 1958 is applied, it does not mean that the Lower Courts should interpret it in a different way and release the accused under the said Act. Showing leniency by Courts dealing with such cases is nothing but encouraging culprits to commit one more rape, and spoil one more life of an innocent girl, dismissing the appeal, however, the Court opined.34

(ii) Attempt to commit rape –

*Benefit of probation can be given* - In the instant case, the Apex Court held that for the offence under Secs. 376/511 of the Indian Penal Code the respondent could be awarded imprisonment upto 10 years. On this reasoning, his case for probation was clearly made out, be it under Sec. 360 of the Code of Criminal Procedure or under Sec. 4 of the Probation of Offenders Act, 1958. The Court of Session, therefore was not wrong in extending to him such benefit and the High Court committed no error in declining to interfere therein.35

(iii) Rape - *Benefit cannot be given to accused of rape* –

(iv) Section 4 of the Probation of Offenders Act, 1958 cannot be made applicable to an accused who is convicted of an offence under Sec. 376 of the Indian Penal Code which is punishable for life imprisonment.36

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34 Public Prosecutor, High Court of A.P. v. Godise Deviah, 1994 Cr.L.J. 349 at p. 351 (A.P.).
36 State of M.P. v. Narendra Kumar Haridas Deshlahare, 2001 (1) A.I. Cr. R. 747 at p. 748 (M.P.)
On sentences, the Trial Court heard the accused who prayed for grant of probation which was rightly refused by the Court. In the light of mandate in sub section (1) of Sec. 376 of the Indian Penal code, the Trial Court imposed minimum sentence of Seven years' rigorous imprisonment and to pay fine of Rs. 2500. In default of payment of fine, the accused was ordered under rigorous imprisonment for six months more. The amount of fine was ordered to be paid to the prosecutrix. The Trial Court was wholly right in awarding sentence and there was no earthly reason to interfere with said order by the High Court.\(^ {37}\)

\((v)\) **Cruelty to married woman**

The Appellate Court considering the factum of compromise and good relation restored between the parties in a case under Secs. 323, 379 and 498-A of the Indian Penal code allowed benefit of Sec. 360 of the Code of Criminal Procedure read with provision of the Probation of Offenders Act, 1958 and in the interest of justice, modified the sentence to the petitioners and released them on executing a probation bond Rs. 2000/- with two sureties each of like amount for a period of two years, so that during the said period said period they will maintain peace and be of good behaviour.

In revision the High Court did not find any infirmity in the impugned judgment/ order and held that appellate court, in the circumstance of the case, was fully justified in modifying the sentences while maintaining conviction of the petitioners.\(^ {38} \)

Three persons were convicted under Sec. 498-A of the Indian Penal Code in the instant case. The Rajasthan High Court found that the appellant Khajan Singh is a Government servant and keeping in view the facts and circumstances of the case, he deserved to be Jethi is an old lady and accused Sikandar is husband of the prosecutrix. It will meet the ends of justice if these two accused are also extended the benefit of Sec.


\(^ {38}\) Santosh Prasad v. State of Bihar, 1996 (3) A.I. Cr. L.R. 751 at pp. 752, 753 (Pat.)
4 of the probation of offenders Act, 1958. They were accordingly directed to be released on probation.\(^{39}\)

**(vi) Death in causing miscarriage (Sec. 341, I.P.C.) –**

The accused in the instant case was convicted under Sec. 314 of the Indian Penal Code. Keeping in view the nature of the offence and character of the appellant he does not deserve the benefit of probation. If a trying to abort, he does not deserve the benefit of probation. It would have been a different matter if a trained surgeon while carrying out the operation in question with the consent of the lady, as in the present case, would have committed some mistake of judgment refused to give benefit of the probation of offenders Act, 1958 to the appellant and chose to put on record that Shri Jain advanced this submission as granting of probation would have removed the disqualification attached to conviction because of what has been stated in Sec. 12 of the aforesaid Act. The Court did not, however, think that if the appellant is required to given this protection and if his practice were to suffer because of the unwanted act undertaken by him, let it suffer, as it required to suffer.\(^{40}\)

**Offences affecting human body**

Of offences causing simple hurt (Sec. 323, I.P.C.) - Even in a conviction under Sec. 323 of the Indian Penal Code of an old man of 50 years, admittedly the first offender, benefit of probation was not extended and the lower Appellate Court brushed aside the argument by a stroke of one sentences, saying that there is no force that the sentences is harsh. The benefit of probation was allowed by the High Court.\(^{41}\)

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\(^{39}\) Radha through State v. Khanan Singh, 1995(1) D.M.C. 341 at p. 346 (Raj.)


\(^{41}\) Lacchiram v. State of Madhya Pradesh, 1990 Cr. L. J. 2229 at p. 2230 (M.P.)
Nature of Offence and character of offender relevant -

It is clear that it is the nature of the offence and character of the offender, which is subject matter of consideration in order to arrive at a conclusion whether it is expedient to release him on probation of good conduct or not. When both parties are living in same village and litigation is pending between them and daily they have an intention of harm being caused by one another, it cannot be said that it was an innocent act, which all of a sudden took shape of injury being caused. Therefore, it is not a fit case in which it may be said that the conduct of the accused justifies for being given the benefit of Sec. 4 of the probation of Offenders Act.42

**Of Offences causing hurt by dangerous weapons or means (Sec. 324 of the I.P.C.) - Petitioner was convicted** - No special reasons have been assigned by the Appellate Court in this case for not applying the provisions of the probation of offenders Act, which was mandatory for the Court to record in its judgment for not giving the benefit under Sec. 360 of the Code of Criminal Procedure, 1973, compelling the Court to hold that it is impossible to reform and rehabilitate the offender. The applicant being an employee in the Municipality, a first offender deserves to be given the benefit of probation under Sec. 360 of the Code of Criminal Procedure, 1973 as the incident was not pre-planned nor the injury caused was of serious nature. Therefore, in the circumstances of the case and having regard to the nature of the offence as also the character of the offender, it is expedient to release the applicant on probation of good conduct.43

**Conviction under Sec 325 of the Indian Penal Code - Released on probation considering the age below 21 years** - The maximum sentence provided under Sec. 325 of the Indian Penal Code is 7 years. The prayer of the revisionists for being given the benefit of Sec. 4 of the Probation of

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42 Nanhakoo v. State of U.P., 2004 (14) A.I.C. 355 at p. 357 (All.)
43 Prakash v State of Madhya Pradesh, 1993 (1) C Cr. J. 175 at p. 176 (M.P.)
offenders Act, 1958 seems to be justified in law. Consequently, the said prayer of the revisionists is allowed and having regard to the circumstances of the case, nature of the offence as also the character of the offenders, it is a fit case to release them on probation for a period of one year from the date of their release on filing a personal bound each to the satisfaction of the Trial Court, i.e. the Court of Judicial Magistrate Ist Class, Patti, with one surety each to the satisfaction of the said Court, within two weeks. The sentence of imprisonment shall remain suspended during the period of probation. During the period of probation the revisionists shall keep peace and be of good behavior. In the case of breach of any conditions of the bond, the revisionist shall appear before the Trial Court to receive the sentences and in that case the sentence already undergone shall be remitted. 44

The offences contemplated by this section are certain petty offences, with offenders having no previous conviction. 45 The provisions relating to admonition cover all offences under the Indian Penal Code as well as other laws punishable with not more than two years' imprisonment or with fine or with both including offences under Sec. 379, 380, 381, 404 and 420 of the Indian Penal Code. This section applies to cases of cheating under Secs. 417 and 420 of the Indian Penal Code. It applies to cases of misappropriation under Sec. 404 of the Indian Penal Code and not under Sec. 405 of the Indian Penal Code. Offence under Sec. 304, 46 or under Sec. 326, 47 or under Sec. 409, 48 or under Sec. 411, 49 or under Sec. 457 of the

45 State Of Maharashtra v. Baidya ramji Patel, 1978 Cr. L.J. 411 at p. 420 (Bom.)
49 Nathu, 44 P.L.R. 67; Bholu 18 P.L.T. 72.
Indian Penal code,\textsuperscript{50} are not within the purview of the present section. Admonition is not intended to apply to offences of the nature of defamation. It is an extension of principle that leniency should be shown to the people of tender ages and to first offenders and is certainly not applicable to men of responsible position who made defamatory statements and aggravated offence by repeating them and attempting justification.\textsuperscript{51} Section 3 of the Probation of offenders act is not restricted to cases of an offence under the Indian penal Code; but can be invoked in a prosecution under any other law or special Act. The section covers offences punishable only with fine as is an offence under Sec. 290, I.P.C.\textsuperscript{52} Section 380 of the Indian Penal code, has been specifically referred to in Sec. 3 wherein in a case where no previous conviction has been proved, Sec. 3 would be directly applicable to the accused and he can be released after due admonition, if in the opinion of the Court, 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. In an Orissa case, the petitioner was a sworn friend of the friend of the patwari. He remained with him in the Deraghar for sometime waiting to get the post of Chainman. He was driven out just the previous day at the instance of the Revenue Inspector. He came back next day and removed the cycle and a bag with clothing’s. In the facts and circumstances of this case, it would not be unreasonable to infer that the theft was committed out of annoyance and anger with his friend, the patwari. The theft was not the outcome of a deliberate preparation or design, but appears to be the outcome of an uncontrollable impulse, or at the worst of the


petitioner becoming a victim to the sudden temptation. It was held to be a fit case for application of Sec. 3 of the Probation of Offenders Act, 1958.53

**Provision for minimum sentence whether bars the application of this Act.**

Prescribing minimum sentence of imprisonment by a statute and to release the offender on probation or after admonition apparently appear to be inconceivable. But almost all the High Courts are unanimous on the point that fixation of minimum sentence is not in conflict with the Probation of Offenders Act, 1958. Calcutta High Court’s view may be cited here. Rule 126-P, sub rule (2) of the Defense of India Rules provides a minimum punishment but it does not override the provisions of the Probation of Offenders Act, 1958. This relates to term of the sentence, in respect of which a minimum is fixed, but it does not take away the Magistrate’s power to take action under Sec. 3 or Sec. 4 of the Probation of Offenders Act, 1958, if he deems it expedient to take such action. Fixation of minimum sentence is not in conflict with Probation of Offenders Act, 1958, where the Magistrate deems it expedient and this probation or admonition is in lieu of sentence. Infliction of sentence follows a conviction whatever may be its extent or form but this Act provides for admonition or probation in place of sentence under certain conditions and therefore provision for a minimum sentence does not affect Court’s power under Secs. 3 and 4 of the Probation of Offenders Act, 1958.54

In the instant case, there was no previous conviction of the accused. The Magistrate found that there was no ill-will or malice on his part. He was a man of high social standing and position. He was convicted under Sec. 500 of the Indian Penal Code.

The offence under Sc. 500 of the Indian Penal Code, is punishable with imprisonment of not more than two yeas. No doubt, in the case of such a person he has to be more careful. but still in such cases conviction itself would be sufficient punishment and an admonition instead of a regular sentence would meet the ends of justice. The Magistrate was, therefore held to be right in letting him off with an admonition.\textsuperscript{55}

In a case of an offence under Sec. 25 of the Tamnil Nadu weights and measures (enforcement) Act, 1958, the Madras High Court, coming to the question of sentence, as the offence was said to have been committed in the year 1973, and as it was the first offence, took a very lenient view in imposing penalty and released the convict after due admonition under Sec. 3 of the Probation of Offenders Act, 1958.\textsuperscript{56}

In order to give benefit to a convict under Sec. 3 of the Probation of Offenders Act, 1958 the following conditions must be fulfilled:

1. There must not be any previous convictions; and
2. the offender should be found guilty of having committed one of the following offences:
   a. theft (Sec. 379 of the Indian Penal Code)
   b. theft in dwelling houses, etc. (sec. 380 of the Indian Penal code)
   c. theft by clerk or servant of property in possession of master (Sec. 381 of the Indian Penal Code)
   d. dishonest misappropriation (sec. 404 of the Indian Penal code);
   e. cheating (Sec. 420 of the Indian Penal code);

\textsuperscript{56} State v. L.T. Pandian, 1976 Cr. L.J. 1330 at pp. 1331, 1333.
f. 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.

Apart from the above the court must be of the 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 give him the benefit of the provisions of Sec. 3 of the probation of offenders Act, 1958.  

As case under Sec. 427 of the Indian Penal Code, relating to an incident whereby the accused cut down a coconut tree belonging to the complainant being of a trivial nature is a case for the discretion of the Magistrate of act under this sub-section having regard to all or any of the various mattes which are there enumerated.

The offence under Sec. 323 of the Indian Penal Code is punishable with imprisonment for one year or fine of Rs. 1000/- or both. No reason has been assigned by the Court below regarding the denial of the privilege of Sec.360 of the Code of Criminal Procedure or of the provision of Sec. 3 of the probation of Offenders Act, 1958 to the appellant in the impugned judgment. In view of the nature of the offence and the appellant being the first offender having no criminal antecedent deserves to be released on due admonition on due admonition in this case.

The Appellate Court while confirming the order of conviction under Secs 452, 147 and 323 of the Indian Penal Code, directed release of opposite party Nos. 2 to 9 on probation of good conduct, by holding that the trial court did not assign any special reason for refusing the benefit

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58 Surendra nath banjerjee v. Dhirendra Nath Dhar, A.I.R. 1929 Cal. 785 (1) at p. 785.
under the provisions of probation of offenders Act, as contemplated under Sec. 360 of the code of Criminal Procedure. It is an admitted case that no charge was framed for outraging the modesty of the complainant and in the absence of any charge, of the not proper for the petitioner to complain that her modesty was outraged. The orders of the appellate court was upheld. 60

The offences contemplated by this section are certain petty offences, with offenders having no previous conviction.61 The provisions relating to admonition cover all offences under the Indian Penal Code as well as other laws punishable with not more than two years' imprisonment or with fine or with both including offences under **Sec. 379, 380, 381, 404 and 420 of the Indian Penal Code. This section applies to cases of cheating under Secs. 417 and 420 of the Indian Penal Code. It applies to cases of misappropriation under Sec. 404 of the Indian Penal Code and not under Sec. 405 of the Indian Penal Code. Offence under Sc. 304,62 or under Sec. 326,63 or under Sec. 409,64 or under Sec. 411,65 or under Sec. 457 of the Indian Penal code,66 are not within the purview of the present section. Admonition is not intended to apply to offences of the nature of defamation. It is an extension of principle that leniency should be shown to the people of tender ages and to first offenders and is certainly not applicable to men of responsible position who made defamatory statements and aggravated offence by repeating them and attempting

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61 State Of Maharashtra v. Baidya ramji Patel, 1978 Cr. L.J. 411 at p. 420 (Bom.)
63 Ezhuvan Velappan, In re, A.I.R. 1943 Mad. 681 at p. 682.
65 Nathu, 44 P.L.R. 67; Bhola 18 P.L.T. 72.
Section 3 of the Probation of offenders act is not restricted to cases of an offence under the Indian penal Code; but can be invoked in a prosecution under any other law or special Act. The section covers offences punishable only with fine as is an offence under Sec. 290, I.P.C. Section 380 of the Indian Penal code, has been specifically referred to in Sec. 3 wherein in a case where no previous conviction has been proved, Sec. 3 would be directly applicable to the accused and he can be released after due admonition, if in the opinion of the Court, 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. In an Orissa case, the petitioner was a sworn friend of the friend of the patwari. He remained with him in the Deraghar for sometime waiting to get the post of Chainman. He was driven out just the previous day at the instance of the Revenue Inspector. He came back next day and removed the cycle and a bag with clothing's. In the facts and circumstances of this case, it would not be unreasonable to infer that the theft was committed out of annoyance and anger with his friend, the patwari. The theft was not the outcome of a deliberate preparation or design, but appears to be the outcome of an uncontrollable impulse, or at the worst of the petitioner becoming a victim to the sudden temptation. It was held to be a fit case for application of Sec. 3 of the Probation of Offenders Act, 1958.

**Provision for minimum sentence whether bars the application of this Act.**

Prescribing minimum sentence of imprisonment by a statute and to release the offender on probation or after admonition apparently appear

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**The Code of Criminal Procedure, 1898 –**

The Code of Criminal Procedure, 1898 have provided for specialized treatment for juvenile offenders and Section 399 of the Code of Criminal Procedure, 1898 provided for commitment of juvenile offenders up-to the age of fifteen years to Reformatory Schools. The court may direct that such person, instead of being imprisoned in a criminal jail, shall be confined in any reformatory established by the State Government as a fit place for confinement, in which there are means of suitable discipline and of training in some branch of useful industry or which is kept by a person willing to obey such rules as the State government.

**Applicability in some specified situations**

(i) **Grave Offence** –

Section 3 cannot be applied to the facts of a case where in addition to the conviction under Sec. 420 of the Indian Penal Code, the appellant has also been found to be guilty of graver offences under Secs. 467, 468 and 471 of the Indian Penal Code.\(^71\)

It is a serious matter where the petitioner forged a certificate showing that he was matriculate with a view to secure job in the police department. In view of this, he cannot be dealt with so leniently to let him off on probation. The ends of justice shall, however, be met if the sentence imposed upon him under Secs. 467 and 471 of the Indian Penal Code is reduced from one year to six months each. Indeed petitioner has gone through an agonizing trial spanned over a period of 15 years and he was only 21 years of age at the time of commission of crime. This revision, insofar as quantum of sentence is concerned, is allowed. While maintaining the order of conviction against him, it is ordered that the petitioner would undergo Rigorous Imprisonment for a period of six months under **Secs. 467 and 471 of the Indian penal Code** which shall be concurrent. The order of fine is, however, maintained and so are the consequences for non-payment thereof.\(^72\)

### 3.6 Law of Probation in Children Act, 1960.

There are many provisions to grant probation benefit in the children act, 1960. Researcher has focused some provision of children act which are most relevant to the juvenile offenders for rehabilitation to them in society. There are some important provisions under the following heads:-

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1. **Children's Courts**
   
   (1) Notwithstanding anything contained in the code of Criminal procedure, 1898*, the administrator may, by notification in the official gazette, constitute for any area specified in the notification, one or more children's Courts for exercising the powers and discharging the duties conferred on imposed on such Court in relation to delinquent children under this act.
   
   (2) A children's court shall consist of such number of Magistrate forming a bench as the administrator thinks fit to appoint, of whom one shall be designated as the senior Magistrate and not less than one shall be a woman; and every such Bench shall have the powers conferred by the Code of Criminal Procedure, 1898, on a Magistrate of the first class.

2. **Power of board and children's court**
   
   (1) Where a board or a children's court has been constituted for any area, such board or court shall, notwithstanding anything contained in any other law for the time being in force but save as otherwise expressly provided in this act, have power to deal exclusively with all proceedings, under this act relating to neglected children or delinquent children, as the case may be.
   
   (2) Where no board or children's court has been constituted for any area, the powers conferred on the board or the children's court by or under this act shall be exercised in that area, only by the following namely:
      (a) The district magistrate; or
      (b) the sub-divisional magistrate; or
      (c) any magistrate of the first class.
   
   (3) The powers conferred on the board of children's court by or under this act may also be exercised by the High Court of
Session when the proceeding comes before them in appeal, revision or otherwise.

3. **Procedure to be followed by a Magistrate not empowered under the act** -

(1) When any magistrate not empowered to exercise the powers of a board or a children's court under this act is of opinion that a person brought before him under any of the provisions of this act (otherwise than for the purpose of giving evidence) is a child, he shall record such opinion and forward the child and the record of the proceedings to the competent authority having jurisdiction over the proceeding.

(2) The competent authority to which the proceeding is forwarded under sub-section (1) shall hold the inquiry as if the child had originally been brought before it.

4. **Children's homes** -

(1) The administrator may establish and maintain as many children's homes as may be necessary for the reception of neglected children under this act.

(2) Where the administrator is of opinion that any institution other than an institution established under sub-section (1) is fit for the reception of the neglected children to be sent there under this act, he may certify such institution as a children's home for the purposes of this act.

(3) Every children's home to which a neglected child is sent under this act shall not only provide the child with accommodation, maintenance and facilities for education, but also provide him with facilities for the development of his character and abilities and give him necessary training for protecting himself against moral dangers or exploitation and shall also perform such other functions as may be prescribed.

(105)
(4) The administrator may, by rules made under this act, provide for the management of children's homes and the circumstances under which, and the manner in which, the certificate of a children's home may be granted or withdraw.

5. **Observations homes** -

(1) The administrator may establish and maintain as many observation homes as may be necessary for the temporary reception of children during the pendency of any inquiry regarding them under this act.

(2) Where the administrator is of opinion that any institution other than an institution established under sub-section (1) is fit for the temporary reception of children during the pendency of any inquiry regarding them under this act, he may recognize such institution as an observation home for the purposes of this act.

(3) Every observation home to which a child is sent under this act shall not only provide the child with accommodation, maintenance and facilities for medical examination and treatment, but also provide him with facilities for useful occupation.

(4) The administrator may, by rules made under this act, provide for the management of observation homes and the circumstances under which, and the manner in which, an institution may be recognized as an observation home or the recognition may be withdrawn.
3.7 Law of Probation in Indian Jail Committee’s report (1919 - 1920).

The process of review of prison problems in the country, continued even after the enactment of Prisons Act, 1894. The first ever comprehensive study was launched on this subject with the appointment of All India Jail Committee (1919-1920).

It is indeed a major landmark in the history of prison reforms in India and is appropriately called the corner stone of modern prison reforms in the country. For the first time, in the history of prison administration.

(i) The care of prisoners should be entrusted to the adequately trained staff drawing sufficient salary to render faithful service.
(ii) The separation of executive/custodial, ministerial and technical staff in prison service.
(iii) The diversification of the prison institutions i.e. separate jail for various categories of prisoners and a minimum area of 675 Sq. Feet (75 Sq. Yards) per prisoner was prescribed within the enclosed walls of the prison.

It is ironical that the recommendations made by this Committee could not be implemented due to unconducive political environment.

The constitutional changes brought about by the Government of India Act of 1935, which resulted in the transfer of the subject of prisons in the control of provincial governments, further reduced the possibilities of uniform implementation of the recommendations of the Indian Jails Committee 1919-1920 in the country. However, the period from 1937 to 1947 was important in the history of Indian prisons because it aroused public consciousness and general awareness for prison reforms at least in some progressive States like, West Bengal, Tamil Nadu, Maharashtra etc. Efforts of some of the eminent freedom fighters who had known first hand the conditions in prisons succeeded in persuading
the governments of these progressive States to appoint committees to further enquire into prison conditions and suggest improvements in consonance with their local conditions.

Some of the Committees appointed during the period were

(i) *The Mysore Committee on Prison Reforms, 1940-41*;

(ii) *The U.P. Jail Reforms Committee, 1946*; and

(iii) *The Bombay Jail Reforms Committee, 1946-48*.

It was around this period that such progressive legislations as

(i) *The Bombay Probation of Offenders Act, 1936*;

(ii) *The C.P. and Berar Conditional Release of Prisoners Act, 1936*; and

(iii) *The U.P. First Offenders Probation Act, 1938*, were passed.

In the late thirties, the U.P. Government appointed a *Jail Enquiry Committee* and in pursuance of its recommendations, the *first Jail Training School* in India was established at Lucknow in 1940 for the training of jail officers and warders. When India gained independence in 1947, the memories of horrible conditions in prisons were still fresh in the minds of political leaders and they, on assumption of power, embarked upon effecting prison reforms.

However, the Constitution of India which came into force in 1950 retained the position of the Government of India Act, 1935 in the matter of prisons and kept *‘Prisons’* as a State subject by including it in *List II—State List*, of the Seventh Schedule (Entry 4).

The first decade after independence was marked by strenuous efforts for improvements in living conditions in prisons. A number of Jail Reforms Committees were appointed by the State Governments, to achieve a certain measure of humanization of prison conditions and to put the treatment of offenders on a scientific footing. Some of the committees which made notable recommendations on these lines were:
(i) The East Punjab Jail Reforms Committee, 1948-49;
(ii) The Madras Jail Reforms Committee, 1950-51;
     The Jail Reforms Committee of Orissa, 1952-55;
(iv) The Jail Reforms Committee of Travancore and Cochin, 1953-55;
(v) The U.P. Jail Industries Inquiry Committee, 1955-56; and

While local Committees were being appointed by State Governments to suggest prison reforms, the Government of India invited technical assistance in this field from the United Nations. Dr. W. C. Reckless, a U.N. Expert on Correctional Work, visited India during the years 1951-52 to study prison administration in the country and to suggest ways and means of improving it. His report ‘Jail Administration in India’ is another landmark document in the history of prison reforms. He made a plea for transforming prisons into reformation centers and advocated establishment of new prisons.

Some of the salient recommendations made by Dr. W. C. Reckless are as under :-

(i) Juvenile delinquents should not be handed over by the courts to the prisons which are meant for adult offenders.

(ii) A cadre of properly trained personnel was essential to man prison services.

(iii) Specialized training of correctional personnel should be introduced.

(iv) Outdated Prison Manuals be revised suitably and legal substitutes be introduced for short sentences.

(v) Full time Probation and Revising Boards be set up for the after-care services and also the establishment of such boards for selection of prisoners for premature release.
(vi) An integrated Department of Correctional Administration be set up in each State comprising of Prisons, Borstals, Children institutions, probation services and after-care services.

(vii) An Advisory Board for Correctional Administration be set up at the Central Government level to help the State Governments in development of correctional programmes.

(viii) A national forum be created for exchange of professional expertise and experience in the field of correctional administration.

(ix) A conference of senior staff of correctional departments be held periodically at regular intervals.

The year 1952 witnessed a significant break-through in national coordination on correctional work as in that year the Eighth Conference of the Inspectors General of Prisons was held after a lapse of 17 years. In pursuance to the recommendations made by the Eighth Conference of the Inspectors General of Prisons and also by Dr. W. C. Reckless, the Government of India appointed the All India Jail Manual Committee in 1957 to prepare a Model Prison Manual.

The All India Jail Manual Committee was also asked to examine the problems of prison administration and to make suitable suggestions for improvements to be adopted uniformly throughout the country. In pursuance to the recommendations made by Dr. W. C. Reckless and also by the All India Jail Manual Committee, the Central Bureau of Correctional Services was set up under the Ministry of Home Affairs in 1961 to formulate a uniform policy and to advise the State Governments on the latest methods relating to jail administration, probation, after-care, juvenile and remand homes, certified and reformatory schools, Borstals and protective homes, suppression of immoral traffic, etc.;

The Central Correctional Bureau observed the year 1971 as “Probation Year” all over the country. The purpose was to create a general awareness amongst the principal branches of the criminal justice system, viz., the judiciary, the police, the pros the correctional
administration about the use of probation as an effective non-institutional mode of treatment for the convicts.

In 1972, the Ministry of Home Affairs, Government of India, appointed a Working Group on Prisons which presented its report in 1973. This Working Group brought out in its report the need for a National Policy on Prisons. Its salient features are as under:

(I) To make effective use of alternatives to imprisonment as a measure of sentencing policy.

(II) Emphasized the desirability of proper training of prison personnel and improvement in their service conditions.

(iii) To classify and treat the offenders scientifically and laid down principles of follow-up and after-care procedures.

(iv) That the development of prisons and the correctional administration should no longer remain divorced from the national development process and the prison administration should be treated as an integral part of the social defence components of national planning process.

(v) Identified an order of priority for the development of prison administration.

(vi) The certain aspects of prison administration be included in the Five Year Plans.

(vii) An amendment to the Constitution be brought to include the subject of prisons and allied institutions in the Concurrent List, the enactment of suitable prison legislation by the Centre and the States, and the revision of State Prison Manuals be undertaken.

In 1964, the Central Bureau of Correctional Services was transferred from the Ministry of Home Affairs to the newly created Department of Social Security, now known as Department of Social Justice and Empowerment under the Ministry of Human Resource Development. However, the Bureau continued to be attached to the Ministry of Home Affairs for various matters concerning prison
administration and reforms. Its Director was latter designated as Exofficio Prison Advisor.

In 1971, the Bureau was re-organized into the National Institute of Social Defence to review policies and programmes in the field of Social Defence.

In spite of the fact that the administration and management of prisons falls under the jurisdiction of State Governments and Union Territory Administrations, the Government of India, has, of late, been seriously concerned about the highly unsatisfactory prison conditions obtaining in many parts of the country. The scheme for the modernization of prisons and improvement in the living conditions of prisoners initiated by the Ministry of Home Affairs during 1977-79 was indicative of a growing awareness for providing a thrust towards the development of prisons in keeping with certain minimum norms. This trend took a definite shape when the Seventh Finance Commission went into the question of upgrading the standards of prison administration on the basis of a comprehensive assessment of the requirements in this regard.

The Seventh Finance Commission in its Report of 1978, on an analysis of the material received from the Ministry of Home Affairs and the Department of Social Welfare in the Government of India and that obtained by it from State Governments, recognized that prisons had been neglected for far too long and that there had been practically no improvement in their physical environments or in the method of handling inmates. Although the Commission did not regard itself competent to lay down the requirements of modernization of prisons and correctional services, it did identify certain basic areas needing urgent attention.

The Seventh Finance Commission took a view that priority should be given:-

(a) To ensure that adequate direct expenditure was incurred on the prisoners;

(112)
(b) To bring improvements in amenities in respect of water supply, sanitary facilities, electrification, etc. and,

(c) To provide the construction of additional prison capacities in States where these were found short of the minimum requirements.

The **Seventh Finance Commission** considered it necessary that a norm of Rs. 3 per head for diet and Rs. 1 per prisoner for other items like, medicine, clothing etc per day should be a minimum, and that inclusive of prison overheads (not including the headquarters cost of direction and administration) a minimum of Rs. 6 per day per prisoner should be provided for in all the States.

Accordingly, the Commission recommended an allocation of Rs. 48.31 crores for the States which were found lagging behind in these respects.

The Government of India convened a **Conference of Chief Secretaries of all the States and Union Territories** on April 9, 1979, in order to assess the gaps in the existing prison management system and to lay down guidelines for standardization of prison conditions throughout the country. This Conference made a detailed examination of the **issues** pertaining to prison administration and on the basis of the consensus arrived at the Conference, the Government of India requested the State Governments and Union Territory Administrations:-

(i) to revise their prison manuals on the lines of the Model Prison Manual by the end of the year;

(ii) to appoint Review Committees for the undertrial prisoners at the district and state levels;

(iii) to provide legal aid to indigent prisoners and to appoint wholetime or part-time law officers in prisons;

(iii) to enforce existing provisions with respect to grant of bail and to liberalize bail system after considering all its aspects;
(iv) to strictly adhere to the provisions of the Code of Criminal Procedure, 1973, with regard to the limitations on time for investigation and inquiry;

(v) to ensure that no child in conflict with law be sent to the prison for want of specialized services under the Central Children Act, 1960.

(vii) to have at least one Borstal School set up under the Borstal Schools Act, 1929 for youthful offenders in each State;

(viii) to create separate facilities for the care, treatment and rehabilitation of women offenders;

(ix) to arrange for the treatment of lunatics in specialized institutions;

(x) to provide special camp accommodation under conditions of minimum security to political agitators coming to prisons;

(xi) to prepare a time bound programme for improvement in the living conditions of prisoners with priority attention to sanitary facilities, water supply, electrification and to send it to the Ministry of Home Affairs for approval;

(xii) To develop systematically the programmes of education, training and work in prisons;

(xiii) To strengthen the machinery for inspection, supervision and monitoring of prison development programme and to ensure that the financial provisions made for upgradation of prison administration by the Seventh Finance Commission are properly utilized;

(xiv) To organize a systematic programme of prison personnel training on State and Regional level;

(xv) To abolish the system of convict officers in a phased manner;

(xvi) To mobilize additional resources for modernization of prisons and development of correctional services in prison;
(xvii) To set up a State Board of Visitors to visit prisons at regular periodicity and to report on conditions prevailing in the prisons for consideration of the State Government;

(xviii) To examine and furnish views to Government of India on proposal for setting up of the National Board of Visitors.

The Government of India has constituted an All India Committee on Jail Reforms under the chairmanship of Mr Justice A. N. Mulla in 1980. The committee examined all aspects of prison administration and made suitable recommendations respecting various issues involved. A total of 658 recommendations made by this committee on various issues on prison management were circulated to all States and UTs for its implementation, because the responsibility of managing the prisons is that of the State Governments as ‘Prisons’ is a ‘State’ subject under the List II—State List of the Seventh Schedule (Entry 4) of the Constitution of India. The Committee has also suggested that there is an immediate need to have a national policy on prisons and proposed a draft National Policy on Prisons as per the brief details given as under Department of Prisons and Correctional Services dealing with adult and young offenders – their institutional care, treatment, aftercare, probation and other non-institutional services.

(v) The State shall endeavour to evolve proper mechanism to ensure that no undertrial prisoner is unnecessarily detained. This shall be achieved by speeding up trials, simplification of bail procedures and periodic review of cases of undertrial prisoners. Undertrial prisoners shall, as far as possible, be confined in separate institutions.

(vi) Since it is recognized that imprisonment is not always the best way to meet the objectives of punishments the government shall endeavour to provide in law new alternatives to imprisonment such as community service, forfeiture of property, payment of
compensation to victims, public censure, etc., in addition to the ones already existing and shall specially ensure that the

Report of Joint committee -

This section imposes restriction on imprisonment of offender under twenty one years of age. Neither Sec. 562 (Sec. 360, new) of the Code of Criminal Procedure, nor the State enactments relating to release of the offenders on probation provide any provision wherein the Court is to assign reasons for not releasing an accused on probation or admonition but wants to convict him. The present section imposes a mandatory duty on the Court to record its reasons in writing for not taking concerned person who is under the age of twenty one years and is found guilty of an offence punishable with imprisonment for any period short of imprisonment for life. Henceforth the Court will have to consider and call for a report from the Probation Officer before deciding whether it would not be desirable to treat the case under the Probation of offenders Act, 1958. It will also have to take into consideration any other information available to it relating to-

(a) the character of the offender
(b) the physical condition of the offender
(c) the mental condition of the offender

The report of the Probation Officer cannot be considered for the purpose of deterring the sentence to be imposed on the offender.

Referring to this section Shri Sinhasan Singh, a member of the Joint Committee, states as follows:

"This Bill in Cl. 8 (now Sec. 6 of the Act) lays down that a Court has to assign reasons for not releasing an accused below twenty one years of age on probation or admonition. It casts a heavy burden on the burden or fine or both, for his failure to release him or her on mere probation or admonition. Human mind is always prone to take and easier and popular line of work and avoid putting oneself in any difficulty. The result would be that all offenders below twenty one years of age would
find a free passport for being released on probation or admonition. This, in my opinion, is a change, which instead of helping the society to a better growth may lead to more troubles. Even the Reformatory Schools Act provides an age of fifteen years. Under Sec. 8 of the Act a Court can send a youthful offender after conviction to a Reformatory School for a period of three years or up to seven years. But here there is no such question and the man or woman below twenty one has to be released on probation or admonition. The only gratifying factor is that his Act is being precluded. From application to the Act, 1956, and the recent Criminal Law Amendment Bill, 1958, which is providing a minimum sentence of one year imprisonment for offences of bribery. This exemption of certain enactments from the application of this Bill should equally apply to other criminal enactments which provide infliction of minimum sentences. All laws should have similar bearing so that the Courts may have to apply their judicial discretion alike. There are offences which are more heinous than those enumerated under the above exempted enactments, but in those cases the offender has a chance, and if below twenty-one years, a clear sailing, to be released on probation or admonition. In my view of the present structure of society and the present unequal distribution of wealth, extreme poverty on the one end with overflowing riches on the other, needs a cautious change in criminal law. Society needs a great evolution, socially economically and educationally before such mental creative laws could be enacted.

Then there is another revolution in the judicial framework. Hitherto the Courts were guided by their sole judicial judgment except in cases tried with the aid of jurors. But henceforth the Courts will have to consider and also to call for the reports of Probation Officers to guide their judgments. It means that a person accused of an offence has not only to prove his innocence before the Court, before whom he is to tried, but has also represent his case to probation officer for getting a favourable report from him. What this would lead to, in our present set-
up, can better be guessed than written. Therefore, in my opinion, at least sub-clause (2) of Cls. 4 and 6 should have no place in the Bill. I agree with my colleague Shri Thakur Das Bhargava that a schedule should be appended wherein the provisions of this bill should not apply.”\(^\text{73}\)

**Changes made by Legislature –**

The joint committee to which the Bill to provide for release of offenders on probation or after due admonition and for matters connected therewith was referred for submitting report felt that the clauses required some re-arrangement and accordingly original Cl. 7 was placed immediately after Cl. 5.

The committee felt that it should be made clear in this clause that report of a Probation officer should be considered by the Court only for the purpose of satisfying itself as to whether the offender should be dealt with under Sec. 3 or Sec. 4 of the Probation of Offenders Act, 1958 and not for the purpose of determining the sentence to be imposed on the offender.

Sub-clause (2) was amended to its form to make the intention clear.

Sub-clause (3) was omitted from this clause and was incorporated in a new Cl.7.

The object of Sec.6 of the Probation of Offenders Act, 1958, broadly speaking, is to seen that young offenders are not sent to jail for the commission of less serious offences mentioned therein because of grave risk to their attitude to life to which they are likely to be exposed as a result of their close association with the hardened and habitual criminals who may happen to be the inmates of jail. Their stay in jail in such circumstances might well attract them towards a life of crime instead of reforming them. This would clearly do them more harm than good, and for that reason it would perhaps also be to an extend prejudicial to the

\(^{73}\) Joint Committee Report, Minutes of Dissent, p. 10-11.
larger interest of the society as a whole. It is for this reason that the mandatory injunction against imposition of sentence of imprisonment has been embodied in Sec. 6 of the Probation of Offender Act, 1958. This mandate is inspired by the desire to keep the young delinquent away from the possibility of association or close contact with hardened criminals and their evil influence. This section, therefore, deserves to be liberally construed so that its operation may be effective and beneficial to the young offenders who are prone more easily to be led astray by the influence of bad company.\textsuperscript{74}

The object of Sec. 6 of the probation of Offenders Act, broadly speaking, is to see that young offenders are not sent to jail for the commission of less serious offences mentioned therein because of grave risk to their attitude to life to which they are likely to be exposed as a result of their close association with the hardened and habitual criminals who may happen to be the inmates of the jail. Section 6 places restrictions on the Court’s power to sentence a person under 21 years of age for the commission of crimes mentioned therein unless the Court is satisfied that it is not desirable to deal with the offender under Secs. 3 and 4 of the said Act. The Court is also required to record reasons for passing sentences of imprisonment on such offender. Section 6 lays down an injunction as distinguished from discretion under Secs. 3 and 4 not to impose a sentence of imprisonment on an offender, unless reasons are recorded.\textsuperscript{75}

This view finds support from the fact that the object of the Probation of Offender Act, 1958 is to prevent the turning of youthful offenders into criminals by their association with hardened criminals of


mature age within the cells of a prison. The method adopted is to attempt their possible reformation instead of inflicting on them the normal punishment for their crime.\textsuperscript{76}

From the bare perusal of Sec. 6 of the Probation of Offenders Act, 1958 it is clear as stated above that this section imposes restriction of the power of the Court to sentence a convict under 21 years of age for the commission of the offence mentioned therein unless the Court is satisfied that it is not desirable to deal with him under Sec. 3 or Sec. 4 of the Act, 1958. The Court is also required to record reason for passing sentence of young offenders are not sent to jail for the commission of less serious offence because of grave risk to their attitude to life to which they are likely to be exposed as a result of their close association with the hardened and habitual criminals. Their stay in jail in such circumstances might well attract them towards a life of crime instead of reforming them. It is for this reason that the mandatory injunction against imposition of sentence of imprisonment has been embodied in Sec. 6 of the Act, 1958. In view of the aforesaid legal position and the fact that at the time of his conviction under Secs. 380/411 of the Indian Penal Code, the petitioner was under 21 years of age; has five brothers and sisters; is son of a poor agriculturist and that the stolen articles recovered from him are not so valuable, the sentence of imprisonment imposed by the learned Appellate Court is et aside and the petitioner is directed to be released on probation of good conduct for a period of six months.\textsuperscript{77}

\textsuperscript{77} Rajiv Sandhu v. State of Union Territory, Chandigarh, 2004(4) A.I. Cr. L.R. 152 at pp. 154, 156 (P.&H.)
The Indian Jail Committee (1919-20) - The Indian Jail Committee's report contains the following remarks about Juveniles.

- It condemned the practice of sending juvenile to jail and recommended for setting up of separate machinery for the trial and treatment of children and young offenders.

- It concluded that imprisonment of child offenders should be prohibited and recommended the provision of Remand Homes, Certified Schools that approximate to ordinary schools.

- The Committee recommended for the creation of children court for hearing of all cases against children and young persons.

- The Committee suggested the child’s release on probation of good conduct with or without supervision of a probation officer and also suggested provision of after-release supervision.

- Sections 29 and 562 of the Code of Criminal Procedure, 1898 amended in 1923. Section 29-B of the Code of Criminal Procedure, 1898 stated that any offence, other than one punishable with death or imprisonment for life, committed by any person who at the date when he appears or is brought before the court is under the age of fifteen years might be tried by a District Magistrate or a Chief Presidency Magistrate, or by any Magistrate specially empowered by the State Government to exercise the powers conferred by Sub-section (1) to Section 8 of the Reformatory School Act, 1897, or, in any area in which the said Act has been wholly or in part repealed by any other law providing for the custody, trial or punishment of youth offenders, by any Magistrate empowered by or under such law to exercise all or any of the powers conferred thereby. Section 562 of the Code of Criminal Procedure, 1898 provided for probation of good conduct to offenders up-to the age of twenty one.
Section 562(1-A) provided that in any case in which a person is convicted of theft, and no previous conviction is provided against him, the court before whom he is so convicted, may, if it thinks fit, having regard to the age, character, antecedents or physical or mental condition of the offender and to the trivial nature of the offence or any extend circumstances under which the offence was committed, instead of sentencing him to any punishment, release him after due admonition.

- As per the recommendations of Indian Jail Committee, Madras, Bengal and Bombay also enacted Children Acts in 1920, 1922 and 1924 respectively.

3.8 Probation Law in Criminal Procedure Code, 1973

Section 360 of Cr. P.C. not to be employed where Probation of Offenders Act is in force

Where the provisions of the Probation of Offenders Act are applicable the employment of Sec. 360 of the Code of Criminal Procedure is not be made. In cases of such application, it would be an illegality resulting in highly undesirable consequences, which the Legislature, who gave birth to the said Act and the Code wanted to obviate. yet the Legislature in its wisdom has obliged the Court under Sec. 361 of the Code to apply one or the other beneficial provisions; be it Sec. 360 of the Code or the provisions of the Court. The comparative elevation of the provisions of the said Act are further noticed in sub-section (10) of Sec. 360 of the Code which makes it clear that nothing in the said section shall affect the provisions of the said Act. Those provisions have a paramountcy of their own in the respective areas where they are applicable.78

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(i) It is to be stated that there is no conflict between the two cases - Bishnu Deo Shaw v. State of West Bengal,79 and State through S.P. v. Ratan Lal Arora,80 of the Supreme Court.

In the former case the applicability of Sec. 360 of the Code of Criminal Procedure in view of the provisions of Sec. 19 of this Act was not for consideration before the Apex Court. In an appeal against death sentence the Supreme Court has referred to the provision of Sec. 361 of the Code of Criminal Procedure to consider the meaning and scope of the words "special reasons" used in that section which have also been used in sub-section (3) of Sec. 354 of the Code of Criminal Procedure for awarding death sentence. The relevant observations of the Court run in para. 25 as under:

"Apart from Sec. 354(3), there is another provision in the Code which also uses the significant expression "special reasons". It is Sec. 361, Section 360 of the Code of Criminal Procedure, 1973 re-enacts in substance, Sec. 562 of the old Code of Criminal Procedure, 1898. If the Court refrains from dealing with an offender under Sec. 360 of the Code of Criminal Procedure or under the provisions of the Probation of Offenders Act, or any other law for the treatment, training or rehabilitation of youthful offenders, where the Court could have done so, Sec. 361, which is a new provision in the Code of Criminal Procedure, 1973 makes it mandatory for the Court to record in its judgment the special reasons for not doing so. Section 361 of the Code of Criminal Procedure thus casts a duty upon the Court to apply the provisions of state "special reasons" if it does not do so. In the context of Sec. 360 of the Code of Criminal Procedure the "special reasons"
contemplated by Sec. 361 must be such as to compel the Court to hold that it is impossible to reform and rehabilitate the offender after examining the matter with due regard to the age, character and antecedents of the offender and the circumstances in which the offence was committed. This is some indication by the Legislature that reformation and rehabilitation of offenders, and not mere deterrence are now among the foremost objects of the administration of criminal justice in our country. Section 361 and Sec. 354(3) have both entered the statute book at the same time and they are part of the emerging picture of acceptance by the Indian Parliament of the new trends in criminology. We will not, therefore, be wrong antecedents and other circumstances and the tractability of the offender to reform must necessarily play the most prominent role in determining the sentence to be awarded. Special reasons must have some relation to these factors."

It is thus evident from these observation that in the case of Bishnu Deo Shaw, the Supreme Court did not take into consideration the effect of Sec. 19 and at the most the judgment given in that case is to be considered as having been rendered per incurium. Looked at from any angle there is no escape from concluding that in the States and Union Territories where the Probation of Offenders Act, 1958 is in force, Sec. 360 of the Code of Criminal procedure ceases to apply and no Court can deal with an offender there under. The Punjab and Haryana High Court has held that the provisions of Sec. 361 of the Code of Criminal Procedure are mandatory in nature and enjoin upon the Court to give specific reason if convict is not dealt with under Sec. 360 of the Code of Criminal procedure as it has been laid down in Bishnu Deo Shaw v.

State of West Bengal. Therefore, it is obligatory on the part of the Court to deal with a convict thereunder when he is not convicted of an offence not punishable with death or imprisonment for life and no previous conviction is proved against the offender. In the instant case the learned Magistrate has not given any reason why the petitioner was not to be dealt with under Sec. 360 of the Code of Criminal Procedure. The maximum sentence under Secs. 5 and 8 of the Act for which the petitioner has been convicted is 2 years. The petitioner is not a previous convict.

This High Court has reiterated that taking into consideration the conduct of the petitioner, there is no ground for declining the benefit of probation to him. It will be in the interest of justice that conviction of the petitioner be maintained and the sentence imposed upon the petitioner be suspended. The petitioner is, therefore, released on probation for a period of one year, on furnishing personal bond of Rs. 10,000 with one surety of the like amount under Sec. 4(1) of the Probation of Offenders Act, 1958 for one year.83

Section 361 of the Code of Criminal Procedure indicates that if the Court decided not to exercise its jurisdiction under Sec. 360, then it must record its reasons as to why the benefit of Sec. 360 of the Code of Criminal Procedure is being denied. In view of the peremptory nature of the language of provisions of Sec. 361, the Magistrate as well as the Court in appeal and revision having not indicating as to why the provisions of Sec. 360 of the Code of Criminal Procedure have not been applied, there has been a gross miscarriage of justice and the legislative mandate engrafted in the aforesaid two sections of the Code of Criminal Procedure have not been complied with.84

(ii) **Cases of explosive situation** - Where the circumstances of a case apparently created an explosive situation which could have triggered off a chain of reactions producing results which may have been more lamentable and far reaching, such a case has no place for leniency in the matter of sentence or for the grant of the benefit of the Probation of Offenders Act, 1958.\(^8\)

(i) **Cases of cattle lifting** - The exercise of discretion given to the Courts under this section needs a considerable sense of responsibility and the Courts should not allow themselves to be misled into the use of this section by misplaced leniency and sympathy. As the cattle lifting is an offence which is very common in this country and it cannot be repressed without condign punishment the fact that the accused has not been convicted before is not in itself a sufficient reason for inflicting no penalty upon him, and it cannot be doubted that the knowledge that a first offence will go unpunished is very apt to lead the young into a course of crime.\(^8\) This section must be applied with discretion, for otherwise rather than preventing the manufacturing of criminals it may assist in their manufacture for it may become known that first offence even of cattle lifting can be committed with impunity.\(^8\)

(ii) **Applicability of Sec. 360(3) of the Cr. P.C. 1973**: It was not correct to say that the Code of Criminal Procedure, 1673 has mentioned several offences by description, such as theft, theft in building, dishonest misappropriation and cheating which are offences connected with property and, therefore, the words "any offence under the Indian Penal code" which follow, must be given an interpretation confining them to

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those sections of the Indian Penal Code where property is either directly or indirectly involved.\(^4\)

It deserves mention here that sub-section (4) of Sec. 360 of the Code of Criminal Procedure, 1973 empowers the Appellate Court or the High Court or the Court of Sessions in the exercise of the revisional jurisdiction, to deal with a case falling within the purview of Sec. 360 of the Code of Criminal Procedure, 1973. Where it is pointed out that neither the Trial Court nor did the Lower Appellate Court comply with the mandatory provisions of Sec. 361 of the Code of Criminal Procedure, 1973 inasmuch as no reasons, much less special were given for not releasing the accused on probation, since High Court in the exercise of its powers of revision can deal with the relief claimed, without remanding the case to the Lower Appellate Court for complying with the provisions of Sec. 361 of the Code of Criminal Procedure, 1973. Now the question is, should the benefit of the provisions of the Sec. 360 of the Code or of the Probation of Offenders Act be given to the accused. For so doing the Court is required to take into account the age, character or antecedents of the offender, the circumstances in which the offence was committed, the nature thereof and then to form an opinion if it is expedient that the offender be released on probation of good conduct. Very often it is urged that there is nothing on record against his character or antecedents. It is so, not because the accused is unquestionably of good character but because of the legal aspect discussed hereinafter. The onus is on the prosecution to prove the charge against an accused person. That having been discharged if an accused is desirous of having the benefit of release on probation, he has to bring the relevant material favourable to him on record. Where the accused led no evidence in relation to his good character, the prosecution was thus precluded from giving any evidence with respect to his bad antecedents, if any. Since bad character of the

accused itself was never in issue, there was no occasion for the prosecution to give evidence of his bad character. Above all conviction has completely demolished the presumption of innocence in his favor. For the foregoing reasons the contention that there is nothing on record against his character is devoid of force.¹

(iii) Exercise of power under this Act –

Though the powers given under Sec. 360 (Sec. 562 of the code of Criminal Procedure, 1898) should be freely exercised, still when circumstances permit action should be taken under the probation of offenders Act, 1958 training or rehabilitation of youthful offenders.

Under Sec. 3 of the probation of offenders Act, 1958 (20 of 1958), a person of any age may be released on admonition provided there was no previous conviction against him and provided he committed offences under the Indian Penal Code either under the sections specified or offences punishable with two years or fine or with both either under Indian Penal Code or under any other law. Of course, the trying Magistrate is expected to take circumstances of the case and the nature of the offence and character of the offender into consideration.

Section 3 of the Probation of Offenders Act, 1958, is based on Sec. 562 (1-A) of the Code of Criminal Procedure, 1898 (Sec. 360, new) Code of the Criminal Procedure, 1973. Under that section a person could be released on admonition when he was convicted of theft in a building, dishonest misappropriation, cheating or any other offence under the Indian Penal Code punishable with not more than two years imprisonment. In Sec. 3 of the Probation of Offenders Act, 1958 the scope of this proviso has been extended to offences specified in the section or any offence punishable with imprisonment for not more than two years with fine or with both either under Indian Penal Code or under any other law.

¹ Harnam Singh v. State of Punjab, 1977 Cr. L.J. 728 at pp. 729-30 (Punj.)
When no Previous conviction is proved

Section 3 of the Probation of Offenders Act, 1958 can be applied only to first offenders and so accused who has already spent two terms in a Borstal School cannot be treated under this section.\(^{88}\)

When accused is convicted in two cases tried consecutively this section will not apply at the time when second judgment is written as then he must be considered to have been convicted within the knowledge of the Court.\(^ {89}\)

To presume on no evidence that a man committing an offence must have committed several offences before which he went undetected is not allowable under our law. So, it is considered that all the accused of this type are really first offenders.\(^ {90}\)

The proof of a previous conviction not contemplated by Sec. 75 of the Indian Penal Code, may be adduced provided the previous conviction is relevant under the Evidence Act, 1872. The whole question is whether the previous conviction in question is relevant under the Act. It is certainly relevant with reference to the question whether the provisions of Sec. 562 (Sec. 360, new) of the Code of Criminal Procedure, would apply to the case, and it seems to be otherwise relevant on the question of punishment. The lower court was justified in taking it into consideration in deciding the question of punishment after the accused was found guilty.\(^ {91}\) It is improper to interfere merely because a conviction of this type is discovered afterwards.\(^ {92}\)

Section 360 of Cr. P.C. not to be employed where Probation of Offenders Act is in force

Where the provisions of the Probation of Offenders Act are applicable the employment of Sec. 360 of the Code of Criminal Procedure is not be made. In cases of such application, it would be an illegality.


\(^{92}\) King-Emperor v. Pratap Narain, A.I.R. 1925 Oudh 673 at p. 673.
resulting in highly undesirable consequences, which the Legislature, who
gave birth to the said Act and the Code wanted to obviate. yet the
Legislature in its wisdom has obliged the Court under Sec. 361 of the
Code to apply one or the other beneficial provisions; be it Sec. 360 of the
Code or the provisions of the Court. The comparative elevation of the
provisions of the said Act are further noticed in sub-section (10) of Sec.
360 of the Code which makes it clear that nothing in the said section
shall affect the provisions of the said Act. Those provisions have a
paramount of their own in the respective areas where they are
applicable.93

3.9 Probation Law in Juvenile Justice Act, 1986

Juvenile Justice Act, 1986- Its main features are-
1. As a result of the experience of implementing the Central and State
Children Acts over a considerable period, it was felt that there was
a lack of uniformity in the provisions of the Children Acts. No
minimum standard for basic needs, living conditions, therapeutic
services etc. were maintained under the Children Act, 1960
programmes.

2. Therefore, keeping in view the United Nations Standard Minimum
Rules for the administration of juvenile justice (Beijing Rules,
1985), the Government of India enacted the Juvenile Justice Act
in 1986 for the whole country to provide for the care, protection,
treatment, Research Journal of Social and Life Sciences, ISSN
0973-3914, Vol.-12-II, Year-06, June, 2012 67 development and
rehabilitation of neglected and delinquent juveniles and for the
adjudication of certain matters relating to delinquent juveniles.

3. The JJ Act, 1986 envisaged a comprehensive approach towards
justice for children in situations of abuse, exploitation and social

2007(1) An. L.D. (Cr.) 709 ; (2007) 1 All Cr. L.R. 573 (S.C.) ; 2007 (1) Crimes 117 (S.C.) :
1298;2008(1) All. Cr. R. 1037 (S.C.) ; 2008 Cr. L.J. 1945 (S.C.) ; 2008 (2) R.C.R. (Cr.)
maladjustment and to lay down a uniform legal framework for juvenile justice in the country so as to ensure that no child under any circumstances is lodged in jail or police lock-up.

4. The JJ Act, 1986 replaced the traditional mechanism for dealing with children in conflicts with law under the various Children Acts in the States and Union Territories.

**Juvenile Justice (Care and Protection of Children) Act, 2000**-


Its Salient features are -

1. Disparity of age between male and female child has been removed and both have been kept at par i.e. 18 years of age.

2. Two terminology for child i.e. juvenile in conflict with law and child in need of care and protection, have been used in the JJ Act 2000;

3. Two different systems for dispositions of juvenile in conflict with law and children in need of care and protection have been used through its Juvenile Justice Board and the Child Welfare Committee respectively;

4. Categories of children have been increased. Under the Central Children Act, 1960, there were five categories of children, one delinquent children and four types of neglected children. Under the Juvenile Justice Act, 1986, the categories of the children were retained. However, under the Juvenile Justice (Care and Protection of Children) Act, 2000, these have been increased to eleven, one juvenile in conflict with law and ten types of children in need of care and protection;
5. Classification and separation of juveniles in the special homes has been made on the basis of age and the nature of offences committed by them and their mental and physical status.

6. Juvenile Justice Board is empowered to provide counselling to juvenile, parent, guardian and direct the juvenile to participate in group counselling and similar activities.

7. Special Juvenile Police Unit will handle the juvenile in conflict with law or the children in need of care and protection.

8. Child Welfare Committee has been given statutory powers.

9. Special emphasis has been given to the protection of human rights of the child.

10. Award of sentence to death and life imprisonment to juvenile has been prohibited.

11. Protection has been provided to the juveniles from stigmatisation, publication of names etc. which may lead to identification of the juvenile before the Juvenile Justice Board.

12. It provides that the following orders cannot be passed in relation to a juvenile:
   - a juvenile cannot be sentenced to death;
   - a juvenile cannot be imprisoned for life; and
   - a juvenile cannot be committed to prison in default of payment of fine or (ii) furnishing surety.

13. Juvenile in conflict with law has been defined in the JJ Act 2000 as: a juvenile who has not completed the age of eighteen years and is alleged to have committed an offence.

14. A child below seven years of age or who is above seven but below twelve years of age, who has not attained the sufficient maturity to understand the nature and consequences of his/her conduct, cannot be dealt with as a juvenile in conflict with law as he/she is
incapable to understand the nature and consequence of his/her conduct on that occasion.

The Juvenile Justice (Care and Protection of Children) Act, 2000 is the primary legal framework for juvenile justice in India. The Act provides for a special approach towards the prevention and treatment of juvenile delinquency and provides a framework for the protection, treatment and rehabilitation of children in the purview of the juvenile justice system.

This law, brought in compliance of Child Rights Convention, repealed the earlier Juvenile Justice Act of 1986. This Act has been further amended in year 2006 and 2010. Government of India is once again contemplating bringing further amendments and a review committee has been constituted by Ministry of Women and Child Development which is reviewing the existing legislation. Juvenile Justice Act is considered to be an extremely progressive legislation and Model Rules 2007 have further added to the effectiveness of this welfare legislation.

However the implementation is a very serious concern even in year 2012 and Supreme Court of India is constantly looking into the implementation of this law in Sampurna Behrua Versus Union of India. Based on a resolution passed in year 2006 and reiterated again in 2009 in the Conference of Chief Justices of India, several High Courts have constituted “Juvenile Justice Committees” which are monitoring committees headed by sitting Judges of High Courts.

These Committees supervise and monitor implementation of Juvenile Justice Act in their Jurisdiction and have been very effective in improving state of implementation. Juvenile Justice Committee of Delhi High Court is considered a model in this regard.

This Act, further amended in 2006 and is now known as the Juvenile Justice (Care and Protection) Act, 2000. Section 21 of the Juvenile Justice (Care and Protection of Children) Act, 2000 (56 of 2000) as amended by the Juvenile Justice (Care and Protection of Children)
Amendment Act, 2006 (33 of 2006), states that: “Prohibition of publication of name, etc., of juvenile or child in need of care and protection involved in any proceeding under the Act-

1) No report in any newspaper, magazine, news-sheet or visual media of any inquiry regarding a juvenile in conflict with law or a child in need of care and protection under this Act shall disclose the name, address or school or any other particulars calculated to lead to the identification of the juvenile or child shall nor shall any picture of any such juvenile or child shall be published: Provided that for any reason to be recorded in writing, the authority holding the inquiry may permit such disclosure, if in its opinion such disclosure is in the interest of the juvenile or the child.

(2) Any person who contravenes the provisions of sub-section (1), shall be liable to a penalty which may extend to twenty-five thousand rupees”. While provisions relating to the Juveniles in conflict with law are very important from jurisprudence point of view, this Act becomes very crucial for Children in Need of Care and Protection, as they are very large in number.

Section 29 of the Act provides constituting five members District (Administrative unit in India) level quasi-judicial body “Child Welfare Committee”. One of the members is designated as Chairperson. At least one of the members shall be woman. The Committee shall have the final authority to dispose of cases for the care, protection, treatment, development and rehabilitation of the ‘Children in Need of Care and Protection’ as well as to provide for their basic needs and protection of human rights.

**Probation Law in Juvenile Justice Act, 2000**

Besides these two enactments (Probation of offenders Act, 1958 & Criminal Procedure Code, 1973) the Juvenile Justice (Care and Protection of Children) Act, 2000 also provides for the release of children who have committed offences to be released on probation of good
conduct and placed under the care of any parent, guardian or other fit person, on such parent, guardian or other fit person executing a bond, with or without surety, or any fit institution as the Board may require, for the good behavior and well-being of the juvenile for any period not exceeding three year.

**Order that may be passed regarding juvenile:**

Direct the juvenile to be released on probation of good conduct and placed under the care of any fit institution for the good behavior and well-being juvenile for any period not exceeding three years.

Provided that the Boards may, if it is satisfied that having regard to the nature of the offence and the circumstances of the case, it is expedient so to do, for reasons to be recorded, reduce the period of stay to such period as it thinks fit.

The board shall obtain the social investigation report on juvenile either through a Probation Officer or a recognised voluntary organisation or otherwise, and shall take into consideration the findings of such report before passing an order.

(3) Where an order under clause (d), (e) or (f) of sub-section (1) is made, the Board may, if it is of opinion that in the interests of the juvenile and of the public, it is expedient so to do, in addition make an order that the juvenile in conflict with law shall remain under the supervision of a Probation Officer named in the order during such period, not exceeding three years as may be specified therein, and may in such supervision order impose such conditions as it deems necessary for the due supervision of the juvenile in conflict with law:

Provided that if at any time afterwards it appears to the Board on receiving a report from the Probation Officer or otherwise, that the juvenile in conflict with law has not been of good behaviour during the period of supervision or that the fit institution under whose care the juvenile was placed is no longer able or willing to ensure the good behaviour and well-being of the juvenile it may, after making such
inquiry as it deems fit, order the juvenile in conflict with law to be sent to a special home.

The Board shall while making a supervision order under sub-section (3), explain to the juvenile and the parent, guardian or other fit person or fit institution, as the case may be, under whose care the juvenile has been placed, the terms and conditions of the order and shall forwith furnish one copy of the supervision order to the juvenile, the parent, guardian or other fit person or fit institution, as the case may be, the sureties, if any, and the Probation Officer.

**Release of Juvenile on Probation of good conduct**-

The Juvenile Justice Board may order the release of juvenile in conflict with law on probation of good conduct and placed him under the care of his parents, guardian or any other proper person. Having regard to the circumstances of the case, the Board may also direct the juvenile to enter into a bond, with or without sureties. But the period of such order of release on probation shall not exceed three years.

Besides, the Board may order the placement of the Juvenile in a Special Home. But the period of such placement -

1. shall not be less than two years where the age of juvenile is more than 17 years but less than 18 years;
2. In the case of other juveniles, until they complete the age of being treated as juvenile, i.e., eighteen years, both for boys as well as girls.

The release of a person on probation being a treatment reaction to crime, it offers an opportunity to the juvenile to reform and rehabilitate himself. This is why it is considered as a better alternative for the juveniles in conflict with law rather than their prisonisation where they are chances of their contamination in association with hardened criminals. But at the same time, the Board should make sure that release of juvenile on probation is not being misused by him for ulterior purposes.
It is discretion of the Court to allow the benefit of release on probation to an accused but such discretion should be exercised judicially and probation should not be allowed in case of serious offences.

In Municipal Corporation, Dehi v. Rattan Lal, it was held that while allowing the benefit of release on probation to an accused, the Court should take into consideration (i) the circumstances of the case; (ii) the nature of the offence; (iii) age and character of the offender, and his antecedents; (iv) family background; and (v) previous conviction of the accused, if any.

The Board may also order under this section that juvenile be placed under the supervision of the Probation Officer for a period not exceeding three years where it finds that such placement is in the interest of juvenile or in public interest. The Probation Officers shall submit the periodical report about the juvenile and his progress in reformation.

Where on the basis of the Probation Officer's report the Board finds that the juvenile is not keeping good behaviour or it is difficult to keep him under control, it may order the placement of such probationer juvenile to Special Home.

Where the Board orders the custody of the juvenile to any person or Special Home, care has to be taken to ensure that he is not being imparted any religious education which is contrary to his own religious faith or conviction.

**3.10 Probation Law in the Probation of Offenders Act, 1958**

**The Probation of Offenders Act in 1958** –

Its main features are as under-

(i) It restricts courts in awarding imprisonment to offenders under twenty, Law of probation has empowered under some provisions of Indian constitution treatment of offenders in the **Directive**
**Principles** of the State Policy embodied in Part IV of the Constitution of India;

(ii) Inclusion of the subject of prisons and allied institutions in the **Concurrent List** of the Seventh Schedule to the Constitution of India;

(iii) Enactment of uniform and comprehensive legislation embodying modern principles and procedures regarding reformation and rehabilitation of offenders.

(iv) There shall be in each State and Union Territory a **Department of Prisons and Correctional Services** dealing with adult and young offenders – their institutional care, treatment, aftercare, probation and other non-institutional services.

(v) The State shall endeavour to evolve proper mechanism to ensure that no **undertrial prisoner** is unnecessarily detained. This shall be achieved by speeding up trials, simplification of bail procedures and periodic review of cases of undertrial prisoners. Under trial prisoners shall, as far as possible, be confined in separate institutions.

(vi) Since it is recognized that imprisonment is not always the best way to meet the objectives of punishments the government shall Endeavour to provide in law new **alternatives to imprisonment** such as community service, forfeiture of property, payment of compensation to victims, public censure, etc.

**Probation of Offenders Act, 1958**, is effectively implemented throughout the country.

(i) Living conditions in every prison and allied institution meant for the custody, care, treatment and rehabilitation of offenders shall be compatible with **human dignity** in all aspects such as accommodation, hygiene, sanitation, food, clothing, medical facilities, etc. All factors responsible for vitiating the atmosphere of these institutions shall be identified and dealt with effectively.
(ii) In consonance with the goals and objectives of prisons, the State shall provide appropriate facilities and professional personnel for the classification of prisoners on a scientific basis. Diversified institutions shall be provided for the segregation of different categories of inmates for proper treatment.

(iii) The State shall endeavour to develop the field of **criminology** and **penology** and promote **research** on the typology of crime in the context of emerging patterns of crime in the country. This will help in proper classification of offenders and in devising appropriate treatment for them.

(iv) A system of **graded custody** ranging from special security institutions to open institutions shall be provided to offer proper opportunities for the reformation of offenders according to the progress made by them.

(v) Programmes for the **treatment** of offenders shall be individualized and shall aim at providing them with opportunities for diversified education, development of work habits and skills, change in attitude, modification of behaviour and implantation of social and moral values.

(vi) The State shall endeavour to develop **vocational training** and **work programmes** in prisons for all types of offenders.

(x) A system of **graded custody** ranging from special security institutions to open institutions shall be provided to offer proper opportunities for the reformation of offenders according to the progress made by them.

(xi) Programmes for the **treatment** of offenders shall be individualized and shall aim at providing them with opportunities for diversified education, development of work habits and skills, change in attitude, modification of behaviour and implantation of social and moral values.
(xii) The State shall endeavour to develop *vocational training* and *work programmes* in prisons for all inmates eligible to work. The aim of such training and work programmes shall be to equip inmates with better skills and work habits for their rehabilitation.

(xiii) Payment of *fair wages* and other *incentives* shall be associated with work programmes to encourage inmate participation in such programmes. The incentives of leave, remission and premature release to convicts shall also be utilized for improvement of their behaviour, strengthening, of family ties and their early return to society.

(xiv) Custody being the basic function of prisons, appropriate *security arrangements* shall be made in accordance with the need for graded custody in different types of institutions. The management of prisons shall be characterized by firm and positive discipline, with due regard, however, to the maintenance of *human rights* of prisoners. The State recognizes that a prisoner loses his right to liberty but maintains his *residuary rights*. It shall be the endeavour of the State to protect these residuary rights of the prisoners.

(xv) The State shall provide *free legal aid* to all needy prisoners.

(xvi) Prisons are not the places for confinement of children. *Children* (under 18 years of age) shall in no case be sent to prisons. All children confined in prisons at present shall be transferred forthwith to appropriate institutions, meant exclusively for children with facilities for their care, education, training and rehabilitation. Benefit of *non-institutional* facilities shall, whenever possible, be extended to such children.

(xvii) *Young offenders* (between 18 to 21 years) shall not be confined in prisons meant for adult offenders. There shall be separate institutions for them where, in view of their young and
impressionable age, they shall be given treatment and training suited to their special needs of rehabilitation.

(xviii) **Women offenders** shall, as far as possible, be confined in separate institutions specially meant for them. Wherever such arrangements are not possible they shall be kept in separate annexes of prisons with proper arrangements. The staff for these institutions and annexes shall comprise of women employees only. Women prisoners shall be protected against all exploitation. Work and treatment programmes shall be devised for them in consonance with their special needs.

(xix) **Mentally ill prisoners** shall not be confined in prisons. Proper arrangements shall be made for the care and treatment of mentally ill prisoners.

(xx) Persons courting arrest during non-violent sociopolitical-economic agitations for declared public cause shall not be confined in prisons along with other prisoners. Separate prison camps with proper and adequate facilities shall be provided for such nonviolent agitators.

(xxii) **Prison services** shall be developed as a professional career service. The State shall endeavour to develop a well-organized prison cadre based on appropriate job requirements, sound training and proper promotional avenues. The efficient functioning of prisons depends
undoubtedly upon the personal qualities, educational qualifications, professional competence and character of prison personnel. The status, emoluments and other service conditions of prison personnel should be commensurate with their job requirements and responsibilities. An *All India Service* namely the *Indian Prisons and Correctional Service* shall be constituted to induct better qualified and talented persons at higher echelons. Proper **training** for prison personnel shall be developed at the national, regional and state levels.

(xxiii) The State shall endeavour to secure and encourage *voluntary participation* of the *community* in prison programmes and in *non-institutional* treatment of offenders on an extensive and systematic basis. Such participation is necessary in view of the objective of ultimate rehabilitation of the offenders in the community. The government shall open avenues for such participation and shall extend financial and other assistance to voluntary organizations and individuals willing to extend help to prisoners and ex-prisoners.

(xxiv) Prisons are hitherto a closed world. It is necessary to open them to some kind of positive and constructive public discernment. Selected *eminent public-men* shall be authorised to visit prisons and give independent report on them to appropriate authorities.

(xxv) In order to provide a forum in the community for continuous thinking on problems of prisons, for promoting professional knowledge and for generating public interest in the reformation of offender, it is necessary that a *professional non-official* registered body is established at the national level. It may have its branches in the States and Union Territories. The Government of India, the State Governments and the Union Territory Administrations shall encourage setting up of such a body and its
branches, and shall provide necessary financial and other assistance for their proper functioning.

(xxvi) Probation, aftercare, rehabilitation and follow-up of offenders shall form an integral part of the functions of the Department of Prisons and Correctional Services.

(xxvii) The development of prisons shall be planned in a systematic manner keeping in view the objectives and goals to be achieved. The progress of the implementation of such plans shall be continuously monitored and periodically evaluated.

(xxviii) The governments at the Centre and in the States / Union Territories shall endeavour to provide adequate resources for the development of prisons and other allied services.

(xxix) Government recognizes that the process of reformation and rehabilitation of offenders is an integral part of the total process of social reconstruction, and, therefore, the development of prisons shall find a place in the national development plans.

( xxx) In view of the importance of uniform development of prisons in the country the Government of India has to play an effective role in this field. For this purpose the Central Government shall set up a high status National Commission on Prisons on a permanent basis. This shall be a specialized body to advise the Government of India, the State Governments and the Union Territory Administrations on all matters relating to prisons and allied services. Adequate funds shall be placed at the disposal of this Commission for enabling it to play an effective role in the development of prisons and other welfare programmes. The Commission shall prepare an annual national report on the administration of prisons and allied services, which shall be placed before the Parliament for discussion.

( xxxi) As prisons form part of the criminal justice system and the functioning of other branches of the system – the police, the
prosecution and the judiciary have a bearing on the working of prisons, it is necessary to effect proper coordination among these branches. The government shall ensure such coordination at various levels.

(xxxii) The State shall promote research in the correctional field to make prison programmes more effective.