**UNIT 6 – PROBATION**

**BY – Pankaj S. Meena**

**Assistant Professor,**

**UCL, MLSU**

1. **Why the need for probation?**

The underline principle behind the concept of probation is that an accused person should be given a chance of reformation which he would lose in case he is incarcerated in prison and associates with hardened criminals.

Probation is the postponement or suspension of final judgment or sentence in a criminal case, giving the offender an opportunity to improve his conduct and to readjust himself to the community, often on condition imposed by the court and under the guidance *or* supervision of an officer of the court.

The suspension of sentence under probation serves the dual purpose of deterrence and reformation. It provides necessary help and guidance to the probationer in his rehabilitation and at the same time the threat of being subjected to unexhausted sentence acts as a sufficient deterrent to keep him away from criminality.

Probation seeks to accomplish the rehabilitation of persons convicted of the crime by returning them to society during a period of supervision rather than by sending them into the unnatural and all too often especially unhealthful atmosphere of prisons.

Probation system is based on reformative theory. It is a scientific approach. It is a rational approach towards the causation of crime of young offenders and thus they can be saved from becoming habitual offenders by dumping them into jails. The probation officer insists on the problem or need of the offender and tries to solve his problem and see that the offender becomes a useful citizen of the society.

1. **OBJECT OF PROBATION**

The object of the Probation of Offenders Act, 1958 as[[1]](#footnote-1):

* To stop conversion of youthful offenders into stubborn criminals as a result of their association with hardened criminals of mature age in case of youthful offenders are sentenced to undergo imprisonment in jail.
* The Act is not meant for hardened and habitual offenders who are beyond redemption and are incorrigible.
* In recent times, the emphasis is on the reformation and rehabilitation of the offender as a self-sufficient and useful member of the society, without subjecting him to the deleterious effects of jail life.
* This relates to the measure of probation, which may be used by the courts as an alternative and is increasingly being used.
1. **HISTORICAL PERSPECTIVE OF PROBATION LAW IN INDIA**
* In India, probation received statutory recognition for the first time in 1898 through Section 562 of the Code of Criminal Procedure, 1898[[2]](#footnote-2). Under the provision of this section, the first offender convicted of not more than two years imprisonment could be released on probation of good conduct at the discretion of the Court.
* The Central Government appointed a committee in 1916 to consider the provision of the Criminal Procedure Code. Particularly, it suggested revision of Section 562 and extension of its provisions to other cases also.
* The scope of probation law was extended further by the legislation in 1923. Consequent to Indian Jail Reforms Committee's Report (1919-20), the first offenders were to be treated more liberally and could even be released unconditionally after admonition.
* The Government of India in 1931, prepared a draft of Probation of Offenders Bill and circulated it to the then Provincial Governments for their views but was not passed.
* Later, the Government of India in 1934, informed the local governments that there were no prospects of a central legislation being enacted on probation and they were free to enact suitable laws on the lines of the draft Bill. Consequently some of the Provinces enacted probation laws which assumed considerable importance because they introduced for the first time provisions regarding pre-sentence enquiry report of probation officer, supervision by paid and voluntary probation officer and compensation for injury caused to a person by the offender's delinquent act. The probation laws enacted by Provinces, however, lacked uniformity.
* After the Indian independence, certain concrete steps were initiated to popularize probation as a correctional measure of treatment of offenders. A Probation Conference was held in Bombay in 1952 on the advice of *Dr. Walter Reckless,* the United Nations Technical Expert on Correctional Services who gave valuable suggestions on Prison Administration in India and assisted in drafting of Probation of Offenders Act, 1958.
1. **THE PROBATION OF OFFENDERS ACT, 1958**

The Probation of Offenders Act contains elaborate provisions relating to probation of offenders which are made applicable throughout the country. The Act provides four different modes of dealing with youthful and other offenders in lieu of sentence subject to certain conditions. These include :­

 (1) release after admonition[[3]](#footnote-3) - Section 3 ;

 (2) release on entering a bond on probation *of* good conduct[[4]](#footnote-4) with or without supervision, and on payment by the offender the compensation and costs to the victim if so ordered, the courts being empowered, to vary the conditions of the bond and to sentence and impose a fine if he failed to observe the conditions ofthe bond – Section 4

 (3) persons under twenty-one years *of* age are not to be sentenced to imprisonment unless the court calls for a report from the probation officer or records reasons to the contrary in writing[[5]](#footnote-5) -Section 6

 (4) the person released on probation does not suffer a disqualification attached to a conviction under any other law[[6]](#footnote-6) - Section 12

1. **Analysis of Section 3**

Section 3 of the Probation of Offenders Act, 1958 provides the Power of court to release certain offenders after admonition.—

When any person is found guilty of having committed an offence punishable under section

1. 379 (punishment for theft) or
2. section 380 (Theft in dwelling house) or
3. section 381(Theft by clerk or servant of property in possession of master) or
4. section 404 (Dishonest misappropriation of property possessed by deceased person at the time of his death) or
5. section 420 (Cheating and dishonestly inducing delivery of property) of the Indian Penal Code, (45 of 1860) or
6. any offence punishable with imprisonment for not more than two years, or with fine, or with both, under the Indian Penal Code, or any other law, and
7. no previous conviction is proved against him and the court by which the person is found guilty is of opinion that, having regard to the **circumstances of the case** including **the nature of the offence**, and **the character of the offender**, it is expedient so to do, then, notwithstanding anything contained in any other law for the time being in force, the court may, instead of sentencing him to any punishment or releasing him on probation of good conduct under section 4 release him after due admonition.

Admonition is a type of punishment by which an accused person will be discharged after **warning** him/her that if the offense is committed again he or she would be punished with severity. In admonition an accused is found guilty but is neither imprisoned nor fined.

The accused can be released after admonition only in the case of certain offences specified in Section 3 of the P.O. Act namely offences punishable under Section 379, 380, 381, 404 and 420 of the Indian Penal Code and any other offence which is punishable with fine or with imprisonment for not more than two years or with both.

1. **Analysis of Section 4 of Probation of Offenders Act 1958**

**Section 4** of the act deals with the power of the court to release certain offenders on probation of good conduct.

As per **Section 4**, if any person is found guilty of having committed an offense not punishable with death or imprisonment for life and the court by which the person is found guilty is of opinion that, having regard **to the circumstances of the case** including **the nature of the offence** and **the character of the offender**, it is expedient to release him on probation of good conduct, then, notwithstanding anything contained in any other law for the time being in force, the court may, instead of sentencing him at once to any punishment, direct that he be released on his entering into a bond, with or without sureties, to appear and receive sentence when called upon during such period, not exceeding three years, as the court may direct and in the meantime to keep the peace and be of good behavior.

The section further requires that the offender or his surety has a fixed place of residence or regular occupation in a place where the court exercises jurisdiction. Also, before making any such order, the court shall take into consideration the report, if any, of the probation officer, concerned in relation to the case. However, it is not necessary that the court has to act on the probation officers report. It can also gather information from other source and on its own analysis.

While directing the accused to be released under Section 4(1) of Probation of good conduct the Court may also pass an order under Section 4(3) of the P.O. Act placing the accused under the supervision of the Probation Officer for a period of not less than one It can also impose appropriate conditions which might be required for such supervision. In case the court does specify such conditional release, it must require the offender has to enter into a bond, with or without sureties, enumerating the conditions. The conditions may relate to the place of residence, abstention from intoxicants, or any other matter as the court thinks appropriate to ensure that the crime is not repeated.

It is a general section under which the benefit is extended to the offenders under 21 years of age and also offenders who are above 21 years of age.  Discretion is exercised by the court while giving the benefit of probation to the offenders above 21 years of age. No reasons are to be recorded when the benefit of probation is granted to the offenders above 21 years of age.

An order of release on probation came into existence only after the accused is found guilty and is convicted of the offense. Thus the conviction of the accused or the finding of the court that he is guilty cannot be washed out at all because that is the*sine quo non* for the order of release on probation of the offender. The order of release on probation of the offender is merely in substitution of the sentence to be imposed by the court. This has been made permissible by the statute with a humanist point of view in order to reform youthful offenders ad to prevent them from becoming hardened criminals.

**Meaning of the “character” of the accused**

The word character is not defined in the Act. Hence it must be given the ordinary meaning.

**Power is discretionary**:

While granting the benefit under the Act the court shall take into consideration the nature of the offense. If the offense is not trivial in nature, the court should not be lenient in granting such a benefit. Power to release on probation is discretionary and has to be exercised in appropriate cases.

Conditions to be satisfied for application of Section 4:

(1) the offense committed must not be one punishable with death or imprisonment for life.

(2) the court must opine that it is expedient to release him on probation of good conduct instead of sentencing him to any punishment  and

(3) the offender or surety must have a fixed place of abode it regular occupation in a place situated within the jurisdiction of the court.

In ***Dasappa v. State of Mysore****,*it is laid down as follows :

“It is only when the court forms an opinion that the offender in a given case should be released on probation of good conduct that it has to act as provided by **Section 4** of the Act. It was for the accused to have placed all the necessary material before the court which could have enabled it to consider that the first accused was an offender to whom the benefit of Section 4 would be extended “.

**FOR WHAT OFFENCES, SECTION 4 CANNOT BE APPLIED?**

It was settled law that nobody can claim benefit under Probation of Offenders Act as a matter of right.

It has further been contended that the Court should also take into consideration that the convicts belonging to middle-class families without any criminal antecedent often become the victim of circumstances because of an undesirable company and other evil influences available to such young generation.Provisions of Probation of Offenders Act,1958 normally cannot be applied to the following offenses:

1. Section 304 Part – II of IPC
2. NDPS cases
3. Section 304-A of IPC
4. Section 325 of IPC
5. Section 409,467,471 of IPC
6. Kidnapping and Abduction
7. Habitual Offenders, etc.

**CASE LAWS**

**LANDMARK CASES**

**I. *Uttam Singh vs The State (Delhi Administration) 21 March, 1974***

The appellant was convicted under s. 292 I.P.C. and sentenced to rigorous imprisonment and fine for selling a packet of playing cards portraying on the reverse luridly obscene naked pictures of men and women in pornographic sexual postures. The conviction and sentence was affirmed by the High Court.

It was contended that the sentence was very severe on the ground that only one single offense had been established and secondly that he might be released Linder the Probation of Offenders Act, 1958.

**Facts :** The accused has a shop at Kishan Ganj, Delhi. It is no more in controversy that on 1st February 1972, the accused sold a packet of playing cards portraying on the reverse luridly obscene naked pictures of men and women in pornographic sexual postures to P.W. 1. This sale was arranged by the police Sub-Inspector (P.W. 4) on receipt of secret information about the accused uttering these obscene pictures.

On getting a signal from the purchaser a raid was made in the accused’s shop when two more packets of such obscene cards were also recovered in addition to the packet already sold to P.W. 1. The ten-rupee note, which was the price of the said set of playing cards and which had been earlier given-by the Sub-Inspector to P.W. 1, was also recovered from the person of the accused.

At the trial, the accused was convicted under Section 292, Indian Penal Code and sentenced to six months’ rigorous imprisonment and to a fine of Rs. 500/-, in default further rigorous imprisonment for three months. The High Court affirmed the conviction as well as the sentence.

The learned counsel for the appellant submitted that the sentence is very severe on the ground that only one single sale has been established in this case and also only three packets of cards were recovered from the accused. He further submitted that the accused is entitled to be released on probation under Section 4 of the Probation of Offenders Act, 1958.

**Held** – The accused is married and is said to be 36 years of age.  Having regard to the circumstances of the case and the nature of the offense and the potential danger of the accused’s activity in this nefarious trade affecting the morals of society particularly of the young, we are not prepared to release him under section 4 of the Probation of Offenders Act. These offenses of corrupting the internal fabric of the mind have got to be treated on the same footing as the cases of food adulterators and we are not prepared to show any leniency. The appeal was, therefore, rejected.

**II.*Ishar Das vs State Of Punjab on 31 January***

The appellant, who was less than 20 years was convicted for an offense under s. 7(1) of the Prevention of Food Adulteration Act, 1954, and was ordered to furnish a bond under s. 4 of the Probation of Offenders Act, 1958. The High Court revised the sentence, because of Section 16 of the Prevention of Food Adulteration Act Prescribed a minimum sentence of imprisonment for 6 months and a fine of Rs. 1000.

It is Manifest from plain reading of sub-section (1) of section 4 of the Act that it makes no distinction between persons of the age of more than 21 years and those of the age of less than 21 years. On the contrary, the said subsection is applicable to persons of all ages subject to certain conditions which have been specified therein. Once those conditions are fulfilled and the other formalities which are mentioned in section 4 are complied with, power is given to the court to release the accused on probation of good conduct.

The question which arises for determination is whether despite the fact that a minimum sentence of imprisonment for a term of six months and a fine of rupees one thousand has been prescribed by the legislature for a person found guilty of the offense under the Prevention of Food Adulteration Act, the court can resort to the provisions of the Probation of Offenders Act.

In this respect sub-section (1) of Section 4 of the Probation of Offenders Act contains the words “notwithstanding anything contained in any other law for the time being in force”. The above non-obstante clause points to the conclusion that the provisions of Section 4 of the Probation of Offenders Act would have an overriding effect and shall prevail if the other conditions prescribed are fulfilled.

Those conditions are:

(1) the accused is found guilty of having committed an offense not punishable with death or imprisonment for life,

(2) the court finding him guilty is of the opinion that having regard to the circumstances of the case, including the nature of the offense and the character of the offender, it is expedient to release him on probation of good conduct, and,

(3) the accused in such an event enters into a bond with or without sureties to appear and receive sentence when called upon during such period not exceeding three years as the court may direct and, in the meantime, to keep the peace and be of good behavior.

**HELD**: Section 4(1) of the Probation of Offenders Act contains the non-obstante clause notwithstanding anything contained in any other law for the time being in force, and hence the section would have overriding effect and shall prevail if its other conditions are fulfilled; especially when the Probation of Offenders Act was enacted in 1958 subsequent to the enactment in 1954 of the Prevention of Food Adulteration Act.

As the object of Probation of offenders act 1958 is to avoid imprisonment of the person covered by the provisions of that act, the said object cannot be set at naught by imposing a sentence of the fine which would necessarily entail imprisonment in case there is a default in the payment of fine.

The Supreme Court held that the Probation of Offenders Act was applicable to the offenses under the Prevention of Food Adulteration Act, 1954.

**III. *Public Prosecutor v. N.S. Murthy*[xv]**

The accused was tried for committing murder of his wife but he was convicted under Section 323 of IPC as the injury caused by him was simple in nature. He was released on Probation by the trial court but the High Court sentenced him to sic months R.I. It was held that the conduct of the accused immediately after the occurrence as well as the trial was one of the relevant and material factors to be taken into account before exercising powers under Section 4(1) of the Probation of Offenders Act 1958. In regard to the conduct of accused the court made the following observation:

“In the present case, the accused did not admit his guilt at any stage. The conduct of the accused is not that of a man of good character. Admittedly he ran away after the incident. He was kept in custody of P.W 3 and was handed over to the police on the day following the date of offense at the inquest. He never repented for what had happened to his wife either immediately after the occurrence or at any time subsequent thereto. His statement under Section 342 CrPC makes it abundantly clear that he is not entitled to have the benefit of Section 4(1) of the Act.

**RECENT CASES**

**I. *Sukhnandan v. State of M.P***

The High Court while dealing with a question as to whether the benefits of the provisions of the Act may be granted to the accused, for outraging the modesty of woman it has been held after considering the provisions of Section 4 as well as Section 12 of the Act , it would be just and proper that  the applicant, who is in service and his service record is found not to be good and also he is having five children and is the sole bread earner, the sentence of fine even imposed on him may attach disqualification, be given the benefit of the provisions of the Act

**Facts**– On 31-10-1990 at 12 o’clock while Parbatia Bai (P.W. 1) was returning from the well, accused met her and followed her. He asked where her husband has gone. Parbatia told that her husband has gone for earning wages. He demanded liquor from Parbatia, but Parbatia refused. He tried to drag Parbatia and took her near the Jack-Fruit Tree (Kathal Ped) and slapped Parbatia.

Parbatia cried, her bangles were broken and her Saree had torn, then the accused ran away from the spot. Parbatia complained about the matter to Muniram, her husband. Both of them then went to the police station on 2-11-1990 at 11:00 a.m. and lodged the F.I.R. Offence under Sections 354 and 323 was registered. She was sent for medical examination. Ex. P-5 is a medical report. The applicant was arrested and the challan was filed.

The accused was serving as Peon in the Education Department. His service record is said to be good. He is having five children, three daughters, and two sons, and the conviction awarded to him may result in removal from service. Therefore, the benefits of the provisions of the Probation of Offenders Act, 1958 may be granted to him.

**Held :** Having thus considered the provisions of Section 4 as well as Section 12 of the Probation of Offenders Act, in the opinion of this Court, it would be just and proper that the applicant, who is in service and his service record is found to be good and also he is having five children and is the sole bread earner, the sentence of fine even imposed on him may attach disqualification, be given the benefit of provisions of the Probation of Offenders Act. The State counsel was specifically asked, who stated that he has no objection to this effect.

**II*.  Ashok Kumar Dogra vs The State (N.C.T. Of Delhi) on 29 September 2008***

**Facts :** On 26.6.1995, while driving a red line bus bearing registration No. DL- 1P-2315 at Peera Garhi Chowk, Delhi, the petitioner hit a scooter bearing No. DL-1S-1132. The scooter rider, who was injured succumbed to his injuries later on. PW-8, Ct. Randhir Kumar was an eye witness to the accident.

Before the Metropolitan Magistrate, Ct. Randhir Kumar deposed that the accident was a result of rash and negligent driving of the petitioner. Considering the entire evidence produced by the prosecution the petitioner was convicted by the Metropolitan Magistrate. The appeal preferred by the petitioner was also dismissed by the Sessions Court, holding that there is no infirmity in the order passed by the Trial Court.

On 28th March 2008, counsel for the petitioner confined his plea in this matter to the reduction of sentence and/or the benefit of Sections 3 and 4 of the Probation of Offenders Act, 1958.

The counsel for the petitioner contends that the petitioner has faced the rigors of trial for nearly twelve years and has already served more than five months of his sentence. Furthermore, the petitioner is the only earning member of the family and has to support his wife and four minor children.

It is also contended that the petitioner has no history of ever being involved in any criminal proceedings. Counsel of the petitioner submitted that keeping in mind these factors, either the sentence of the petitioner may be reduced or the petitioner may be released on probation of good conduct as contemplated by Sections 3 and 4 of the Probation of Offenders Act, 1958.

Counsel for the State, on the other hand, opposed the contention of the petitioner and relies on the decision of the Supreme Court *in Dalbir Singh Vs. State of Haryana* 2000 Cri.L.J. 2283. In that case, whilst dealing with the question of benefit of probation being granted to offenders under Section 304-A of the IPC, the Supreme Court categorically stated that the benefit of any such probation should not be extended to persons convicted under Section 304-A for rash and negligent driving.

**Held**– While considering the quantum of sentence, to be imposed for the offense of causing death by rash or negligent driving of automobiles, one of the prime considerations should be deterrence.

The punishment sentencing the petitioner to undergo rigorous imprisonment for three months under Section 279 IPC, with a fine of Rs.500/-; and rigorous imprisonment for one year with fine of Rs.5,000/- under Section 304-A IPC awarded by the Court of the Metropolitan Magistrate and confirmed by the Court of Sessions was held to be quite reasonable. The revision petition was accordingly dismissed.

**III. *Mukhtiar Singh vs State Of Punjab on 16 March 2010***

The trial Court convicted the petitioner for the offense and sentenced him to undergo rigorous imprisonment for a period of one year and to pay a fine of Rs.5000/- and in default of payment of fine, he was ordered to further undergo rigorous imprisonment for three months. Aggrieved against the same, petitioner had filed an appeal. The Appellate Court dismissed the same, upheld the conviction and maintained the sentence.

**Facts –** On 9th November, 1995, ASI Jagsir Singh was present along with his companion officials at Sirsa Kainchian in connection with patrol duty. At that time, secret information was received that the present petitioner is engaged in the distilling of illicit liquor and is operating a working Still in the fields of Jit Singh son of Harnam Singh at Ghaggar drain.

On the receipt of secret information, ruqa was sent to the Police Station for registration of the case and a raiding party was constituted. When the raiding party reached the spot, it found the accused feeding fire below the hearth. The working still was dismantled. The equipment and raw material was cooled down and was taken into possession. A separate recovery memo was prepared, vide which the equipment of the working Still and 175 kg of Lahan (raw material used for preparing the illicit liquor) were taken into possession.

From the testimony of the witnesses, it has held that the petitioner was operating a working Still and was engaged in distilling illicit liquor. It was submitted that the occurrence had taken place on 9th November, 1995. A period of more than 14 years has elapsed and during this period, the petitioner has not committed any other offense.

It was further submitted that at the time of occurrence, the petitioner was aged about 33 years. He has a large family to support and is the sole breadwinner of his family. It has been submitted that petitioner be granted an opportunity to reform himself and rehabilitate in the society.

In ***Isher Dass v. State of Punjab*,** AIR 1972 SC 1295, Hon’ble Supreme Court held that subsection (1) of Section 4 of the Probation of Offenders Act containing the non-obstante clause, would have an over-riding effect and shall prevail if the other conditions prescribed were fulfilled.

**The Full Bench held as follows:-**“To conclude on the legal aspect, therefore, it must be held that the mere prescription of the minimum sentence under Section 61 (1)(c) of the Punjab Excise Act, 1914 is no bar to the applicability of Sections 360 and 361 of the Criminal Procedure Code, 1973 and the same is not a special reason for denying the benefit of probation to a person convicted thereunder. In the alternative, it is equally no bar to the applicability of Sections 4 and 6 of the Probation of Offenders Act. The answer to the question posed at the outset is rendered in the negative.”

Taking into consideration that in the last 14 years, petitioner has committed no other offense, the age and antecedents of the petitioner, the Court was of the view that ends of justice will be fully met in case petitioner is released on probation under Probation of Offenders Act, 1958 for a period of one year. He shall furnish personal/surety bonds to the satisfaction of the trial Court with an undertaking that he shall maintain peace, good conduct, and behavior during the period of probation.

1. **Analysis of Section 6**

Section 6(1) of the Probation of Offenders Act provides that when **a person below 21 years of age** is found guilty of an offence which is **punishable with imprisonment (but not imprisonment for life)**, the Court by which the person is found guilty shall not sentence him to imprisonment unless it is satisfied that, having regard to the **circumstances of the case i**ncluding **the nature of the offence** and **the character of the offender**, it would **not be desirable to deal with him under section 3 or section 4**, and if the court passes any sentence of imprisonment on the offender, it shall record its reasons for doing so.

Therefore if any person below the age of 21 years has committed an offense not punishable with imprisonment for life and if the Courts imposes imprisonment then the Court is bound to record the reasons for it, but if the person is above the age of 21 years and the Courts does not give him the benefit of Section 3 or 4 then the Court is not bound to record the reasons..

For the purpose of satisfying itself whether it would not be desirable to deal under section 3 or section 4 with an offender referred to in sub-section (1), the court shall call for a report from the probation officer and consider the report, if any, and any other information available to it relating to the character and physical and mental condition of the offender .

1. **Who is a probation officer?**

As per section 13(1) of the Act a probation officer is :-

(a) a person appointed to be a probation officer by the State Government or recognised as such by the State Government; or

(b) a person provided for this purpose by a society recognised in this behalf by the State Government; or

(c) In any exceptional case, any other person who, in the opinion of the court, is fit to act as a probation officer in the special circumstances of the case.

According to Section 13(2) a court which passes an order under section 4 or the district magistrate of the district in which the offender for the time being resides may, at any time, appoint any probation officer in the place of the person named in the supervision order.

As per section 13(3) a probation officer, in the exercise of his duties under this Act, shall be subject to the control of the district magistrate of the district in which the offender for the time being resides.

1. **Duties of A Probation Officer :-**

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

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

1. enquire, in accordance with any directions of a court, into the circumstances or home surroundings of any person accused of an offence with a view to assist the court in determining the most suitable method of dealing with him and submit reports to the court;
2. supervise probationers and other persons placed under his supervision and, where necessary, endeavour to find them suitable employment;

(c) advise and assist offenders in the payment of compensation or costs ordered by the

Court;

(d) advise and assist, in such cases and in such manner as may be prescribed, persons who have been released under section 4;

(e) perform such other duties as may be prescribed.

1. **PROCEDURE**
* The appropriate stage at which probation order may be made by a court is at the time of pronouncement of judgment.
* The Judge may make such an order straightway without calling for a report from the probation officer or he may prefer to call for a report.
* However, it is always advisable to call for a report from the probation officer because at times material available on record in course of trial is hardly sufficient for the presiding Judge to make up his mind on the point whether the accused should be admitted to the benefit of release on probation or not.
* The court must record a clear finding about the age of the offender after recording necessary evidence.
* With a view to avoiding delay in the' disposal of the case, it would be proper to obtain the probation report before the trial is completed.
* In warrant cases, the probation officer is directed to prepare probation report of the offender right at the time the charge is framed.

It must be stated that the provisions of the Probation of Offenders Act are not confined to juveniles alone, but extend to adults also. Again, provisions of the Act are not only confined to offenses committed under the Indian Penal Code but they extend to offenses under other special laws such as the Prevention of Corruption Act, 1947; the Prevention of Food Adulteration Act, 1954; the Customs Act, 1962; the Prevention of Black Marketing & Maintenance of Supplies of Essential Commodities Act, 1980; the Conservation of Foreign Exchange & Prevention of Smuggling Activities Act, 1974, Narcotic Drugs & Psychotropic Substances Act, 1985 etc.

1. **PROVISIONS IN OTHER ENACTMENTS**
2. Section 360 of the Code of Criminal Procedure, 1973, provides the rationale of protection which is extended to young offenders under the Indian law.
	* *Firstly,* the section excludes certain types of offences (for which draconic punishment is provided) from the purview of the Probation of Offenders Act, 1958.
	* *Secondly,* the section prescribes certain age-limit for offenders to be admitted for release on probation; and
	* *Thirdly,* the section explicitly provides that probation applies only to the first offenders.
3. Section 27 of the Code of Criminal Procedure, 1973, provides that any offence not 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 sixteen years, may be tried by the court of a Judicial Magistrate or by any Court specially empowered or any other law for the time being in force providing for the treatment, training or rehabilitation of youthful offenders.
4. The Juvenile Justice (Care and Protection of Children) Act, 2000 which came into force with effect from December 30, 2000 and extends to whole of India excepting the State of Jammu & Kashmir, further provides for the release of children who have committed offences, on probation of good conduct and placing them under the care of their parents or guardians or other fit persons executing a bond, with or without sureties to be responsible for good behavior and well being of the juvenile for any period not exceeding three years.
5. **UTILITY OF PROBATION FROM THE POINT OF VIEW OF THE DELINQUENT**

It serves the needs of the probationer in the following manner :­

1. Probation keeps the offender away from the criminal world.
2. The fear of punishment in case of violation of probation law has a psychological effect on the offender. It deters him from law-breaking during the period of probation. Thus probation indirectly prevents an offender from adopting a revengeful attitude towards the society.
3. Probation seeks to obviate the evils of institutional incarceration and thus prevents the offender from contamination and conforming to a criminal career.
4. Probation seeks to socialize the criminal as the liberty which he enjoys during the probation period enables him to pick up those life-habits which are necessary for a law-abiding member of the community.
5. Probation enables the offender to attend to his domestic obligations and thus contribute to support his family financially by taking up suitable work according to his capability.
6. Probation enables the offender to rehabilitate himself through his own efforts.
7. **UTILITY OF PROBATION FROM THE STAND-POINT OF SOCIETY**

Besides the delinquent; probation also serves a useful purpose for the society as a whole.

1. It is well known that the interests of society are best served when its entire members play a positive role by seeking their self-rehabilitation. Since this object is fully achieved by the probation system, it is indeed an effective method of preserving social solidarity by keeping the law-breakers well under control.
2. During the probation period, the offender is sent to various educational, vocational and industrial institutions where he is trained for a profession which may help him lead an absolutely upright life.
3. Whatever work an offender is doing as a probationer, he is contributing to the national economy. Thus, he no longer remains a burden on society.
1. *Ramji Missar* v. *St. of* Bihar; AIR 1963 SC 1088. [↑](#footnote-ref-1)
2. Now Section 360 of the Code of Criminal Procedure, 1973. [↑](#footnote-ref-2)
3. Section 3 [↑](#footnote-ref-3)
4. Section 4 [↑](#footnote-ref-4)
5. Section 6. [↑](#footnote-ref-5)
6. Section 12 [↑](#footnote-ref-6)