

## Case Studies on Probation

1. R Mahalingam vs G Padmavathi and another (Supreme Court of India), 1978--LW(Crl)182

**Held - Calling for report from Probation Officer:** Before deciding to act under S. 4(1) also, it is mandatory on the part of the court to call for a report from the Probation Officer and if such a report is received, it is mandatory on the part of the court to consider the report.

2. Rattan Lal vs State Of Punjab (Supreme Court of India), 1965 AIR 444, 1964 SCR (7) 676

**Held - Ignoring provisions of the Act:** Both the Additional Sessions Judge and the High Court ignored the mandatory provisions of the Act. It is true that the appellant did not bring the provisions of the Act to the notice of the Court till after the disposal of the revision petition, but that does not absolve the court from discharging its duty under the Act.

3. Daulat Ram vs The State of Haryana (Supreme Court of India), AIR 1972 SC 2334, 1972 CriLJ 1517, (1973) 75 PLR 146

**Held - Object of Section 6 of the Act:** Object of Section 6 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.

4. Yashwant Singh vs The State Of Rajasthan (Rajasthan High Court), 1978 WLN UC 66

**Held - Age at the time of judgment:** Learned Lower Court was definitely wrong when it held that the accused was not below 21 years of age when the judgment was pronounced. The relevant date on which the age of the accused has to be seen is the date when the occurrence took place to extend the benefit of Section 6 of The Probation of Offenders Act, 1958.

5. Mohan Singh vs State Of Rajasthan (Rajasthan High Court), 1994 CriLJ 2229, 1994 (1) WLN 561

**Held - Disqualification from service:** Conviction of the appellant will not incur any disqualification in his service/ career as he has been granted the benefit of Section 4 of the Probation of Offenders Act and it was further directed that his conviction for the aforesaid offences will not attach any disqualification to his service/ career.

## Commonwealth Human Rights Initiative



Commonwealth Human Rights Initiative (CHRI) is an independent, non-partisan, international non-governmental organisation, mandated to ensure the practical realisation of human rights across the Commonwealth. CHRI advocates for better respect for, protection and promotion of international human rights standards and ensuring greater adherence to Commonwealth Harare principles. Issues relating to accountability and participation in governance – access to justice and access to information – are at the heart of CHRI's work. The Commonwealth Human Rights Initiative's access to justice work in India addresses removal of systemic obstacles to justice and builds accountability of justice sector actors vis-à-vis the rule of law and human rights standards. In Rajasthan, CHRI hopes to further its endeavours by capacity building of various actors of the criminal justice system – advocates, magistrates, probation officers, paralegals, jail officials, law students, and strategic interventions in prisons and courts to build safeguards against unnecessary pre-trial detention.

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## THE PROBATION OF OFFENDERS ACT (1958)

- A handout



## Probation of Offenders

- ✚ **What is Probation:** An alternative to imprisonment and an integral part of Penal Reform.
- ✚ **Aim:** To provide the offender a chance to reform and reintegrate into society productively and with accountability.
- ✚ **How does it work:** It is a system in which the offender, instead of being sentenced to imprisonment, is placed under the supervision of a Probation Officer for a specified period and certain conditions laid by the Court, with a view of his/her reformation and rehabilitation back into the community.
- ✚ **History:** Probation of Offender's Act was passed in 1958. Section 562 of the CrPC (1898) was the earliest provision which dealt with probation. It was later amended in 1974 and became section 360.
- ✚ **Why Probation:**
  - Penal system should be reformatory in nature and not punitive
  - Prevents congestion in prisons
  - Not all offenders are dangerous criminals
  - There are many socio-economic external influences which lead a person to commit crime
  - Mixing with repeat or hardened criminals in prison has a negative impact on petty/first time offenders
  - Such a practice can assist the offender, prevent recidivism, and provide opportunities for reform

## Highlights of the Act

- ✚ **Section 3: Power of Court to release certain offenders after admonition** *[Release of first time petty offenders (of any age) on admonition convicted of offences punishable with not more than two years of imprisonment]*
- ✚ **Section 4: Power of Court to release certain offenders on probation of good conduct** *[Release of offenders (any age, irrespective of first or habitual offender) on probation of good conduct and entering into bond with or without sureties for offences not punishable with death or imprisonment for life]*
- ✚ **Section 5: Power of Court to require released offenders to pay compensation and costs.** *[Offender can be directed to pay compensation and cost of proceedings to the person whom he/she caused]*
- ✚ **Section 6: Restrictions on imprisonment of offenders under 21 years of age** *[Restrictions on the Court's power to imprison offenders who are below 21 years of age for an offence punishable with imprisonment (but not imprisonment for life). If the Court passes any sentence of imprisonment, it shall record its reason for doing so.]*
- ✚ **Section 9: Procedure in case of offender failing to observe conditions of bond** *[If the offender has failed to observe the bond, the Court may sentence him/her for the original offence or impose a penalty not exceeding fifty rupees]*
- ✚ **Section 12: Removal of disqualification attaching to conviction**
- ✚ **Section 13 and Section 14: Lay down the Duties of the Probation Officer**

## Powers and Duties of a Magistrate

1. Release certain offenders on **admonition:** Section 3 *(first time offenders, any age, offence punishable with not more than 2 years of imprisonment).*
2. Release certain offenders on **probation** of good conduct, with or without sureties: Section 4 (1) *(first time or habitual offenders, any age, offence not punishable by death or imprisonment for life).*
3. Considering **report** of Probation Officer after the offender is found guilty : Section 4(2)
4. Passing a **supervision order**, impose necessary/additional conditions and explaining the terms and conditions to the offender : section 4 (3, 4 & 5)
5. Direct the offender to pay **compensation** and cost of proceedings to the person whom he/she has caused loss/injury : Section 5
6. Providing grounds to imprison offenders below **21 years of age** : Section 6 *(for offence punishable with imprisonment but not imprisonment for life)*
7. In case of **failure of bond** by the probationer, sentence him/her for the original offence or impose a penalty.