The Probation of Offenders Act, 1958

Act 20 of 1958. 19 sections. Bare Act with the official footnotes.

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[16th May, 1958.]

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

BE it enacted by Parliament in the Ninth Year of the Republic of India as follows:-

Section 1. Short title, extent and commencement

(1) This Act may be called the Probation of Offenders Act, 1958.

(2) It extends to the whole of India [1]***.

(3) It shall come into force in a State on such date[2] as the State Government may, by notification in the Official Gazette, appoint, and different dates may be appointed for different parts of the State.

[1] The words "except the State of Jammu and Kashmir" omitted by Act 34 of 2019, s. 95 and Sch. V (w.e.f. 31-10-2019).

[2] Extended to the Union territory of Pondicherry Act 26 of 1968, s. 3 and Sch. and Madras (1-11-1962) vide Home Deptt. No. Goms No. 3698, dated 2nd November, 1962 and this Act has been extended to Go, Daman and Diu by Reg. 11 of 1963, s. 3 and Sch. (w.e.f. 1-2-1964).

Section 2. Definitions

In this Act, unless the context otherwise requires,-

(a) "Code" means the Code of Criminal Procedure, 1898 (5 of 1898);

(b) "probation officer" means an officer appointed to be a probation officer or recognised as such under section 13;

(c) "prescribed" means prescribed by rules made under this Act;

(d) words and expressions used but not defined in this Act and defined in the Code of Criminal Procedure, 1898 (5 of 1898)[1], shall have the meanings respectively assigned to them in that Code.

[1] Now see Code of Criminal Procedure, 1973 (2 of 1974).

Section 3. Power of court to release certain offenders after admonition

When any person is found guilty of having committed an offence punishable under section 379 or section 380 or section 381 or section 404 or section 420 of the Indian Penal Code, (45 of 1860) or any offence punishable with imprisonment for not more than two years, or with fine, or with both, under the Indian Penal Code or any other law, and no previous conviction is proved against him and the court by which the person is found guilty is of opinion that, having regard to the circumstances of the case including the nature of the offence, and the character of the offender, it is expedient so to do, then, notwithstanding anything contained in any other law for the time being in force, the court may, instead of sentencing him to any punishment or releasing him on probation of good conduct under section 4, release him after due admonition.

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

Section 4. Power of court to release certain offenders on probation of good conduct

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

Provided that the court shall not direct such release of an offender unless it is satisfied that the offender or his surety, if any, has a fixed place of abode or regular occupation in the place over which the court exercises jurisdiction or in

which the offender is likely to live during the period for which he enters into the bond.

(2) Before making any order under sub-section (1), the court shall take into consideration the report, if any, of the probation officer concerned in relation to the case.

(3) When an order under sub-section (1) is made, the court may, if it is of opinion that in the interests of the offender and of the public it is expedient so to do, in addition pass a supervision order directing that the offender shall remain under the supervision of a probation officer named in the order during such period, not being less than one year, as may be specified therein, and may in such supervision order impose such conditions as it deems necessary for the due supervision of the offender.

(4) The court making a supervision order under sub-section (3) shall require the offender, before he is released, to enter into a bond, with or without sureties, to observe the conditions specified in such order and such additional conditions with respect to residence, abstention from intoxicants or any other matter as the court may, having regard to the particular circumstances, consider fit to impose for preventing a repetition of the same offence or a commission of other offences by the offender.

(5) The court making a supervision order under sub-section (3) shall explain to the offender the terms and conditions of the order and shall forthwith furnish one copy of the supervision order to each of the offenders, the sureties, if any, and the probation officer concerned.

Section 5. Power of court to require released offenders to pay compensation and costs

(1) The court directing the release of an offender under section 3 or section 4, may, if it thinks fit, make at the same time a further order directing him to pay-

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

(b) such costs of the proceedings as the court thinks reasonable.

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

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

Section 6. Restrictions on imprisonment of offenders under twenty-one years of age

(1) When any person under twenty-one years of age is found guilty of having committed an offence punishable with imprisonment (but not with imprisonment for life), the court by which the person is found guilty shall not sentence him to imprisonment unless it is satisfied that, having regard to the circumstances of the case including the nature of the offence and the character of the offender, it would not be desirable to deal with him under section 3 or section 4, and if the court passes any sentence of imprisonment on the offender, it shall record its reasons for doing so.

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

Section 7. Report of probation officer to be confidential

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

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

Section 8. Variation of conditions of probation

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

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

(2) If any surety refuses to consent to any variation proposed to be made under sub-section (1), the court may require

the offender to enter into a fresh bond and if the offender refuses or fails to do so, the court may sentence him for the offence of which he was found guilty.

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

Section 9. Procedure in case of offender failing to observe conditions of bond

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

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

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

(a) sentence him for the original offence; or

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

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

Section 10. Provision as to sureties

The provisions of sections 122, 126, 126A, 406A, 514, 514A, 514B and 515 of the Code shall, so far as may be, apply in the case of bonds and sureties given under this Act.

Section 11. Courts competent to make order under the Act, appeal and revision and powers of courts in appeal and revision

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

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

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

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

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

Section 12. Removal of disqualification attaching to conviction

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

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

Section 13. Probation officers

(1) A probation officer under this Act shall be-

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

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

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

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

Explanation.-For the purposes of this section, a presidency town shall be deemed to be a district and chief presidency magistrate shall be deemed to be the district magistrate of that district.

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

Section 14. Duties of probation officers

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

(a) inquire, in accordance with any directions of a court, into the circumstances or home surroundings of any person accused of an offence with a view to assist the court in determining the most suitable method of dealing with him and submit reports to the court;

(b) supervise probationers and other persons placed under his supervision and, where necessary, endeavour to find them suitable employment;

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

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

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

Section 15. Probation officers to be public servants

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

Section 16. Protection of action taken in good faith

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

Section 17. Power to make rules

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

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

(a) appointment of probation officers, the terms and conditions of their service and the area within which they are to exercise jurisdiction;

(b) duties of probation officers under this Act and the submission of reports by them;

(c) the conditions on which societies may be recognised for the purposes of clause (b) of sub-section (1) of section 13;

(d) the payment of remuneration and expenses to probation officers or of a subsidy to any society which provides probation officers; and

(e) any other matter which is to be, or may be, prescribed.

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

Section 18. Saving of operation of certain enactments

Nothing in this Act shall affect the provisions of section 31 of the Reformatory Schools Act, 1897 (8 of 1897), or sub-section (2) of section 5 of the Prevention of Corruption Act, 1947 (2 of 1947), [1]*** or of any law in force in any State relating to juvenile offenders or Borstal Schools.

[1] The words and figures "or the Suppression of Immoral Traffic in Women and Girls Act, 1956" omitted by Act 46 of 1978, s. 20 (w.e.f. 2-1-1979).

Section 19. Section 562 of the Code not to apply in certain areas

Subject to the provisions of section 18 section 562 of the Code shall cease to apply to the States or parts thereof in which this Act is brought into force.

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