

Probation of Offenders

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1. **Law Relating to Probation of offenders** : Different laws relating to award of benefit of probation to offenders are as under :
 - (i) Sec. 360, 361 CrPC
 - (ii) Probation of offenders Act, 1958
 - (iii) Uttar Pradesh First Offenders' Probation Act, 1938
 - (iv) Uttar Pradesh First Offenders' Probation Rules, 1939

2. **'Probation' an humanitarian approach for rehabilitation of offender** : Probation is not the result of any intentional or planned legislation but it is a consequence of voluntary and humanitarian approach to mend the offender for his rehabilitation in the society. Probation is conditional suspension of punishment and should not be viewed as a form of leniency or as a let off. See : **State of U.P. vs. Dev Dutt Sharma, 1984 ALJ 1229 (Allahabad)(DB).**

3. **Nature of Probation:** Probation is not the result of any intentional or planned legislation but it is a consequence of voluntary and humanitarian approach to mend the offender for his rehabilitation in the society. Probation is conditional suspension of punishment and should not be viewed as a form of leniency or as a let off. See : **State of U.P. vs. Dev Dutt Sharma, 1984 ALJ 1229 (Allahabad)(DB).**

4. **Essential elements of probation** : There are three essential elements of probation :
 - (1) Conviction
 - (2) Suspension of Sentence
 - (3) Supervision. See : **State of U.P. vs. Dev Dutt Sharma, 1984 ALJ 1229 (Allahabad)(DB).**

5. **Only Central Probation of Offenders Act, 1958 to apply to the State of UP w.e.f. 01.05.1981** : Before coming into force of the Central Act (Act No. 20 of 1958), some States including UP had their own legislation regarding probation. The necessity of having a uniform law in this regard was felt. Hence, the Central Act, i.e. The Probation of Offenders Act, 1958 was passed, the Statement of Objects and Reasons wherein enacts as thus : "*In view of the widespread interest in the probation system in the country this question has been examined and it is proposed to have a Central Law, which should be uniformly applicable to all States.*" However, under sub-clause (3) of Section 1 of the Act, the Central Act was to come into force in a State on such date as the State government may by notification in the Official Gazette appoint. Different dates were appointed for different parts of the State. Vide notification No. 683/XXVI-2-80-500(25)-78, dated May 29, 1980 published in UP Gazette, Part I, dated 21st June

1980, page 848, the Central Act was made applicable to 15 districts of this State and with effect from 01.05.1981 the Central Act became applicable to 35 more districts including the district 'Jaunpur' related to the instant case. See :

- (i) **Uma Shanker Vs. State of UP, 2016 (94) ACC 208 (All)**
- (ii) **Hari Singh Vs. State of UP, 1990 (27) ACC 27 (All)**

6. **Probation of offenders Act, 1958 not to apply to the State of U.P. :** In India, before the probation of offenders Act, 1958 was enacted, Sec. 360 CrPC dealt with the powers of courts to release certain convicted offenders on probation of good conduct instead of sentencing them to punishment. The probation of offenders Act, 1958 has not been adopted by the State of U.P. which has its own local U.P. First offenders' Probation Act, 1938. Probation of offenders Act, 1958 is, therefore, not applicable in the state of U.P. See : **State of U.P. Vs. Dev Dutt Sharma, 1984 ALJ 1229 (Allahabad) (DB).**
7. **U.P. First Offenders' Probation Act, 1938 alone to apply to the state of U.P :** State of U.P. has its own local law of probation i.e., U.P. First Offenders' Probation Act, 1938. Probation of offenders Act, 1958 has not been adopted by the State of U.P. See : **State of U.P. Vs. Dev Dutt Sharma, 1984 ALJ 1229 (Allahabad)(DB).**
8. **Extending probation by court at Unnao in Uttar Pradesh to accused u/s 4 of Probation of Offenders Act, 1958 upheld by Supreme Court:** In the case noted below, the accused persons/ respondents Nos. 2 to 10 were prosecuted and punished by the trial court of Unnao in Uttar Pradesh for the offences punishable under Sections 498-A and 323 of the IPC and Sections 3 and 4 of the Dowry Prohibition Act, 1961. The respondent Nos. 2 and 3 were convicted under Section 498-A IPC and sentenced to undergo rigorous imprisonment for two years and to pay a fine of Rs.1,000/- each with the default clause. The other accused, i.e., respondent nos.4 to 10 were convicted for the offence punishable under Section 498-A of the IPC and sentenced to undergo simple imprisonment of six months and pay a fine of Rs.1,000/- each with the default clause. All the accused persons were convicted under Section 323 of the IPC and Section 4 of the 1961 Act and sentenced to undergo rigorous imprisonment for six months on the first count and for a period of one year on the second score. They were also sentenced to pay fine with the stipulation of the default clause. The respondents challenged the judgment of conviction and order of sentence before the learned Sessions Judge, Unnao, Uttar Pradesh in Criminal Appeal No.55 of 2013 who, in course of hearing, taking note of the fact that the counsel appearing for the appellants had abandoned the challenge pertaining to the conviction but only confined the argument seeking benefit under Section 4 of the Probation of Offenders Act, 1958 extended the benefit as prayed for. The Allahabad High Court also confirmed the benefit of probation awarded by the trial court to the accused person. Against the said judgment of Allahabad High Court, the appellant preferred this SLP before the Supreme Court on the ground that probation could not have been awarded to the accused persons in an offence under the Dowry Prohibition Act, 1961. The Supreme Court dismissed the SLP by holding that the court at Unnao and the Allahabad High Court had rightly granted probation to the accused persons u/s 4 of the Probation of Offenders Act, 1958. Note: It has to be noticed that in this case, the Supreme Court has not considered and specifically ruled whether the said Central Act i.e. the Probation of Offenders Act, 1958 was applicable to the State of UP or not. See: **Mohd. Hashim Vs. State of UP, (2017) 2 SCC 198.**
9. **Probation of Offenders Act, 1958 invoked by Allahabad High Court to grant probation in appeal:** In the case noted below, the Allahabad High Court granted

benefit of probation to the convicts of offences u/s 323, 326, 452 IPC in appeal by applying the provisions of Section 4 of the Probation of Offenders Act, 1958. See: Durgesh Chandra Vs. State of UP, 2019 SCC Online All. 2176, Decided on 15.05.2019 by Hon'ble Justice Dinesh Kumar Singh.

10. **Sec. 360/361 CrPC not to apply in the State of UP :** Sec. 360/361 CrPC is wholly inapplicable in areas where Probation of Offenders Act, 1958 is made applicable. The provisions of the two statutes have significant differences. They cannot co-exist. In view of Sec. 8 of the General Clauses Act, 1897, enforcement of Probation of Offenders Act, 1958 in particular area excludes the applicability of the provisions of Sec. 360 and 361 of the Cr PC in that area. See :
 - (i) **Chhanni Vs. State of UP, AIR 2006 SC 3051**
 - (ii) **Gulzar Vs. State of MP, (2007) 1 SCC 619.**

Note : *In India, before the Probation of Offenders Act, 1958 was enacted, Sec. 360 Cr.P.C. dealt with the powers of courts to release certain convicted offenders on probation of good conduct instead of sentencing them to punishment. The Probation of Offenders Act, 1958 has not been adopted by the State of U.P. which has its own local U.P. First Offenders' Probation Act, 1938. Probation of Offenders Act, 1958 is, therefore, not applicable in the state of U.P. See : State of UP Vs. Dev Dutt Sharma, 1984 ALJ 1229 (Allahabad)(DB).*
11. **Denial of benefit of probation u/s 361 CrPC without assigning any reasons improper:** Denial of benefit of probation u/s 361 CrPC without assigning any reasons is improper. Assigning of reasons for denying benefit of probation u/s 361 CrPC is mandatory. See : **Subhash Chand Vs. State of UP, 2016 (2) ALJ 417 (All).**
12. **Sentence & benefit of probation not to be awarded together :** Court can not pass sentence of imprisonment and thereafter release the accused on probation. Order of sentence and benefit of probation can not run together See : **State of U.P. vs. Dev Dutt Sharma, 1984 ALJ 1229 (Allahabad)(DB).**
13. **Probation not to be awarded where court has no discretion to lower the minimum mandatory sentence:** Probation cannot be awarded by the Court where the court has no discretion to lower the minimum prescribed sentence. See: **Mohd. Hashim Vs. State of UP, (2017) 2 SCC 198.**
14. **Probation where minimum sentence has been provided with discretion to court to lower it:** Minimum sentence means a sentence which must be imposed without leaving any discretion to court i.e. a quantum of sentence which cannot be reduced below the period fixed. A provision that gives discretion to court not to award minimum sentence cannot be equated with a provision which prescribes minimum sentence without any discretion, and consequently, it has different implications with respect to the applicability of the Probations of Offenders Act, 1958. In cases involving offence u/s 4 of the Dowry Prohibition Act, 1961, there being no minimum sentence, the provision of the PO Act, 1958 would apply. See: **Mohd. Hashim Vs. State of UP, (2017) 2 SCC 198.**
15. **Meaning of 'minimum sentence':** Where legislation prescribes minimum sentence without any discretion to the court, such sentence cannot be reduced by the court. Imposition of minimum sentence in such cases, be it imprisonment or fine, is

mandatory. However, there may be cases where legislation prescribes a minimum sentence but grants discretion to the court to award a lower sentence or not to award a sentence of imprisonment, which discretion includes discretion not to send the accused to prison. In such latter cases, the minimum prescribed sentence cannot be construed as a minimum sentence. **See: Mohd. Hashim Vs. State of UP, (2017) 2 SCC 198.**

16. **Fine & sentence of imprisonment in default of fine with probation not to be imposed :** While granting benefit of probation to a convict under the provisions of U.P. First Offenders' Probation Act, 1938, the accused cannot be asked to pay fine and in default of fine to undergo sentence of imprisonment. See : **Shiv Singh vs. State of U.P., 1989 ALJ 515 (Allahabad).**
17. **TRC (Till Rising of Court) as Sentence of Imprisonment :** In the case noted below, award of TRC has been declared/held as adequate sentence of imprisonment. See : **State of UP vs. Dev Dutt Sharma, 1984 ALJ 1229 (Allahabad)(DB) (case u/s 409 IPC).**
18. **TRC:** Awarding sentence of TRC (till rising of court) has been deprecated by the courts by observing that the punishment by imprisonment under IPC means that the offender shall go to jail and TRC would be illegal and *ultra vires* the jurisdiction of the court, such a sentence violates distinct provisions contained in CrPC, IPC and the Prisons Act and also the rules made in jail manuals under the provisions of the Prisons Act. See: **Assam Musa Lierakeh Kunhi Bava In re AIR 1929 Mad. 226.** A contrary view has been taken in **Muthu Nadar In re, AIR 1945 Mad. 313 (DB)**
19. **TRC when not justified?:** The punishment till the rising of the court (TRC) for the offence of grievous hurt and the related offences committed conjointly by an accused person which had resulted in the hospitalization of the victim for four weeks has been held by the Kerala High Court not to be in conformity with the rational legal theory or behavior, much less the reformatory theory of punishment. **See: Raman Vs. Francis, (1988) CRLJ 1359 (Kerala).**
20. **Recording of reasons for awarding sentence mandatory:** Section 354 (4) CrPC reads as under:
 "When the conviction is for an offence punishable with imprisonment for a term of one year or more, but the Court imposes a sentence of imprisonment for a term of **less than three months**, it shall record its reasons for awarding such sentence, unless the sentence is one of imprisonment till the rising of the Court (**TRC**) or unless the case was **tried summarily** under the provisions of this code."
21. **Certain offences wherefor probation cannot be awarded :** Benefit of probation to a convict for certain offences, noted below, cannot be awarded :
 (1) Sec. 409 IPC, being punishable with imprisonment for life, the offence is one in which a term of imprisonment, however slight, must be imposed. See :
 (i) **State of U.P. vs. Dev Dutt Sharma, 1984 ALJ 1229 (Allahabad)(DB)**
 (ii) **Som Nath Puri vs. State of Rajasthan, AIR 1972 SC 1490.**
22. **No role/report from probation officer is required u/s 360/361 CrPC :** Sec. 360 CrPC does not provide for any role for probation officers in assisting the courts in

relation to supervision and other matters while Probation of Offenders Act, 1958 does not make such a provision. See : **Chhanni Vs. State of UP, AIR 2006 SC 3051.**

- 23. Trial Court must record reasons why grant of probation is not possible :** Trial court must record reasons why it is not possible to release the convict on probation. Similarly, grant of compensation to the victim is equally a part of just sentencing. Reason should be recorded for not granting compensation. A Trial Judge must be alive to alternate methods of mutually satisfactory disposition of a case. See : **State Vs. Sanjiv Bhalla, 2014 (86) ACC 938 (SC).**
