

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) U.P. First Offenders' Probation Act, 1938
 - (iv) U.P. First Offenders' Probation Rules

2. **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).**

3. **'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).**

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

- 5(A). **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)**

5(B). 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).**

5(C). 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).**

5(D-1). 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).*

5(D-2).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).**

6. **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).**

7. **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).**

8. **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).**

9. **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.**
10. **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 make such a provision. See : **Chhanni Vs. State of UP, AIR 2006 SC 3051.**
11. **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).**
