

An offence. section 3
of the act applies



An order of release on probation comes into existence only after the accused is found guilty and is convicted of the offence. Section 3 of the Act applies in case of offences of the following: (1) Offence punishable under Section 379 of the Indian Penal Code; or (2) An offence punishable under Section 380 of the Indian Penal Code; or (3) An offence punishable under Section 381 of the Indian Penal Code; or (4) An offence punishable under Section 404 of the Indian Penal Code; or (5) An offence punishable under Section 420 of the Indian Penal Code; or (6) Any offence punishable with imprisonment for not more than 2 years, or with fine, or with both under the Indian Penal Code or any other law. The conditions necessary for the release on probation of good conduct under Section 3 of the Act are: (1) No previous conviction is proved against the person who has been charged of having committed an offence; (2) The Court by which the person is found guilty is of the opinion that it is expedient to do so; (3) The Court may form its opinion keeping in view the nature of the offence and character of the offender. The factors to be considered for granting benefit of probation are the age, character, antecedents of the individual and other circumstances in which the offence was committed. When the report given by the probation officer is a favourable one, probation should be granted to the accused.

The Court has power to release the offender if the above conditions are fulfilled after due admonition. Admonition means censure which, if not obeyed, may be followed by a severe penalty. The power of granting probation may be exercised by the Court in spite of anything contained in any other law for the time being in force. That is even though, there are provisions in some other law which are contrary by the powers of the Court

under this Section, the provisions of this Section shall prevail. The order of release on probation of the offender cannot wash out the conviction of the accused or the finding of the Court that he is guilty.

The order of release on probation 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 and to prevent them from becoming hardened criminals. In *Bijender v. The State* the offender was convicted under Sections 498-A and 306 of the Indian Penal Code, having regard to the circumstances of the case including the nature of offence and the character of the offender, the Court released the offender on probation of good conduct for a period of two years on his entering into a personal bond of ten thousand rupees with one surety of the like amount, to appear and receive sentence when called upon during such period and in the meantime, he shall keep peace and, be of good behaviour. In *Basikesan v. State of Orissa*, a youth of twenty years committed an offence punishable under Section 380 of the Indian Penal Code and was released under Section 3 of the Act as there was no previous conviction. In *G. C.*

Patra v. State of Orissa, the Court released a 19 years offender who is convicted under Sections 447 & 354 of I. P. C. under Section 3 of the Probation of Offenders Act instead of sending him to a term of imprisonment. In *Sarangadhar Nayak and Others v. State of Orissa*, the benefit of the Probation of Offenders Act was granted in favour of the petitioner as the conviction under Section 506 of the Indian Penal Code is set aside.

Non-applicability of Section 3 of the Act. In *Devki v. State of Haryana*, the Supreme Court refused to extend the benefit of Probation of Offenders Act to anti-social specialist criminal who has shown sufficient expertise in the art of abduction, seduction and sale of girls to others who offer tempting price and sentenced to three years rigorous imprisonment. In *Prema Devi v. State of U. P.*, the Court held that release of the offender on probation who was keeping and managing brothel is not allowed as Probation of Offenders Act, 1958 is not applicable to offences under Suppression of Immoral Traffic in Women and Girls Act, 1956.

In *Prem Baliab v. State (Delhi Admn.)*, and in *S. A. Roa v. State of Andhra Pradesh*, the Courts held that the benefits of Probation of Offenders Act cannot be given to offenders who commit economic offences by profit motive under the Prevention of Food Adulteration Act, 1954. In *Superintendent Central Excise v. Bahubali*, the Supreme Court held that recourse to the provisions of the Probation of Offenders Act, 1958 cannot be had by the Court where a person is found guilty of any offence specified in Rule 126-P(2) (ii) of the Defence of India Rules relating to gold.

In *Anandan v. State*, it was held that the offender charged and convicted under Section 392 read with Section 397 of the Indian Penal Code was not entitled to the benefit of Probation of Offenders Act because he was already convicted for the offence under Sections 463 and 380 of the Indian Penal Code on his pleading guilty. In *Dalbir Singh v. State of Haryana*, the Supreme Court held that benefit of Probation of Offenders Act should not normally be afforded in respect of the offences under Section 304-A of the Indian Penal Code when it involves rash or negligent driving.