Law Relating to Probation and Admonition in India: An Analysis

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Abstract

The Probation and admonition constitute important mechanisms of reformative and rehabilitative justice within the Indian criminal justice system. They provide courts with alternatives to conventional punishment, particularly imprisonment, by enabling appropriate offenders to reform within the community. The principal statutory framework governing these measures is the Probation of Offenders Act, 1958, which provides for release after admonition, release on probation of good conduct, payment of compensation and costs, supervision, and protection of certain offenders from imprisonment. Sections 3 and 4 of the Act respectively deal with admonition and probation, while Section 6 provides special protection to offenders below twenty-one years of age. The enactment of the Bharatiya Nagarik Suraksha Sanhita, 2023 has provided a contemporary procedural framework for probation and admonition through Sections 401 and 402. Section 401 enables courts, subject to prescribed conditions, to release certain offenders on probation of good conduct or after admonition, while Section 402 requires special reasons to be recorded where the court could have dealt with an accused under the probationary framework but chooses not to do so. This research paper examines the conceptual foundations, statutory provisions under Probation of Offenders Act, 1958 and BNSS 2023. The research paper also examines relevant judicial decisions to identify the emerging approach of Indian courts towards reformative sentencing and judicial interpretation of probation and admonition in India. To achieve these objectives, a doctrinal mythology of research has been adopted. Books, scholarly articles, judicial decisions and relevant reports *have been referred to as secondary sources of data.*

Keywords : *Rehabilitative justice, Probation, admonition, sentencing*

1. Introduction

Criminal justice is traditionally associated with punishment of offenders; however, modern penological thought increasingly recognises reformation and rehabilitation as important objectives of sentencing. Probation and admonition represent two significant alternatives to conventional punishment. Instead of immediately imposing imprisonment, the court may, in appropriate circumstances, provide an offender an opportunity to reform while remaining in the community. The Probation of Offenders Act, 1958 constitutes the principal legislation governing probation in India. Its long title itself indicates that the legislation seeks to provide for the release of offenders on probation or after due admonition and for matters connected therewith. The contemporary criminal procedural framework under the Bharatiya Nagarik Suraksha Sanhita, 2023 also contains provisions relating to probation and admonition. Section 401 deals with the release of offenders on probation of good conduct or after admonition, while Section

402 requires courts to record special reasons where probationary treatment could have been considered but was not granted.

These enactment Act is deeply rooted in the Gandhian philosophy of criminal justice. Mahatma Gandhi once said, **"**'Hate the sin and not the sinner" which means Hate the crime, not the criminal. The Probation Act 1958 translates this very ideal into legal practice, it condemns the offence but extends compassion and a second chance to the offender, especially first-time offenders, young persons, women, and those who have committed offences under circumstances unlikely to recur. By preventing unnecessary incarceration, the Act protects individuals from the dehumanising and criminogenic effects of prison life, reduces overcrowding in jails, saves public expenditure, and promotes social harmony.

1.2 Research methodology

The research paper adopts a doctrinal methodology and this paper relies on statutes, Supreme Court and High court judgments, committee and commission reports, Books, scholarly articles and secondary literature.

2. Meaning and Definition of Probation

The term "probation" is derived from the Latin word "probatio" or "probare", which means "to test", "to prove", or "to put on trial". The meaning of probation is suspended sentence. Suspended sentence means that he will be left in society under the guidance and care of a probation officer or of a surety or of such other agent who would be able to look after him and assist him and see that he behaves well and is able once again to become what we call a good citizen.

In others words Probation is a non-custodial, rehabilitative measure whereby a convicted person is released into the community under certain conditions and under the supervision (or without supervision in some cases) of a probation officer, instead of being sent to jail. It is neither complete acquittal nor full punishment; rather, it is a conditional suspension of sentence aimed at reformation.

The Supreme Court of India has beautifully explained the essence of probation in ***Jugal Kishore Prasad v. State of Bihar 1972***. Justice V.R. Krishna Iyer observed: *"Probation is a milestone in the progress of the modern liberal trend of reform in the field of penology. It is the result of the recognition of the doctrine that the ultimate object of punishment is reformation and not retribution."*

In ***State of U.P. v. Dev Dutt Sharma, 1984 ALJ 1229 (Allahabad)(DB)*** case court describe various definitions in pare 15 i.e- According to ER Sutherland, *probation is a "status of convicted offender during a period of suspension of sentence in which he is given liberty conditioned on his good behaviour and in which the State by supervision, attempts to assist to maintain good behaviour."* 'Max Grunhut' *advances*

a simple definition of probation as a condition of two equally essential elements, namely suspension of sentence plus personal supervision. The United Nations Department of Social Affairs 1951 (Probation and Related Measures) has defined *probation as a process of treatment prescribed by the Court for persons convicted of offences against the Law during which the individual or probationer lives in a community and regulates his own life on conditions imposed by the Court or other constituted authority and is subject to supervision of a probation officer.*

Thus, Probation is an alternative to imprisonment and an Integral part of Penal Reform

3. Historical prospective

The history of probation as a reformative method in criminal justice is closely associated with the remarkable humanitarian efforts of John Augustus, who is universally recognised as the "Father of Probation." His pioneering work transformed the philosophy of criminal justice from one based solely on punishment to one emphasizing reformation, rehabilitation, and social reintegration of offenders. John Augustus was born in 1785 in Woburn, Massachusetts, United States of America. By profession, he was a shoemaker and was actively associated with the Washington Total Abstinence Society, an organisation dedicated to helping individuals overcome alcoholism and adopt disciplined lives. Augustus possessed deep humanitarian values and strongly believed that individuals involved in minor offences should be given an opportunity to reform rather than being subjected to harsh punishment.

The foundation of the probation system can be traced to an incident that occurred in 1841 in Boston. Augustus witnessed the pitiable condition of a common drunkard who had been produced before the court for sentencing. Moved by compassion and convinced that the offender could reform, Augustus requested the court to release the man on bail under his personal supervision. He assured the court that he would guide and reform the offender before the next hearing. The court accepted his request. During the following three weeks, Augustus personally supervised and assisted the offender by providing moral guidance, encouragement, and support. When the offender reappeared before the court, he had undergone a remarkable transformation. He appeared sober, disciplined, respectable, and dignified. The judge was greatly impressed by this successful experiment. This event marked the beginning of Augustus's lifelong mission of offender rehabilitation and laid the foundation for the modern probation system.

According to the article *"History of Probation"* published by the New York City Department of Probation, between the years 1841 and 1858, Augustus arranged bail and supervision for approximately 1,946 men and women. Remarkably, only ten individuals among them violated the conditions of their bond. This extraordinary achievement demonstrated the effectiveness of reformative treatment and established public confidence in the probation system.

The contributions of John Augustus significantly influenced the development of probation laws in the United States. Shortly after his death in 1859, the first probation statute was enacted in the State of Massachusetts. This legislation is widely regarded as a direct consequence of Augustus's pioneering reformative work. The influence of his ideas soon extended beyond America. Inspired by similar reformative ideals, Frederick Rainer, a printer from Hertfordshire in England, donated funds in 1876 to the Church of England Temperance Society for assisting offenders involved in alcohol-related crimes. The Society thereafter appointed "Police Court Missionaries," whose responsibility was to interview offenders, evaluate their behaviour, and recommend rehabilitative measures before the courts. These developments eventually led to the enactment of the Probation of First Offenders Act, 1887 in England, which formally recognised probation as an important reformative measure in criminal justice administration.

In India, the evolution of probation law can be traced back to the provisions of the colonial criminal procedure legislation, various committee recommendations, provincial enactments, and finally the enactment of the comprehensive Probation of Offenders Act, 1958 after independence.

In India the Code of Criminal Procedure, 1898 was perhaps the first legislation that recognized the principle of probation and enabled courts to release certain offenders on probation of good conduct instead of sentencing them to punishment. The relevant provisions relating to probation were incorporated under Sections 562, 563, and 564 of the Cr.P.C, 1898. The scope and importance of probation law in India were considerably expanded following the recommendations of the Indian Jails Committee Report (1919–1920)**.** The origin of this development may be traced to the winter session of 1913–1914, when the Imperial Legislative Council passed a resolution for the appointment of a committee to examine the entire system of jail administration in India and suggest reforms in light of Western experiences and modern penological theories. Consequently, in April 1914, a committee was constituted under the chairmanship of Sir Alexander G. Cardew**,** Member of the Executive Council, Madras. This committee is regarded as one of the earliest committees in India to systematically examine the question of probation along with prison reforms. The committee submitted its report during 1919–1920. The report, extending to more than five hundred pages, contained a separate chapter dealing exclusively with probation under Section III of Chapter XV. The report provided detailed insights into the administration of penal laws in various countries and emphasized the importance of reformative treatment for offenders. The Committee strongly recommended that first-time and youthful offenders should not be exposed to the harmful environment of prisons, as imprisonment often converted minor offenders into habitual criminals. Instead, they should be provided opportunities for rehabilitation under supervision within the

community. The recommendations of the Cardew Committee laid the intellectual and legislative foundation for probation reforms in India.

Based on the recommendations of the Indian Jails Committee headed by Sir Alexander G. Cardew, the Government of India prepared a draft legislation known as the Probation of Offenders Bill, 1931. The draft Bill was circulated among the provincial governments for consideration and implementation. However, the provincial governments did not take substantial steps toward enacting a uniform law on probation. Consequently, the Government of India informed the provinces that they were free to enact their own legislations relating to probation of offenders. The Province of Punjab is considered one of the earliest provinces to enact legislation relating to probation. It enacted the Good Conduct Prisoners Probational Release Act, 1926. Interestingly, after partition, Pakistan continued to follow this law until the enactment of a new probation law in 1960. Following Punjab, several other provinces enacted probation laws. Notably, in the year 1936 and thereafter, important provincial legislations included—

1. The Madras Probation of Offenders Act, 1936
2. The Central Provinces and Berar Probation of Offenders Act, 1936
3. The Bombay Probation of Offenders Act, 1938

These provincial enactments reflected the growing acceptance of the reformative theory of punishment in India and marked significant progress in the development of probation jurisprudence.

After independence, the need for a uniform and comprehensive probation law applicable throughout India was strongly felt. Consequently, the Parliament enacted the Probation of Offenders Act, 1958. The Act was enacted with the primary objective of reforming offenders and preventing minor and first-time offenders from becoming habitual criminals through exposure to prison life. The legislation embodied the modern reformative and humanitarian approach in criminal justice administration. The States were given discretion to bring the Act into force on dates notified by them. Therefore, implementation of the Act varied from State to State.

The Code of Criminal Procedure, 1898 was eventually replaced by the Code of Criminal Procedure, 1973. Under the new Code 1973, the provisions corresponding to Section 562 were incorporated under Section 360**.** However, Section 360 expressly clarified that its provisions would not affect the operation of the Probation of Offenders Act, 1958 or the Children Act, 1960 relating to the treatment, training, and rehabilitation of youthful offenders. Subsequently, with the replacement of the CrPC, 1973 by the Bharatiya Nagarik Suraksha Sanhita, 2023, Section 360 has now been substantially retained as Section 401 of the BNSS, 2023**.**

4. Concept of Admonition under Probation of offender act 1958 and BNSS 2023

Section 3 of probation of offender act and section 401(3) of BNSS 2023 deals with Admonition. Section 3 of the Probation of Offenders Act, 1958 deals with the concept of releasing a first-time offender after a formal *admonition* instead of imposing any punishment. This provision reflects the reformative approach of criminal law where minor offenders, particularly those with no criminal history, are given an opportunity to reform without the stigma of imprisonment.

4.1 Meaning of Admonition

The word *admonition* means a formal and serious warning given by the court, in which the judge explains to the offender the seriousness of the offence and cautions him not to repeat such conduct. Release after admonition is a sentencing measure available after the offender has been found guilty. It does not amount to acquittal, although Section 12 provides protection against specified disqualifications attaching to conviction

4.2 Essential Conditions of section 3

1. The Accused Must Be Guilty of Specific Offences Under IPC (Now BNS 2023)

The person must be found guilty of an offence punishable under Specific IPC Sections

IPC Section 379 → now BNS Section 303(2) (Theft)

IPC Section 380 → now in BNS Section 305(a) (Theft in a building)

IPC Section 381 → now in BNS Section 306 (Theft by clerk/servant)

IPC Section 404 → now in BNS Section 315 (Dishonest misappropriation of property of deceased)

IPC Section 420 → now in BNS Section 318(4) (Cheating and dishonestly inducing delivery of property) or any other offence under the Indian Penal Code or any other law, which is punishable with imprisonment for not more than two years, or with fine, or with both. (By the virtue of Section 8(1) of the General Clauses Act, 1897, any old IPC sections mentioned in the Probation Act 1958 is automatically treated as the new corresponding BNS 2023 sections)

2. No Previous Conviction Must Be Proved Against the offender.

The offender must be a first-time offender. No Previous Conviction Must Be Proved Against the offender. The rationale behind this condition is that a new or accidental or situational offender deserves an opportunity for reformation. The "Explanation" of section 3 clarifies that if an offender was previously let off under Section 3 (admonition) or Section 4 (probation), it will be treated as a previous conviction for the purpose of this section, disqualifying them from this benefit again. This prevents the habitual misuse of this benevolent provision.

3. Court Must Consider Circumstances of the Case

The court must be satisfied, after considering the following factors, that it is expedient (advisable/suitable/beneficial and in the interest of justice) to release the offender after admonition.

A Circumstances of the Case: For Example- Was it committed under sudden provocation, compulsion, or a momentary lapse of judgment?

B Nature of the Offence: The offence should be of a trivial or technical nature, without involving violence, brutality, or deep-rooted criminality.

C Character of the Offender: The court will consider the offender's age, background, social and family circumstances. Youth is a significant factor.

Only when all three conditions are met can a court exercise its power under Section 3.

4. Discretionary power

Even if all above conditions are satisfied, the court is not bound to release on admonition; it is purely discretionary because of the word under section 3 is *"the court may". Last line of section 3 says that 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.

5. Overrides other laws

The words "notwithstanding anything contained in any other law" in section 3 means that even if some other law prescribes a mandatory minimum sentence, Section 3 can still be applied if the offence qualifies.

In ***Government sponsored Malegaon Camp Post Office, Malegaon (Maharashtra) v. Rauf Khan 2023*** - Magistrate in Malegaon, Maharashtra ordered a Muslim man to offer five times namaaz for 21 days and plant two trees in a road-accident brawl case for voluntarily causing hurt (Section 323 IPC). In this case A 30-year-old convict, Rauf Khan, was booked in a 2010 case for allegedly assaulting a man and hurting him over a road accident brawl. Khan was booked under Indian Penal Code Sections 323 (voluntarily causing hurt), 325 (voluntarily causing grievous hurt), 504 (intentional insult to provoke breach of peace) and 506 (criminal intimidation). The court held Khan guilty under IPC Section 323 and acquitted him of the other charges. Magistrate Tejwant Singh Sandhu passed the order on February 27, 2023 and observed that Section 3 of the Probation of Offenders Act could be applied in the present case. The Act empowered magistrates to release a convict after admonition or appropriate warning to ensure he or she does not repeat the offence. *"According to me, giving appropriate warning means, to give an understanding that*

the crime had been committed, the accused has been proven guilty and he remembers the same so that he does not repeat the offence again," the order said.

4.3 Differences between Section 401(3) of Bharatiya Nagarik Suraksha Sanhita, 2023 and Section 3 of the Probation of Offenders Act, 1958

Differences between Section 401(3) of BNSS 2023 and Section 3 of the Probation of Offenders Act, 1958, both provisions dealing with release of certain offenders after admonition

S. No.	Basis of Difference	Section 401(3) – BNSS 2023	Section 3 – Probation of Offenders Act, 1958
1	Legal Framework	This provision is part of the *BNSS 2023* which is a general procedural law dealing with investigation, trial, and sentencing. Admonition here is only one of many sentencing options available to criminal courts.	This is part of a *special welfare-oriented statute* created specifically to promote reformative justice. Admonition is a key rehabilitative tool under the Act.
2	Criteria Considered by Court	The court must consider factors like *age, character, antecedents, physical or mental condition*, and *trivial nature of the offence* or other extenuating circumstances before granting admonition.	The focus is on the *nature of the offence*, *character of the offender*, and *overall circumstances of the case*. There is no explicit mention of physical/mental condition or triviality.
3	Non-Obstante Clause (Overriding Effect)	The section does *not* contain any overriding clause, meaning it does not supersede other laws. It works only within the BNSS scheme.	Contains a strong **"**notwithstanding anything contained in any other law**"** clause, giving it overriding effect over conflicting criminal laws when granting admonition.
4	Bond Requirement	Section 401(3) BNSS does not require execution of any bond for release after admonition;	Section 3 PO Act permits the court to require a bond with or without sureties
5	Treatment of Previous Convictions	"Previous conviction" is mentioned but not defined. It is interpreted in the	The Act provides an explanation that previous conviction includes any prior order of admonition or probation

S. No.	Basis of Difference	Section 401(3) – BNSS 2023	Section 3 – Probation of Offenders Act, 1958
		ordinary sense and does not include earlier admonition orders.	under Section 3 or 4. This expands the meaning and restricts repeat benefits.
6	Legislative Intent	Primarily aims at reducing unnecessary short-term imprisonment in minor BNS offences and ensuring proportionality in sentencing under the new procedural law.	Intended to promote reformative and rehabilitative justice, recognizing that first-time offenders should avoid imprisonment to prevent social stigma and criminalization.
7	Role of Triviality and Extenuating Circumstances	The section explicitly allows admonition when the offence is trivial or committed under extenuating circumstances, recognizing situational mitigation.	The Act does not expressly mention triviality or extenuating circumstances; the decision is based on broader considerations of the case and offender but without these explicit grounds.
8	Flexibility Regarding Fine-Only Offences	Applies to offences punishable with fine only or imprisonment up to two years, but only under BNS.	Applies to offences punishable with fine only, fine or imprisonment, or imprisonment up to two years under IPC or any other law, giving wider operational flexibility.
9	Appealability:	An order of admonition under Section 401(3) BNSS is generally not appealable (being a minor disposal);	An order under Section 3 PO Act refusing probation/admonition is appealable under Section 11 of the PO Act.

5 Concept of Probation under Probation of offender act and BNSS 2023

Section 4 of the Act empowers courts to release certain offenders on probation of good conduct instead of imposing immediate punishment. The underlying rationale is that in suitable cases the offender can be corrected through supervision and guidance in the community without undergoing imprisonment.

5.1 Essential conditions of section 4

1. **Found guilty**

The offender must have been found guilty of an offence that is not punishable with death or imprisonment for life. Probation is a post-conviction measure, not an acquittal. Before granting probation, the court must form the opinion that release is **expedient**. The court must consider the following:

(a) Circumstances of the Case- i.e *Sudden provocation, Minor role in the offence, Lack of premeditation, First-time involvement*

(b) Nature of the Offence i.e *Offence not involving violence, Offence arising out of personal disputes, Youth-related impulsive actions, petty offence , attempt*

(c) Character of the Offender i.e *Age, Background, Employment, Educational status, Family circumstances, Absence of criminal history, first-time offender*

The assessment must be holistic, based on facts and Probation Officer's report. The judge must positively assess that the offender is capable of reform.

2. **Execution of a Bond**

If the court decides to release the offender on probation, the offender must enter into a bond to maintain peace and good behaviour during the specified period. The bond may be with or without sureties, depending on the circumstances. This period cannot exceed three years, and the offender must also agree to appear before the court whenever called upon to receive the final sentence. The bond acts as a legal and moral commitment, ensuring that the offender adheres to lawful behaviour and remains accountable to the court throughout the probation period.

3. **Court's Opinion on Expediency of Release**

Another essential requirement is that the court must form an opinion that it is expedient to release the offender on probation of good conduct. This opinion is judicially formed after evaluating the circumstances of the case, the nature of the offence, and the character of the offender.

In ***State of Gujarat v. Jamnadas G. Pabri , AIR 1974 SC 2233*** a three-Judge Bench of this Court has considered the word "expedient". Learned Judges have observed in para 21 thus: (SCC p. 145) - *"Again, the word 'expedient' used in this provisions, has several shades of meaning. In one dictionary sense, 'expedient' (adj.) means 'apt and suitable to the end in view', 'practical and efficient'; 'politic'; 'profitable'; 'advisable', 'fit, proper and suitable to the circumstances of the case'. In another shade, it means a device 'characterised by mere utility rather than principle, conducive to special advantage rather than to what is universally right' (see Webster's New International Dictionary)." It was then held that the court must construe the said word in keeping with the context and object of the provision in its widest amplitude. Here the word "expedient" is used in Section 4 of the PO Act in the context of casting a duty on the court to take*

into account "the circumstances of the case including the nature of the offence…". This means Section 4 can be resorted to when the court considers the circumstances of the case, particularly the nature of the offence, and the court forms its opinion that it is suitable and appropriate for accomplishing a specified object that the offender can be released on probation of good conduct."

4. Consideration of Probation Officer's Report (Mandatory) Under Section 4(2)

Prior to any order under Section 4(1), the court shall take into consideration the report from a probation officer under Section 4(2) if available. This report provides insights such as: Social background, Family stability, Economic condition, Mental health status, Probability of reform, Risk of reoffending. The word "shall" indicates it's obligatory. However, if a report is not called for or is unavailable, the court can still proceed, but it must record its reasons. The consideration of the report ensures an informed decision based on the offender's social and personal circumstances.

The report assists the court in making an informed and fair decision. It also helps the court evaluate whether the offender is suitable for probation or whether imprisonment would be more appropriate. This condition ensures that the decision is based on a holistic understanding rather than solely on the facts of the offence.

5. Passing of a Supervision Order (Optional Condition) Under Section 4(3)

Under Section 4(3), the court may, if it considers it necessary in the interest of the offender and the public, pass a supervision order requiring the offender to remain under the supervision of a probation officer for a period not less than one year. The court may also impose specific conditions in the supervision order, such as regular reporting, attending counselling, avoiding certain associates, maintaining employment, or restrictions on movement. The purpose of the supervision order is to guide the offender toward positive behavioural change and prevent future offences by providing structured oversight.

6. Additional Bond for Compliance with Supervision Conditions Under Section 4(4)

If a supervision order is issued, the offender must execute an additional bond—again, with or without sureties—ensuring compliance with the conditions mentioned in the supervision order. The court may incorporate further requirements relating to residence, abstinence from alcohol or intoxicants, or other conditions necessary to prevent repetition of the offence. This bond reinforces the offender's responsibility and provides the court with a mechanism to enforce compliance throughout the supervision period.

7. Explanation of Terms and Supply of Copies Under Section 4(5)

The final procedural requirement under Section 4 is that the court must explain the terms and conditions of the supervision order to the offender in clear language. Additionally, the court must furnish

copies of the supervision order to the offender, the sureties, and the probation officer. This ensures transparency, helps avoid confusion, and enables all parties responsible for implementing the order to be well informed about their duties. This requirement ensures that the offender understands the obligations and consequences of violating probation conditions.

5.2 Comparative Analysis of Section 4 – Probation of Offenders Act, 1958 and Section 401 – BNSS, 2023

S. No.	Basis of Comparison	Section 4 – PO Act, 1958	Section 401 – BNSS, 2023
1	Nature of Law	Special reformative legislation	Procedural criminal provision
2	Legislative Objective	Rehabilitation and reform	Sentencing discretion in minor cases
3	Scope of Application	All offences except death/life	Restricted by age and punishment
4	Age Classification	No age classification except section 6	Distinguishes above 21, below 21, and women
5	Gender Consideration	No special gender provision	Special protection to women
6	First Offender Requirement	No express requirement	No previous conviction must be proved
7	Punishment Ceiling	Only excludes death/life offences	Adults: offence up to 7 years
8	Judicial Discretion	Broad and individualized	Structured and conditional
9	Overriding/Saving Clause	Overriding clause present	Saving clause protecting PO Act
10	Role of Probation Officer	Mandatory consideration of report if any	No mandatory report
11	Supervision Order	Expressly provided	Not expressly structured
12	Minimum Supervision Period	Minimum 1 year (if ordered)	No minimum period specified
13	Conditions of Release	Detailed (residence, intoxicants, conduct)	General condition of good behavior
14	Bond Structure	Separate supervision bond possible	Bond or bail bond only

S. No.	Basis of Comparison	Section 4 – PO Act, 1958	Section 401 – BNSS, 2023
15	Explanation of Terms	Mandatory explanation and copy	No such requirement
16	Copy to Stakeholders	Offender, surety, probation officer	No express provision
17	Magistrate's Powers	No class restriction	Second-class Magistrate limited
18	Appellate Powers	Not detailed in section	Appellate/revisional powers specified
19	Breach Procedure	General mechanism	Detailed warrant and remand procedure
20	Applicability Despite Prior Conviction	Possible subject to discretion	Not applicable if previous conviction
21	Emphasis on Character Study	Through probation officer	Based on judicial satisfaction
22	Institutional Framework	Integrates probation system	No institutional integration
23	Preventive Orientation	Designed to prevent repetition	Designed to suspend sentence
24	Individualized Justice	Strong focus	Limited focus
25	Legislative History	Enacted to promote probation system	Successor to Section 360 Cr.P.C 1973
26	Social Welfare Orientation	Strong welfare legislation	Procedural concession
27	Rehabilitation Depth	Long-term behavioural reform	Temporary release mechanism
28	Administrative Supervision	Active probation officer role	No mandatory administrative supervision
29	Flexibility in Conditions	Wide flexibility	Limited statutory framework
30	Overall Breadth	Wider, reformative, dominant statute	Narrow, supplementary provision

6. Dissimilarities between P.O. Act and BNSS 2023

Dissimilarities in Section 360 Cr.P.C. (now BNSS Section 401) and the provisions of the P.O. Act is discussed by the Apex Court in *Gulzar v. State of M.P (2007) 1 SCC 619* Apex Court held that "Section 360 of the Code relates only to persons not under 21 years of age convicted for an offence punishable with fine only or with imprisonment for a term of seven years or less, to any person under 21 years of age or any woman convicted of an offence not punishable with sentence of death or imprisonment for life. The scope of Section 4 of the P.O. Act is much wider. It applies to any person found guilty of having committed an offence not punishable with death or imprisonment for life. Section 360 of the Code does not provide for any role for Probation Officers in assisting the Courts in relation to supervision and other matters while P.O. Act does make such a provision. While Section 12 of the P.O. Act states that the person found guilty of an offence and dealt with under Section 3 or 4 of the P.O. Act shall not suffer disqualification, if any, attached to conviction of an offence under any law, the Code does not contain parallel provision".

The Division Bench of this Court in *Sanjay Dutt (A-117) v. State of Maharashtra* 2013 SCC OnLine SC 252 while relying upon the inherent differences between these two frameworks, held that they could not be intended to co-exist. It was observed as thus – *"81. Section 360 of the Code of Criminal Procedure does not provide for any role for probation officers in assisting the courts in relation to supervision and other matters while the Probation of Offenders Act does make such a provision. While Section 12 of the Probation of Offenders Act states that a person found guilty of an offence and dealt with under Section 3 or 4 of the Probation of Offenders Act, shall not suffer disqualification, if any, attached to the conviction of an offence under any law. The Code of Criminal Procedure does not contain parallel provision. Two statutes with such significant differences could not be intended to co-exist at the same time in the same area. Such co-existence would lead to anomalous results. The intention to retain the provisions of Section 360 of the Code and the Probation of Offenders Act as applicable at the same time in a given area cannot be gathered from the provisions of Section 360 or any other provisions of the Code."*

7 Judicial Interpretation

Whether the benefit of Section 4 of the 1958 Act is available to an offender who has been sentenced only with payment of fine, and not to any term of imprisonment?

The Supreme Court in case ***Milind S/O Ashruba Dhanve And Ors. V. The State Of Maharashtra 2026 Special Leave Petition (Crl.) No. 6843 Of 2024; April 10, 2026*** has observed that offenders sentenced only to payment of a fine can still be granted the benefit of probation under Section 4 of the Probation of Offenders Act, 1958. The court ordered the release of convicts, who were convicted under Sections 323 and 324 read with Section 34 IPC for assault and were sentenced to only a fine of Rs. 500-2,000/- without any substantive punishment. The Court observed that the word "release" used in Section 4 of the Act

should not be interpreted narrowly. According to the Court, release does not mean release only from physical custody or jail, but it also means release from the obligation of undergoing any punishment, including payment of fine. The Court further stated that fine is also a form of punishment under criminal law. Therefore, an offender sentenced only with fine can still be released on probation if the circumstances of the case justify such relief.

Can benefit of the Probation of Offenders Act 1958, be extended to offences for which the legislation prescribes a minimum sentence ?

In case *Mohd. Hashim v. State of UP & Ors. 2016, CRIMINAL APPEAL NO. 1218 OF 2016*, the Supreme Court held that the benefit of the Probation Of Offenders Act 1961, can be extended to offences for which the legislation prescribes a minimum sentence, but grants discretion and the courts, for reasons to be recorded in writing, may award a lower sentence or not award a sentence of imprisonment. The case was decided by a Division Bench comprising Justice Dipak Misra and Justice Amitava Roy. The appeal was filed by the de-facto complainant against the judgment of the Allahabad High Court and the Sessions Court, which had granted the benefit of probation to the accused persons convicted under Sections 498-A and 323 of the Indian Penal Code and Section 4 of the Dowry Prohibition Act, 1961. It was argued on behalf of the complainant that since Section 4 of the Dowry Prohibition Act prescribes a minimum sentence, the accused were not entitled to the benefit of probation under the Probation of Offenders Act.

The Supreme Court first examined whether the offences involved in the case actually prescribed a mandatory minimum sentence. The Court observed that Sections 323 and 498-A IPC do not prescribe any minimum punishment. The counsel for the appellant argued that the legislature has stipulated for the imposition of sentence of imprisonment for a term, which shall not be less than six months, and the proviso only stated that sentence can be reduced for a term of less than six months and, therefore, it has to be construed as minimum sentence.

But the bench observed that when the legislature has prescribed minimum sentence without discretion, the same cannot be reduced by the courts.

"In such cases, imposition of minimum sentence, be it imprisonment or fine, is mandatory and leaves no discretion to the court. However, sometimes the legislation prescribes a minimum sentence but grants discretion and the courts, for reasons to be recorded in writing, may award a lower sentence or not award a sentence of imprisonment. Such discretion includes the discretion not to send the accused to prison." The bench held that minimum sentence means a sentence which must be imposed without leaving any discretion to the court. *"It means a quantum of punishment which cannot be reduced below the period fixed. If the sentence can be reduced to nil, then the statute does not prescribe a minimum sentence*".

Can granting the benefit of Section 4(1) of the Probation of Offenders Act, 1958 to one accused and denying the same benefit to others without proper reasons is justified?

In *Manbodh @ Manoj and Others v. State of U.P. and Another* Criminal Revision No. 318 *of 2024 Allahabad High Court* held that where all accused persons are- convicted for the same offences, granting the benefit of Section 4(1) of the Probation of Offenders Act, 1958 to one accused and denying the same benefit to others without proper reasons is unjustified. The revisionists argued that all accused persons were convicted for the same offences, but the trial court granted the benefit of probation only to co-accused Shiv Pyari and denied the same benefit to the revisionists without giving any valid reason. It was also submitted that the revisionists were first offenders, had no criminal history, and the dispute arose out of matrimonial differences. On the other hand, the complainant argued that the revisionists had ill-treated the informant and therefore did not deserve the benefit of probation. The High Court observed that when similarly situated co-accused are treated differently without any cogent reason, such discrimination is improper. The Court further held that since the challenge was only regarding unequal treatment in granting probation, there was no need to call for the entire trial court record.

Section 4 creates no distinction between categories of offenders, except those facing death or life imprisonment and can be applied where circumstances justify

In *Ram Sajeewan and Ors. v. State of U. P* 2024 decided on 14.11.2025, Allahabad High Court Grants Benefit Of 'Probation Of Offenders Act' to Kidnapping Convicts 30 Years After Incident. The HC noted that Section 4 *creates no distinction between categories of offenders, except those facing death or life imprisonment and can be applied where circumstances justify.* The Court added that the object of justice would be fulfilled by granting probation considering age, delay and absence of criminal history.

Can the power under Section 3 or 4 be exercised by the Apex Court

In *Sitaram Paswan and Anr v. State of Bihar AIR 2005 SC 3534,* Supreme Court held as under:-*"For exercising the power which is discretionary, the Court has to consider circumstances of the case, the nature of the offence and the character of the offender. While considering the nature of the offence, the Court must take a realistic view of the gravity of the offence, the impact which the offence had on the victim. Thebenefit available to the accused under Section 4 of the Probation of Offenders Act is subject to the limitation embodied in the provisions and the word "may" clearly indicates that the discretion vests with the Court whether to release the offender in exercise of the powers under Section 3 or 4 of the Probation of Offenders Act, having regard to the nature of the offence and the character of the offender and overall circumstances of the case. The powers under Section 4 of the Probation of Offenders Act vest with the Court when any person is found guilty of the offence committed, not punishable with death or*

imprisonment for life. This power can be exercised by the Courts while finding the person guilty and if the Court thinks that having regard to the circumstances of the case, including the nature of the offence and the character of the offender, benefit should be extended to the accused, the power can be exercised by the Court even at the appellate or revisional stage and also by this Court while hearing appeal under Article 136 of the Constitution of India."

8. Conclusion and Suggestions

Probation and admonition represent an important shift in Indian criminal jurisprudence from punishment as the sole response to crime towards a more balanced approach that also recognises reformation and rehabilitation. The Probation of Offenders Act, 1958 provides a specific statutory framework for releasing eligible offenders after admonition or on probation of good conduct, while Sections 401 and 402 of the Bharatiya Nagarik Suraksha Sanhita, 2023 address related matters within the criminal procedural framework. These provisions recognise that imprisonment may not always be necessary or appropriate, particularly where the circumstances of the offence and the character of the offender indicate a reasonable possibility of reform. However, the grant of probation or admonition is not an automatic right of every convicted person. Courts must examine the applicable statutory conditions, the nature and gravity of the offence, the offender's background and the impact of the offence on the victim. The effectiveness of these measures therefore depends upon a careful exercise of judicial discretion that balances the prospects of rehabilitation with the requirements of justice and public safety. The analysis of judicial decisions further demonstrates that the application of probation law requires a contextual and legally reasoned approach. The availability of probation, the relevance of previous convictions, the treatment of offences carrying minimum sentences and the consideration of probation officers' reports must be determined in accordance with the governing statutory provisions and authoritative judicial interpretation. The relationship between the Probation of Offenders Act, 1958 and the BNSS, 2023 also deserves careful examination, particularly to avoid treating their respective provisions as identical in scope and operation. In this regard, courts should record clear reasons when granting or refusing the benefit of probation or admonition, thereby promoting consistency, transparency and fairness in sentencing. At the same time, the interests of victims should not be overlooked; appropriate compensation, where legally permissible, and consideration of the harm caused by the offence should form part of a balanced sentencing decision. A reformative approach must not mean the absence of accountability, but rather an effort to achieve accountability without imposing unnecessary or counterproductive punishment.

To make probation and admonition more effective in practice, greater attention should be given to institutional support, timely social-background assessments, adequate staffing of probation services and systematic follow-up of offenders released under these provisions. Probation officers should be equipped to assist courts through reliable reports and to support offenders in complying with the conditions imposed upon them. Judicial officers may also benefit from periodic training on the statutory requirements, relevant precedents and the practical objectives of non-custodial measures. Furthermore, publicly accessible and anonymized data on the grant of probation, compliance with probation conditions and subsequent offending would help assess whether these measures are achieving their intended rehabilitative purpose. The legislature and relevant authorities should periodically review implementation gaps and clarify any continuing uncertainties in the interaction between the 1958 Act and the BNSS, 2023. Ultimately, the success of probation and admonition should be assessed not merely by the number of offenders spared imprisonment, but by whether the legal system can promote lawful conduct, protect society, recognise victims' interests and provide suitable offenders with a meaningful opportunity to reintegrate into the community.

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