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**Uttar Pradesh First Offenders Probation Act, 1938****06 of 1938****CONTENTS**

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**Uttar Pradesh First Offenders Probation Act, 1938****06 of 1938**

An Act to provide for the release on probation of first offenders Whereas it is expedient to amend and consolidate the law relating to release on probation of first offenders in certain cases and to provide for other matters incidental thereto; It is hereby enacted as follows : Statements of Object and reasons.--In Section 562 of the Code of Criminal Procedure, 1898,<sup>2</sup> there was a provision empowering Courts to release certain first offenders on probation of good conduct instead of passing a sentence on them. This provision was considerably restricted in its scope and it applied only to certain minor offences. In 1923 this section was amended and its scope was considerably widened. It now applies to every person of whatever sex or age convicted of an offence punishable with imprisonment for not more than seven years and to all women and

all men under 21 years of age convicted of an offence not punishable with death or transportation for life. The Court is empowered to release such persons if they are first offenders on their entering into bonds, with or without sureties, to keep peace and be of good behaviour. Provision was also made for the first time in 1923 empowering Courts to release certain first offenders in trivial cases after admonition. The State Government is of opinion that in order to ensure that an offender released on probation of good conduct really conducts himself properly and becomes a useful member of the society something more definite is required than the mere taking of security, and that a provision for placing such offenders under the supervision of certain officers or societies appointed to take care of them and watch their behaviour and conduct would achieve that object. This Bill is, therefore, introduced for the purpose. It is intended to replace Sections 562, 563 and 564 of the Code of Criminal Procedure, 1898. The important changes introduced in these sections are the following :

- (1) Under Section 552 (1) of the Code before releasing an offender on probation the court is to take into account the age, character and antecedent only. It is now proposed that such order is also made on consideration of his physical and mental condition.
- (2) Under Section 564 of the Code it is required that the offender or at least one of his sureties should reside and carry on a regular occupation within the jurisdiction of the Court or at any place where the offender is likely to live. In order to give the sureties a real and effective control over the offender, this Bill provides in the proviso to clause 4 (1) that both the offender as well as at least one of his sureties should so reside or carry on occupation.
- (3) More elaborate provisions for taking action on the offender's failure to observe the condition of his release are provided in this Bill and power has been given to the Court instead of sentencing the offender for the original offence to impose on him penalty not exceeding Rs. 50 and to let him continue on probation.
- (4) New provision has been made in clause (2) to enable the court to place offenders under 24 years of age under the supervision of a probation officer. Additional conditions, e.g. with respect to residence or abstention from intoxicants, may be imposed on the passing of a supervision order and security for their observance may be taken. Provision has also been made to vary the condition of release and the term of the security bond on the application of the probation officer. As Government will have to consider the question of appointment of probation officers or recognition of certain societies to be invested

with the powers to nominate probation officers before the new Act can function, it is provided in the Bill that the Act shall come into force on such date as the State Government may notify. In 1938, came the present Act which replaced Sections 562, 563 and 564 of the Code of Criminal Procedure, 1898,<sup>3</sup> and brought important changes in the law relating to first offenders. The Probation of Offenders Act (No. XX of 1958) has since been enacted by the Parliament, but has not been applied to the State of Uttar Pradesh as yet. 1. Received the assent of the Governor General on 22nd November, 1938, and was published under Section 76 of the Government of India Act, 1935, on 3rd December, 1938. For S.O.R., see Gaz., Extra., dated Jan. 18, 1938, pp. 6-7, published in Gaz. of India, 1938, Pt. VII, pp. 271-273. 2. Now see Section 482, Cr. P.C., 1973. 3. See now Secs. 360 and 360 (7), (8), (9) and (10) of Code of Criminal Procedure, 1973.

### **1. Short Title, Extent And Commencement :-**

(1) This Act may be called the United Provinces First Offenders Probation Act, 1938.

(2) It extends to the whole of Uttar Pradesh.

(3) (a) This section shall come into force at once.

(b) The 1[State Government] may, by notification in the Gazette, direct that all or any of the remaining provisions of this Act shall come into force in any local area on such date or dates as may be specified in such notification.

1. Substituted by the A.O., 1950.

### **2. Interpretation :-**

In this Act, unless there is anything repugnant in the subject or context,--

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

(b) such of the expressions used in this Act as are defined in the Code have the meanings assigned to them in the Code.

### **3. Power Of Court To Release Certain Offenders After Admonition :-**

In any case in which a person is found guilty of the offences of theft, dishonesty, misappropriation or cheating, punishable under the Indian Penal Code, or of any offence punishable with not more than two years imprisonment and no previous conviction is proved

against him, the court by which he is found guilty may, if it thinks fit, having regard to the age, character, antecedents or physical or mental condition of the offender, and to the trivial nature of the offence or any extenuating circumstances under which the offence was committed instead of sentencing him to any punishment, release him after due admonition.

#### **4. Power Of Court To Release Certain Of Fenders On Probation Of Good Conduct :-**

(1) When any person is convicted of an offence not punishable with death or transportation for life, and no previous conviction is proved against the offender, if it appears to the court before which he is convicted, regard being had to the age, character, antecedents or physical or mental condition of the offender and to the circumstances in which the offence was committed that it is expedient that the offender should be released on probation of good conduct 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 the release of an offender under this section unless it is satisfied that the offender, or his surety, has a fixed place of abode and regular occupation in the place for which the court acts, or in which the offender is likely to live during the period named for the observance of the conditions :

Provided also that if a person under twenty-one years of age is convicted of any offence under the Indian Penal Code, or any other enactments prescribed in this behalf under rules made by the 1[State Government], which is punishable with imprisonment not exceeding six months, the court shall take action under this section unless, for special reasons to be recorded in writing, it does not consider it proper to do so.

(2) Where the offender ordered to be released under sub-section (1) is under twenty-four years of age, the court may make a supervision order directing that such offender shall be under the supervision of such probation officer as may be named in the order during the period specified therein and imposing such other conditions for securing such supervision as may be specified in the order :

Provided that the period so specified shall not extend beyond the date on which, in the opinion of the court, the offender will attain the age of twenty-five years.

(3) A court making an order under sub-section (2) shall require the offender, before he is released to enter into a bond, with or without sureties, to observe the condition with respect to residence, abstention from intoxicants and any other matters as the court may, having regard to the particular circumstances of the case, consider fit to impose for preventing a repetition of the same offence or a commission of other offences by the offender.

(4) A court making an order under sub-section (2) shall furnish to the offender and the sureties, if any, a notice in writing stating in simple terms the conditions of the bond.

1. Substituted by the A.O., 1950.

## **5. Procedure In Cases Submitted By Magistrate Not Empowered To Act Under Sections 3 And 4 :-**

Notwithstanding anything contained in Sections 3 and 4, where any first offender is found guilty of an offence by Magistrate of the third class or a Magistrate of the second class not specially empowered by the 1[State Government] in this behalf, and the magistrate is of the opinion that the powers conferred by the sections should be exercised, he shall record his opinion to that effect and submit the proceedings to a Magistrate of the first class or Sub-Divisional Magistrate, forwarding the accused to, or taking bail for his appearance before such Magistrate, who may thereupon pass such sentence or make such order as he might have passed or made, if the case had originally been heard by him, and, if he thinks further inquiry or additional evidence on any point to be necessary, he may make such inquiry or take such evidence himself or direct such inquiry or evidence to be made or taken.

1. Substituted by the A.O., 1950.

## **6. Powers Of Appellate Courts :-**

(1) An order under Section 3 or Section 4 may be made by an appellate court or by the High Court when exercising its powers of revision.

(2) When an order has been made under Sections 3, 4 or 5 of this Act in respect of an offender, the High Court may on appeal, when there is a right of appeal to such Court, or when exercising its powers of revision, set aside such order and in lieu thereof, pass

sentence on such offender according to law; Provided that it shall not inflict a greater punishment than might have been inflicted by the court by which the offender was convicted.

## **7. Procedure In Case Of Offender Failing To Observe Conditions Of Release :-**

(1) If the court before which the offender is bound by his bond under Section 4 to appear for sentence when called upon, or any court which could have dealt with the offender in respect of his original offence, has reason to believe that the offender has failed to observe any of the conditions of the bond executed by him, it may issue a warrant for his apprehension or may, if it thinks fit, issue a summons to the offender 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 admit him to bail, with or without sureties, to appear on the date of 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 executed by him, it may forthwith,--

(a) sentence him for the original offence, or

(b) without prejudice to the continuance in force of the bond or bonds, impose upon him, in respect of the first such failure, a penalty not exceeding the amount of fine which may be imposed for the original offence but in no case 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, from time to time fix, the court, instead of realizing the penalty, may sentence the offender for the original offence.

## **8. Provision As To Bonds :-**

The provisions of Sections 122, 126, 126-A, 406-A (b) and (c), 514, 514-A, 514-B and 515 of the Code shall, so far as may be, apply in the case of sureties offered and bonds given under this Act as if they had been offered and given under Chapter VIII of the Code.

## **9. Appointment Of Probation Officers :-**

(1) A probation officer named in an order under Section 4 (2) shall be,--

(a) any person appointed to be a probation officer by the 1[State Government], or

(b) any person provided for this purpose by a society recognized in this behalf by the 1[State Government], or

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

Explanation.--A probation officer may be a person of either sex.

(2) In nominating a probation officer, the court shall be guided by any general or special instructions the 1[State Government] may issue in this behalf.

(3) A probation officer, in the exercise of his duties under any supervision order, shall be subject to the control of the District Magistrate of the district in which the offender, for the time being resides.

(4) The court, before which an offender is bound by his bond to appear for sentence when called upon, or the District Magistrate of the district in which the offender for the time being resides may at any time, appoint another probation officer in the place of the person named in a supervision order :

Provided that if such person was provided by a society, the probation officer to be appointed in his place shall also be one provided by such society, unless the society is unable to provide a man suitable in the opinion of such court or magistrate to act as a probation officer.

1. Substituted by the A.O., 1950.

## **10. Duties Of Probation Officers :-**

A probation officer shall, subject to rules made under this Act and to the directions of the court,--

(a) visit or receive visits from the offender at such reasonable intervals as may be specified in the supervision order, or subject thereto, as the probation officer may think fit-

(b) see that he observes the conditions of the bond or bonds executed by him;

(c) report to the court as to his behaviour; and

( d ) advise, assist and befriend him, and when necessary, endeavour to find suitable employment for him.

## **11. Variation Of Condition Of Probation And Discharge Of**

**Bonds :-**

executed by offender

The court before which any offender is bound by his bond under Section 4 to appear for sentence when called upon--

(a) may at any time, if it appears upon the application of the probation officer, that it is expedient that the bond or bonds executed by the offender should be varied, summon him, and if he fails to show cause why such variation should not be made, vary the bond or bonds by extending or diminishing the duration thereof (so however, that it shall not exceed three years from the date of the original order and shall not extend beyond the date on which in the opinion of the court, the offender shall attain the age, of twenty-five years), or by altering the conditions thereof or by inserting additional conditions therein, or

(b) may, on application made by the probation officer and on being satisfied that the conduct of the offender has been such as to make unnecessary that he should be kept any longer under supervision, discharge the bond or bonds executed by him.

**12. Effect Of Variation Of Bond On Sureties :-**

(1) When any condition in a bond is relaxed under the provisions of Section 11, the condition as so relaxed, and not the original condition, shall be binding on the sureties to the bond.

(2) Where any condition in a bond is made more onerous under the provisions of Section 11 such condition shall not be binding in the more onerous form on any surety to the bond, unless he has accepted it in writing, but the condition in its original form shall continue to bind the surety who has not accepted the condition in its more onerous form.

(3) Where any additional condition is imposed under the provisions of Section 11, such additional condition shall not be binding on any surety to the bond unless he has accepted it in writing.

(4) No variation in, or addition to, the conditions of any bond made under the provisions of Section 11, shall affect the liability of any surety to the bond in respect of any condition which has not been varied.

**12A. Delegation Of Powers :-**

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1[The State Government may, by a notification in the Official Gazette, direct that all or any of the powers exercisable by it under this Act shall, in relation to such matters and subject to such conditions, if any, as may be specified in this behalf be exercised also by such officer or authority as may be specified.]



1. Inserted by U.P. Act VIII of 1958, Section 2

### **13. Power Of State Government To Make Rules :-**

(1) The 1[State Government] may, either generally or specially for any area or areas in which this Act is in force, make rules consistent with this Act for carrying out all or any of the purposes thereof.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for or regulate or prescribe--

(a) any matters incidental to the appointment, resignation and removal of probation officers;

(b) the payment of remuneration and expenses to probation officers appointed by the 1[State Government] direct or or a subsidy to any society which provides persons for appointment as probation officers;

(c) the conditions on which societies may be recognized for the purpose of clause (b) of sub-section (1) of Section 9; and

(d) the enactments referred to in the second proviso to Section 4 (1).

(3) All rules made under this section shall be subject to the condition of previous publication.

1. Substituted by the A.O., 1950.

### **14. Saving Of The Operation Of Certain Enactments :-**

Nothing in this Act shall affect the provisions of Section 31 of the Reformatory Schools Act, 1897.

### **15. Repeal :-**

1[Sections 562, 563 and 564 of the Code] are hereby repealed.

1. See now Section 360 of the Code of Criminal Procedure, 1973.