

CHAPTER 21

First Offenders

1. (i) *Release on probation of good conduct*—Section 562 of the Code of Criminal Procedure [Section 360 of new Code] empowers a Magistrate of the first class or a Magistrate of the second class specially empowered, to release first offenders in certain cases on probation of good conduct, instead of sentencing them to punishment and enables a Magistrate of the third class or a Magistrate of the second class not specially empowered in this behalf, if he is of the opinion that the powers conferred by this section should be exercised, to submit his proceedings to a Magistrate of the first class for disposal under Section 380. The same section empowers all Magistrates to release after due admonition first offenders convicted of certain offences, when such a course appears advisable in view of the age, character, antecedents or physical or mental condition of the offender and the trivial nature of the offence or other extenuating circumstances.

(ii) *Action under Section 562 is suitable on occasions of famine*—These provisions appear particularly suitable during seasons of scarcity and distress, at which time hunger is an extenuating circumstance. As, however, there is a large floating population during famine, care should be taken to see that the preliminary conditions of Section 564 of the Code of Criminal Procedure [Section 300(7), (10) of new Code] are present, *i.e.*, that the accused and his surety have a fixed abode or regular occupation within the jurisdiction of the Court.

(iii) *Youth of the offender also justifies this action*—It should also be borne in mind that the youth of an offender would often constitute an extenuating circumstance which would justify action under Section 562 of the Code of Criminal Procedure [Section 360 of new Code].

2. Appropriate case for application of Section 562—It should be noted that the provisions of Section 562 [Section 360 of new Code] are not limited in application to juvenile offenders. They are, however, more restricted in their operation so far as men over twenty-one years of age concerned. The section should be generally applied in the case of youths and women, but is not limited to them. Its application is also appropriate to the following class of persons, *viz.*—

(i) young men who show no indication of being confirmed bad characters, and

(ii) men of whatever age who have borne a good character for a long unpremeditated offence on sudden temptation.

It must be remembered, however, that the foregoing are only instances. The Magistrate must decide for himself in each case whether the section should be applied. The point to be kept in view is that punishment should not be inflicted when there is a reasonable expectation that the offender will not offend again, and it is not necessary to punish as a warning to others.

3. Section 562 not to be applied for offences under Excise and Opium Act—Section 562 [Section 360 of the New Code] is not, as a rule, appropriate in the case of offences like illicit distillation of liquor, sale of cocaine, etc., under the Excise and Opium Acts, which are not the result of any sudden temptation, but involve previous preparation and are prompted by the large profits made by illicit traffic in such articles. (*Cf.* 7 I.L.R. Lah, 32. 19 P.R. 1916).

4. Form of warrant—A form of warrant has been prescribed,—*vide* Form No. 89 (New series, Criminal)—for use in the case of persons who, on conviction, have been ordered to appear and receive sentence when called upon. This form should be obtained and used, when necessary.

5. Second Class Magistrates have also been empowered to act under Section 562 Criminal Code—All Magistrates of the 2nd class have been invested with power under Section 562 of the Code of Criminal Procedure, 1898, [Section 360 of new Code] to take security from first offenders [*Punjab Government Notification No. 431 (Home—Judl.) dated the 18th April, 1910*].