

in *Swamy Shraddananda* and several other cases, by giving a sentence in a capital offence of 20 years or 30 years imprisonment without remission, is to effectively injunct the appropriate Government from exercising its power of remission for the specified period. In our opinion, this issue needs further and greater discussion, but as at present advised, we are of the opinion that this is not permissible. The appropriate Government cannot be told that it is prohibited from granting remission of a sentence. Similarly, a convict cannot be told that he cannot apply for a remission in his sentence, whatever the reason. In this case, though the Division Bench raised a doubt about the decision of a three-Judge Bench in *Swamy Shraddananda* (*supra*), yet the same has not been referred to a larger Bench.

In *Sahib Hussain @ Sahib Jan v State of Rajasthan*,<sup>148</sup> another two-Judge Bench reiterated the position held in *Swamy Shraddananda* (*supra*) by holding that the observations in *Sangeet* (*supra*) are not warranted. In *Gurvail Singh @ Gala v State of Punjab*,<sup>149</sup> another two Judge also termed the remarks in *Sangeet* (*supra*) were 'unwarranted' and opined that if the two-Judge Bench was of the opinion that earlier judgments, even of a larger Bench were not justified, the Bench ought to have referred the matter to the larger Bench.

### **[s 54.3] Cases where the death sentence was modified to a particular period (or life) with further direction to avoid premature release**

1. *Subhash Chander v Krishan Lal* <sup>150</sup>.
2. *Shri Bhagwan v State of Rajasthan* <sup>151</sup>.
3. *Ram Anup Singh v State of Bihar* <sup>152</sup>.
4. *Mohd. Munna v UOI* <sup>153</sup>.
5. *Jayawant Dattatraya Suryarao v State of Maharashtra* <sup>154</sup>.
6. *Nazir Khan v State of Delhi* <sup>155</sup>.
7. *Swamy Shraddananda (2) v State of Karnataka* <sup>156</sup>.
8. *Haru Ghosh v State of WB* <sup>157</sup>.
9. *Ramraj v State of Chattisgarh* <sup>158</sup>.
10. *Neel Kumar @ Anil Kumar v The State of Haryana* <sup>159</sup>.
11. *Sandeep v State of UP* <sup>160</sup>.
12. *Gurvail Singh @ Gala v State of Punjab* <sup>161</sup>.
13. *Brajendra Singh v State of MP* <sup>162</sup>.
14. *State of UP v Sanjay Kumar* <sup>163</sup>.

<sup>127</sup>. Subs. by the A.O. 1950, for "the Central Government or the Provincial Government of the Province within which the offender shall have been sentenced". The words in italics were

substituted by the A.O. 1937, for "the Government of India or the Government of the place".

128. The Law Commission of India in its 41st report proposed that sections 54, 55 and 55A may be omitted from the [IPC](#) and their substance incorporated in [Section 402 Criminal Procedure Code](#)- See *State (Govt of NCT of Delhi) v Prem Raj*, (2003) 7 SCC 121 [LNIND 2003 SC 632] : JT 2003 (8) SC 17 [LNIND 2003 SC 632] .

129. *Ashok Kumar v UOI*, AIR 1991 SC 1792 [LNIND 1990 SC 319] : (1991) 3 SCC 498 [LNIND 1991 SC 288] .

130. *State of Haryana v Mahender Singh*, (2007) 13 SCC 606 [LNIND 2007 SC 1295] : 2008 Cr LJ 444 : (2009) 1 SCC (Cr) 221.

131. *Epuru Sudhakar v Govt of AP*, (2006) 8 SCC 161 [LNIND 2006 SC 807] : AIR 2006 SC 3385 [LNIND 2006 SC 807] .

132. *State of Mysore v H Srinivasmurthy*, (1976) 1 SCC 817 [LNIND 1976 SC 29] : AIR 1976 SC 1104 [LNIND 1976 SC 29] .

133. *Maru Ram v UOI*, AIR 1980 SC 2147 [LNIND 1980 SC 446] : 1981 SCR (1) 1196.

134. *Devender Pal Singh Bhullar v State of NCT of Delhi*, AIR 2013 SC 1975 [LNIND 2013 SC 1281] : (2013) 6 SCC 195 [LNIND 2008 SC 2975] .

135. *Kehar Singh v UOI*, AIR 1989 SC 653 [LNIND 1988 SC 586] : (1989) 1 SCC 204 [LNIND 1988 SC 586] .

136. **Overruled** in *Triveni Ben v State of Gujarat*, AIR 1989 SC 1335 [LNIND 1989 SC 885] : (1989) 1 SCC 678 [LNIND 1989 SC 885] .

137. In *Ediga Annamma's case*, (1974) (3) SCR 329, two years was considered sufficient to justify interference with the sentence of death. In *Bhagwan Baux's case* ( AIR 1978 SC 34 ), two and a half years and in *Sadhu Singh's case* ( AIR 1978 SC 1506 ), three and a half years were taken as sufficient to justify altering the sentence of death into one of imprisonment for life, **See also** *KP Mohammed v State of Kerala*, (1985) 1 SCC (Cr) 142 : 1984 Supp SCC 684.

138. *Sher Singh v State of Punjab*, AIR 1983 SC 465 [LNIND 1983 SC 89] : (1983) 2 SCC 344 [LNIND 1983 SC 89] .

139. *Javed Ahmed v State of Maharashtra*, AIR 1985 SC 231 [LNIND 1984 SC 310] : (1985) 1 SCC 275 [LNIND 1984 SC 310] .

140. *Triveni Ben v State of Gujarat*, AIR 1989 SC 1335 [LNIND 1989 SC 885] : (1989) 1 SCC 678 [LNIND 1989 SC 885] : JT 1989 (1) SC 314 [LNIND 1989 SC 885] : 1990 Cr LJ 1810 : (1989) 1 SCC (Cr) 248.

141. *Madhu Mehta v UOI*, (1989) 3 SCR 775 [LNIND 1989 SC 390] .

142. See also *Daya Singh v UOI*, (1991) 3 SCC 61 [LNIND 1991 SC 231] .

143. *Devender Pal Singh Bhullar v State of NCT of Delhi*, AIR 2013 SC 1975 [LNIND 2013 SC 1281] : (2013) 6 SCC 195 [LNIND 2008 SC 2975] .

144. *GS Singhvi and S J Mukhopadhaya*, JJ.

145. *Mahendra Nath Das v UOI*, (2013) 6 SCC 253 [LNIND 2013 SC 522] : 2013 (6) Scale 591 [LNIND 2013 SC 522] .

146. *Swamy Shraddananda (2) v State of Karnataka*, 2008 (13) SCC 767 [LNIND 2008 SC 1488] : AIR 2008 SC 3040 [LNIND 2008 SC 1488] : 2008 Cr LJ 3911; Also see *State of UP v Sanjay Kumar*, (2012) 8 SCC 537 [LNIND 2012 SC 416] .

147. *Sangeet v State of Haryana*, AIR 2013 SC 447 [LNIND 2012 SC 719] : (2013) 2 SCC 452 [LNIND 2012 SC 719] : 2013 Cr LJ 425 .

148. *Sahib Hussain @ Sahib Jan v State of Rajasthan*, 2013 Cr LJ 2359 : 2013 (6) Scale 219 [LNIND 2013 SC 474] .

149. *Gurvail Singh @ Gala v State of Punjab*, 2013 (10) Scale 671 [LNIND 2013 SC 1147] .

150. *Subhash Chander v Krishan Lal*, (2001) 4 SCC 458 [LNIND 2001 SC 853] .
151. *Shri Bhagwan v State of Rajasthan*, (2001) 6 SCC 296 [LNIND 2001 SC 1234] .
152. *Ram Anup Singh v State of Bihar*, (2002) 6 SCC 686 [LNIND 2002 SC 482] .
153. *Mohd Munna v UOI*, (2005) 7 SCC 417 [LNIND 2005 SC 701] .
154. *Jayawant Dattatraya Suryarao v State of Maharashtra*, (2001) 10 SCC 109 [LNIND 2001 SC 2510] .
155. *Nazir Khan v State of Delhi*, (2003) 8 SCC 461 [LNIND 2003 SC 696] .
156. *Swamy Shraddananda (2) v State of Karnataka*, AIR 2008 SC 3040 [LNIND 2008 SC 1488] : 2008 (13) SCC 767 [LNIND 2008 SC 1488] : 2008 Cr LJ 3911 .
157. *Haru Ghosh v State of WB*, (2009) 15 SCC 551 [LNIND 2009 SC 1734] .
158. *Ramraj v State of Chattisgarh*, (2010) 1 SCC 573 [LNIND 2009 SC 2093] .
159. *Neel Kumar @ Anil Kumar v The State of Haryana*, (2012) 5 SCC 766 [LNIND 2012 SC 298] .
160. *Sandeep v State of UP*, (2012) 6 SCC 107 [LNIND 2012 SC 306] .
161. *Gurvail Singh @ Gala v State of Punjab*, (2013) 2 SCC 713 [LNIND 2013 SC 94] .
162. *Brajendra Singh v State of MP*, (2012) 4 SCC 289 [LNIND 2012 SC 159] .
163. *State of UP v Sanjay Kumar*, (2013) 8 SCC 537 .

# THE INDIAN PENAL CODE

## CHAPTER III OF PUNISHMENTS

### [s 55] Commutation of sentence of imprisonment for life.

In every case in which sentence of <sup>164.</sup>[imprisonment] for life shall have been passed, <sup>165.</sup>[the appropriate Government] may, without the consent of the offender, commute the punishment for imprisonment of either description for a term not exceeding fourteen years.

#### COMMENT—

In the absence of an order under [section 55 IPC, 1860](#) or [section 433\(b\) Cr PC, 1973](#) a life convict cannot be released even after expiry of 14 years, for a sentence of life imprisonment means rigorous imprisonment for the rest of convict's life.<sup>166.</sup> It is now conclusively settled by a catena of decisions that the punishment of imprisonment for life handed down by the Court means a sentence of imprisonment for the convict for the rest of his life.<sup>167.</sup> However, Supreme Court has been, for quite some time, conscious of the liberal approach and sometimes discriminatory too, taken by the States in exercise of their power under [sections 432 and 433 of Cr PC, 1973](#) in remitting or commuting sentences. In *Jagmohan Singh v State of UP*,<sup>168.</sup> Court had expressed concern about such approach made by the States in remitting life sentences that led to the amendment in [Cr PC](#) introducing section 433A by Act 45 of 1978. Under [section 433A of Cr PC, 1973](#) a sentence of imprisonment for life is imposed for an offence for which death is one of the punishments or where a death sentence is commuted to life under section 433, he shall not be released unless he has served 14 years of imprisonment.

It appears that the provision has been generally understood to mean that life sentence would only be 14 years of incarceration. Taking judicial notice of such a trend, the Supreme Court has, in cases where imposition of death sentence would be too harsh and imprisonment for life (the way it is understood as above) too inadequate, in several cases, has adopted different methods to ensure that the minimum term of life imprisonment ranges from at least 20 years to the end of natural life. However, in some cases, the Court had also been voicing concern about the statutory basis of such orders.<sup>169.</sup> In the case of *State of Rajasthan v Jamil Khan*,<sup>170.</sup> the Supreme Court opined that:

We are of the view that it will do well in case a proper amendment under [section 53 of IPC](#) is provided, introducing one more category of punishment - life imprisonment without commutation or remission. Dr. VS Malimath, J, in the Report on 'Committee of Reforms of Criminal Justice System', submitted in 2003, had made such a suggestion but so far no serious steps have been taken in that regard. There could be a provision for imprisonment till death without remission or commutation.

#### [s 55.1] The power of High Court to commute.—

Exercise of power under section 433 is an executive discretion. The High Court in exercise of its revisional jurisdiction had no power conferred on it to commute the sentence imposed where a minimum sentence was provided for offence. The mandate of [section 433 Cr PC, 1973](#) enables the Government in an appropriate case to commute

the sentence of a convict and to prematurely order his release before expiry of the sentence as imposed by the Courts.<sup>171</sup> In *State (Govt. of NCT of Delhi) v Prem Raj*,<sup>172</sup> Supreme Court was called upon to consider whether in a case involving conviction under section 7 read with [section 13\(1\)\(d\) of the Prevention of Corruption Act 1988](#), the High Court could commute the sentence of imprisonment on deposit of a specified amount by the convict and direct the State Government to pass appropriate order under [section 433\(c\) Cr PC, 1973](#). It was held that the question of remission lay within the domain of the appropriate government and it was not open to the High Court to give a direction of that kind even if the High Court could give such a direction, it could only direct consideration of the case of premature release by the Government and could not have ordered the premature release of the respondent itself. The right to exercise the power under [section 433 Cr PC, 1973](#) vests in the Government and has to be exercised by the Government in accordance with the rules and established principles. The impugned order of the High Court cannot, therefore, be sustained and is hereby set aside.<sup>173</sup>

### **[s 55.2] Power to commute, when minimum sentence is provided in the Statute.—**

Punishment has a penological purpose. Reformation, retribution, prevention, and deterrence are some of the major factors in that regard. Parliament is the collective conscience of the people. If it has mandated a minimum sentence for certain offences, the Government being its delegate, cannot interfere with the same in exercise of their power for remission or commutation. Neither section 432 nor [section 433 of Cr PC, 1973](#) hence contains a non-obstante provision. Therefore, the minimum sentence provided for any offence cannot be and shall not be remitted or commuted by the Government in exercise of their power under [sections 432 or 433 of the Cr PC, 1973](#). Wherever the [Indian Penal Code](#) or such penal statutes have provided for a minimum sentence for any offence, to that extent, the power of remission or commutation has to be read as restricted; otherwise the whole purpose of punishment will be defeated and it will be a mockery on sentencing.<sup>174</sup>

<sup>164</sup>. Subs. by Act 26 of 1955, section 117 and Sch, for transportation (w.e.f. 1-1-1956).

<sup>165</sup>. Subs. by the A.O. 1950, for "*the Provincial Government of the Province* within which the offender shall have been sentenced". The words in italics were substituted by the A.O. 1937, for the Government of India or the Government of the place.

<sup>166</sup>. *Naib Singh v State of Punjab*, 1983 Cr LJ 1345 : AIR 1983 SC 855 [LNIND 1983 SC 116] : 1983 Cr LR (SC) 348 : (1983) 2 SCC 454 [LNIND 1983 SC 116] : 1983 SCC (Cr) 536. The provisions of these sections are subject to the overriding power conferred by [Articles 72 and 161](#) of the [Constitution of India](#). *Ashok Kumar v UOI*, AIR 1991 SC 1792 [LNIND 1990 SC 319] : 1991 Cr LJ 2483, where the court also emphasised that imprisonment for life means imprisonment for the full span of life. **Affirming**, *Gopal Vinayak Godse v State of Maharashtra*, AIR 1961 SC 600 [LNIND 1961 SC 11] : (1961) 3 SCR 440 [LNIND 1961 SC 11] : (1961) 1 Cr LJ 736. In the absence of an order the section is not applicable because there can be no order by

inference or implication, *Sat Pal v State of Haryana*, AIR 1993 SC 1218 [LNIND 1992 SC 526] : 1993 Cr LJ 314 : (1992) 4 SCC 172 [LNIND 1992 SC 526] .

167. *Gopal Vinayak Godse v The State of Maharashtra*, (1961) 3 SCR 440 [LNIND 1961 SC 11] (Constitution Bench); *Dalbir Singh v State of Punjab*, (1979) 3 SCC 745 [LNIND 1979 SC 281] ; *Maru Ram v UOI*, (1981) 1 SCC 107 [LNIND 1980 SC 446] (Constitution Bench); *Naib Singh v State of Punjab*, (1983) 2 SCC 454 [LNIND 1983 SC 116] ; *Ashok Kumar alias Golu v UOI*, (1991) 3 SCC 498 [LNIND 1991 SC 288] ; *Laxman Naskar (Life Convict) v State of WB*, (2000) 7 SCC 626 [LNIND 2000 SC 1180] ; *Zahid Hussein v State of WB*, (2001) 3 SCC 750 [LNIND 2001 SC 692] ; *Kamalanantha v State of TN*, (2005) 5 SCC 194 [LNIND 2005 SC 337] ; *Mohd Munna v UOI*, (2005) 7 SCC 416 [LNIND 2005 SC 701] and *CA Pious v State of Kerala*, (2007) 8 SCC 312 [LNIND 2007 SC 1070] .

168. *Jagmohan Singh v State of UP*, (1973) 1 SCC 20 [LNIND 1972 SC 477] .

169. *Sangeet v State of Haryana*, AIR 2013 SC 447 [LNIND 2012 SC 719] : (2013) 2 SCC 452 [LNIND 2012 SC 719] : 2013 Cr LJ 425 .

170. *State of Rajasthan v Jamil Khan*, 2013 (12) Scale 200 [LNIND 2013 SC 883] .

171. *Delhi Administration (Now NCT of Delhi) v Madan Lal*, 2002 (6) Supreme 77 [LNIND 2002 SC 533] .

172. *State (Govt of NCT of Delhi) v Prem Raj*, (2003) 7 SCC 121 [LNIND 2003 SC 632] .

173. *State of Punjab v Kesar Singh*, 1996 (5) SCC 495 [LNIND 1996 SC 1091] .

174. *State of Rajasthan v Jamil Khan*, 2013 (12) Scale 200 [LNIND 2013 SC 883] .

# THE INDIAN PENAL CODE

## CHAPTER III OF PUNISHMENTS

**175.** **[[s 55A] Definition of "appropriate Government".**

**In sections 54 and 55 the expression "appropriate Government" means,—**

- (a) in cases where the sentence is a sentence of death or is for an offence against any law relating to a matter to which the executive power of the Union extends, the Central Government; and**
- (b) in cases where the sentence (whether of death or not) is for an offence against any law relating to a matter to which the executive power of the State extends, the Government of the State within which the offender is sentenced.]**

### COMMENT—

This section was substituted for the old section by the Adaptation of Laws Order 1950.

The appropriate Government empowered to remit the sentence of a person convicted of offences under [sections 489-A to 489-D](#) of the [IPC, 1860](#) is the Central Government not the State Government.<sup>176.</sup>

<sup>175.</sup> Subs. by the A.O. 1950, for section 55A. Earlier section 55A was inserted by the A.O. 1937.

<sup>176.</sup> *GV Ramanaiah v Superintendent of Central Jail, Rajahmundry*, [AIR 1974 SC 31](#) [[LNIND 1973 SC 300](#)] : (1974) 3 SCC 531 [[LNIND 1973 SC 300](#)] ; *Hanumant Dass v Vinay Kumar*, [AIR 1982 SC 1052](#) : (1982) 2 SCC 177 -the appropriate Government is the Government of the State where the conviction took place and not the Government of the State where the offence was committed ([Section 432\(7\) Cr PC](#)).

# THE INDIAN PENAL CODE

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## **THE INDIAN PENAL CODE**

### **CHAPTER III OF PUNISHMENTS**

**[s 56] Sentence of Europeans and Americans to penal servitude. Proviso as to sentence for term exceeding ten years but not for life.**

**[Rep. by the Criminal Law (Removal of Racial Discriminations) Act, 1949 (17 of 1949), sec. 2 (w.e.f. 6-4-1949).]**

# THE INDIAN PENAL CODE

## CHAPTER III OF PUNISHMENTS

### [s 57] Fractions of terms of punishment.

In calculating fractions of terms of punishment, <sup>177</sup>[imprisonment] for life shall be reckoned as equivalent to <sup>178</sup>[imprisonment] for twenty years.

### COMMENT—

Section 57 of the IPC, 1860 does not in any way limit the punishment of imprisonment for life to a term of 20 years. Section 57 is only for calculating fractions of terms of punishment and provides that imprisonment for life shall be reckoned as equivalent to imprisonment for 20 years. The object and purpose of section 57 will be clear by simply referring to sections 65, 116, 119, 129 and 511 of the IPC, 1860.<sup>179</sup> The accused has thus no right to be released after a period of 20 years. The remissions granted under the rules made under the Prison Act or under the Jail Manual are merely administrative orders of the appropriate Government and fall exclusively within the discretion of the Government under section 401 (now section 432) Cr PC, 1973. In the case of a prisoner who is convicted in one State but transferred to the jail of another State to serve out the sentence, the appropriate Government to grant remission would be the Government of the State where the accused was convicted and not that of the transferee Government.<sup>180</sup>

### [s 57.1] Life imprisonment.—

Life imprisonment means imprisonment for the whole of a convict's natural life. It does not automatically expire on his serving sentence of 14 years or 20 years, unless, of course, the sentence is remitted or commuted by the Government in accordance with the law<sup>181</sup>. The Court said that life imprisonment means imprisonment for the whole of the remaining period of the convict's life. The fact that the West Bengal Correctional Services Act 1992, equates life imprisonment with imprisonment for 20 years does not entitle the convict to automatic release on expiry of such term of imprisonment including remission.<sup>182</sup>

### [s 57.2] Punishment for attempt Under Section 511 when the offence attempted is punishable with Life imprisonment.—

Section 57 of the IPC, 1860 provides that in calculating fractions of terms of punishment, imprisonment for life shall be reckoned as equivalent to imprisonment for 20 years. In view of this, for the offence of attempt to commit rape punishable under section 376(2)(a) read with section 511 maximum sentence would be rigorous imprisonment for ten years.<sup>183</sup>