

grandmother but granted her six months' time to arrange for the daughter and then to surrender to serve the sentence.^{120.}

[s 53.24] Community Service for Avoiding Jail Sentence.—

Convicts in various countries, now, voluntarily come forward to serve the community, especially in crimes relating to motor vehicles. Graver the crime greater the sentence. But, serving the society actually is not a punishment in the real sense where the convicts pay back to the community which he owes. Conduct of the convicts will not only be appreciated by the community, it will also give a lot of solace to him, especially in a case where because of one's action and inaction, human lives have been lost. In the facts and circumstances of the case, where six human lives were lost, Court felt to adopt this method would be good for the society rather than incarcerating the convict further in jail. The Court ordered to do community service for two years, which will be arranged by the Ministry of Social Justice and Empowerment within two months. On default, the convict will have to undergo simple imprisonment for two years.^{121.}

[s 53.25] Probation.—

[Probation of Offenders Act, 1958](#) ('PO Act') 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 object of the criminal law is more to reform the individual offender than to punish him. Broadly stated that the PO Act distinguishes offenders below 21 years of age and those above that age, and offenders who are not guilty of having committed an offence punishable with death or that imprisonment for life and those who are guilty of a lesser offence. While in the case of offenders who are above the age of 21 years absolute discretion is given to the Court to release them after admonition or on probation of good conduct, subject to the conditions laid down in the appropriate provisions of the PO Act. In case of offender below the age of 21 years, an injunction is issued to the Court not to sentence them to imprisonment unless it is satisfied that, having regard to the circumstances of the case, including the nature of the offence and the character of the offenders, it is not desirable to deal with them under sections 3 and 4 of the PO Act.^{122.} The PO Act introduced a very basic change in the criminal law of the country. At the same time, Courts were also to be careful about the impact on the society consequent on letting offenders on probation. Indiscriminate application of provisions of the PO Act to anti-social and white collar offenders may have an adverse effect on the security of the society. Application of the PO Act is specifically barred in some cases.^{123.} Provisions of the PO Act should be applied having regard to the nature of offence and age, character and antecedents of the offender.^{124.}

1. Subs. by Act 26 of 1955, section 117 and Sch, for "Secondly—Transportation" (w.e.f. 1-1-1956).

2. Clause "Thirdly" omitted by Act 17 of 1949, section 2 (w.e.f. 6-4-1949).

3. *Shivaji v State of Maharashtra*, 1973 Cr LJ 1783 : AIR 1973 SC 2622 [LNIND 1973 SC 249] .
4. *Inder Singh v State*, AIR 1978 SC 1091 : 1978 Cr LJ 766 (SC), see also *Ram Prasad*, 1980 Cr LJ 10 : AIR 1980 SC 83 [LNIND 1979 SC 404] ; *Ashok Kumar*, 1980 Cr LJ 444 : AIR 1980 SC 636 [LNIND 1980 SC 36] .
5. *Alister Anthony Pareira v State of Maharashtra*, 2012 Cr LJ 1160 : (2012) 2 SCC 648 [LNIND 2012 SC 15] : (2012) 1 SCC (Cr) 953 : AIR 2012 SC 3802 [LNIND 2012 SC 15] .
6. *State of Punjab v Bawa Singh*, 2015 Cr LJ 1701 .
7. *UOI v Kuldeep Singh*, AIR 2004 SC 827 [LNIND 2003 SC 1056] : (2004) 2 SCC 590 [LNIND 2003 SC 1056] ; *State of MP v Ghanshyam Singh*, JT 2003 (Supp.1) SC 129 : 2003 (8) SCC 13 [LNIND 2003 SC 772] ; *Jashubha Bharatsinh Gohil v State of Gujarat*, JT 1994 (3) SC 250 [LNIND 1994 SC 415] : 1994 (4) SCC 353 [LNIND 1994 SC 415] .
8. *BG Goswami v Delhi Administration*, 1974 (3) SCC 85 [LNIND 1973 SC 194] : AIR 1973 SC 1457 [LNIND 1973 SC 194] : 1973 SCC (Cr) 796 1974 Cr LJ 243 .
9. *TK Gopal alias Gopi v State of Karnataka*, AIR 2000 SC 1669 [LNIND 2000 SC 826] : (2000) 6 SCC 168 [LNIND 2000 SC 826] : JT 2000 (6) SC 177 [LNIND 2000 SC 826] : 2000 Cr LJ 2286 : *Sunil Batra (I) v Delhi Administration*, AIR 1978 SC 1675 [LNIND 1978 SC 215] : (1978) 4 SCC 494 [LNIND 1978 SC 215] : 1979 (1) SCR 392 [LNIND 1978 SC 215] : (1978 Cr LJ 1741) ; *Sunil Batra (II) v Delhi Administration*, AIR 1980 SC 1579 : (1980) 3 SCC 488 [LNIND 1978 SC 215] : 1980 (2) SCR 557 [LNIND 1978 SC 215] : (1980 Cr LJ 1099) ; *Charles Sobraj v Superintendent, Central Jail, Tihar*, AIR 1978 SC 1514 [LNIND 1978 SC 218] : (1978 Cr LJ 1534) and *Francis Coralie Mullin v The Administrator, Union Territory of Delhi*, (1981) 1 SCC 608 [LNIND 1981 SC 27] : AIR 1981 SC 746 [LNIND 1981 SC 27] : 1981 (2) SCR 516 [LNIND 1981 SC 27] : (1981 Cr LJ 306) etc.
10. *Karamjit Singh v State*, AIR 2000 SC 3467 [LNIND 2000 SC 707] : (2001) 9 SCC 161 [LNIND 2000 SC 707] .
11. *Dhannajoy Chatterjee v State of WB*, (1994) (2) SCC 220 [LNIND 1994 SC 34] : 1994 (3) RCR (Cr) 359 (SC).
12. *Attorney General of India v Lachma Devi*, 1986 Cr LJ 364 : AIR 1986 SC 467 .
13. *Murray and Co v Ashok Kr Newatia*, AIR 2000 SC 833 [LNIND 2000 SC 159] : (2000) 2 SCC 367 [LNIND 2000 SC 159] .
14. *Karamjit Singh v State*, AIR 2000 SC 3467 [LNIND 2000 SC 707] : (2001) 9 SCC 161 [LNIND 2000 SC 707] .
15. *Mohammad Giasuddin v State of AP*, (1977) 3 SCC 287 [LNIND 1977 SC 211] : AIR 1977 SC 1926 [LNIND 1977 SC 211] .
16. *State of Gujarat v Hon'ble High Court of Gujarat*, (1998) 7 SCC 392 [LNIND 1998 SC 920] : AIR 1998 SC 3164 [LNIND 1998 SC 920] : JT 1998 (6) SC 530 : 1998 Cr LJ 4561 .
17. *Gurdeep Singh alias Deep v State*, AIR 1999 SC 3646 [LNIND 1999 SC 837] : (2000) 1 SCC 498 [LNIND 1999 SC 837] : JT 1999 (7) SC 191 [LNIND 1999 SC 837] : 1999 Cr LJ 4573 .
18. *State Tr PS Lodhi Colony New Delhi v Sanjeev Nanda*, (2012) 8 SCC 450 [LNIND 2012 SC 459] : 2012 Cr LJ 4174 : AIR 2012 SC 3104 [LNIND 2012 SC 459] .
19. *UOI v Kuldeep Singh*, AIR 2004 SC 827 [LNIND 2003 SC 1056] : (2004) 2 SCC 590 [LNIND 2003 SC 1056] .
20. *Sahdev v Jaibar*, (2009) 11 SCC 798 [LNIND 2009 SC 476] : (2010) 1 SCC (Cr) 215.
21. *State of Karnataka v Krishnappa*, 2000 Cr LJ 1793 : AIR 2000 SC 147 .
22. *Mahesh v State of MP*, AIR 1987 SC 1346 ; *State of Punjab v Rakesh Kumar*, AIR 2009 SC 391 [LNIND 2008 SC 1729] .
23. *Gurdeep Singh alias Deep v State*, AIR 1999 SC 3646 [LNIND 1999 SC 837] : (2000) 1 SCC 498 [LNIND 1999 SC 837] : JT 1999 (7) SC 191 [LNIND 1999 SC 837] : 1999 Cr LJ 4573 .

24. *Mohd Arif v The Registrar, Supreme Court of India*, 2014 Cr LJ 4598 .
25. *State of HP v Nirmala Devi*, AIR 2017 SC 1981 [LNIND 2017 SC 189] .
26. *State of Rajasthan v Mohan Lal*, AIR 2018 SC 3564 .
27. *Alister Anthony Pareira v State of Maharashtra*, AIR 2012 SC 3802 [LNIND 2012 SC 15] : (2012) 2 SCC 648 [LNIND 2012 SC 15] : (2012) 1 SCC (Cr) 953 : 2012 Cr LJ 1160 .
28. *State of HP v Nirmala Devi*, AIR 2017 SC 1981 [LNIND 2017 SC 189] .
29. *Alister Anthony Pareira v State of Maharashtra*, 2012 Cr LJ 1160 : (2012) 2 SCC 648 [LNIND 2012 SC 15] : (2012) 1 SCC (Cr) 953 : AIR 2012 SC 3802 [LNIND 2012 SC 15] .
30. *Sahdev v Jaibar*, (2009) 11 SCC 798 [LNIND 2009 SC 476] : (2010) 1 SCC (Cr) 215.
31. *Sahdev v Jaibar*, (2009) 11 SCC 798 [LNIND 2009 SC 476] : (2010) 1 SCC (Cr) 215.
32. *Alister Anthony Pareira v State of Maharashtra*, 2012 Cr LJ 1160 : (2012) 2 SCC 648 [LNIND 2012 SC 15] : (2012) 1 SCC (Cr) 953 : AIR 2012 SC 3802 [LNIND 2012 SC 15] .
33. *State of MP v Saleem alias Chamaru*, 2005 (5) SCC 554 [LNIND 2005 SC 1070] 61.
34. *C Muniappan v State of TN*, (2010) 9 SCC 567 [LNIND 2010 SC 809] : AIR 2010 SC 3718 [LNIND 2010 SC 809] : (2010) 10 SCR 262 [LNIND 2010 SC 809] : (2010) 3 SCC (Cr) 1402.
35. *Dinesh v State of Rajasthan*, 2006 (3) SCC 771 [LNIND 2006 SC 151] : AIR 2006 SCW 1123 : AIR 2006 SC 1267 [LNIND 2006 SC 151] .
36. *Gurmukh Singh v State of Haryana*, JT 2009 (11) SC 122 : 2009 (11) Scale 688 [LNIND 2009 SC 1725] .
37. *Jameel v State of UP*, 2010 Cr LJ 2106 : (2010) 12 SCC 532 [LNIND 2009 SC 1960] : AIR 2010 SC (Supp) 303 : (2011) 1 SCC (Cr) 582.
38. *UOI v Kuldeep Singh*, AIR 2004 SC 827 [LNIND 2003 SC 1056] : (2004) 2 SCC 590 [LNIND 2003 SC 1056] . Meaning of Judicial discretion explained.
39. *State of Rajasthan v Mohan Lal*, AIR 2018 SC 3564 .
40. *State of HP v Nirmala Devi*, AIR 2017 SC 1981 [LNIND 2017 SC 189] .
41. *State of Rajasthan v Mohan Lal*, AIR 2018 SC 3564 .
42. *State v Narayan Bisoi*, 1975 Cr LJ 1399 (Ori).
43. *Javed Ahmed*, 1983 Cr LJ 960 : AIR 1983 SC 594 [LNIND 1983 SC 119] : (1983) 3 SCC 39 [LNIND 1983 SC 119] : 1983 SCC (Cr) 559; see also *Henry Westmuller*, 1985 Cr LJ 1079 : AIR 1985 SC 823 [LNIND 1985 SC 105] : (1985) 3 SCC 291 [LNIND 1985 SC 105] ; *Lok Pal Singh*, 1985 Cr LJ 1134 (SC) : AIR 1985 SC 823 [LNIND 1985 SC 105] .
44. *Munnalal*, 1977 Cr LJ NOC 108 (MP).
45. *Gauri Shanker Sharma v State of UP*, AIR 1990 SC 709 [LNIND 1990 SC 8] : 1990 (2) SCC 502 [LNIND 1990 SC 100] , the acquittal granted by the High Court was set aside and the sentence of 7-year RI restored.
46. *State v Balkrishna*, 1992 Cr LJ 1872 (Mad).
47. *State of UP v MK Anthony*, 1985 Cr LJ 493 : AIR 1985 SC 48 . For an account of the perplexities of criminal justice, see S Venugopal Rao, *Perplexities of Criminal Justice*, (1985) 27 JILI 458. See also *Pandurang Dhondu Bhuwad v State of Maharashtra*, 1991 Cr LJ 3177 Bom, domestic servants committing day-light robbery in an apartment resulting in the death of an inmate, life imprisonment, no concession for young age or poverty.
48. *Guvala China Venkatesu v State of AP*, AIR 1991 SC 1926 : 1991 Cr LJ 2326 .
49. *Sevaka Perumal v State of TN*, AIR 1991 SC 1463 [LNIND 1991 SC 269] : 1991 Cr LJ 1845 .
50. *State of Rajasthan v Sukhpal Singh*, (1983) 1 SCC 393 [LNIND 1982 SC 206] : 1983 SCC (Cr) 213 : AIR 1984 SC 207 [LNIND 1982 SC 206] ; *Philip Bhimsen Aind v State*, (1995) Cr LJ 1694 (Bom).
51. *Babarali Ahmedali Sayed v State of Gujarat*, 1991 Cr LJ 1269 Guj.

52. *TM Joseph v State of Kerala*, AIR 1992 SC 1922 : 1992 Cr LJ 3166 . The court referred to its own decision in *BC Goswami v Delhi Administration*, AIR 1973 SC 1457 [LNIND 1973 SC 194] : 1974 Cr LJ 243 .
53. *Ajit Kumar Vasantlal Zaveri v State of Gujarat*, AIR 1992 SC 2064 : 1992 Cr LJ 3593 .
54. *Gurmukh Singh v State of Haryana*, 2010 Cr LJ 450 : AIR 2009 SC 2697 [LNIND 2009 SC 847] .
55. *State of MP v Sheikh Shahid*, AIR 2009 SC 2951 [LNIND 2009 SC 867] : (2009) 12 SCC 715 [LNIND 2009 SC 867] : (2010) 1 SCC (Cr) 704.
56. *UOI v Kuldeep Singh*, AIR 2004 SC 827 [LNIND 2003 SC 1056] : (2004) 2 SCC 590 [LNIND 2003 SC 1056] .
57. *Jitendra v State of Govt of NCT of Delhi*, AIR 2018 SC 5253 [LNIND 2018 SC 537] .
58. *Bachan Singh v State of Punjab*, 1980 Cr LJ 636 : AIR 1980 SC 898 [LNIND 1980 SC 260] . The minimum sentence awardable under section 302 being life imprisonment, it has been held that the sentence cannot be reduced. *Dori v State of UP*, 1991 Cr LJ 3139 (All); *Dadasaheb Misal v State of Maharashtra*, 1987 Cr LJ 1512 (Bom). See *Triveniben v State of Gujarat*, 1990 Cr LJ 273 (Guj); *Sham Sunder v Puran*, (1990) 4 SCC 731 [LNIND 1990 SC 994] : 1991 SCC (Cr) 38 : 1990 Cr LJ 2600 ; *Kannan v State of TN*, 1989 Cr LJ 825 : AIR 1989 SC 396 [LNIND 1982 SC 73] : 1989 Supp (1) SCC 81 .
59. *Laxman Naskar v State of WB*, 2000 Cr LJ 4017 : AIR 2000 SC 2762 [LNIND 2000 SC 1180] .
60. *State of Gujarat v Hon'ble High Court of Gujarat*, 1998 Cr LJ 4561 : AIR 1998 SC 3164 [LNIND 1998 SC 920] .
61. For an example of early release see *Iqbal Singh v State of Punjab*, 1990 Cr LJ 1460 .
62. Act No. 13 of 2013 w.e.f 2 April 2013.
63. *Mohd Arif v The Registrar, Supreme Court of India*, 2014 Cr LJ 4598 : (2014) 9 SCC 737 [LNIND 2014 SC 769] .
64. *R S Joshi v Ajit Mills*, AIR 1977 SC 2279 [LNIND 1977 SC 260] : 1977 SCC (Tax) 536 : (1978) 1 SCJ 239 .
65. *State of Maharashtra v Chandra Prakash Keshavdeo*, 1991 Cr LJ 3187 (Bom).
66. *Kapoor Lal v State of UP*, 1991 Cr LJ 2159 (All).
67. *Rajbir v State of Haryana*, 1985 Cr LJ 1495 : 1985 Guj LH 117 : AIR 1985 SC 1278 . Referred to in *Dhansukh Chhotalal Joshi v State of Gujarat*, 1990 Cr LJ 2333 to reduce the sentence of a 19 year- old boy convicted under section 304-II to that already undergone who was a member of a party which caused death without any intention to do so.
68. *State of Gujarat v Hon'ble High Court of Gujarat*, (1998) 7 SCC 392 [LNIND 1998 SC 920] : AIR 1998 SC 3164 [LNIND 1998 SC 920] See the box.
69. *Phool Kumari v Office of the Superintendent Central Jail, Tihar New Delhi*, (2012) 8 SCC 183 [LNINDORD 2012 SC 410] : 2012 Cr LJ 4261 : AIR 2012 SC 3198 [LNINDORD 2012 SC 410] .
70. *Constitution Bench in GV Godse v State*, AIR 1961 SC 600 [LNIND 1961 SC 11] and *Naib Singh v State of Punjab*, AIR 1983 SC 855 [LNIND 1983 SC 116] .
71. *State of Gujarat v Hon'ble High Court of Gujarat*, (1998) 7 SCC 392 [LNIND 1998 SC 920] : AIR 1998 SC 3164 [LNIND 1998 SC 920] : JT 1998 (6) SC 530 : 1998 Cr LJ 4561 .
72. *Bhuvan Mohan Patnaik v State of AP*, (1975) 3 SCC 185 [LNIND 1974 SC 269] : AIR 1974 SC 2092 [LNIND 1974 SC 269] .
73. *State of Maharashtra v Jethmat Himatmal Jain*, 1994 Cr LJ 2613 (Bom).
74. *Chanda Lal v State of Rajasthan*, AIR 1992 SC 597 : 1992 Cr LJ 523 .
75. *Ramanlal Baldevdas Shah v State of Gujarat*, 1992 Cr LJ 3164 : AIR 1992 SC 1916 . See also *State of Karnataka v Bhojappa Hanamanthappa*, 1994 Cr LJ 1543 .

76. *Sushil Kumar Sanghi v State*, [1995 Cr LJ 3457](#) (Del).
77. *Babloo v State of MP*, [1995 Cr LJ 3534](#) (MP). *Jaya Mala v Home Secy, Govt of J&K*, [AIR 1982 SC 1297](#) [[LNIND 1982 SC 109](#)] : [1982 Cr LR \(SC\) 441](#) relied upon.
78. *Pratapsingh Rathod v State of Maharashtra*, [1996 Cr LJ 790](#) (Bom). Incident of causing stab wound taking place 24 years back and the injury being of simple nature, the sentence was reduced into one already undergone, *Pritam Singh v State*, [1996 Cr LJ 7](#) (Del).
79. *Rasananda Bindhani v State of Orissa*, [1992 Cr LJ 121](#) (Ori).
80. *BY Deshmukh v State of Maharashtra*, [1996 Cr LJ 1108](#) (Bom), **relying** on in *Re Vadivel Padayachi*, [1972 Cr LJ 1641](#) (Mad).
81. *Panchu Parida v State of Orissa*, [1993 Cr LJ 953](#) (Ori). The court referred to *Ippili Trinadha Rao v State of AP*, [1984 Cr LJ 1254](#) .
82. *State of Orissa v Gangadhar Behuria*, [1992 Cr LJ 3814](#) (Ori).
83. *Dayaram v State of MP*, [1992 Cr LJ 3154](#) (MP).
84. *Madhuri Mukund Chitnis v Mukund Martand Chitnis*, [1992 Cr LJ 111](#) (Bom).
85. *Kashiram v Sonvati*, [1992 Cr LJ 760](#) (MP).
86. *MS Sheshappa v State of Karnataka*, [1994 Cr LJ 3372](#) (Kant).
87. *SC Bahri v State of Bihar*, [AIR 1994 SC 2020](#) : [1994 Cr LJ 3271](#) .
88. *State v Banwari Lal*, [1996 Cr LJ 1078](#) (Raj).
89. *Manish Jalan v State of Karnataka*, [JT 2008 \(7\) SC 643](#) [[LNIND 2008 SC 1396](#)] .
90. *Dilip S Dahanukar v Kotak Mahindra Co Ltd*, ((2007) 6 SCC 528 [[LNIND 2007 SC 451](#)] 65) See also *Alister Anthony Pareira v State of Maharashtra*, [2012 Cr LJ 1160](#) : (2012) 2 SCC 648 [[LNIND 2012 SC 15](#)] : (2012) 1 SCC (Cr) 953 : [AIR 2012 SC 3802](#) [[LNIND 2012 SC 15](#)] .
91. *State Tr PS Lodhi Colony New Delhi v Sanjeev Nanda*, (2012) 8 SCC 450 [[LNIND 2012 SC 459](#)] : [2012 Cr LJ 4174](#) : [AIR 2012 SC 3104](#) [[LNIND 2012 SC 459](#)] .
92. *Akhil Kumar v State of MP*, [1992 Cr LJ 2029](#) (MP).
93. *Madhukar Chandar v State of Maharashtra*, [1993 Cr LJ 3281](#) (Bom).
94. *Joshi v State of Kerala*, [1996 Cr LJ 143](#) (Ker).
95. *Sarup Singh v State of Haryana*, [AIR 1995 SC 2452](#) : [1995 Cr LJ 4168](#) .
96. *Raja Ram v State of Rajasthan*, [1993 Cr LJ 1016](#) (Raj).
97. *Lal Diwan v State of UP*, [1995 Cr LJ 3899](#) (All).
98. *Umesh Singh v State of Bihar*, [AIR 2000 SC 2111](#) [[LNIND 2000 SC 871](#)] : [2000 Cr LJ 6167](#) .
99. *Shankar v State of TN*, (1994) 4 SCC 478 [[LNIND 1994 SC 377](#)] : [1994 Cr LJ 3071](#) .
100. *Sharomani Akali Dal (Mann) v State of JK*, [1993 Cr LJ 927](#) (J&K).
101. *Bhimabhai Kalabhai v State of Gujarat*, [1992 Cr LJ 2585](#) (Guj).
102. *Arjunan v State*, [1993 Cr LJ 3113](#) (Mad).
103. *Madhukar Damu Patil v State of Maharashtra*, [1996 Cr LJ 1062](#) (Bom).
104. *Jaivir Singh v State of UP*, [1996 Cr LJ 1494](#) (All).
105. *Dedekula Khabala Saheb v State of AP*, [1996 Cr LJ 2196](#) (AP).
106. *Gochipathula Samudralu v State of AP*, [1992 Cr LJ 2488](#) (AP).
107. *State of Rajasthan v Mohan Lal*, [AIR 2018 SC 3564](#) .
108. *Jagat Bahadur v State of HP*, [1994 Cr LJ 3396](#) (HP).
109. *Paniben v State of Gujarat*, [AIR 1992 SC 1817](#) [[LNIND 1992 SC 248](#)] : [1992 Cr LJ 2919](#) .
110. *Venkappa K Chowdari v State of Karnataka*, [1996 Cr LJ 15](#) (Kant).
111. *Jodha Khoda Rabari v State of Gujarat*, [1992 Cr LJ 3298](#) (Guj).
112. *State of Rajasthan v Mohan Lal*, [AIR 2018 SC 3564](#) .
113. *Jameel v State of UP*, [2010 Cr LJ 2106](#) : (2010) 12 SCC 532 [[LNIND 2009 SC 1960](#)] : [AIR 2010 SC \(Supp\) 303](#) : (2011) 1 SCC (Cr) 582.

114. *UOI v Kuldeep Singh*, AIR 2004 SC 827 [LNIND 2003 SC 1056] : (2004) 2 SCC 590 [LNIND 2003 SC 1056] .
115. *State of Rajasthan v Mohan Lal*, AIR 2018 SC 3564 .
116. *State of MP v Babu Natt*, (2009) 2 SCC 272 [LNIND 2008 SC 2471] : (2009) 1 SCC (Cr) 713 : AIR 2009 SC 1810 [LNIND 2008 SC 2471] : (2009) 1 Ker LJ 686 : 2009 Cr LJ 1722 .
117. *State of Rajasthan v Mohan Lal*, AIR 2018 SC 3564 .
118. Act VIII of 1897, section 8. Where the accused was a child of 14 at the time of the incident and, therefore, the benefit of being sent to an approved school under the U.P. Children Act (1 of 1952) would have been available to him but he became a man of 28 by the time of the final judgment, and, therefore, not fit for the school, his conviction was sustained and the sentence reduced to already undergone. *Pachrangi v State of UP*, 1991 Cr LJ 3232 (All), **relying** on *Bhoop Ram v State of UP*, 1989 All Cr R 276 : 1990 Cr LJ 2671 : AIR 1990 SC 1329 [LNIND 1990 SC 277] .
119. *Prahlad G Gajbhiye v State of Maharashtra*, (1994) 2 Cr LJ 2555 at p 2561 (Bom).
120. *Harkori v State of Rajasthan*, 1998 Cr LJ 814 : AIR 1998 SC 2821 [LNIND 1997 SC 1368] .
121. *State Tr PS Lodhi Colony New Delhi v Sanjeev Nanda*, (2012) 8 SCC 450 [LNIND 2012 SC 459] : 2012 Cr LJ 4174 : AIR 2012 SC 3104 .
122. *Rattan Lal v State of Punjab*, AIR 1965 SC 444 [LNIND 1964 SC 135] : 1964 (7) SCR 676 [LNIND 1964 SC 135] : 1965 (1) Cr LJ 360 ; *DalbirSingh v State of Haryana*, AIR 2000 SC 1677 [LNIND 2000 SC 810] : 2000 (5) SCC 82 [LNIND 2000 SC 810] : 2000 Cr LJ 2283 .
123. *Nalinakshan v Rameshan*, 2009 Cr LJ 1703 (Ker).
124. *MCD v State of Delhi*, 2005 (4) SCC 605 [LNIND 2005 SC 445] : AIR 2005 SC 2658 [LNIND 2005 SC 445] : 2005 SCC (Cr) 1322 : 2005 Cr LJ3077; *Sitaram Paswan v State of Bihar*, 2005 (13) SCC 110 [LNIND 2005 SC 703] : AIR 2005 SC 3534 [LNIND 2005 SC 703] : 2005 Cr LJ 4135 .

THE INDIAN PENAL CODE

CHAPTER III OF PUNISHMENTS

125. **[s 53A] Construction of reference to transportation.**

- (1) Subject to the provisions of sub-section (2) and sub-section (3), any reference to "transportation for life" in any other law for the time being in force or in any instrument or order having effect by virtue of any such law or of any enactment repealed shall be construed as a reference to "imprisonment for life".
- (2) In every case in which a sentence of transportation for a term has been passed before the commencement of the [Code of Criminal Procedure](#) (Amendment) Act, ^{126.}[1955] (26 of 1955), the offender shall be dealt with in the same manner as if sentenced to rigorous imprisonment for the same term.
- (3) Any reference to transportation for a term or to transportation for any shorter term (by whatever name called) in any other law for the time being in force shall be deemed to have been omitted.
- (4) Any reference to "transportation" in any other law for the time being in force shall,—
 - (a) if the expression means transportation for life, be construed as a reference to imprisonment for life;
 - (a) if the expression means transportation for any shorter term, be deemed to have been omitted.]

COMMENT—

This section has been inserted by Act XXVI of 1955. It deals with a sentence of transportation wherever it occurs in a statute. After this amendment of the Code 'transportation' as a sentence has been done away with as a punishment.

^{125.} Ins. by Act 26 of 1955, section 117 and Sch. (w.e.f. 1-1-1956).

^{126.} Subs. by Act 36 of 1957, section 3 and Sch. II, for "1954" (w.e.f. 17-9-1957).

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CHAPTER III OF PUNISHMENTS

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- (3) Any reference to transportation for a term or to transportation for any shorter term (by whatever name called) in any other law for the time being in force shall be deemed to have been omitted.
- (4) Any reference to "transportation" in any other law for the time being in force shall,—
 - (a) if the expression means transportation for life, be construed as a reference to imprisonment for life;
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COMMENT—

This section has been inserted by Act XXVI of 1955. It deals with a sentence of transportation wherever it occurs in a statute. After this amendment of the Code 'transportation' as a sentence has been done away with as a punishment.

^{125.} Ins. by Act 26 of 1955, section 117 and Sch. (w.e.f. 1-1-1956).

^{126.} Subs. by Act 36 of 1957, section 3 and Sch. II, for "1954" (w.e.f. 17-9-1957).

THE INDIAN PENAL CODE

CHAPTER III OF PUNISHMENTS

[s 54] Commutation of sentence of death.

In every case in which sentence of death shall have been passed, ^{127.} [the appropriate Government] may, without the consent of the offender, commute the punishment for any other punishment provided by this Code.

COMMENT—

The law governing suspension, remission and commutation of sentence is both statutory and constitutional.^{128.} The stage for the exercise of this power generally speaking is post-judicial, i.e., after the judicial process has come to an end. After the judicial function ends, the executive function of giving effect to the judicial verdict commences. Constitutional power under [Article 72/161](#) would override the statutory power contained in sections 432 and 433 and the limitation of section 433A of the Code as well as the power conferred by [sections 54 and 55, IPC, 1860](#).^{129.} No convict has a fundamental right of remission or shortening of sentence. The State in exercise of its executive power of remission must consider each individual case keeping in view the relevant factors. The power of the State to issue general instructions, so that no discrimination is made, is also permissible in law.^{130.} Exercise of executive clemency is a matter of discretion and yet subject to certain standards. It is not a matter of privilege.^{131.} A right to be considered for remission, keeping in view the constitutional safeguards of a convict under [Articles 20 and 21](#) of the [Constitution of India](#), must be held to be a legal one. Such a legal right emanates from not only the [Prisons Act](#) but also from the Rules framed thereunder.^{132.} The power of remission vested in the Government under [section 433A Code of Criminal Procedure, 1973 \(Cr PC, 1973\)](#) is not in conflict with [Articles 72 and 162](#) of the [Constitution](#).^{133.} Granting of pardon is in no sense an overturning of a judgment of conviction, but rather it is an executive action that mitigates or sets aside the punishment for a crime. It eliminates the effect of conviction without addressing the defendant's guilt or innocence.^{134.} It is open to the President in the exercise of the power vested in him by [Article 72 of the Constitution](#) to scrutinize the evidence on the record of the criminal case and come to a different conclusion from that recorded by the Court in regard to the guilt of, and sentence imposed on, the accused.^{135.}

[s 54.1] Delay in Execution whether entitle commutation of Death sentence to Life Imprisonment.—

In *TV Vatheeswaran's case*, [AIR 1983 SC 361 \[LNIND 1983 SC 43\] : 1983 SCR \(2\) 348](#)^{136.} a two-Judge Bench of SC considered whether the accused, who was convicted for an offence of murder and sentenced to death, kept in solitary confinement for about eight years was entitled to commutation of death sentence. It was held that delay exceeding two years in the execution of a sentence of death should be considered sufficient to entitle the person under sentence of death to invoke [Article 21](#) and demand the quashing of the sentence of death.^{137.} But a three-Judge in *Sher Singh v State of Punjab*,^{138.} held that though prolonged delay in the execution of a death sentence is

unquestionably an important consideration for determining whether the sentence should be allowed to be commuted, no hard and fast rule that "delay exceeding two years in the execution of a sentence of death should be considered sufficient to entitle the person under sentence of death to invoke [Article 21](#) and demand the quashing of the sentence of death" can be laid down as has been done in *Vatheeswaran Javed Ahmed v State of Maharashtra*,¹³⁹ re-iterated the proposition laid down in *Vatheeswaran (supra)* case and doubted the competence of the three-Judge Bench to **overrule** the *Vatheeswaran Case*. The conflicting views are finally settled by the [Constitution Bench](#) in *Triveni Ben v State of Gujarat*.¹⁴⁰ It **overruled** *Vatheeswaran (supra)* holding that undue long delay in execution of the sentence of death will entitle the condemned person to approach this Court under [Article 32](#) but the Court will only examine the nature of delay caused and circumstances that ensued after sentence was finally confirmed by the judicial process and will have no jurisdiction to reopen the conclusions reached by the Court while finally maintaining the sentence of death. Court, however, may consider the question of inordinate delay in the light of all circumstances of the case to decide whether the execution of sentence should be carried out or should be altered into imprisonment for life. No fixed period of delay could be held to make the sentence of death inexecutable and to this extent the decision in *Vatheeswaran* case cannot be said to lay down the correct law. In *Madhu Mehta v UOI*,^{141, 142} Supreme Court commuted the death sentence on the ground that the mercy petition was pending for eight years after disposal of the criminal appeal by Supreme Court.

[s 54.1.1] Devender Singh Bhullar and Mahendra Das. —

In *Devender Pal Singh Bhullar v State of NCT of Delhi*,¹⁴³ the convict appealed to the President for clemency in 2003. The President, after a lapse of over eight years, dismissed his mercy plea in 2011. Bhullar had sought commutation of his death penalty to life sentence by the Supreme Court on the ground that there was inordinate delay by the President over his plea for clemency. A two-Judge Bench¹⁴⁴ by order dated 12 April 2013 dismissed his plea, by holding that the rule enunciated in *Sher Singh's case (supra)*, *Triveniben's case (supra)* and some other judgments that long delay may be one of the grounds for commutation of the sentence of death into life imprisonment cannot be invoked in cases where a person is convicted for offence under TADA or similar statutes. Two weeks later in *Mahendra Nath Das v UOI*,¹⁴⁵ the same Bench held that the convict's death sentence could be commuted to life imprisonment because much of the inordinate delay of 12 years in the rejection of his mercy petition by the President was unexplained, and therefore, inexcusable.

[s 54.2] Modification of death sentence to a particular period with the further direction that the convict must not be released from prison for the rest of his life or before actually serving out the term.—

It was in *Swamy Shraddananda (2) v State of Karnataka*,¹⁴⁶ the three-Judge Bench held that there is a good and strong basis for the Court to substitute a death sentence by life imprisonment or by a term in excess of 14 years and further to direct that the convict must not be released from the prison for the rest of his life or for the actual term as specified in the order, as the case may be. But a two-Judge Bench in *Sangeet v State of Haryana*¹⁴⁷ in which it was held that:

a reading of some recent decisions delivered by this Court seems to suggest that the remission power of the appropriate Government has effectively been nullified by awarding sentences of 20 years, 25 years and in some cases without any remission. Is this permissible? Can this Court (or any Court for that matter) restrain the appropriate Government from granting remission of a sentence to a convict? What this Court has done