RAJASTHAN HIGH COURT

REPORTABLE

HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

Judgment Reserved on : 04.11.2026

Judgment Delivered on : 21.11.2026

Judgment (Full) Uploaded on : 21.11.2026

Rajasthan High Court
सत्यमेव जयते
Web Copy - Not Official

D.B. Civil Reference No. 4/2026

CNR: RJHC021080542026 | URN: CREF / 7U / 2026

In

D.B. Civil Writ Petition No.12101/2026

In Ref. Ashok son of Nibhori Lal, resident of Village Kharagpura, Police Station Basedi, District Dholpur (Rajasthan) presently confined in Open Air Camp, Karauli through his elder brother Hari Babu so of Nibhori Lal, aged about 42 years, resident of village Kharagpura, Police Station Basedi, District Dholpur (Rajasthan)

----Petitioner

Versus

1. State Of Rajasthan through Secretary, Department of Home, Government of Rajasthan, Jaipur.
2. The Prisoners Parole Advisory Committee (State Committee) through its Chairman, Director General of Prisons, Rajasthan.
3. Deputy Inspector General of Prisons, Jaipur, Rajasthan.
4. Deputy Superintendent, District Jail, Dholpur

----Respondent

Connected with

D.B. Civil Writ Petition No.12102/2026
D.B. Civil Writ Petition No.12103/2026
D.B. Civil Writ Petition No.12104/2026
D.B. Civil Writ Petition No.12106/2026
D.B. Civil Writ Petition No.12107/2026
D.B. Civil Writ Petition No.12108/2026
D.B. Civil Writ Petition No.12109/2026
D.B. Civil Writ Petition No.12111/2026

For Petitioner(s) : Mr. Anshuman Saxena with
Mr. Dharamsheel Sharma,
Ms. Manisha Agarwal &
Mr. Divyansh Saini
Mr. Shiv Charan Gupta with
Mr. Harsh Saraswat &

(Uploaded on 21/11/2026 at 04:20:45 PM)
(Downloaded on 21/11/2026 at 04:46:12 PM)

Rajasthan High Court Web Copy - Not Official

Mr. Tarun Singhal
Mr. Kapil Gupta with
Mr. Ajay Ghadwal,
Mr. R.S. Sinsinwar,
Mr. Dharmendra Kumar Bairwa,
Mr. Chitransh Saxena,
Ms. Anisha Yadav,
Mr. Abhay Singh Rathore,
Mr. Tanay Choudhary,
Mr. Aval Yadav &
Mr. Sunil Yadav
Mr. Ramsharan Singh
Mr. Dheeraj Singhal
Mr. Jai Lodha with
Mr. Ankit Rathore, Adv. Saral Sharma
Mr. Katyani Singh
Mr. Vishram Prajapati
Mr. T.C. Swami
Mr. Abhishek B. Sharma with
Mr. Deependra Yadav
Mr. Rajesh Kala with
Mr. Avi Airun,
Mr. Jitendra Mitruka &
Mr. Harshit Sharma
Mr. Siddharth Jain Mutha
Mr. Anubhav Agarwal with
Mr. Hemang Kumawat
Mr. Chain Singh Rathore with
Mr. Vikas Meena &
Mr. Banwari Lal Sharma
Mr. Achin Singhal
Mr. Prem Chand Dewanda with
Ms. Riya Choudhary,
Mr. Kapil Choudhary,
Mr. Himanshu Dholia,
Mr. Abhishek Singh Devanda &
Ms. Muskaan Jalu
Mr. P.L. Saini with
Mr. Pawan Kumar
Mr. Ramveer Saini
Mr. Govind Rawat
Mr. Kalu Rram Bhati through VC
Mr. Amit Sharma through VC
Mr. Rahul Soni through VC

For Respondent(s) : Mr. Rajendra Prasad, Advocate General assisted by Mr. Rajesh Choudhary, GA-cum-AAG, Ms. Harshita Thakral & Ms. Neha Goyal
Mr. Shobhit Tiwari with
Mr. Pushpendra Singh Tanwar &
Mr. Rohit Tiwari

(Uploaded on 21/11/2026 at 04:20:45 PM)
(Downloaded on 21/11/2026 at 04:46:12 PM)

FULL BENCH

HON'BLE THE CHIEF JUSTICE MR. SANJAY K. AGRAWAL
HON'BLE MR. JUSTICE ANOOP KUMAR DHAND
HON'BLE MR. JUSTICE SAMEER JAIN

C.A.V. JUDGMENT

Rajasthan High Court Web Copy - Not Official

Sanjay K. Agrawal, CJ

For the sake of exposition, this judgment is divided in following parts:

Part	Particulars	Page Nos.
Part-I	Preface	3
Part-II	Questions of law referred to the Larger Bench	4
Part-III	The object of grant of parole	4
Part-IV	The difference between parole and remission	6
Part-V	The Prisons Act, 1894 and the Prisons (Rajasthan Amendment) Act, 2015	10
Part-VI	Answer to question of law No.B	11
Part-VII	Answer to question of law No.C	13
Part-VIII	Answer to the referred questions of law	18

Part-I Preface

1. The Division Bench of this Court on 29.10.2026 finding divergence of the judicial view for the purpose of grant of parole as to whether the rules prevailing on date of conviction of the prisoners, i.e., the Rajasthan Prisoners (Release on Parole) Rules, 1958 (hereinafter referred to as 'the Rules of 1958'), would apply or whether the rules in force at the time of consideration of parole application i.e. the Rajasthan Prisoners (Release on Parole) Rules, 2021) (hereinafter referred to as 'the Rules of 2021') would apply.

(Uploaded on 21/11/2026 at 04:20:45 PM)
(Downloaded on 21/11/2026 at 04:46:12 PM)

Referred the matter to Hon'ble The Chief Justice for constitution of Larger Bench for determination of questions of law.

Part-II: Questions of law referred to the Larger Bench

2. The said Bench referred the matter to the Chief Justice for determination of the following three questions of law by order dated 29.10.2026, which reads as under,

> "(a) Whether, for the purpose of grant of parole, the Rules prevailing on the date of conviction (the Rajasthan Prisoners (Release on Parole) Rules, 1958) would apply, or the Rules in force at the time of consideration of the parole application (the Rajasthan Prisoners (Release on Parole) Rules, 2021).
>
> (b) Whether the grant of parole amounts to a temporary suspension of sentence, as contemplated under Section 386 of the Code of Criminal Procedure, 1973 (Section 427 of the BNSS).
>
> (c) What would be the effect of the repeal of the Code of Criminal Procedure, 1973 and its replacement by the Bharatiya Nagarik Suraksha Sanhita, 2023, on the applicability and operation of the Rajasthan Prisoners (Release on Parole) Rules, 1958."

3. Pursuant to order dated 29.10.2026, the Full Bench has been constituted to determine the aforesaid questions for adjudication. This is how this reference is before us for determination.

Part-III: The object of grant of parole

4. The object of granting parole is to make necessary efforts to rehabilitate a convict in the main stream of society based on "Karuna" (compassion), as well as on human consideration. His Lordship A.P. Sen, J. speaking for the Supreme Court, while highlighting the object of parole in the matter of **Poonam Lata v.**

(Uploaded on 21/11/2026 at 04:20:45 PM)
(Downloaded on 21/11/2026 at 04:46:12 PM)

RAJASTHAN HIGH COURT
सत्यमेव जयते

M.L. Wadhawan and others[1], observed in no uncertain terms that "release on parole is a wing of the reformative process and is expected to provide opportunity to the prisoner to transform himself into a useful citizen. Parole is thus a grant of partial liberty or lessening of restrictions to a convict prisoner.

Rajasthan High Court
Web Copy - Not Official
सत्यमेव जयते

5. The concept of "Karuna" with reference to right of a prisoner who stands convicted for a criminal offence has been highlighted by His Lordship V.R. Knahina Iyer, J. speaking for the Supreme Court, in the matter of **Inder Singh and another v. State (Delhi Administration)**[2] as under:

> "….Parole will be allowed to them so that their family ties may be maintained and inner tensions may not further build up. …."

6. Not only this, His Lordship further emphasized the object of parole and quoted a passage from Lewis Moore with approval. The said passage reads as under:

> "You cannot rehabilitate a man through brutality and disrespect. Regardless of the crime a man may commit, he still is a human being and has feelings. And the main reason most inmates in prison today disrespect their keepers, is because they themselves (the inmates) are disrespected and are not treated like human beings. Does this type of treatment bring about respect and rehabilitation? No! It only instills hostility and causes alienation toward the prison officials from the inmate or inmates involved.
>
> If you treat a man like an animal, then you must expect him to act like one. For every action, there is a reaction. This is only human nature. And in order for an inmate to act like a human being, you must treat him as such. Treating him like an animal will only get negative results from him. Lewis Moore (71 pg. 72)"

---

1 (1987) 3 SCC 347
2 AIR 1978 SC 1091

(Uploaded on 21/11/2026 at 04:20:45 PM)
(Downloaded on 21/11/2026 at 04:46:12 PM)

7. Thus, parole has been considered as a part of human dignity which is included in Article 21 of the Constitution of India.

8. In the matter of **State of Haryana v. Nauratta Singh & Ors.**[3], the Supreme Court has held that the line in Black's Law Dictionary as "a conditional release of a prisoner, generally under supervision of a parole officer, who has served part of terms for which he was sentenced to prison". It is further held by His Lordship that the parole relates to executive action taken after the door has been closed on a convict. During parole period there is no suspension of sentence but the sentence is actually continuing to run during that period also.

Part-IV: The difference between parole and remission:

9. In case of parole, the sentence is not at all interfered with, but the prisoner is allowed to come out of the prison wall while continuing under custody and supervision of prison authorities. On the other hand, prison even though does not alter the sentence judicially imposed however, it results in reduction in the terms for which a sentence is to be carried out in prison. Thus, in some way, it affects the effective sentence itself.

10. A constitution Bench judgment in the matter of **Maru Ram Vs. Union of India & Ors.** [4], relying upon **Sarat Chandra Rabha & Ors. Vs. Khagendranath & Ors.**[5], the Supreme Court has held that an order of remission does not wipe off the offence; it also does not wipe out the conviction. All that it does is to have an effect on the execution of the sentence; though ordinarily, a

3 (2000) 3 SCC 514
4 (1981) 1 SCC 107
5 (1961) 2 SCR 133

(Uploaded on 21/11/2026 at 04:20:45 PM)
(Downloaded on 21/11/2026 at 04:46:12 PM)

convicted person would have to serve out the full sentence imposed by the court as observed in para 24 is under:

> **"24.** We are loathe to loading this judgment with citations but limit it to two leading authorities in this part of the case. Two fundamental principles in sentencing jurisprudence have to be grasped in the context of the Indian corpus juris. The first is that sentencing is a judicial function and whatever may be done in the matter of executing that sentence in the shape of remitting, commuting or otherwise abbreviating, the Executive cannot alter the sentence itself. In Rabha's case, a Constitution Bench of this Court illumined this branch of law. What is the jural consequence of a remission of sentence ?
>
> In the first place, an order of remission does not wipe out the offence, it also does not wipe out the conviction. All that it does is to have an effect on the execution of the sentence; though ordinarily a convicted person would have to serve out the full sentence imposed by a court, he need not do so with respect to that part of the sentence which has been ordered to be remitted. An order of remission thus does not in any way interfere with the order of the court; it affects only the execution of the sentence passed by the court and frees the convicted person from his liability to undergo the full term of imprisonment inflicted by the court, though the order of conviction and sentence passed by the court still stands as it was. The power to grant remission is executive power and cannot have the effect which the order of an appellate or revisional court would have of reducing the sentence passed by the trial court and substituting in its place the reduced sentence adjudged by the appellate or revisional court. This distinction is well brought out in the following passage from Weater's "Constitutional Law" on the effect of reprieves and pardons vis a vis the judgment passed by the court imposing punishment, at p. 176, para 134:-
>
> > "A reprieve is a temporary suspension of the punishment fixed by law. A pardon is the remission of such punishment. Both are the exercise of executive functions and should be distinguished from the exercise of judicial power over sentences. 'The judicial power and the executive power over sentences are readily distinguishable', observed Justice Sutherland, 'To render a judgment is a judicial function. To carry the judgment into effect is an executive function. To cut short a sentence by an act of clemency is an exercise of executive power which abridges the enforcement of the judgment but does not alter it qua judgment."
> >
> > Though, therefore, the effect of an order of remission is to wipe out that part of the sentence of imprisonment which has not been served out and thus in practice to reduce the sentence to the period

(Uploaded on 21/11/2026 at 04:20:45 PM)
(Downloaded on 21/11/2026 at 04:46:12 PM)

RAJASTHAN HIGH COURT

> already undergone, in law the order of remission merely means that the rest of the sentence need not be undergone, leaving the order of conviction by the court and the sentence passed by it untouched.
>
> The relevance of this juristic distinction is that remission cannot detract from the quantum or quality of sentence or its direct and side-effects except to the extent of entitling the prisoner to premature freedom if the deduction following upon the remission has that arithmetic effect."

Rajasthan High Court Web Copy - Not Official

11. Similarly, in the matter of **State of Haryana & Ors. v. Jagdish**[6], it has been held as under:

> "39. The Constitution Bench of this Court in Maru Ram (supra) clarified that not only the provisions of Section 433-A Cr. P.C. would apply prospectively but any scheme for short sentencing framed by the State would also apply prospectively. Such a view is in conformity with the provisions of Articles 20 (1) and 21 of the Constitution. The expectancy of period of incarceration is determined soon after the conviction on the basis of the applicable laws and the established practices of the State. When a short sentencing scheme is referable to Article 161 of the Constitution, it cannot be held that the said scheme cannot be pressed in service. Even if, a life convict does not satisfy the requirement of remission rules/short sentencing schemes, there can be no prohibition for the President or the Governor of the State, as the case may be, to exercise the power of clemency under the provisions of Article 72 and 161 of the Constitution. Right of the convict is limited to the extent that his case be considered in accordance with the relevant rules etc., he cannot claim pre-mature release as a matter of right. "

12. In the matter of **Hitesh @ Bavko Shivshankar Dave Vs. State of Gujarat**[7], it has been held that for entitlement of a convict for premature release, the policy of the State Government on date of conviction would have to be the determinative factor.

13. As such, from the decisions rendered in **Maru Ram** (supra), **Jagdish** (supra) **& Hitesh @ Bavko Shivshankar Dave** (supra), it is evidently clear that remission in its effects ultimately results

6 (2010) 4 SCC 216
7 (2024) 5 SCC 623

(Uploaded on 21/11/2026 at 04:20:45 PM)
(Downloaded on 21/11/2026 at 04:46:12 PM)

in reduction of sentence in the sense of early release from prison. Therefore, the law on the date of conviction becomes relevant.

14. As such, the concept and consideration for remission are completely different. The Rules for shortening of sentence have separately been framed under the provisions of Prisons Act, 1894 (hereinafter referred to as 'the Act of 1894') i.e. the Rajasthan Prisoners (Shortening of Sentence) Rules, 1958, which have been repealed and reenacted as Rajasthan Prisoners (Shortening of Sentence) Rules, 2006 (hereinafter referred to as 'the Rules of 2006').

15. In exercise of powers conferred by Sub-Section (6) of Section 401 of the Code of Criminal Procedure, 1898 (equivalent to Section 432 of the Code of Criminal Procedure, 1973), the Government of Rajasthan enacted the Rules of 1958 which came into force w.e.f 20.12.1958. Rule 13 of the Rules of 1958 provides that the grant of parole should be regarded as concession to encourage good conduct and it shall not be claimed by prisoners as a matter or right. This rule has been enacted under Sub-Section (6) of Section 401 of the Code of Criminal Procedure, 1898 which sates as under:

> "(6) The Government may, by general rules or special orders give directions as to the suspension of sentences and the conditions on which petitions should be presented and dealt with. "

16. The Code of Criminal Procedure 1898 has been repealed by the Code of Criminal Procedure, 1973 and the Code of Criminal Procedure, 1973 has now been repealed by the Bharatiya Nagrik Suraksha Sanhita, 2023 (hereinafter referred to as 'BNSS').

(Uploaded on 21/11/2026 at 04:20:45 PM)
(Downloaded on 21/11/2026 at 04:46:12 PM)

RAJASTHAN HIGH COURT सत्यमेव जयते

Part-V: The Prisons Act, 1894 and the Prisons (Rajasthan Amendment) Act, 2015

17. The Act of 1894 is law relating to prisons in India and to provide rules for regulation of such prison. Section 58A of the Act of 1894 was introduced in the Act of 1894 by the State of Rajasthan w.e.f 08.10.2015, which states as under:

Rajasthan High Court सत्यमेव जयते Web Copy - Not Official

> "**58-A. Release of prisoners on parole**'- The State Government or any authority empowered by it may release a prisoner on parole in accordance with such rules as may be made in this behalf."

18. Section 58A of the Act of 1894 provides that the State Government or any authority empowered by it, may release a prisoner on parole in accordance with such rules as may be made in this behalf and Section 58B provides for surrender of prisoners on the expiry of the period on temporary release.

19. Similarly, Section 59 of the Act of 1894 provides for the power to the State Government may, by notification in the Official Gazette, make rules consistent with the Act of 1894. Clause (27-a) in sub-section (1) of Section 59 of the Act of 1894 was inserted vide the Prisons (Rajasthan Amendment) Act, 2015 (hereinafter referred to as 'the Act of 2015') by publication in Official Gazette dated 08.10.2015, to be effective from w.e.f. 20.08.2015 and after the enactment of the Act of 2015, the Prisons (Rajasthan Amendment) Ordinance, 2015 was repealed.

20. The State Government (Rajasthan) in exercise of powers conferred by Clause (27-a) of Section 59 of the Act of 1894 enacted the Rules namely; Rajasthan Prisoners (Release on Parole) Rules, 2021 w.e.f. 30.06.2021 after publication in the

(Uploaded on 21/11/2026 at 04:20:45 PM)
(Downloaded on 21/11/2026 at 04:46:12 PM)

RAJASTHAN HIGH COURT सत्यमेव जयते

Official Gazette. Rules make detailed provision for grant of parole to the prisoners and parole defined in Clause 2(g) means conditional enlargement of a prisoner from the jail under these rules. Clause 15 of the Rules of 2021 provides that the grant of parole should be regarded as concession to encourage good conduct and it shall not be claimed by prisoners as a matter of right.

Rajasthan High Court सत्यमेव जयते Web Copy - Not Official

21. As such, Rule 25 of the Rules of 2021 repeals the Rules of 1958. Sub-Rule 2 of Rule 25 of the Rules of 2021 provides that repeal under Sub-rule (1) shall not affect the previous operation of the rules, so repealed, and anything done or action taken or deemed to have been done.

22. Now on the aforesaid consideration of questions of law in this background, we will proceed to consider the questions of law so formulated and referred to us.

23. In order to appropriately answer the questions so formulated, it would be apt to answer the question Nos.B & C together first and then to answer question No.A.

Part-VI: Answer to question of law No.B

24. We have already held that the parole is not the suspension of sentence and their Lordships of the Supreme Court in the matter of **Dadu Alias Tulsidas v. State of Maharashtra**[8]**,** in categorical terms, have held that the grant of parole is not a suspension of the sentence. The convict continues to serve the sentence despite granting of parole under the statute, rules, jail manual or the Government Orders. "Parole" means the release of the prisoner

8 (2000) 8 SCC 437

(Uploaded on 21/11/2026 at 04:20:45 PM)
(Downloaded on 21/11/2026 at 04:46:12 PM)

temporarily for a special purpose before the expiry of a sentence and has observed in Para Nos. 6 & 11 as under:

> "6. Parole is not a suspension of the sentence. The convict continues to be serving the sentence despite granting of parole under the statute, jail manual or the Government Orders. "Parole" means the release of the prisoner temporarily for a special purpose before the expiry of a sentence, on the promise of good behaviour and return to jail. It is a release from jail, prison or other internment after actually being in jail serving part of sentence.....
>
> 11. It is thus clear that parole did not amount to the suspension, remission or commutation of sentences which could be withheld under the garb of Section 32A of the Act. Notwithstanding the provisions of the offending section, a convict is entitled to parole, subject however, to the conditions governing the grant of it under the statute, if any, or the jail manual or the government instructions. The writ Petition No.169 of 1999 apparently appears to be misconceived and filed in a hurry without approaching the appropriate authority for the grant of relief in accordance with the jail manual applicable in the matter. "

25. In the matter of **Sunil Fulchand Shah v. Union of India & Ors.**[9], a Constitution Bench of the Supreme Court has clearly held that 'parole' is a form of "temporary release" from custody, which does not suspend the sentence or the period of detention, but provides conditional release from custody and changes the mode of undergoing the sentence, as observed in paragraph 13 as under:

> "13. Thus, it is seen that 'parole' is a form of "temporary release" from custody, which does not suspend the sentence or the period of detention, but provides conditional release from custody and changes the mode of undergoing the sentence."

9 AIR (2000) SC 1023

(Uploaded on 21/11/2026 at 04:20:45 PM)
(Downloaded on 21/11/2026 at 04:46:12 PM)

Rajasthan High Court Web Copy - Not Official

26. As such, the grant of parole does not amount to suspension of sentence, as parole being a benefit granted for good behavior or in case of emergencies and earned by serving the sentence, but by good behavior post imposition of sentence and during its execution, the rules as applicable on the date of accrual of right for conferment of such benefit would be relevant.

Part-VII: Answer to question of law No.C

27. As noticed hereinabove, the Rules of 1958 were enacted with reference to the Section 401(6) of the old Code of Criminal Procedure, 1898 (for short 'the old Cr.PC, 1898'). The code of Criminal Procedure, 1898 has been repealed by the Code of Criminal Procedure, 1973 and the Code of Criminal Procedure, 1973 has now been repealed by BNSS w.e.f. 01.07.2024. Though the Rules of 1958 are said to have been enacted under Section 401(6) of the old Cr.PC, 1898 but the Cr.P.C. contains no such provision for grant of parole.

28. This aspect has been considered by the Constitution Bench of the Supreme Court in the matter of **Sunil Fulchand Shah** (supra)**,** wherein it has been held that there are no statutory provision dealing with the question of grant of parole. The Code of Criminal Procedure does not contain any provision for grant of parole, as observed in paragraph 12 as under:

> "12. In this country, there are no statutory provisions dealing with the question of grant of parole. The Code of Criminal Procedure

(Uploaded on 21/11/2026 at 04:20:45 PM)
(Downloaded on 21/11/2026 at 04:46:12 PM)

Rajasthan High Court Web Copy - Not Official

> does not contain any provision for grant of parole.
>
> By administrative instructions, however, rules have been framed in various States, regulating the grant of parole. Thus, the action for grant of parole is generally speaking an administrative action. The distinction between grant of bail and parole has been clearly brought out in the judgment of this Court in State of Haryana v. Mohinder Singh (2000 1 JT (SC) 629 : (2000 AIR SCW 478) to which one of us (Wadhwa, J.) was a party. That distinction is explicit and I respectfully agree with that distinction."

29. As noticed hereinabove, the Prisons Act, 1894 has been amended by the State Government vide Gazette Notification dated 08.10.2015 and made effective w.e.f. 20.08.2015, by which Clause (27-a) in sub-section (1) of Section 59 of the Act of 1894 was inserted. Thereafter, the State Government, in exercise of power conferred by above Clause (27-a) of Section 59, enacted the Rules of 2021 vide Gazette Notification dated 30.06.2021, to be made effective from the date of their publication in the Official Gazette.

30. Effect of repeal/complete obliteration of the enactment is as if it had never been enacted. The effect is to destroy all *inchoate* rights and all causes of action that may have arisen under the repealed statute. However, the saving clause in the repealing statute and the provisions of General Clauses Act, which apply to

(Uploaded on 21/11/2026 at 04:20:45 PM)
(Downloaded on 21/11/2026 at 04:46:12 PM)

all enacted statutes, may have bearing upon continuance of certain rules.

31. The Supreme Court in the matter of **Qudrat Ullah vs. Municipal Board, Barelly**[10], provides the consequence of repeal of statute, as held in paragraph 18 as under:

> "18. Certain propositions are clear regarding the consequence of repeal of a statute. The general principle is that an enactment which is repealed is to be treated, except as to transactions passed and closed as if it had never existed. However, the operation of this principle is subject to any savings which may be made expressly or by implication, by the repealing enactment (vide Halsbury's Laws of England Vol. 36 Paragraph 714)."

32. Similarly in the matter of **State of Rajasthan vs. Mangilal Pindwal**[11], the Supreme Court has held as under:

> "9. As pointed out by this Court, the process of a substitution of statutory provision consists of two Steps; first, the old rule is made to cease to exist and, next, the new rule is brought into existence in its place. [see Koteshwar Vittal Kamath v, K. Rangappa, 1969 (3) SCR 40, at p. 48]. In other words, the Substitution of a provision results in repeal of the earlier provision and its replacement by the new provision. As regards repeal of a statute the law is thus stated in Sutherland on Statutory Construction.....

10 AIR 1974 SC 396
11 AIR 1996 SC 2181

(Uploaded on 21/11/2026 at 04:20:45 PM)
(Downloaded on 21/11/2026 at 04:46:12 PM)

Rajasthan High Court Web Copy - Not Official

> "The effect of the repeal of a statute where neither a saving clause nor a general saving statute exists to prescribed the governing rule for the effect of the repeal, is to destroy the effectiveness of the repealed act in future and to divest the right to proceed under the statute, which, except as to proceedings past and closed, is considered as if it had never existed." [Vol. I, para 2042, pp.522-523]

10. Similarly in Crawford's Interpretation of Laws it has been said :

> "Effect of Repeal, Generally. - In the first place, an outright repeal will destroy the effectiveness of the repealed act in futuro and operate to destroy inchoate rights dependent on it, as a general rule. In many cases, however, where statutes are repealed, they continue to be the law of the period during which they were in force with reference to numerous matters." [pp.640-641]

11. The Observations of Lord Tenterden and Tindal C.J. referred in the abovementioned passages in Craies on Statute Law also indicate that the principle that on repeal a statute is obliterated is subject to the exception that it exists in respect of transactions past and closed. To the same effect is the Jaw laid down by this Court. [See : Qudrat Ullah v. Municipal Board. Bareilly. 1974 (2) SCR 530, at p. 539]

12. This means that as a result of repeal of a statute as repealed ceases to exist with effect from the date of such repeal but the repeal does

(Uploaded on 21/11/2026 at 04:20:45 PM)
(Downloaded on 21/11/2026 at 04:46:12 PM)

Rajasthan High Court Web Copy - Not Official

> not affect the previous operation of the law which has been repealed during the period it was operative prior to the date of such repeal. Section 24 on the other hand provides for continuance of rule etc. with the rider that the rules enacted under repealed act should not be inconsistent to the provisions re-enacted and further that such existing rules should not have been superseded by Rules issued under provisions of enacted law."

33. As such, the Rules of 1958 being merely executive instructions, on being replaced by the Rules of 2021 w.e.f. 30.06.2021 and having been specifically repealed through Rule 25 of the Rules of 2021, and only the previous operation of the Rules of 1958 having been saved and as such there will be complete obliteration of the Rules of 1958 as if they have never been enacted except to the extent of saving under Rule 25(2) of the Rules of 2021. Since the Rules of 1958 stood repealed, question of consideration of parole of any convict under the Rules of 1958, in no circumstance, arises for consideration.

34. Consequently, it is held that by virtue of repeal having become effective w.e.f. 30.06.2021, the Rules of 1958 not being in force, will not otherwise be revived or repealed by Code of Criminal Procedure, 1898, or by Code of Criminal Procedure, 1973, or by BNSS, 2023, and BNSS, 2023 does not specifically provide for revival of any such rules.

35. Consequently, as on date and w.e.f. 30.06.2021 for the purpose of grant of parole, the Rules enforced at the time of

(Uploaded on 21/11/2026 at 04:20:45 PM)
(Downloaded on 21/11/2026 at 04:46:12 PM)

consideration, the parole application, i.e., the Rules of 2021 (w.e.f., 30.06.2021) would govern the grant of parole.

36. We answer the aforesaid questions of law as under:

Rajasthan High Court Web Copy - Not Official

Part-VIII: Answer to the referred questions of law

36.(i) The Rules of 2021, having come into force on 30.6.2021 and having expressly repealed the Rules of 1958, would govern the consideration of every application for release on parole, temporary or permanent, made after their commencement, irrespective of the date of conviction. The mere fact that prisoner was convicted while the 1958 Rules were in force does not give him a vested right to have later applications considered under the repealed rules of 1958. The principle laid down in **Jagdish** (supra) & **Hitesh @ Bavko Shivshankar Dave** (supra), concerning the remission policy at conviction in cases of permanent release, does not extend to parole/permanent parole.

36.(ii) The grant of parole does not, in its legal character, amount to suspension, remission, or commutation of sentence. It is a conditional release that changes only the mode of undergoing the sentence, as held by the Supreme Court in **Sunil Fulchand Shah** (supra), **Dadu Alias Tulsidas** (supra) and **Nauratta Singh** (supra), as the period spent on parole as per Rule 10 of the Rules of 2021 including permanent parole is to be treated as imprisonment served.

(Uploaded on 21/11/2026 at 04:20:45 PM)
(Downloaded on 21/11/2026 at 04:46:12 PM)

RAJASTHAN HIGH COURT सत्यमेव जयते

36.(iii) The Rules of 1958 framed under Section 401(6) of Cr.P.C. 1898, continued after coming into force of CrPC 1973 by virtue of Section 484 (2)(b) of Cr.P.C. They were expressly repealed by Rule 25(1) of the Rules of 2021 with effect from 30.06.2021 and the Rules of 2021 have been made independently under Section 59 of the Act of 1894 read with Rule 27-a of the Act of 1894. Section 531(2)(b) of BNSS, 2023 preserves only rules in force immediately before 01.07.2024, so the repeal of the Cr.P.C. 1973 and the commencement of BNSS neither affect the Rules of 2021 nor revive the Rules of 1958.

Rajasthan High Court Web Copy - Not Official सत्यमेव जयते

37. The aforesaid questions of law are answered accordingly. Now the matter be placed before the appropriate Bench having the roster to consider the writ petitions accordingly.

38. The reference is disposed off accordingly.

39. We place on record our appreciation for the assistance rendered by Mr. Rajendra Prasad, learned Advocate General, Mr. Anshuman Saxena with Mr. Dharamsheel Sharma, Ms. Manisha Agarwal & Mr. Divyansh Saini, Mr. Shiv Charan Gupta with Mr. Harsh Saraswat & Mr. Tarun Singhal, Mr. Kapil Gupta with Mr. Ajay Ghadwal, Mr. R.S. Sinsinwar, Mr. Dharmendra Kumar Bairwa, Mr. Chitransh Saxena, Ms. Anisha Yadav, Mr. Abhay Singh Rathore, Mr. Tanay Choudhary, Mr. Aval Yadav & Mr.Sunil Yadav, Mr. Ramsharan Singh, Mr. Dheeraj Singhal, Mr. Jai Lodha with Mr. Ankit Rathore,

(Uploaded on 21/11/2026 at 04:20:45 PM)
(Downloaded on 21/11/2026 at 04:46:12 PM)

RAJASTHAN HIGH COURT सत्यमेव जयते

Adv. Saral Sharma, Mr. Katyani Singh, Mr. Vishram Prajapati, Mr. T.C. Swami, Mr. Abhishek B. Sharma with Mr. Deependra Yadav, Mr. Rajesh Kala with Mr. Avi Airun, Mr. Jitendra Mitruka & Mr. Harshit Sharma, Mr. Siddharth Jain Mutha, Mr. Anubhav Agarwal with Mr. Hemang Kumawat, Mr. Chain Singh Rathore with Mr. Vikas Meena & Mr. Banwari Lal Sharma, Mr. Achin Singhal, Mr. Prem Chand Dewanda with Ms. Riya Choudhary, Mr. Kapil Choudhary, Mr. Himanshu Dholia, Mr. Abhishek Singh Devanda & Ms. Muskaan Jalu, Mr. P.L. Saini with Mr. Pawan Kumar, Mr. Ramveer Saini, Mr. Govind Rawat, Mr. Kalu Rram Bhati through VC, Mr. Amit Sharma through VC, Mr. Rahul Soni through VC, who appeared on behalf of the petitioners and Mr. Rajesh Choudhary, GA-cum-AAG, Ms. Harshita Thakral & Mr. Rohit Tiwari learned counsels who appeared and made submissions in arriving at the aforesaid conclusion.

Rajasthan High Court Web Copy - Not Official सत्यमेव जयते

(SAMEER JAIN), J (ANOOP KUMAR DHAND),J (SANJAY K. AGRAWAL),CJ

SANJAY KUMAWAT(RESERVED)

(Uploaded on 21/11/2026 at 04:20:45 PM)
(Downloaded on 21/11/2026 at 04:46:12 PM)