

**CONSTRUCTION OF LIFE IMPRISONMENT: AN INTERNATIONAL  
ANALYSIS**

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**ABSTRACT**

*The punishment of Life imprisonment is awarded by various countries all over the world. However, each country connotes a different meaning to it. The length of sentence awarded also differs. While some countries consider it to be a determinate sentence, others regard it as an imprisonment till the end of the convict's life.*

*Life imprisonment may be with the possibility of release which is in tune with reformatory theory of justice, while that without the possibility of release is retributive and deterrent in nature. Each carries its own penological justifications.*

*The article examines in detail the type of life imprisonment and its construction by different countries. Lastly, the meaning of life imprisonment in India has also been analysed by citing appropriate precedents.*

*Life imprisonment connotes different meanings and realities. It may be mandatory or discretionary. It further may be classified as life sentence with parole or a life imprisonment without parole. Within them exists the determinate or indeterminate life sentences under the background of public security, retribution and deterrence as their justifications. Each type has its own meaning, particulars and justifications.<sup>3</sup>*

**Mandatory and Discretionary life sentence**

In a mandatory life sentence, the decision for the release depends on the Home secretary who further takes the opinion of the judiciary and the parole board. He sets the date of release when the penal element is met. The risk that the offender shall pose to the

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<sup>3</sup> Sebastiaan Verelst, Life Imprisonment and Human Rights in Belgium, 2003, Human Rights Law Review, pp 2

general public is not the deciding factor to be considered for release. The justification lies in the fact that the crime committed is so heinous that it deserves a mandatory life term.<sup>4</sup>

In a discretionary life sentence, once the penal element of the crime had been served, the parole board shall consider the release. The procedure entails a lot of secrecy. The home secretary along with the judicial officer shall decide on the time a convict shall minimum spend before his first review is considered. It is ensured that the discretionary power is not misused.

Initially the right of release was only present with the convicts who had been sentenced to a discretionary life imprisonment. But, now the right to be considered for release is present with both lifers. The convict sentenced to a mandatory term of imprisonment can forward representation before his review date is set. The Home secretary shall give the reasons in writing if he does not comply with the penal sentence set by the judiciary.

The difference between the two types is thus reducing. However, one pertinent difference that exists is the obligation on the Home Secretary to comply with the penal element does not exist in mandatory life sentence.<sup>5</sup>

In the case of *Rummel V Estelle*<sup>6</sup>, the US Supreme Court sentenced the accused to a mandatory life sentence. It was challenged on the ground of being 'cruel and unusual; which is prohibited under the US constitution's 8<sup>th</sup> amendment. The court held the sentence to be constitutional. It believed that the sentence is not likely to last till the end of the convict's life. With the possibility of release open, it is not against the 8<sup>th</sup> amendment. However in *Harmelin V Michigan*<sup>7</sup> the Supreme Court held that even a mandatory life sentence without the possibility of parole is also constitutional.

In **Germany**, the mandatory life sentence was challenged due to certain basic reasons which included the negative psychological impact of this sanction on the offender, challenge to his freedom of movement, prohibition on resocialisation and unsatisfactory procedures for commutation. However the Federal Constitutional Court held the life

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4 Stephanie Palmer Redefining the meaning of life: The early release of Life prisoners, 1994, Cambridge Law Journal, , pp 4-5

5 ibid

<sup>6</sup> 445 U.S. 263 (1980)

<sup>7</sup> 501 U.S. 957 (1991)

imprisonment to be constitutional if the possibility of release was kept open. It mandated that the procedure for release be ascertained by way of legislation.<sup>8</sup>

In the **United Kingdom**, in the case of *Stafford v UK*<sup>9</sup>

The Court held that '*it may now be regarded as established in domestic law that there is no distinction between mandatory life prisoners, discretionary life prisoners and juvenile murderers as regards the nature of tariff-fixing. It is a sentencing exercise. The mandatory life sentence does not impose imprisonment for life as a punishment. The tariff, which reflects the individual circumstances of the offence and the offender, represents the element of punishment.*'

The way of executing and implementing the life sentence is crucial in assessing its acceptability.

### **Life imprisonment with a possibility of release**

Life imprisonment with a possibility of release suggests that an inmate can be paroled at some time in the future. After serving a certain number of years, the life sentenced convict will appear before the jurisdiction's parole board. The board reviews his case, his progress and chances of rehabilitation. The board examines the inmate's disciplinary record, participation in prison programmes. The decision about the release will then be taken by the parole board.<sup>10</sup>

The possibility of release exists in both determinate and indeterminate life sentence.

### **Indeterminate life sentence**

It includes imposing of a sentence of incarceration within a range. A minimum and maximum period is set which is coupled with a possibility of release. This type of sentencing has three main components.<sup>11</sup>

#### 1. Minimum term

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<sup>8</sup> Immanuel Kant, *The philosophy of law*, 1887, Online Library of Liberty, pp196 , <http://oll.libertyfund.org/titles/kant-the-philosophy-of-law>, accessed on 16 February 2017 , pp 4

<sup>9</sup> (2002) ECHR 470

<sup>10</sup> William J. Chambliss, *Corrections*, George Washington University

<sup>11</sup> Peet M. Bekker , *The maximum length of imprisonment imposed by South African courts after the constitutional abolition of the death penalty: a comparative note on the position in the United States of America*, 2000, *The Comparative and International Law Journal of Southern Africa*, pp9-10

The accused cannot be released before serving the minimum term. The purpose or rather the justification behind setting a minimum term is to incapacitate the accused from resorting to another crime of a similar nature. The rationale behind setting this term is also to prevent the parole board from acting arbitrarily.

2. Maximum term

After serving the maximum term, the prisoner gets the right of release. The purpose here is to ensure that the accused is not punished beyond the term quoted here.

3. Discretion of the judge.

The discretion with the judge enables him to choose the maximum and minimum term on individual basis. The purpose of providing this discretion is to allow him to consider the offence and the characteristics of the individual. A judge has to make two decisions. One, he may increase the maximum period to give more time to the parole board to assess the behaviour of the offender. Two, he may reduce it if he feels that the offender will not be paroled soon.

Implications for this type of sentencing include increased incarcerations, uncertainty in the mind of the accused and subjection of the accused to discrimination. It is also accompanied by fake promises of rehabilitation from the side of the offender.<sup>12</sup>

### **Determinate life sentence**

This type of sentence sets a particular term of imprisonment which is set by the judge. The parole board does not assess the case after the offender is sentenced by the judge. The justification behind this type is deterrence, incapacitation and retribution. However it leads to overcrowding and increases the cost of prisons.<sup>13</sup>

Certain European countries have held that irreducible life sentence cannot be given as a punishment. Such countries include **Norway, Spain, and Portugal**. However, certain

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<sup>12</sup> *ibid*

<sup>13</sup> *Ibid*, pg 10

European countries vouch for a life sentence which must be open for release after a certain period of time. For instance, in **Belgium** life imprisonment shall be considered for release after 10 years, in **Austria, Germany and Switzerland** it is reviewed after 15 years. Countries like **Russia, Poland and Slovakia** do it after 25 years.<sup>14</sup>

Germany justifies this type of imprisonment by associating it with the right of human dignity recognised by the federal constitutional court. The prospect of release should not only be limited to an executive pardon but shall also be provided by the statutes.<sup>15</sup> Life imprisonment devastates the prisoner emotionally, psychologically and physically. The federal republic of Germany guarantees under article 1 the right to dignity. The number of prisoners who are sentenced to life imprisonment are 50-60 each year. The number has remained stable which shows lack of impact on the target audience. The right to pardon has now been extended to the court i.e. the judicial officers which confer a real hope of release on the prisoners.<sup>16</sup>The criminal code of Germany provides for an opportunity of release to the prisoner if he has been incapacitated and is no more a threat to the society.<sup>17</sup>

Life imprisonment shall always carry a hope of release. Shutting the hope of release is considered a violation of human rights.

Article 10(1) of the International Covenant on Civil and Political Rights (ICCPR) states that 'All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person'. Article 10(3) states that 'The penitentiary system shall comprise treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation'.

In the case of *Vinter v White* the three appellants had each been convicted of exceptionally serious murders, and been sentenced to mandatory life sentences, but with provision that they could not be eligible for early release, making them whole life terms.

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<sup>14</sup> Dirk Van Zyl Smit *Outlawing irreducible life sentence: Europe on the Brink*, 2010, University of California Press, pp3

<sup>15</sup> *ibid*

<sup>16</sup> KC Horton, *Life Imprisonment and pardons in the German Federal Republic*, 1980, Cambridge University Press, pp4-5

<sup>17</sup> John Stuart Mill, 'speech in favour of Capital Punishment' in Peter Singer (Ed.). *Applied Ethics*, 1986, Oxford University Press, pp.98.

They appealed, saying that the refusal of any hope of release was cruel and inhuman treatment.<sup>18</sup>

In the case of *Hutchinson v. the United Kingdom*<sup>19</sup>

The Grand Chamber held that there had been no violation of Article 3 of The Convention. It held that that the Convention did not prohibit the imposition of a life sentence on those convicted of serious crimes, such as murder. However, it was necessary that there had to be both a prospect of release for the prisoner and a possibility of review of their sentence. It was the duty of the Secretary of State for Justice to exercise the power of release for life prisoners in such a way that it was compatible with the Convention. The Grand Chamber therefore concluded that whole life sentences in the United Kingdom could now be regarded as compatible with Article 3 of the Convention.

The human dignity of the offender is of utmost importance. The indeterminacy of life imprisonment makes it a poison to human rights.<sup>20</sup> The convict lives with an uncertainty of release thereby giving the state functionaries and the criminal justice system unlimited powers.<sup>21</sup> Such justification has also been cited by France for using a life imprisonment with the possibility of release as the ultimate sanction.

In **South Africa**, while awarding a life sentence after the abolition of death penalty the court took the view that a life sentence is more cruel for a person who is in his youth than a person who is in his 60s. The future hope of release is finished. The imposition of such a sentence must be with a careful scrutiny of certain factors. The antecedents of the accused, the gravity of the offence and the justification of deterrence and incapacitation must be considered. One main argument against avoiding life imprisonment without the possibility of release was the assertion that a criminal has chances of reformation that wither away with such a punishment. The law of diminishing marginal utility supports this assertion. The more the imprisonment, the lesser the hope of release and hence no scope of rehabilitation.

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<sup>18</sup> *Vinter, Bamber And Moore v The United Kingdom*, 2011 ECHR 324

<sup>19</sup> *Hutchinson v UK* 2015 ECHR 57592/08

<sup>20</sup> Catherine Appleton and Bent Grøver, *The pros and cons of life without parole*, 2007, *The British Journal of Criminology*, Oxford University Press, pp 14

<sup>21</sup> Salutare laszlo kohalmi, *Life imprisonment in Hungarian Penal Law*, 2006, *Iustum Aequum*, pp 9

Hence, in South Africa the life imprisonment with the possibility of release exists as a punishment. The Correctional Services Act brought a new provision in October 2004 regarding the release of the life convict. Section 73(6)(b)(iv) of the act provides the scope of parole after 25 years or 15 years ( if he has attained the age of 65).<sup>22</sup>

In the Unites States, the life imprisonment extends to the remainder of the convict's life depending on the fact if the system is a determinate one or an indeterminate one.<sup>23</sup>

It has been argued that while making predictions about the future dangerousness of the offender the parole board is likely to overestimate the danger in an attempt to restore the trust of the public in the criminal justice system. In this scenario keeping the hope of release open is very essential. Also it enables to reduce the rise of old and elderly prison population. If the hope of release is shut, the offenders do not have an incentive that makes them regulate their behaviour. They are likely to get destructive in prison with the inmates.

Life imprisonment has been equated to be as worse as death sentence it basically is a form of punishment that puts the offender in the waiting room of his death. Human life is not just limited to survival but also includes various others rights that ensure a life of dignity. Life imprisonment deprives the offender of the same.<sup>24</sup>

One of the arguments in favour of life imprisonment without remission is that it reduces the pressure on the court to administer death sentence when the case falls short of the rarest of the rare category. It is manly serving a twofold purpose. One, protecting the public from dangerous offenders and eliminating the risk of wrongful execution.<sup>25</sup>

Life imprisonment, if shut with the possibility of release also adds to the cost of incarceration. The cost of life sentenced inmates is extremely high. Moreover, the executive clemency that exists in life imprisonment without remission gives rise to a political game. It becomes a means to acquire votes and influence elections. Also the

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22 Jamil Ddamulira Mujuzi, Life imprisonment in South Africa: yesterday, today and tomorrow,2009African Journal of Criminology,pp6

23 George P. Fletcher, The Place of Victims in the Theory of Retribution, 1999, Buffalo Criminal Law Review,pp58

24 Esther Gumboh The penalty of life imprisonment under international criminal law, 2011, African human rights law journal, p76-78

25 Van Zyl Smit, 'Abolishing Life Imprisonment?', Punishment and Society,2001,pp 299-306

chances of release are very low because the executive has to face the music of the offender taking to crime upon release.<sup>26</sup>

### **Life Imprisonment without the possibility of release**

In a life sentence without the possibility of release means that the inmate is ineligible for release on parole or through some other early release policy. However, the inmate can be released through an executive clemency, which is the authority of the governor or president to amend a sentence .<sup>27</sup>

Certain countries do not keep the block of release open. For instance, in the **Netherlands** this type of punishment is given. Since 1986 only one convict has been released because he was ill. 37 prisoners have been sentenced to life. <sup>28</sup>

In **England and Wales** a whole life sentence is given. Judges can set a minimum period after which the prisoner MAY be considered for release. This is an example of a determinate life sentence not subject to release. In some cases, the judges decline to set the minimum period.

Such sentences were held to be constitutional in the case of R V secretary. It was held that the requirements of retribution and deterrence are so high that such a sentence is necessary.<sup>29</sup>

In the United States of America , life imprisonment without the possibility of release is used as a substitute for death penalty. Recently, it is being applied to both adults and juveniles. It is one of the severest punishments. Out of every four offenders in the Us, one is a convict of life imprisonment without remission.

Most states grant it as punishment for offences that were earlier punished with death penalty. For instance, in Hawaii and Massachusetts no offender can be considered for release if he is serving a life sentence for a first degree murder.

The statute of the state of Washington explains such a sentence

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<sup>26</sup> Thom Brooks, Punishment, Routledge,pp16-17

<sup>27</sup> Thom Brooks, Punishment, Routledge,pp16-17

<sup>28</sup> Garland, Peculiar institution: America's death penalty in an age of abolition, 2012, Cambridge: Harvard University press

<sup>29</sup> ibid



*A person sentenced to life imprisonment under this section shall not have that sentence deferred or commuted by any judicial officer and the board of prison terms and paroles or its successor may not parole such prisoner nor reduce the period of confinement in any manner including but not limited to any sort of good-time calculation. The department of social and health services or its successor or any executive official may not permit such prisoner to participate in any sort of release or furlough programme.*

Life imprisonment does not practically imply an imprisonment till the end of convict's life. The right of release is with the executive and not the parole board and the prison authorities.

#### JUSTIFICATION

##### 1. Principles of Deterrence, Incapacitation and Retribution

By sentencing one prisoner to life imprisonment without remission, thousands of potential offenders can be deterred. Since there is no prospect of release, the deterrent value is undeniably high.<sup>30</sup> It acts as a warning in display. For deterrence to be successful three things are essential:-

One, knowledge about the punishment among the targets.

Second, possession of rationality to comprehend it and third, the capacity to know that the cost of punishment is more than the benefit derived from the crime.

The deterrent effect is contingent on the perception of deterrence in the minds of people.<sup>31</sup>

The analysis of cost-benefit is not required for showing the incapacitation effect. The probability to identify the offenders who can commit a crime in future is the key to successful incapacitation. There should be a minimum of 'false positives' ( the ones who appear to commit a felony, but do not do so).

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<sup>30</sup> Esther Gumboh, The penalty of life imprisonment under international criminal law,2011, African human rights law journal,pp76-78

<sup>31</sup> Paul h Robinson ,Life without parole under modern theories of punishment,New York University Press, ,pp 1-6

Prior criminal records come handy though they provide only a rough estimate.<sup>32</sup>

This type of sentence caters to the public outrage thereby satisfying the feeling of vengeance and retribution.<sup>33</sup>

A research on the disciplinary conduct of the life sentenced inmates demonstrated that such convicts are less likely to commit rule violations than inmates who have a chance of parole. They abide by the rules of the correctional homes.<sup>34</sup>

## 2. Distributive principles of desert

It basically gives the offender what he deserves. It attaches a moral blame on him. A punishment is given as what the offender is entitled after committing a wrong. However, since offences related to drug, serious felonies are not always committed intentionally, a new rule was developed. The rule of 'empirical deserts'. It implies doing justice in order to control crime. Thereby, justifying the punishment of life imprisonment without remission.<sup>35</sup>

## 3. Protecting the public

The horrendous and dangerous crimes that are committed by certain offenders render them dangerous to be let loose in public. Public protection is the rationale behind sentencing them with life imprisonment without remission.<sup>36</sup>

Such a sanction removes dangerous offenders from the community

Life imprisonment without remission is considered to be a punishment based on the justification of retribution. It brings the offender on the gateway of death. However indeterminate incarceration leads to an over crowded prison population. In the United States of America the number of such offenders has increased hundred times in thirty years.

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<sup>32</sup> *ibid*

<sup>33</sup> Esther Gumboh, The penalty of life imprisonment under international criminal law,2011, African human rights law journal,pp76-78

<sup>34</sup> Thom Brooks, Punishment, Routledge,pp16-17

<sup>35</sup> *ibid*

<sup>36</sup> Esther Gumboh, The penalty of life imprisonment under international criminal law,2011, African human rights law journal,pp76-78

Certain arguments against life imprisonment without remission include the assertion of a fact that it is sometimes given to please politicians and the public prosecutors. However, it can be countered by the fact that it is often accepted by the offenders as an alternative to being executed.<sup>37</sup>

### **Life Imprisonment in India**

- In every case in which sentence of [imprisonment] for life shall have been passed, [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.<sup>38</sup>
- In calculating fractions of terms of punishment, [imprisonment] for life shall be reckoned as equivalent to [imprisonment] for twenty years.<sup>39</sup>

- Power to Suspend, Remit or commute sentences.

When any person has been sentenced to punishment for an offence, the appropriate Government may, at any time, without conditions or upon any conditions that the person sentenced accepts, suspend the execution of his sentence or remit the whole or any part of the punishment to which he has been sentenced.<sup>40</sup>

- Section 433 of CrPC provides the Power of the appropriate government To Commute Sentence.

The appropriate Government may, without the consent of the person-sentenced commute -A sentence of death, for any other punishment provided by the Indian Penal Code, 1860; sentence of imprisonment for life, for imprisonment for a term not exceeding fourteen years or for fine; A sentence of rigorous imprisonment for

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<sup>37</sup> Catherine Appleton and Bent Grøver, The pros and cons of life without parole, 2007 The British Journal of Criminology, pp. 597-615

<sup>38</sup> Section 55, IPC

<sup>39</sup> Section 57, IPC

<sup>40</sup> Section 432 CrPC

simple imprisonment for any term to which that person might have been sentenced, or sentenced, or for fine; A sentence of simple imprisonment, for fine.

- Section 433A CrPC provides for the restriction on the power

Notwithstanding anything contained in Section 432, where a sentence of imprisonment for life is imposed on conviction of a person for an offence for which death is one of the punishments provided by law or where a sentence of death imposed on a person has been commuted under Section 433 into one of imprisonment for life, such person shall not be released from prison unless he has served at least fourteen years of imprisonment.

A combined reading of the above provisions concludes that India statutorily offers a life imprisonment with a possibility of release after 14 years

- Judicial activism on life sentence in India

According to the case of *Swamy Shraddananda*<sup>41</sup>. *”The matter may be looked at from a slightly different angle. The issue of sentencing has two aspects. A sentence may be excessive and unduly harsh or it may be highly disproportionately inadequate. When an appellant comes to this court carrying a death sentence awarded by the trial court and confirmed by the High Court, this Court may find, as in the present appeal that the case just falls short of the rarest of the rare category and may feel somewhat reluctant in endorsing the death sentence. But at the same time, having regard to the nature of the crime, the Court may strongly feel that a sentence of life imprisonment that subject to remission normally works out to a term of 14 years would be grossly disproportionate and inadequate. If the Court's option is limited only to two punishments, one a sentence of imprisonment, for all intents and purposes, of not more than 14 years and the other death, the court may feel tempted and find itself nudged into endorsing the death penalty. Such a course would indeed be disastrous. Hence it imposed restriction on power of appropriate government to commute life sentence”*

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<sup>41</sup> *Swamy Shraddananda v. State of Karnataka* (2008) 13 SCC 767

The cases of Sahib Hussain @ Sahib Jan v. State of Rajasthan, and Gurvail Singh @ Gala v. State of Punjab, also favoured Swamy Shraddananda's judgement of imposing restriction on power of appropriate government

Certain issues emerged in the case of Sriharan v UOI<sup>42</sup>

1. Whether imprisonment for life in terms of Section 53 read with Section 45 of the Penal Code meant imprisonment for rest of the life of the prisoner or a convict undergoing life imprisonment has a right to claim remission and whether the as per the principles enunciated in Swamy Shraddananda , a special category of sentence may be made for the very few cases where the death penalty might be substituted by the punishment of imprisonment for life or imprisonment for a term in excess of fourteen years and to put that category beyond application of remission?

Article 72 or Article 161 of the Constitution will always be available being Constitutional Remedies untouchable by the Court.

2. Whether the "Appropriate Government" is permitted to exercise the power of remission under Sections 432/433 of the Code after the parallel power has been exercised by the President under Article 72 or the Governor under Article 161 or by this Court in its Constitutional power under Article 32 as in this case?

The exercise of power under Sections 432 and 433 of Code of Criminal Procedure will be available to the Appropriate Government even if such consideration was made earlier and exercised under Article 72 by the President or under Article 161 by the Governor. As far as the application of Article 32 of the Constitution by this Court is concerned, it is held that the powers under Sections 432 and 433 are to be exercised by the Appropriate Government statutorily and it is not for this Court to exercise the said power and it is always left to be decided by the Appropriate Government

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<sup>42</sup> Sriharan v Union of India (2014) 4 SCC 242

### 3.4.1 PENOLOGICAL JUSTIFICATION

Amnesty International asserts that incapacitation cannot be the justification for death penalty. If an offender is sentenced to death on the ground of incapacitation, the judgement is based on sheer probability. There is no way to ascertain if the offender would have taken to crime if allowed to live. Amnesty international therefore vouches for life imprisonment without remission as it provides a way to keep the offender away from the public without resorting to execution.<sup>43</sup>

Life sentences are cheaper than death penalty hence it would be cost effective to impose a life sentence. In addition to that, the fact that it can be reversed makes it more attractive. An offender who has been sentenced to death penalty erroneously has no recourse<sup>44</sup>

The most remarkable feature in the punishment of death is the taking from the offender the power of doing further injury<sup>45</sup>. Matthew Kramer in his book *The Ethics of Capital Punishment* brings out the difference between death penalty and life imprisonment with remission with respect to incapacitation. While death penalty is focused on instilling fear in people other than the offenders; the incapacitative theory is focused on permanently eliminating these offenders. In both the cases (life imprisonment without parole and death penalty) the focus is not on specific deterrence. (The convict is deterred and not the general public.

The legal position as enunciated in Pandit Kishori Lal,<sup>46</sup> Gopal Vinayak Godse,<sup>47</sup> Maru Ram,<sup>48</sup> Ratan Singh<sup>49</sup> and Shri Bhagirath<sup>50</sup> highlighted the inconsistent way in which remissions were awarded. This makes it essential to substitute death penalty with life imprisonment without remission.

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<sup>43</sup> Amensty International, *The death penalty v human rights, Why abolish the death penalty*, 2007, AI Index ACT 51/002/2007 pp 1-6

<sup>44</sup> Anju Chaudhary v. State of UP, 2013) 6 SCC 384.

<sup>45</sup> Bentham, Jeremy, *Principles of Penal Law*. In the Works of Bentham, 1843, W Tait, pp978

<sup>46</sup> Pandit Kishori Lal and anr. v. King Emperor AIR 1928 All 546.

<sup>47</sup> Gopal Vinayak Godse v. The State Of Maharashtra 1961 SCR (3) 440

<sup>48</sup> . Maru Ram v. Union of India and another 1981 (1) SCR 1196.

<sup>49</sup> State of Madhya Pradeshv. Ratan Singh 1976 AIR 1552.

<sup>50</sup> Bhagirath and ors. v. Delhi Administration 1985 AIR SC 1050.

If the Court's option is limited only to two punishments, one a sentence of imprisonment and the other death, the Court may be bent towards awarding death penalty as life imprisonment lasts for approximately 14 years. Such a course would indeed be disastrous.<sup>51</sup>

In most parts of our country, cases are not uncommon where even a person sentenced to imprisonment for life and having come back after earning a number of remissions has committed repeated offences. In the present atmosphere it is essential to adopt a deterrent punishment.

When the issue is analysed in the light of the principles laid down in very many judgments starting from Godse,<sup>52</sup> Maru Ram,<sup>53</sup> Sambha Ji Krishan Ji,<sup>54</sup> Ratan Singh,<sup>55</sup> it has now come to stay that when in exceptional cases, death penalty is altered as life sentence that would only mean rest of one's life span.

In State of Haryana and others v. Jagdish,<sup>56</sup> it was observed by the Supreme Court:

*“At the time of considering the case of premature release of a life convict, the authorities may require to consider his case mainly taking into consideration whether the offence was an individual act of crime without affecting the society at large; whether there was any chance of future recurrence of committing a crime; whether the convict had lost his potentiality in committing the crime; whether there was any fruitful purpose of confining the convict anymore; the socio-economic condition of the convict's family and other similar circumstances*

In Supreme Court Bar Association v. Union of India & another<sup>57</sup> while dealing with exercise of powers under Article 142 of Constitution, it was observed :-

*“The plenary powers of this Court under Article 142 of the Constitution are inherent in the Court and are complementary to those powers which are specifically conferred on the Court by various statutes though are not limited by those statutes. These powers also exist independent of the statutes with a view to do complete*

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<sup>51</sup> Swamy Shraddananda@ Murali Manohar Mishra v. State of Karnataka (2008) 13 SCC 767.

<sup>52</sup> Pandit Kishori Lal and anr. v. King Emperor AIR 1928 All 546.

<sup>53</sup> Gopal Vinayak Godse v. The State Of Maharashtra 1961 SCR (3) 440

<sup>54</sup> Sambha Ji Krishan Ji vs State Of Maharashtra AIR 1974 SC 147.

<sup>55</sup> State of Madhya Pradeshv. Ratan Singh 1976 AIR 1552.

<sup>56</sup> CA No. 566 OF 2010.

<sup>57</sup> 1998 (4) SCC 409

*justice between the parties. These powers are of very wide amplitude and are in the nature of supplementary powers. This plenary jurisdiction is, thus, the residual source of power which this Court may draw upon as necessary whenever it is just and equitable to do so and in particular to ensure the observance of the due process of law, to do complete justice between the parties, while administering justice according to law... the construction of Article 142 must be functionally informed by the salutary purposes of the article, viz., to do complete justice between the parties.”*

Since death penalty is an irrevocable punishment and it is applied in an inconsistent way in India. There was a need to introduce life imprisonment without remission when the case falls short of the rarest of the rare category. The way in which remissions are granted in lieu of section 433A CrPC

The court dismissed the argument that the judiciary was encroaching in the domain of the legislature and the executive. Though, life imprisonment without remission cuts down the hope of release and resocialisation of the offender, but the power of the offender to claim remission by executive clemency stays alive.



## **CONCLUSION**

Upon analysing the term 'life imprisonment' as envisaged by various countries and considering its justifications it can be seen that life imprisonment without remission leads to instrumentalisation of the offender's life. Hence, it is a violation of the right to dignity.

Since life imprisonment without remission is an indeterminate sentence it is considered as arbitrary and disproportionate. It cuts the scope of resocialisation and integration into the society. There is no hope of release and rehabilitation.

It is considered to be a punishment based on the justification of retribution. It brings the offender on the gateway of death. However indeterminate incarceration leads to an over crowded prison population. In the United States of America the number of such offenders has increased hundred times in thirty years.

The Indian Penal Code prescribes the punishment of death and life imprisonment. However, there have been many concerns with the administration of the death penalty in India. There have also been concerns with the manner in which the powers of remission have been exercised by state governments in the context of life imprisonment.

One of the arguments in favour of life imprisonment without remission is that it reduces the pressure on the court to administer death sentence when the case falls short of the rarest of the rare category. It is mainly serving a twofold purpose. One, protecting the public from dangerous offenders as well as eliminating the risk of wrongful execution.

In this context, the Supreme Court in *Swami Shraddhananda* and *Sriharan* evolved the punishment of life imprisonment without remission, thereby empowering the High Courts and the Supreme Court to sentence an individual to spend the rest of his/ her natural life in prison by excluding the state government's powers of remission