CHAPTER -V
LIFE IMPRISONMENT AND SENTENCING POLICY:
JUDICIAL CODIFICATION OF LIFE IMPRISONMENT
AND FALLOUTS THEREOF

Life after all is full of questions!

Justice Aftab Alam

5.1 Introduction

Imprisonments weather for a limited period or for indeterminate time place restriction on the liberty of individuals. The second most rigorous punishment after death penalty in India is life imprisonment. Unlike death penalty, life imprisonment serves all aims of punishment. The word ‘life imprisonment’ has not been defined in the Indian Penal Code, 1860 which law espouses the imposition of this punishment. For a lexicographer, the word ‘life imprisonment’ may sound a plain meaning of life in prison till last breath- that is probably the intended meaning also- however, the remissional powers of the executive, demands of reformatory theories, movement against life without parole have questioned the meaning of life imprisonment. The remissional provisions have given the executive the power to remit the sentence of life convict after 14 years of life in prison if death is one of the alternative punishment and reduce life imprisonment to any other sentence or period lesser than

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1 Justice Aftab Alam in Swamy Shraddananda (2) v. State of Karnataka (2008) 13 SCC 767, para 1, when he was answering the question of critical choice between life or death. He further observed that:

“Death to a cold blooded murderer or life, albeit subject to severe restrictions of personal liberty, is the vexed question that once again arises before Supreme Court. A verdict of death would cut the matter cleanly, apart from cutting short the life of the condemned person. However, a verdict of imprisonment for life is likely to give rise to certain questions. (Life after all is full of questions!). How would the sentence of imprisonment for life work out in actuality?...”

2 In Ashok Kumar Alias Golu v. Union of India and Ors.1991 SCC (3) 498 Justice Ahmadi, A.M. observed:

“[l]iberty is the lifeline of every human being. Life without liberty is ‘lasting’ but not ‘living’. Liberty is, therefore, considered as one of the most precious and cherished possessions of a human being. Any attempt to take liberties with the liberty of a human being is visited with resistance. Since no human being can tolerate fetters on his personal liberty imprisonments weather for a limited period or for indeterminate time places restriction on the liberty of individuals”

3 The court observed:

“Incarceration, life or otherwise, potentially serves more than one sentencing aims. Deterence, incapacitation, rehabilitation and retribution – all ends are capable to be furthered in different degrees, by calibrating this punishment in light of the overarching penal policy. But the same does not hold true for the death penalty. It is unique in its absolute rejection of the potential of convict to rehabilitate and reform. It extinguishes life and thereby terminates the being, therefore puts an end anything to do with the life. This is the big difference between two punishments. Before imposing death penalty, therefore, it is imperative to consider the same.”

4 Section 433A of Code of Criminal Procedure, 1973

5 Death sentence as an alternative punishment is provided in Sections 121, 132, 194, 302, 305, 307 and 396 of IPC
14, if original sentence is life imprisonment simpliciter.⁶ The exercise of this power and subsequent judicial response to this has raised few controversies surrounding life imprisonment today namely,—indiscriminate remission of life imprisonment for lesser sentence, secondly courts favoring life imprisonment over death penalty for inherent defects in capital sentences, thirdly courts fixing their own terms of life imprisonment from 20 to 35 years, fourthly courts restricting executive from exercising the constitutional powers of remission and fifthly legislature coming up with defined meaning of life imprisonment in recent legislations creating ambiguity in their own intent and interpretation.

The fact that the question of life imprisonment was referred, after Gopal Vinayak Godse,⁷ to a larger bench of five judges⁸ for interpretation in 2015 (since1860!) itself is indicative of the fact that, concrete jurisprudence in this field is required. In this chapter, therefore, the meaning of life imprisonment, judicial codification of life imprisonment and difficulties in working out life imprisonment etc. are intended to be discussed.

5.2 Life Imprisonment – Meaning Of

The term "imprisonment for life" or popularly called as ‘life sentence’ is not the original sentence in the Indian Penal Code 1860 (herein after IPC). It was in 1956 that Section 53 of the Indian Penal Code was amended to include this form of punishment. Clause 'secondly' of Section 53 relating to "transportation"⁹ was deleted and in its place "imprisonment for life" was introduced by Act 26 of 1955 with effect from 1.1.1956.¹⁰ Life imprisonment, thus, substituted transportation.¹¹

The word life imprisonment has not been defined in any laws of India though the word ‘life’ and ‘imprisonment’ have been distributively explained. Section 45, the Indian Penal Code defines ‘life’ as the life of the human being unless a contrary intention appears from the context. Section 3(27) of the General Clauses Act, 1897 states that imprisonment shall mean imprisonment of either description as defined in

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⁶ See section 433 of Code of Criminal Procedure, 1973
⁸ Union of India v. Sriharan 2015 (13) SCALE 165
⁹ Prior to the commencement of Act 26 of 1955, all prisoners sentenced to "transportation" for a fixed term or for life were not invariably deported to the overseas penal settlements in the island of Andaman. The prisoners were divided into two categories and those who were found eligible for deportation were alone sent to the penal settlements. The other prisoners were confined in one of the jails within the country under Section 32 of the Prisoners Act, 1900.
the Indian Penal Code. The expression `life imprisonment', therefore, must be read in the context of section 45 IPC. Read so, it would ordinarily mean imprisonment for the full or complete span of life.

5.3 Ordinary Misconceptions and Misinterpretations Ordinarily Made

Having said that life imprisonment is imprisonment for the natural life of the convict, a misconception in public and in certain corners of the academics is prevailing that life imprisonment is either 14 years or 20 years. At times this misconception has had hunted judiciary also. This misreading is the outcome of half understanding of section 433 and 433A of Criminal Procedure Code, 1973(hereinafter Cr.PC) and section 57 of the Indian Penal Code, 1860. Under section 432 of Cr.PC, appropriate governments have the power to remit the sentence of life convict after he has served minimum 14 years in the jail. This minimum 14 years imprisonment and release is not a rule but an exception. In other words, convict cannot claim for release after 14 years as a matter of right. It is one thing to say that his case may be considered for premature release after 14 years and quite another thing to say that he has a right to be realised after 14 years. If the government wishes to confer upon him the benefits of clemency, his case may be processed and he may be realised after 14 years or after any definite period of imprisonment say 20 years. The government is

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12 The Supreme Court in the case of Naib Singh v. State of Punjab AIR 1983 SC 855, has specifically held that "life imprisonment" means imprisonment for the whole of a convict's life and does not automatically expire on his serving a sentence of 14 years or 20 years.

13 In Laxman Naskar (Life Convict) v. State of W.B. and anr. 2000 CriLJ 4017, after referring to the decision of the case of Gopal Vinayak Godse v. State of Maharashtra 1961CriLJ 736, the court reiterated that "sentence for 'imprisonment for life' ordinarily means imprisonment for the whole of the remaining period of the convicted person's natural life; that a convict undergoing such sentence may earn remissions of his part of sentence under the Prison Rules but such remissions in the absence of an order of an appropriate Government remitting the entire balance of his sentence under this section does not entitled the convict to be released automatically before the full life term if served. It was observed that though under the relevant Rules a sentence for imprisonment for life is equated with the definite period of 20 years, there is no indefeasible right of such prisoner to be unconditionally released on the expiry of such particular term, including remissions and that is only for the purpose of working out the remissions that the said sentence is equated with definite period and not for any other purpose."

14 Since prison administration is a state subject, rules regarding commutations and remissions be under constitution or CrPC are framed by the respective states. This may result in disparity in commutation and remission also. Take for example, in Maharashtra a prisoner has to put in 20 years of minimum incarceration before being considered for commutation and remission. However, in Karnataka, Andra Pradesh and Kerala it is 14 years respectively. Even in same state, the state may prescribe different conditions for different crimes to be considered for premature release or commutation. As for example in the state of Maharashtra, guidelines for premature release of prisoners sentenced to life imprisonment or to death penalty commuted to life imprisonment after 18th December, 1978, prescribe that, a prisoner has to serve minimum 22 years if the convict is the aggrieved person and has no previous criminal history and committed the murder in an individual capacity in moment of anger and without premeditation. A convict on the other hand has to serve 30 years if Murder is committed in pursuance of a political philosophy and as a means to acquire political powers as by terrorist of extremist groups. Similarly persons sentenced to life imprisonment for offences like (a) offences against the State (Chapter-VI) IPC, (b) Abetment of Mutiny (Sec.131,132 IPC), (c) Offences against public justice (Sec.222 & 225 of IPC), (d) Offences in respect of Coinage, Stamps (Sec.252, 238, 225 of IPC) etc, have to serve minimum 30 years before their file is 'put up' for remissions and commutation.
however not under an obligation to exercise such powers.\textsuperscript{15} In fact, the exercise of this power to a greater extent depends upon the crimes committed and rehabilitation chances. If the criminal is hardcore, governments would never exercise this power keeping such convicts in jail for reminder of their life.\textsuperscript{16} This proposition makes crystal clear that life imprisonment is imprisonment for the reminder of the life. Thus Imprisonment for life is not confined to 14 years of imprisonment. A reading of Section 55 IPC and Section 433 and 433A Cr.P.C. would indicate that only the appropriate Government can commute the sentence for imprisonment of life for a term not exceeding fourteen years or the release for such person unless he has served at least fourteen years of imprisonment.\textsuperscript{17}

The second reason for the misconceived life imprisonment stems from the isolated reading of section 57 IPC, which declares that “[i]n calculating fractions of terms of punishment, imprisonment for life shall be reckoned as equivalent to imprisonment for twenty years”

Section 57 of the IPC merely relates to calculating fractions of terms of punishment by providing a numerical value of 20 years to life imprisonment.\textsuperscript{18}

\textsuperscript{15} See Subash Chander v. Krishan Lal and others (2001) 4 SCC 458

Justice U U Lalit made the following observation in the context of remission powers Union of India v. V. Sriharan @ Marugan & Ors (2015) available at http://judis.nic.in/supremecourt/imgs1.aspx?filename=43153

“The right to apply and invoke the powers under these provisions does not mean that he can claim such benefit as a matter of right based on any arithmetical calculation as ruled in Godse. All that he can claim is a right that his case be considered. The decision whether remissions be granted or not is entirely left to the discretion of the concerned authorities, which discretion ought to be exercised in a manner known to law. The convict only has right to apply to competent authority and have his case considered in a fair and reasonable manner.”

\textsuperscript{16} The State Government of Maharashtra declared that the offenders sentenced to life imprisonment in connection with the 1993 terrorist attack on Mumbai will have to serve a minimum of 60 years in prison before their plea for release is even considered. See infra note 162 at p 44


\textsuperscript{18} Ibid
Section 65, Section 116, Section 120 and Section 511 of the IPC fix the term of imprisonment there under as a fraction of the maximum fixed for the principal offence. It is for the purpose of working out this fraction that it became necessary to provide under section 57 that imprisonment for life shall be reckoned as equivalent to imprisonment for 20 years. If such a provision had not been there it would have been impossible to work out the fraction of an indefinite term. In order to work out the fraction of terms of punishment provided in the above sections it was imperative to lay down the equivalent term for life imprisonment. Other than this calculation purpose section 57

19 Section 65 IPC reads
“Section 65. Limit to imprisonment for non-payment of fine, when imprisonment and fine awardable.—The term for which the Court directs the offender to be imprisoned in default of payment of a fine shall not exceed one-fourth of the term of imprisonment which is the maximum fixed for the offence, if the offence be punishable with imprisonment as well as fine.”

20 Section 116 IPC reads
“Section 116. Abetment of offence punishable with imprisonment—if offence be not committed.—Whoever abets an offence punishable with imprisonment shall, if that offence be not committed in consequence of the abetment, and no express provision is made by this Code for the punishment of such abetment, be punished with imprisonment of any description provided for that offence for a term which may extend to one-fourth part of the longest term provided for that offence; or with such fine as is provided for that offence, or with both; If abettor or person abetted be a public servant whose duty it is to prevent offence,—and if the abettor or the person abetted be a public servant, whose duty it is to prevent the commission of such offence, the abettor shall be punished with imprisonment of any description provided for that offence, for a term which may extend to one-half of the longest term provided for that offence, or with such fine as is provided for the offence, or with both.”

21 Section 120 IPC reads
“Section 120. Concealing design to commit offence punishable with imprisonment.—Whoever, intending to facilitate or knowing it to be likely that he will thereby facilitate the commission of an offence punishable with imprisonment, voluntarily conceals, by any act or illegal omission, the existence of a design to commit such offence, or makes any representation which he knows to be false respecting such design, If offence be committed—if offence be not committed.—shall, if the offence be committed, be punished with imprisonment of the description provided for the offence, for a term which may extend to one-fourth, and, if the offence be not committed, to one-eighth, of the longest term of such imprisonment, or with such fine as is provided for the offence, or with both.”

22 Section 511 IPC reads
“Section 511. Punishment for attempting to commit offences punishable with imprisonment for life or other imprisonment.—Whoever attempts to commit an offence punishable by this Code with [imprisonment for life] or imprisonment, or to cause such an offence to be committed, and in such attempt does any act towards the commission of the offence, shall, where no express provision is made by this Code for the punishment of such attempt, be punished with [imprisonment of any description provided for the offence, for a term which may extend to one-half of the imprisonment for life or, as the case may be, one-half of the longest term of imprisonment provided for that offence], or with such fine as is provided for the offence, or with both.”

23 Ashok Kumar Alias Golu v. Union of India And Ors 1991 SCC (3) 498
confers no other right on the convict.\textsuperscript{24} Section 57 on the other hand, is also helpful in interpreting newly added sections like section 18 of Protection of Children From Sexual Offences Act, 2012, which provides for punishment to attempted crimes.\textsuperscript{25}

Thus, it is clear that a prisoner sentenced to life imprisonment was bound to serve the remainder of his life in prison unless the sentence is commuted or remitted by the appropriate authority.

5.4 Judicial Reading of Life Imprisonment

The courts have held in clear terms that life imprisonment cannot be assigned any other meaning other than for the reminder of natural life of human beings. In \textit{Gopal Vinayak Godse v. State of Maharashtra},\textsuperscript{26} a first Constitutional Bench of Supreme Court, in respect of life imprisonment, held that a prisoner sentenced to life imprisonment was bound to serve the remainder of his life in prison unless the sentence is commuted or remitted by the appropriate authority. Such a sentence could not be equated with a fixed term.

In \textit{Maru Ram v. Union of India and Ors.},\textsuperscript{27} also the Court following \textit{Godse’s case (supra)} held that imprisonment for life lasts until last breath of the prisoner and whatever the length of remissions earned, the prisoner could claim release only if the remaining sentences is remitted by the Government.

Again in \textit{State of Punjab v. Joginder Singh},\textsuperscript{28} the Court held that if the sentence is ‘imprisonment for life’ the convict has to pass the remainder of his life under imprisonment unless of course he is granted remission by a competent authority in exercise of the powers vested in it under Sections 432 and 433 of the Cr.P.C.

In the case of \textit{Laxman Naskar v. Union of India},\textsuperscript{29} the Court held that life sentence is nothing less than lifelong imprisonment although by earning remission, the life convict could pray for pre-mature release before completing 20 years of imprisonment including remissions earned.

\textsuperscript{24}See \textit{Maru Ram etc. v. Union of India and another} 1981 (1) SCR 1196 at pp 1222-1223
\textsuperscript{25}section 18 of Protection of Children From Sexual Offences Act, 2012 reads
“18. Punishment for attempt to commit an offence : Whoever attempts to commit any offence punishable under this Act or to cause such an offence to be committed, and in such attempt, does any act towards the commission of the offence, shall be punished with imprisonment of any description provided for the offence, for a term which may extend to one half of the imprisonment for life or, as the case may be, one-half of the longest term of imprisonment provided for that offence or with fine or with both.”

\textsuperscript{26}(1961) 3 SCR 440
\textsuperscript{27}(1981) 1 SCC 107
\textsuperscript{28}(1992) 2 SCC 661
\textsuperscript{29}(2000) 2 SCC 595
In *State of Madhya Pradesh v. Ratan Singh &Ors.*, the Court observed that
the sentence of life imprisonment does not automatically expire at the end of 20
years. In *Ashok Kumar v. Union of India &Ors.*, the Court ruled that the life
imprisonment must be read in the context of Section 45 of the IPC, which would
mean imprisonment for the full or complete span of life.

In *Subash Chander v. Krishan Lal &Ors.*, the Court held that life
imprisonment means imprisonment for the whole of the remaining period of the
convicted persons natural life unless the appropriate Government chooses to exercise
its discretion to remit either the whole or a part of the sentence under Section 401
Cr.P.C.[of old code, corresponding to present Section 432]

In *Shri Bhagwan v. State of Rajasthan*, the Court reiterated that
imprisonment for life was not equivalent to imprisonment for 14 years or 20 years. In
*Mohd. Munna v. Union of India &Ors.*, similar views were expressed by the courts.
The court further held that there is no provision either in the IPC or Cr.PC, whereby
life imprisonment could be treated as either 14 years or 20 years ‘without there being
of formal remission by the appropriate Government’.

Similar views were expressed by the Supreme Court in *Swamy Shraddananda
v. State of Karnataka*, and *Sangeet & Anr. vs. State of Haryana*. Reference may
also be made to the decisions of the Court in *Subash Chander v. Krishan Lal*, *Shri
Bhagwan v. State of Rajasthan*, which too reiterate the legal position settled by the
earlier mentioned decisions of the Court. A recent Constitution Bench decision of
Supreme Court in *Union of India v. Sriharan*, also affirmed with the stamp of
approval on the same interpretation.

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30 (1976) 3 SCC 470
31 (1991) 3 SCC 498
32 (2001) 4 SCC 458
33 (2001) 6 SCC 296
34 (2005) 7 SCC 417
35 (2008) 13 SCC 767
36 (2013) 2 SCC 452
37 (2001) 4 SCC 458
38 (2001) 6 SCC 296
39 2015 (13) SCALE 165
40 See Dalbir Singh v. State of Punjab (1979) 3 SCC 745, Ashok Kumar v. Union of India [(1991) 3 SCC 498,
of W.B. (2001) 3 SCC 750
rendered by the Court, it is clear that a sentence of imprisonment for life means a sentence for entire life of the prisoner unless the appropriate Government chooses to exercise its discretion to remit either the whole or a part of the sentence under the provisions of the Criminal Procedure Code.

The controversy does not end here. It rather gives birth to a yet another difficult question. The settled position that life imprisonment means life in jail till last breath unless remitted earlier, becomes complicated if it is remitted by the executive arbitrarily. Executive may indiscriminately remit the sentence, and it is judicially noted, which exercise may futile the judicial sentencing where the judiciary sentences a person to life imprisonment, instead of death, under the sincere impression that such person would serve his life in jail. The judiciary, of late, to check this arbitrary exercise of remission and to strike just desert with criminals, has started putting judicial breaks over the exercise of remission powers by the executive by prescribing the length of life imprisonment say 20/21/25/30/35 years before which no remission shall be granted. The executive has not welcomed this type of judicial innovation since it touches upon their core premise of exercise of powers. It is this dichotomy between legislature and executive that has opened a new era in sentencing policy in India. This dichotomy may be noted later in 5.6 of this chapter, before which let us classify the life imprisonment and theorize it for present discussion as under.

5.5 Types of Life Imprisonment

For the purposes of this academic exercise, life imprisonments can be classified as Legislative Life Imprisonsments and life Imprisonment from the point of Executive. By legislative life imprisonment what we mean is – the legislature, in the forms of enactments - fixes life imprisonment of various natures in the statute book. Such life imprisonments can be further classified in to three categories namely, life imprisonment as standalone punishment\(^{41}\) Secondly life imprisonments with death penalty as alternative\(^{42}\) and thirdly life imprisonment defined to mean imprisonment

\(^{41}\) Sections 226 (unlawful return from transportation) and 311 (for being a thug) of Indian penal code, 1860 provide for life imprisonment as standalone punishments. Life imprisonment is alternated with lesser imprisonment in the sections like 313,314,394,409,412,413 and 460 of the Indian Penal Code, 1860

\(^{42}\) For all offences punishable with death penalty under IPC, the life imprisonment as alternative is provided. There are no mandatory death penalties under IPC in view of being struck as unconstitutional or read down to life imprisonment. See Chapter IV “A Critical Analysis of Capital Sentencing: Riddles, Riders and Resolutions” for detailed discussion on this issue.
for the remainder of that person's natural life.  

Standalone life imprisonments are those imprisonments where death penalty is not alternatively sanctioned. In such classification, life imprisonment itself is the highest punishment.  

As far as executive clemency is concerned, criminals sentenced with life imprisonment simpliciter may have the benefit of sections 432, 433 and of Code of Criminal Procedure, 1973 and get released from the jail by serving any number of years say 5 to 9 years. The executive clemency is exercised in an unfettered way in such cases.

Life imprisonments with death penalty as alternative, on the other hand are different life imprisonments. In this category, the convict has to serve at least 14 years of actual term before being released on the basis of ‘good times’ earned. Sentences of convict cannot be reduced to a period of less than 14 years notwithstanding the remission period earned during such time. Only constitutional powers under Articles 72 and 161 can be invoked to release the convict before 14 years of actual term.

Of late, the legislature is coming with determinate life sentence. The Criminal Law Amendment Act, 2013 fixes the meaning of life imprisonment to be for whole reminder of that person’s life. This life imprisonment comes in between the minimum

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43 See sections 376A and 376D of Indian penal code, 1860
44 In State of Rajasthan v. Jamil Khan, (2013) 10 SCC 721 the bench headed by justice C.K. Prasad and Justice Kurian Joseph observed: “We are of the view that it will do well in case a proper amendment under Section 53 of IPC is provided, introducing one more category of punishment - life imprisonment without commutation or remission. Dr. Justice V. S. Malimath in the Report on “Committee of Reforms of Criminal Justice System”, submitted in 2003, had made such a suggestion but so far no serious steps have been taken in that regard. There could be a provision for imprisonment till death without remission or commutation.”
45 See Section 313 IPC. Also see Section 14 of POSCO Act, 2012 which reads “14. Punishment for using child for pornographic purposes
   (3) If the person using the child for pornographic purposes commits an offence referred to in section 5, by directly participating in pornographic acts, he shall be punished with rigorous imprisonment for life and shall also be liable to fine.”
46 The amount of time deducted from time to be served in prison on a given sentence is known as ‘good time’. In India it is known as remission. Remissions are of two types: routine and statutory. Routine remissions are earned by the prisoners by their labour and behaviors whereas statutory remissions are granted by the state under criminal and constitutional laws. See Chapter VI - Clemency, Concessionary and Short Sentencing: Executive Interference in Judicial Process; Two Sides of the Same Coin or Tug of War Between? For detailed discussion on this issue.
47 See section 433A of Code of Criminal Procedure, 1973
48 See Maru Ram etc. v. Union of India & Another (1981) 1 SCC 107
20 years rigorous imprisonment and death penalty. In other words, in sections 376A and 376 D the punishments with 20 years imprisonment as starting point and death penalty as highest with life imprisonment as middle punishment is provided for. Given the fact that jail manuals do not provide for remissions for offences of sexual nature, 20 years imprisonment would seem sufficient since ordinarily even life imprisonment is calculated as actual imprisonment of 20 years where after such convict is eligible to present his case before the remission board.

In *Kamlesh @Ghanti v. state of M.P*, (2016)*49* the Supreme Court exercised this power for the first time. In the present Case, the Supreme Court has commuted the death penalty imposed by the Trial Court and the High Court on *Kamlesh @Ghanti* who was found guilty of raping and murdering a seven year old girl. Three Judge Bench comprising Justice Ranjan Gogoi, Justice Prafulla C. Pant and Justice Uday Umesh Lalit upheld the conviction of the accused under Section 376A, 302, 201, 363 and 366A of the Indian Penal Code.*50* The court observed

“[i]n the totality of the facts of the case and for the reasons stated above the present is not a case where the imposition of the extreme penalty would be justified. We have noticed that the legislature by incorporating Section 376A by the Criminal Law (Amendment) Act,2013 has provided for rigorous imprisonment of not less than 20 years which may extend to imprisonment for life which shall mean imprisonment for the remainder of that person's natural life or with death as alternative punishments for the offence under Section 376A. As the accused-appellant has been found guilty of commission of said offence along with the offence 5under Section 302 IPC we direct that the accused appellant shall suffer rigorous imprisonment for the remainder of the natural life of the accused-appellant. The sentence of death is accordingly commuted.”

‘Life Imprisonment from the point of Executive’ on the other hand, means that category of imprisonment, where the executive by their clemency jurisdiction, commute the death sentence into life imprisonment. Section 432 and 433 of CrPC, section 55 of the IPC, Article 72 and 161 of the constitution, confer powers on the appropriate government and constitutional functionaries to commute and remit the sentence judicially handed down.*51* Life imprisonment form this angle is of two types. Life imprisonments which can be remitted even before 14 years of actual

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incarceration and life imprisonment which cannot be remitted unless mandatory 14 years of incarceration is suffered. Constitutional remissions, however, are not bound by this classification.52

5.6 Judicial Codification of Life Imprisonment-Towards Determinate Sentencing

The aforementioned classification of life imprisonment in two categories, i.e., remittable before 14 years and remittable after 14 years has lead to further complication in the context of heinous crimes. A particular crime may qualify for death sentence, yet the progressive penological jurisprudence, March of human rights jurisprudence, conviction based on circumstantial evidence53 inadequate legal assistance at the trial or appeal54 doubtful deterrent value of death penalty 55 may convince the court that the death be avoided and next highest punishment be imposed. Here comes the relevancy of life imprisonment. Instead of death if the courts impose life imprisonment as substitute to death, which may be remittable after 14 years, the very purpose of sentencing policy is defeated since the offender would escape proportional punishment.56

Life imprisonment may fail the retributive theory of punishment, if the grace of executive were to fall on convicts. In other words, if the life imprisonment which is intended to be jail till life is remitted by the executive, after 14 years of minimum incarceration, the convicts would enjoy double lottery, i.e., he would escape from the gallows and secondly he would be set free after 14 years. Precisely this was the question that hunted the judiciary since the time of Jagmohan case.57 Judicial codification, for the present purpose can be discussed in four phases as under.

52 See Maru Ram etc. v. Union of India & Another(1981) 1 SCC 107)
53 see Ashok Debbarma v. State of Tripura (2014) 4 SCC 747
5.6.1. Phase I- Jagamohan Ratio

The predicament of “no death but no normal life imprisonment also” prompted the courts to craft a judicial life imprisonment which would substitute the death penalty in real sense. The fact that executive remission would cut short the rigour infused in the life imprisonment by the judiciary was noted by the judiciary way back in 1973. In Jagamohan it was observed thus:

“In the context of our Criminal Law which punishes murder, one cannot ignore the fact that life imprisonment works out in most cases to a dozen years of imprisonment and it may be seriously questioned whether that sole alternative will be an adequate substitute for the death penalty...”

Five years after the pronouncement of Jagmohan Singh, Section 433A was inserted by the amendment Act of 1978 with effect from 18 December 1978, imposing a restriction on the powers of remission or commutation in certain cases. Section 433A of the Cr.P.C. reads as:

“433A. Restriction on powers of remission or Commutation in certain cases.- 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 had served at least fourteen years of imprisonment.”

Thus the apprehension of judiciary in Jagmohan Singh and legislative response by way of 1978 amendment may be considered as first phase towards the codification of life imprisonment.

5.6.2. Phase II - Dalbir Singh v. State of Punjab

The second phase of codification of life imprisonment appeared in 1979 when the judgment of Dalbir Singh &Ors v. State of Punjab was delivered. Though the court was not convinced about the death penalty in the case in question, the court was reluctant about life imprisonment also for want of proportional sentence. The court was aware of the reluctance of court to declare death penalty unconstitutional.

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58 The Jagamohan Ratio came in the context of capital sentence in question. The judgment was analyzing the viability of death penalty in terms of constitutionality and appropriateness.

59 The constitutional Bench consisted of JJ. Sikri, S.M., Ray, A.N., Dua, I.D., Palekar, D.G., Beg, M. Hameedullah


61 Dalbir Singh &Ors v. State of Punjab 1979 AIR 1384

62 The sentences of death in the present case was reduced to life imprisonment.(Per JJ. Krishnaiyer, V.R. Desai, D.A. majority judgment) However, justice Sen, A.P. favored death penalty in this case in his minority opinion.
for want of better substitute. It was in this predicament that the court ruled

“[w]e may add a footnote to the ruling in Rajendra Prasad's case. Taking the cue from the English legislation on abolition, we may suggest that life imprisonment which strictly means imprisonment for the whole of the man's life, but in practice amounts to incarceration for a period between 10 and 14 years may, at the option of the convicting court, be subject to the condition that the sentence of imprisonment shall last as long as life lasts where there are exceptional indications of murderous recidivism and the community cannot run the risk of the convict being at large. This takes care of judicial apprehensions that unless physically liquidated the culprit may at some remote time repeat murder.”

This observation played a role of landmark decision in the codification of life imprisonment. Taking clue from this judgment courts in many cases exercised the power to convict the criminals with the condition that the sentence of imprisonment shall last as long as life lasts where there are exceptional indications of murderous recidivism and the community cannot run the risk of the convict being at large. Though courts started awarding life imprisonments without remission or definite period of 20 years or so were fixed, the courts confined this approach to limited cases only. The courts nowhere openly advocated this type of structured sentencing as substitute for death penalty.

5.6.3. Phase III- Swamy Shradhanada Ratio

The real dynamics in the structured life sentencing came with the pronunciation of Swamy Shradhananda (2) v. State of Karnataka. In this case the

63 In Jagmohan Singh v. The State of U. P 1973 AIR 947, a constitutional bench (Sikri, S.M., Ray, A.N., Dua, I.D., Palekar, D.G., Beg, M. Hameedullah) was seized with the constitutional validity of death penalty. The court held death penalty to be constitutional. However, concerning life imprisonment it made a interesting remark as under:

“ In the context of our Criminal law, which punishes murder, one cannot ignore the fact that life imprisonment works out in most cases to a dozen years of imprisonment and it may be seriously questioned whether that sole alternative will be an adequate substitute for the death penalty. Proposals for its abolition have not been accepted by Parliament. In this state of affairs, it cannot be said that capital punishment, as such, is either unreasonable or not in public interest.”


65 (2008) 13 SCC 767

66 For the offence of murder the conviction of Swamy Shradhananda under Section 302 IPC resulted in the sentence of death by the Sessions Judge as confirmed by the Karnataka High Court. On appeal to the Supreme Court, a bench of two judges earlier heard the Appeal. Both the hon’ble judges unanimously upheld the appellant's conviction for the two offences but they were unable to agree to the punishment meted out to the appellant. S. B. Sinha J. felt that in the facts and circumstances of the case the punishment of life imprisonment, rather than death would serve the ends of justice. He, however, made it clear that the appellant would not be released from prison till the end of his life. M. Katju J., on the other hand, took the view that the appellant deserved nothing but death. The matter was consequently placed before the three Judge Bench which judgment is being referred to herein.
court was seized with a question of death or life! The constitutional bench extensively discussed the law, posed the question to itself and answered accordingly

**Precise question**

“…a verdict of imprisonment for life is likely to give rise to certain questions. (Life after all is full of questions!). How would the sentence of imprisonment for life work out in actuality? The Court may feel that the punishment more just and proper, in the facts of the case, would be imprisonment for life with life given its normal meaning and as defined in Section 45 of the Indian Penal Code. The Court may be of the view that the punishment of death awarded by the trial court and confirmed by the High Court needs to be substituted by life imprisonment, literally for life or in any case for a period far in excess of fourteen years. The Court in its judgment may make its intent explicit and state clearly that the sentence handed over to the convict is imprisonment till his last breath or, life permitting, imprisonment for a term not less than twenty, twenty five or even thirty years. But once the judgment is signed and pronounced, the execution of the sentence passes into the hands of the executive and is governed by different provisions of law. What is the surety that the sentence awarded to the convict after painstaking and anxious deliberation would be carried out in actuality? The sentence of imprisonment for life, literally, shall not by application of different kinds of remission, turn out to be the ordinary run of the mill life term that works out to no more than fourteen years. How can the sentence of imprisonment for life (till its full natural span) given to a convict as a substitute for the death sentence be viewed differently and segregated from the ordinary life imprisonment given as the sentence of first choice? These are the questions that arise for consideration in this case.”

The court began to answer this question with the proposition that “[w]e think that it is time that the course suggested in Dalbir Singh [68] should receive a formal recognition by the Court.”

Justice Aftab Alam was seized with two predicaments namely-

1. A case may fall just falls short of the rarest of the rare category escaping death, however, not short enough to qualify for normal imprisonment with remission.69

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67 B.N. Agarwal, G.S. Singhvi and Aftab Alam, JJ. Justice Aftab Alam wrote the judgment for the Bench.
68 1979 AIR 1384
69 The court observed

“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 Supreme Court carrying a death sentence awarded by the trial court and confirmed by the High Court, the Supreme Court may find ... 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. What then the Court should do? 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.”
2. When the court sentences a convict for life imprisonment with a sincere belief that such convict would serve his term till his life, what is the surety that the sentence awarded to the convict after painstaking and anxious deliberation would be carried out in actuality?  

To the answer the question of 14 years life imprisonment being grossly disproportionate, the court answered that the solution lies in breaking the standardization and observed that

"[t]he answer lies in breaking this standardization that, in practice, renders the sentence of life imprisonment equal to imprisonment for a period of no more than 14 years; in making it clear that the sentence of life imprisonment when awarded as a substitute for death penalty would be carried out strictly as directed by the Court. This Court, therefore, must lay down a good and sound legal basis for putting the punishment of imprisonment for life, awarded as substitute for death penalty, beyond any remission and to be carried out as directed by the Court so that it may be followed, in appropriate cases as a uniform policy not only by this Court but also by the High Courts, being the superior Courts in their respective States."  

After noting the various case laws on the issue, the court noted

A far more just, reasonable and proper course would be to expand the options and to take over what, as a matter of fact, lawfully belongs to the court, i.e., the vast hiatus between 14 years’ imprisonment and death. It needs to be emphasized that the Court would take recourse to the expanded option primarily because in the facts of the case, the sentence of 14 years imprisonment would amount to no punishment at all.

“Further, the formalization of a special category of sentence, though for an

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70 The court further noted

"[t]he Court may be of the view that the punishment of death awarded by the trial court and confirmed by the High Court needs to be substituted by life imprisonment, literally for life or in any case for a period far in excess of fourteen years. The Court in its judgment may make its intent explicit and state clearly that the sentence handed over to the convict is imprisonment till his last breath or, life permitting, imprisonment for a term not less than twenty, twenty five or even thirty years. But once the judgment is signed and pronounced, the execution of the sentence passes into the hands of the executive and is governed by different provisions of law. What is the surety that the sentence awarded to the convict after painstaking and anxious deliberation would be carried out in actuality? The sentence of imprisonment for life, literally, shall not by application of different kinds of remission, turn out to be the ordinary run of the mill life term that works out to no more than fourteen years. How can the sentence of imprisonment for life (till its full natural span) given to a convict as a substitute for the death sentence be viewed differently and segregated from the ordinary life imprisonment given as the sentence of first choice?"

71 Swamy Shraddananda@Murali v. State of Karnataka (2008) 13 SCC 767 Para 38


73 Swamy Shraddananda@Murali v. State of Karnataka (2008) 13 SCC 767 Para 66
extremely few number of cases, shall have the great advantage of having the death penalty on the statute book but to actually use it as little as possible, really in the rarest of the rare cases. This would only be a reassertion of the Constitution Bench decision in Bachan Singh besides being in accord with the modern trends in penology."  

This ruling finally sealed the structured life sentencing policy in India. After this pronouncement, apex courts have profusely used the ratio of this case and awarded life imprisonment with definite periods like 20, 21, 30, and 35 years!

5.6.4. Phase IV- Union of India v. Sriharan @ Murugan & Ors.-Constitutional Bench (2015)

In Union of India v. V. Sriharan @ Murugan & Ors.,(2014) learned Judges thought it fit to refer seven questions for consideration by the Constitution Bench. Of those seven questions, the question which was asked and is pertinent for the present discussion is

“52.1 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 as per the principles enunciated in paras 91 to 93 of Swamy Shraddananda (2), 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?”

The court very clearly concurred with Swamy Shraddananda (2) ratio and held that

75 Swamy Shraddananda@Murali v. State of Karnataka (2008) 13 SCC 767, Para 67
76 In the following judgments the court directed that the appellant shall not be released from the prison unless he had served out at least 20 years of imprisonment including the period already undergone by the appellant.
78 In the following judgments the court directed that the appellant shall not be released from the prison unless she had served out at least 30 years of imprisonment Neel Kumar @ Anil Kumar v. The State of Haryana (2012) 5 SCC 766. Sandeep v. State of UP (2012) 6 SCC 107.Gurvail Singh @ Gala and Anr. v. State of Punjab (2013) 2 SCC 713
80 (2014) 4 SCC 242
81 Bench consisted of CJI H.L. Dattu, Pinaki Chandra Ghose, Fakkir Mohamed Ibrahim Kalifulla, Abhay Manohar Sapre, Uday Umesh Lalit. J. Fakkir Mohamed Ibrahim Kalifulla wrote the judgment on behalf of himself and JJ. H.L. Dattu, Pinaki Chandra Ghose. Abhay Manohar Sapre, J. and J. Uday Umesh Lalit differed from the majority opinion. Justice Uday Umesh Lalit wrote dissenting judgment to which Abhay Manohar Sapre, J. concurred.
82 2014 (11) SCC 1
“[w]e hold that the ratio laid down in Swamy Shraddananda (supra) that a special category of sentence; instead of death can be substituted by the punishment of imprisonment for life or for a term exceeding 14 years and put that category beyond application of remission is well-founded and we answer the said question in the affirmative.”

The court surveyed the entire jurisprudence that was building before and after Swamy Shraddananda (2) and answered many questions as under.

5.6.4.1. **Swamy Shraddananda (2) Ratio doubted**

Though Swamy Shraddananda (2) settled the matter of determinate life imprisonment, subsequent judgment doubted this ratio though the benches were smaller in nature. There was protest from within the court to this judgment, which curtailed the remission powers of the government. In Sangeet & Anr v. State of Haryana the court observed

> “58. 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 in Swamy Shraddananda and several other cases, by giving a sentence in a capital offence of 20 years or 30 years imprisonment without remission, is to effectively injunct[sic] the appropriate Government from exercising its power of remission for the specified period. In our opinion, this issue needs further and greater discussion, but as at present advised, we are of the opinion that this is not permissible. The appropriate Government cannot be told that it is prohibited from granting remission of a sentence. Similarly, a convict cannot be told that he cannot apply for a remission in his sentence, whatever the reason.”

5.6.4.2. **Swamy Shraddananda ratio affirmed**

In order to have unanimity in sentencing policy in this area the matter was ultimately referred to full bench of the Supreme Court. The court made extensive references to earlier cases and affirmed the ratio of Swamy Shraddananda (2). While affirming the Swamy Shraddananda (2) the court observed

> “[i]n such context when we consider the views expressed in Shraddananda (supra) in paragraphs 91 and 92, the same is fully justified and needs to be upheld. By stating so, we do not find any violation of the statutory provisions prescribing the extent of punishment provided in the Penal Code. It cannot also be said that by stating so, the Court has carved out a new punishment. What all it seeks to declare by stating so was that within the prescribed limit

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832013 (2) SCC 452

84 The Bench consisted of K.S. Radhakrishnan, Madan B. Lokur JJ. Judgment was written by Madan B. Lokur J. for the bench.
of the punishment of life imprisonment, having regard to the nature of offence committed by imposing the life imprisonment for a specified period would be proportionate to the crime as well as the interest of the victim, whose interest is also to be taken care of by the Court, when considering the nature of punishment to be imposed.”

5.6.4.3. Ray of hope argument – overruled

It was argued before the court that declining the convict of his case being considered for remission even after sufficient incarceration amounts to negating the ray of hope. Rejecting this argument the court observed:

“88. As far as the argument based on ray of hope is concerned, it must be stated that however much forceful, the contention may be, as was argued by Mr. Dwivedi, the learned Senior Counsel appearing for the State, it must be stated that such ray of hope was much more for the victims who were done to death and whose dependents were to suffer the aftermath with no solace left. Therefore, when the dreams of such victims in whatever manner and extent it was planned, with reference to oneself, his or her dependents and everyone surrounding him was demolished in an unmindful and in some cases in a diabolic manner in total violation of the Rule of Law which is prevailing in an organized society, they cannot be heard to say only their rays of hope should prevail and kept intact. For instance, in the case relating to the murder of the former Prime Minister, in whom the people of this country reposed great faith and confidence when he was entrusted with such great responsible office in the fond hope that he will do his best to develop this country in all trusts, all the hope of the entire people of this country was shattered by a planned murder … Therefore, we find no scope to apply the concept of ray of hope to come for the rescue of such hardened, heartless offenders, which if considered in their favour will only result in misplaced sympathy and again will be not in the interest of the society. Therefore, we reject the said argument outright.”

5.6.4.4. Courts empowered to structure life sentences

It was even tried to be argued before the court that, the legislature does not vest the judiciary with the discretion to fix the sentence with term imprisonment. Courts have been conceded with the power to choose between life and death, which power does not include fixing of term life imprisonment. In response to this, the court observed:

“97. While that be so it cannot also be lost sight of that it will be next to impossible for even the law makers to think of or prescribe in exactitude all kinds of such criminal conduct to fit into any appropriate pigeon hole for structured punishments to run in between the minimum and maximum period of imprisonment. Therefore, the law makers thought it fit to prescribe the minimum and the maximum sentence to be imposed for such diabolic nature of crimes and leave it for the adjudication authorities, namely, the Institution of Judiciary who is fully and appropriately equipped with the necessary knowledge of law, experience, talent and infrastructure to study the detailed parts of each such case based on the legally acceptable material evidence, apply the legal principles and the law on the subject, apart from the guidance
it gets from the jurists and judicial pronouncements revealed earlier, to
determine from the nature of such grave offences found proved and
depending upon the facts noted what kind of punishment within the
prescribed limits under the relevant provision would appropriately fit in.In
other words, while the maximum extent of punishment of either death or life
imprisonment is provided for under the relevant provisions noted above, it
will be for the Courts to decide if in its conclusion, the imposition of death
may not be warranted, what should be the number of years of imprisonment
that would be judiciously and judicially more appropriate to keep the person
under incarceration, by taking into account, apart from the crime itself, from
the angle of the commission of such crime or crimes, the interest of the
society at large or all other relevant factors which cannot be put in any
straitjacket formulae.”

5.6.4.5. Choice of structured life imprisonment – inherent in IPC

5.6.4.6. Sangeet and Anr. v. State of Haryana- overruled

By the above observation, the court consequently overruled Sangeet and
Anr.85 which doubted the ratio of Swamy Shraddananda. The court ruled:

“105. Viewed in that respect, we state that the ratio laid down in Swamy
Shraddananda (supra) that a special category of sentence; instead of Death;
for a term exceeding 14 years and put that category beyond application of
remission is well founded and we answer the said question in the affirmative.
We are, therefore, not in agreement with the opinion expressed by this Court
in Sangeet and Anr. v. State of Haryana – 2013 (2) SCC 452 that the deprival
of remission power of the Appropriate Government by awarding sentences of
20 or 25 years or without any remission as not permissible is not in
consonance with the law and we specifically overrule the same.”

Thus, the complex question of whether courts can structure life sentence was finally
put to rest by constitutional benches in Swamy Shraddananda (2008) and V. Sriharan
@ Murugen&Ors (2015). It may be noted that subsequently after the
SwamyShraddananda (2008) case, courts have profusely made use of third option in
sentencing convicts with determinate life sentences. It can, nonetheless, be said that
the in the above cases constitutional court has put the edifice of the new structured
determinate life imprisonment in the sentencing policy of India.

5.7. Judicial Codification Of Life Imprisonment- Illustrations

Though some attempts were being made by the judiciary before Swamy
Shraddananda case to structure life imprisonment with minimum terms,86 it’s only
after this case that the judiciary gained momentum. Some of the cases decided by
Supreme Court may be noted by way of illustration as to how courts have sentenced

85 2013 (2) SCC 452
86 High court judgments from remssion phd
the convict with structured life imprisonment. Either the courts have gone for ‘no remission rule’ or have subscribed to ‘remission after judicial limits’.

5.7.1. Rest of life without remission

In the following cases the courts have ordered that, no remission shall be granted for the rest of life.

1. **Sebastian @ Chevithiyan v. State of Kerala**

   Rest of life for rape and murder of two year old minor.

2. **Subhash Chandra v. Krishan Lal**: Rest of life without remission for gunning down entire family due to enmity.

3. **Jayawant Dattatraya Suryarao v. State of Maharashtra**: In the case of terrorist convict committing brutal murder of two police constables who were on duty to guard person who they wanted to kill, held not entitled to any commutation or premature release.

4. **Reddy Sampath Kumar v. State of Andhra Pradesh**: it was directed that the appellant shall not get the benefit of any remission either by the State or by the Government of India on any auspicious occasion.

5.7.2. Term sentences

Apart from sentencing for life as mentioned above with a rider that no release shall take place under ordinary laws, except in the exercise of constitutional clemency, courts have also tried with fixed numbers of minimum imprisonment as life imprisonment as under:

**20 years/21 years/25 years**

In the following cases the courts have ordered that, remission shall be granted only after certain time as fixed by the court:

1. **Dharam Deo Yadav v. State of Uttar Pradesh**: Imprisonment of 20 years

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88 (2010) 1 SCC 58
89 The appellant had raped and murdered a two-year-old child after kidnapping her from her house. The appellant was 24 years old at that time. It was held that this was not a “rarest of rare” case and the appellant was sentenced to imprisonment for the rest of his life.
90 (2001) 4 SCC 458
91 The court took the apprehension of the imminent danger expressed by the witness and ordered for no remission.
92 (2001) 10 SCC 109
93 JT (2005) 8 SC 294
94 Supra note 87 at p 113
95 (2014) 5 SCC 509
with no remission over and above the period already undergone for the murder of a foreign tourist lady by the appellant who was a tourist guide.  

2. *Birju v. State of M.P.*\(^{97}\): 20 years imprisonment, over and above the period already undergone without remission for killing a child.\(^{98}\)

3. *Ashok Debbarma v. State of Tripura*\(^{99}\): 20 years imprisonment without remission for setting fire to 20 houses belonging to linguistic minority leaving 15 dead.

4. *Dilip Premnarayan Tiwari v. State of Maharashtra*\(^{100}\): Sentence of 20 and 25 years rigorous imprisonment respectively in the case of honour killing of husband of young sister and his family members over inter-caste marriage of younger sister.\(^{101}\)

5. *Ramnaresh v. State of Chhattisgarh*\(^{102}\): Imprisonment of 21 years for gang rape of his sister-in-law and murder.\(^{103}\)

6. *Brajendrasingh v. State of M.P.*\(^{104}\): Sentence of 21 years for killing three young children and wife suspecting her illicit relations.


9. *Reddy Sampath Kumar v. State of Andhra Pradesh*\(^{107}\): life imprisonment of 20 years terms of Section 57 IPC without any remission.\(^{108}\)

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\(^{96}\) The tourist guide was convicted of murder by strangulation of a young tourist of a foreign country. The convict had no previous criminal record and the case was based on circumstantial evidence.  
\(^{97}\) (2014) 3 SCC 421 : 2014 (2) SCALE 293  
\(^{98}\) Motive was for getting money from child's grandfather for consuming liquor. Accused was involved in 24 criminal cases.  
\(^{100}\) (2010) 1 SCC 775  
\(^{101}\) Over the inter-caste marriage of the sister of one of the appellants three men including the girl's brother attacked the girl's husband and his family and killed four people including the husband. The Supreme Court considered the young age of the brother as a mitigating circumstance and I sentenced him to imprisonment for 25 years.  
\(^{102}\) (2012) 4 SCC 257  
\(^{103}\) The appellant (with his friends) gang raped his sister-in-law and murdered her. The young age (being between 21 to 30 years old), absence of prior criminal record and possibility of reformation weighted in favour of accused.  
\(^{104}\) (2012) 4 SCC 289  
\(^{105}\) (2010) 1 SCC 573  
\(^{106}\) (2010) 9 SCC 42  
\(^{107}\) JT 2005 (8) SC 294  
\(^{108}\) With the intention to grab property, father-in-law, mother-in-law and their three minor children were poisoned and killed.
10. *Nazir Khan v. State of Delhi*\(^{109}\) : life imprisonment with minimum 20 years without remission \textit{over and above the sentence already undergone}.\(^{110}\)


12. *Ram Anup Singh v. State*\(^{112}\) : rigorous imprisonment for life with the condition that they shall not be released before completing an actual term of 20 years including the period undergone by them.


\textbf{30 years/35 years}

In the following cases the courts have ordered that, remission shall be granted only after minimum incarceration of 30/35 years\(^{114}\)


3. *Md. Jamuluddin Nasir v. State of West Bengal*\(^{117}\) : Appellant was awarded 30 years without remission for attack at American Centre, Calcutta.\(^{118}\)


5. *Gurvail Singh @ Gala v. State of Punjab*\(^{120}\) : Sentence of 30 years without

\(^{109}\) (2003) 8 SCC 461 : AIR 2003 SC 4427

\(^{110}\) The appellants were sentenced to death for offences under section 364-A read with Section 120-B IPC and TADA. The Supreme Court however, directed for their incarceration for a period of 20 years with no remission from the term of 20 years.

\(^{111}\) (2002) 2 SCC 35

\(^{112}\) (2002) 6 SCC 686

\(^{113}\) (2201) 6 SCC 296

\(^{114}\) Supra note 87 at p 115

\(^{115}\) 2014 (8) SCALE 113

\(^{116}\) 2014 (58) SCALE 525

\(^{117}\) 2014 (7) SCALE 571

\(^{118}\) The Supreme Court has given a term imprisonment of 30 years to one convict and of imprisonment till the reminder of his life to the other.

\(^{119}\) 2014 (2) JCC 1217

\(^{120}\) (2013) 10 SCC 631 (2013)
remission for murder of four persons.121


8. Haru Ghosh v. State of West Bengal125: Imprisonment of 35 years without remission for double murder and attempt to murder.126

9. Anil Anthony v. State of Maharashtra127: Sentence of 30 years without remission in addition to sentence already undergone for strangulation of minor boy aged 10 years who was subjected to carnal intercourse by the accused.

10. In The State of West Bengal v. Lakhikanta Adhikary128 the Calcutta High Court awarded life imprisonment with minimum 30 years without remission for killing his 26 year old wife and 7 year old son.

11. In Ganesh S/o Maruti Bhutkar v. The state of Maharashtra129 the Bombay high court commuted the death penalty to 30 years with a rider that the state government shall not consider the case of the appellant for premature release unless the appellant undergoes minimum sentence of 30 years.

The judicial pronouncements noticed above demonstrate that the Supreme Court has expansively exercised the alternative of directing a fixed term of imprisonment before exercise of the discretion by the executive under Section 432 Cr.P.C.

5.8. Consecutive Life Sentences – As Via Media Punishment

5.8.1. Consecutive life sentences for heinous crimes as alternatives to death penalty

When the courts faced the predicament of awarding life sentences in the wake

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121 The appellant's age (34) years and no criminal record favored for term life imprisonment instead of death penalty.
122 2012 (5) SCALE 766
123 The Supreme Court sentenced the appellant to imprisonment for a period of 30 years, instructing the State not to provide the option of remission till that time.
124 (2012) 6 SCC 107
125 (2009) 15 SCC 551
126 This was case where a old woman and her 12-year-old son were brutally murdered by the appellant when he was in fact serving out a sentence in another case and had been released on bail.
127 2014 (4) SCALE 54
128 Decided on 10 February, 2017 Available at https://indiankanoon.org/doc/72564556/
129 Decided on 10 August, 2016 Available at https://indiankanoon.org/doc/186462118/
of inherent contours and controversies surrounding death penalty, courts went for consecutive sentences in order to do justice to the case in hand. In other words, in case of multiple offences in one incidence like rape and murder, courts have used the techniques of consecutive sentences where the offenders would be asked to undergo one punishment after the other so that proportionate sentencing takes place. Courts have used their powers under section 31 of Cr.P.C\textsuperscript{130} wherein courts may sentence the prisoner consecutively, rather than concurrently, so that one sentence would start after the first is served.\textsuperscript{131} Courts have in several cases directed sentences of imprisonment for life to run consecutively having regard to the gruesome and brutal nature of the offence committed by the prisoner.

\textit{Ravindra Trimbak Chouthmal v. State of Maharashtra}\textsuperscript{132} is perhaps among the earliest cases where consecutive sentences were awarded. This was not a case of rape and murder but one of causing a dowry death of his pregnant wife. It was held:

“10. We have given considered thought to the question and we have not been able to place the case in that category which could be regarded as the rarest of the rare type. This is so because dowry death has ceased to belong to that species of killing. The increasing number of dowry deaths would bear this. To halt the rising graph, we, at one point, thought to maintain the sentence; but we entertain doubt about the deterrent effect of a death penalty. We, therefore, resist ourselves from upholding the death sentence, much though we would have desired annihilation of a despicable character like the appellant before us. We, therefore, commute the sentence of death to one of

\textsuperscript{130} Section 31 CrPC reads

“31. Sentence in cases of conviction of several offences at one trial

(1) When a person is convicted at one trial of two or more offences, the Court may, subject to the provisions of section 71 of the Indian Penal Code (45 of 1860), sentence him for such offences, to the several punishments, prescribed therefor which such Court is competent to inflict; such punishments when consisting of imprisonment to commence the one after the expiration of the other in such order as the Court may direct, unless the Court directs that such punishments shall run concurrently;

(2) In the case of consecutive sentences, it shall not be necessary for the Court by reason only of the aggregate punishment for the several offences being in excess of the punishment which it is competent to inflict on conviction of a single offence, to send the offender for trial before a higher Court: Provided that—

(a) in no case shall such person be sentenced to imprisonment for a longer period than fourteen years;

(b) the aggregate punishment shall not exceed twice the amount of punishment which the Court is competent to inflict for a single offence

(3) For the purpose of appeal by a convicted person, the aggregate of the consecutive sentences passed against him under this section shall be deemed to be a single sentence.”


\textsuperscript{132} (1996) 4 SCC 148
RI for life.

11. But then, it is a fit case, according to us, where, for the offence under Sections 201/34, the sentence awarded, which is RI for seven years being the maximum for a case of the present type, should be sustained, in view of what had been done to cause disappearance of the evidence relating to the commission of murder--the atrocious way in which the head was severed and the body was cut in nine pieces. These cry for maximum sentence. Not only this, the sentence has to run consecutively, and not concurrently, to show our strong disapproval of the loathsome, revolting and dreaded device adopted to cause disappearance of the dead body.

12. The result is that the appeal stands allowed to the extent that the sentence of death is converted to one of imprisonment for life. But then, the sentence of seven years' RI for the offence under Sections 201/34 IPC would start running after the life imprisonment has run its course as per law. […] Since imprisonment for life means that the convict will remain in jail till the end of his normal life, what this decision mandates is that if the convict is to be released earlier by the competent authority for any reason, in accordance with procedure established by law, then the second sentence will commence immediately thereafter.”

*Ronny v. State of Maharashtra*133 is also among the earliest cases in the recent past where consecutive sentences were awarded. The three accused, aged about 35 years (two of them) and 25/27 years had committed three murders and a gang rape. The Court converted the death sentence of all three to imprisonment for life since it was not possible to identify whose case would fall in the category of the rarest of rare cases. However, after awarding a sentence of life imprisonment, the Court directed that they would all undergo punishment for the offence punishable under Section 376(2)(g) IPC *consecutively*, after serving the sentences for other offences.

*In Sunil Damodar Gaikwad v. State of Maharashtra,*134 the court sentenced the appellant to life imprisonment for the offence under Section 302 IPC. He was sentenced to imprisonment of 7 years for the conviction for the offence under Section 307 IPC. It was however, clarified that

“in case the sentence of imprisonment for life is remitted or commuted to any specified period (in any case, not less than fourteen years in view of Section 433-A Cr.P.C.), the sentence of imprisonment under Section 307 IPC shall commence thereafter.”

*Raja Ram Yadav &Ors. v. State of Bihar*135 wherein the Supreme Court upheld the conviction of the appellant for the offence of murder of six persons to take revenge of a carnage involving his kith and kin. The court commuted the death

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133 (1998) 3 SCC 625
134 (2014) 1 SCC 129
135 (1996) 9 SCC 287
sentence of the appellants to the sentence of life imprisonment and additionally awarded the sentence of six years rigorous imprisonment to each of the appellants for the offence under Section 436 read with Section 149 as well as a composite fine of Rs.15,000/- against each of the appellants for the offences under Section 302 and 436 read with Section 149 of the IPC. It was further directed that

“[t]he sentence of life imprisonment for the offence of murder and the sentence of six years rigorous imprisonment for the offence under Section 436 read with Section 149 IPC will run consecutively.”

In Kamalanantha & Ors. v. State of T.N., the founder of the ashram raped 13 girls of which rapes were methodically abetted by the co-accused. The conviction of founder under Section 376(2)(c) and sentence of life imprisonment with fine of Rs.5,10,000/- on each count to run separately and consecutively was upheld by the Supreme Court. In addition, the conviction of the co-accused under Section 376/106 and sentence of life imprisonment to run separately and consecutively was also found to be justified by the Supreme Court.

In Sandesh @ Sainath Kailash Abhang v. State of Maharashtra, the appellant was convicted for murder and a rape of the pregnant daughter-in-law of the deceased besides committing robbery. The trial court convicted the appellant under Sections 302, 307, 394, 397 and 376(e) and awarded the death sentence for his conviction under Section 302 along with imprisonment sentences for his other crimes. The Supreme Court commuted the death sentence upon his conviction for murder to that of rigorous imprisonment of life directing that the life imprisonment “shall be for life and the sentences shall run consecutively.”

In Sanaullah Khan v. State of Bihar, the appellant was convicted with death for murder by trial court. The Supreme Court however, found the evidence insufficient to establish the gravest case of the extreme culpability of the appellant. It also did not have the evidence to establish the circumstances of the appellant. Therefore, for each of the murders, he was sentenced to life imprisonment with the following directions:

“23. Considering the facts of this case, we are of the opinion that the appellant is liable under Section 302 IPC for imprisonment for life for each of the three offences of murder under Section 300 IPC and the imprisonments for life should not run concurrently but consecutively and such punishment of consecutive sentence of imprisonment for the triple murder committed by the

136 (2005) 5 SCC 194
137 (2013) 2 SCC 479
138 (2013) 3 SCC 52
appellant will serve the interest of justice.

24. In the result, we maintain the conviction of the appellant for three offences of murder under Section 302 IPC, but convert the sentence from death to sentence for rigorous imprisonment for life for each of the three offences of murder and direct that the sentences of imprisonment for life for the three offences will run consecutively and not concurrently. Thus, the appeals are allowed only on the question of sentence, and dismissed as regards conviction.”

It is important to note that the court has directed not mere imprisonment sentences, but three sentences - each for life imprisonment - to run consecutively. The effect would be that upon a favorable consideration of an application for remission of one sentence, the second life sentence would commence. Given the prohibition under Section 433A, the second application could at the earliest be made after 14 years of further imprisonment. If this was favorably considered, the third life imprisonment sentence would commence. 139

Shankar Kisanrao Khade v. State of Maharashtra 140 was a case where the appellant, a man of 52 years was found guilty of murder by strangulation after repeated rape and sodomization of a minor girl of 11 years with intellectual disability. The trial Court convicted the first accused and sentenced him to death under Section 302 IPC, and was also awarded imprisonment for life and to pay a fine of Rs 1000 in default to suffer rigorous imprisonment (for short RI) for six months for offences under Section 376 IPC, further seven years' RI and to pay a fine of Rs 500 in default to suffer RI for three months under Section 366-A IPC and five years' RI and to pay a fine of Rs 500 in default to suffer RI for one month for the offences punishable under Section 363 IPC read with Section 34 IPC. The accused preferred Criminal Appeal before the High Court. The High Court dismissed 141 the appeal the death sentence was confirmed. On appeal, the supreme court dismissed the criminal appeals and the death sentence awarded to the accused was converted to that of rigorous imprisonment for life with a direction that all the sentences awarded will run consecutively.

From the above illustrative cases, it can be deciphered that, though courts are slow in imposing death penalties in routine way, they are serious enough to denounce despicable crimes by imposing consecutive sentences. The technique of consecutive

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140 (2013) 5 SCC 546
sentencing is a way of showing disapproval to the crime. All said and done, consecutive sentencing is not free from errors and criticism. Consecutive sentencing is based on the premise that life sentences are for a definite period and executive interference would cut short such life sentences to sentences of few years. This calculation does not always work as can be seen in the next discourse.

5.9. No two or more consecutive life sentences be imposed- Constitutional Bench (2016): earlier position revisited.

However, once life sentence is treated as imprisonment for life, the consecutive sentencing becomes difficult, rather futile. If a life sentence is for life then inevitably, all term sentences have to run concurrent, life imprisonment being highest and longest. In spite of this logic, courts have sentenced consecutively, as noted above, with life imprisonment on the assumption that executives will exercise their powers under section 432 and 433A of Cr.PC. The courts even went for imposing multiple life sentences consecutively to run one after the other. It was this sentencing technique, which was challenged before constitutional bench. In Muthuramalingam the constitutional bench observed that

“17. The legal position is, thus, fairly well settled that imprisonment for life is a sentence for the remainder of the life of the offender unless of course the remaining sentence is commuted or remitted by the competent authority. That being so, the provisions of Section 31 under Cr.P.C. must be so interpreted as to be consistent with the basic tenet that a life sentence requires the prisoner to spend the rest of his life in prison. Any direction that requires the offender to undergo imprisonment for life twice over would be anomalous and irrational for it will disregard the fact that humans like all other living beings have but one life to live. So understood Section 31 would permit consecutive running of sentences only if such sentences do not happen to be life sentences. That is, in our opinion, the only way one can avoid an obvious impossibility of a prisoner serving two consecutive life sentences.

31. In conclusion our answer to the question is in the negative. We hold that while multiple sentences for imprisonment for life can be awarded for multiple murders or other offences punishable with imprisonment for life, the life sentences so awarded cannot be directed to run consecutively. Such sentences would, however, be super imposed over each other so that any remission or commutation granted by the competent authority in one does not ipso facto result in remission of the sentence awarded to the prisoner for the other.”

142 See Sanaullah Khan v. State of Bihar (2013) 3 SCC 52, Muthuramalingam & Ors. v. State Rep. By Insp. of Police available at http://judis.nic.in/supremecourt/imgs1.aspx?filename=43802 (appellants were to undergo consecutive life sentences ranging between two to eight such sentences depending upon the number of murders committed by them)
144 Bench Consisted of Chief Justice T.S. Thakur, Fakkir Mohamed Ibrahim Kalifulla, A.K. Sikri, S.A. Bobde and R. Banumathi JJ.
5.9.1. Term sentences and consecutive life sentences can be imposed

Though two or more life sentences cannot be awarded consecutively, if the term imprisonment is attached with life sentence, such term sentence can be asked to be served first before life sentence begins. To illustrate, if 7 years imprisonment and life imprisonment are awarded to run consecutively, it would be wrong to specify that, first life sentence be served and then 7 years imprisonment, since life sentence is for the reminder of the life. However, sentencing court may ask the accused to first serve the term imprisonment, i.e., 7 years in our example, where after life imprisonment would begin. The court in *Muthuramalingam*, the Constitutional Bench observed that

“32. We may, while parting, deal with yet another dimension of this case argued before us namely whether the Court can direct life sentence and term sentences to run consecutively. That aspect was argued keeping in view the fact that the appellants have been sentenced to imprisonment for different terms apart from being awarded imprisonment for life. The Trial Court’s direction affirmed by the High Court is that the said term sentences shall run consecutively. It was contended on behalf of the appellants that even this part of the direction is not legally sound, for once the prisoner is sentenced to undergo imprisonment for life, the term sentence awarded to him must run concurrently. We do not, however, think so. The power of the Court to direct the order in which sentences will run is unquestionable in view of the language employed in Section 31 of the Cr.P.C. The Court can, therefore, legitimately direct that the prisoner shall first undergo the term sentence before the commencement of his life sentence. Such a direction shall be perfectly legitimate and in tune with Section 31. The converse however may not be true for if the Court directs the life sentence to start first it would necessarily imply that the term sentence would run concurrently. That is because once the prisoner spends his life in jail, there is no question of his undergoing any further sentence.”

5.9.2. Subsequent life imprisonment on already life convict- consequences

A life convict may, when he is on parole or in the jail itself may commit another crime which may entail him term imprisonment or life imprisonment. Such situations are governed by section 427 of Cr.P.C. If a person is undergoing a term

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146 Section 427 of Criminal Procedure Code, 1973 reads

“Sentence on offender already sentenced for another offence.

(1) When a person already undergoing a sentence of imprisonment is sentenced on a subsequent conviction to imprisonment or imprisonment for life, such imprisonment or imprisonment for life shall commence at the expiration of the imprisonment to which he has been previously sentenced, unless the Court directs that the subsequent sentence shall run concurrently with such previous sentence:

Provided that where a person who has been sentenced to imprisonment by an order under section 122 in default of furnishing security is, whilst undergoing such sentence, sentenced to imprisonment for an offence committed prior to the making of such order, the latter sentence shall commence immediately.

(2) When a person already undergoing a sentence of imprisonment for life is sentenced on a subsequent conviction to imprisonment for a term or imprisonment for life, the subsequent sentence shall run concurrently with such previous sentence.”
sentence and sentenced for the second crime, such sentence shall run consecutively, unless ordered to run concurrently. However, if a person who is already undergoing life imprisonment is convicted for life or term imprisonment, such sentence shall run concurrently.

In *Ranjit Singh v. Union Territory of Chandigarh*\(^{147}\) The prisoner was convicted for murder and sentenced to undergo life imprisonment. He was released on parole while undergoing the life sentence when he committed a second offence of murder for which also he was convicted and sentenced to undergo imprisonment for life. In an appeal filed against the second conviction and sentence, the Court by an order dated 30th September, 1983 directed that the imprisonment for life awarded to him should not run concurrently with his earlier sentence of life imprisonment. The Court directed that in the event of remission or commutation of the earlier sentence awarded to the prisoner, the second imprisonment for life awarded for the second murder committed by him shall commence. Aggrieved by the said direction which made the second life sentence awarded to him consecutive, the prisoner filed a writ petition under Article 32 of the Constitution primarily on the ground that the Supreme Court’s order dated 30\(^{th}\) September, 1983 was contrary to Section 427 (2) of the Cr.P.C., according to which any person already undergoing sentence of imprisonment for life if sentenced to undergo imprisonment for life, the subsequent sentence so awarded to him shall run concurrently with such previous sentence. Relying upon *Godse’s*\(^{148}\) and *Maru Ram’s*\(^{149}\) cases, the Court held that imprisonment for life is a sentence for remainder of the life of the offender. There was, therefore, no question of a subsequent sentence of imprisonment for life running consecutively as per the general rule contained in sub-section (1) of Section 427. The Court observed:

“…[T]he earlier sentence of imprisonment for life being understood to mean as a sentence to serve the remainder of life in prison unless commuted or remitted by the appropriate authority and a person having only one life span, the sentence on a subsequent conviction of imprisonment for a term or imprisonment for life can only be superimposed to the earlier life sentence and certainly not added to it since extending the life span of the offender or for that matter anyone is beyond human might. It is this obvious situation which is stated in sub-section (2) of Section 427 since the general rule enunciated in sub-section (1) thereof is that without the court’s direction the subsequent sentence will not run concurrently but consecutively. The only situation in which no direction of the court is needed to make the subsequent

\(^{147}\) (1991) 4 SCC 304

\(^{148}\) 1961 AIR 600

\(^{149}\) 1980 AIR 2147
sentence run concurrently with the previous sentence is provided for in sub-section (2) which has been enacted to avoid any possible controversy based on sub-section (1) if there be no express direction of the court to that effect. Sub-section (2) is in the nature of an exception to the general rule enacted in sub-section (1) of Section 427 that a sentence on subsequent conviction commences on expiry of the first sentence unless the court directs it to run concurrently. The meaning and purpose of sub-sections (1) and (2) of Section 427 and the object of enacting sub-section (2) is, therefore, clear.”

5.10. Legislative Reintroduction Of Determinate Life Sentence

In the mid of the controversy of judiciary fixing the life imprisonment with 20 years to 35 or till the rest of life, legislature has, of late, introduced a different and unprecedented sentences in recent legislations calling for paradoxical readings. The recent legislations and amendments like Protection of Children from Sexual Offences Act, 2012 and Criminal Law (Amendment) Act, 2013 have introduced typical term imprisonments opening a new chapter in sentencing policy. The traditional life imprisonment has been retained in some of new offences whereas, imprisonment of not less than fourteen years, but which may extend to imprisonment for life has been introduced. On the other hand, in some of the sections, life imprisonment has been explained to be imprisonment for life, “which shall mean imprisonment for the remainder of that person's natural life”. Interestingly, life imprisonment as extended and alternated form of punishment to minimum term of 20 years has also been used in some of the sections. One fails to understand as to why legislature intended so many varieties of life imprisonments when judicially interpreted and widely accepted meaning of life imprisonment has been accepted. The fact that, the legislature has clarified, in some of the section that, the meaning of life imprisonment to be “imprisonment for the remainder of that person's natural life” itself indicates that, the uncalculated play of remission rules shall not play in favour of convicts of certain crimes, where convicts are let loose with lighter sentences.

The new classification of life imprisonment introduced by Protection of Children from Sexual Offences Act, 2012 and Criminal Law (Amendment) Act, 2013 may be categorized as under:

5.10.1. Life imprisonment with combination of not less than 7 years imprisonment but which may extend to imprisonment for life

Section 376 (1) of the Criminal Law (Amendment) Act, 2013 provides

“Whoever, except in the cases provided for in sub-section (2), commits rape, shall be punished with rigorous imprisonment of either description for a term which shall not be less than seven years, but which may extend to imprisonment for life, and shall also be liable to fine.”
5.10.2. Life imprisonment with combination of not less than 10 years imprisonment but which may extend to imprisonment for life

Section 326A of the Criminal Law (Amendment) Act, 2013 provides

“Whoever causes permanent or partial damage or deformity to, or burns or maims or disfigures or disables, any part or parts of the body of a person or causes grievous hurt by throwing acid on or by administering acid to that person, or by using any other means with the intention of causing or with the knowledge that he is likely to cause such injury or hurt, shall be punished with imprisonment of either description for a term which shall not be less than ten years but which may extend to imprisonment for life, and with fine:
Provided that such fine shall be just and reasonable to meet the medical expenses of the treatment of the victim:
Provided further that any fine imposed under this section shall be paid to the victim.”

Section 370 (3) and (4) of the Criminal Law (Amendment) Act, 2013 provides

“(3) Where the offence involves the trafficking of more than one person, it shall be punishable with rigorous imprisonment for a term which shall not be less than ten years but which may extend to imprisonment for life, and shall also be liable to fine.”
(4) Where the offence involves the trafficking of a minor, it shall be punishable with rigorous imprisonment for a term which shall not be less than ten years, but which may extend to imprisonment for life, and shall also be liable to fine.”

Section 6 of the Protection of Children from Sexual Offences Act, 2012 provides

Section 6 Punishment for aggravated penetrative sexual assault:

“Whoever, commits aggravated penetrative sexual assault, shall be punished with rigorous imprisonment for a term which shall not be less than ten years but which may extend to imprisonment for life and shall also be liable to fine.”

5.10.3. Life imprisonment with combination of not less than 14 years imprisonment but which may extend to imprisonment for life

Section 370 (5) of the Criminal Law (Amendment) Act, 2013 provides

“Where the offence involves the trafficking of more than one minor, it shall be punishable with rigorous imprisonment for a term which shall not be less than fourteen years, but which may extend to imprisonment for life, and shall also be liable to fine.”

5.10.4. Life imprisonment with combination of not less than 20 years imprisonment but which may extend to imprisonment for reminder of life

Section 376A, 376D, 376E of the Criminal Law (Amendment) Act, 2013 provide

“376A. whoever, commits an offence punishable under sub-section (1) or subsection (2) of section 376 and in the course of such commission inflict an injury which causes the death of the woman or causes the woman to be in a persistent vegetative state, shall be punished with rigorous imprisonment for
a term which shall not be less than twenty years, but which may extend to imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life, or with death.’

“376D. Where a woman is raped by one or more persons constituting a group or acting in furtherance of a common intention, each of those persons shall be deemed to have committed the offence of rape and shall be punished with rigorous imprisonment for a term which shall not be less than twenty years, but which may extend to life which shall mean imprisonment for the remainder of that person's natural life, and with fine:
Provided that such fine shall be just and reasonable to meet the medical expenses and rehabilitation of the victim:
Provided further that any fine imposed under this section shall be paid to the victim.”

“376E. Whoever has been previously convicted of an offence punishable under section 376 or section 376A or section 376D and is subsequently convicted of an offence punishable under any of the said sections shall be punished with imprisonment for life which shall mean imprisonment for the remainder of that person's natural life, or with death.’

5.10.5. Imprisonment for the remainder of that person's natural life
Section 370 (6) and (7) of the Criminal Law (Amendment) Act, 2013 provides
“(6) If a person is convicted of the offence of trafficking of minor on more than one occasion, then such person shall be punished with imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life, and shall also be liable to fine.”
“(7) When a public servant or a police officer is involved in the trafficking of any person then, such public servant or police officer shall be punished with imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life, and shall also be liable to fine.”

5.10.6. Life imprisonment as only punishment
Interestingly section 14 (3) of the Protection of Children from Sexual Offences Act, 2012, speaks of rigorous imprisonment for life as a sole punishment without any punishment being minimum. It reads
“14. Punishment for using child for pornographic purposes
(3) If the person using the child for pornographic purposes commits an offence referred to in section 5, by directly participating in pornographic acts, he shall be punished with rigorous imprisonment for life and shall also be liable to fine.”

5.11. Difficulties in Working Out Life Sentences
Having said that courts have assumed the power to structure life imprisonment to strike the “just desert”, the fallouts of such exercises are not free from difficulties and hurdles. Following questions have been posed in respect of such structuring of sentences.
5.11.1. Powers only to be exercised by the apex courts

The judicially crafted determinate life sentences can only be awarded by High courts and the Supreme Court. It necessarily means that sessions court which is invariably a trial court shall have only two options i.e., death or life imprisonment simpliciter. The trial court may be convinced about the brutality of the crime, but for the short of rarest of rare case, the court may incline to impose life imprisonment with fixed term of such life sentence. However, this facility of imposing ‘individualized term life imprisonment’ has not been conceded to trial courts. The Supreme Court in *Union of India v. Sriharan,*\(^{150}\) held that

“104. We, therefore, reiterate that, the power derived from the Penal Code for any modified punishment within the punishment provided for in the Penal Code for such specified offences can only be exercised by the High Court and in the event of further appeal only by the Supreme Court and not by any other Court in this country. To put it differently, the power to impose a modified punishment providing for any specific term of incarceration or till the end of the convict’s life as an alternate to death penalty, can be exercised only by the High Court and the Supreme Court and not by any other inferior Court.”

Interestingly, the Delhi high court in *Vishal Yadav v. State Govt. Of UP,*\(^{151}\) held that such modified power is available to all sentencing courts\(^{152}\) including session courts. The court had observed that:

“164. The submission as pressed by learned counsel for the defendants would require us to hold that the trial court can impose a life sentence for an ordinary murder, the death sentence for the rarest of rare case but it has no jurisdiction to consider as to whether the case falls in the intermediate ‘rare’ category inviting mandatory tenure imprisonment as an adequate sentence. Or

\(^{150}\) 2015 (13) SCALE 165

\(^{151}\) *Available at* http://indiankanoon.org/doc/154440315/

\(^{152}\) It was contended in this case that, the third sentencing option made available by supreme court in *Swamy Shraddananda(2)* is available only to the supreme court and not to the high courts. Refuting the contention, the court observed:

“170. Thus the restriction on the power of the courts which Mr. Verma is pressing is unwarranted. It is not supported by either the statutory provisions or the judicial precedents. It is clearly permissible for the sentencing court to judicially regulate the power of the executive to remit the sentence of the convict and while imposing a life sentence, direct a minimum term of imprisonment which may be in excess of fourteen years imprisonment depriving the convict of the benefit of remissions till expiry of such period. It can also be lawfully awarded by the High Court while commuting the death sentence awarded by the trial court upon conviction for such offence. In the light of the above discussion, we also find no legal prohibition upon the high court in handing out such sentence when adjudicating upon a prayer for enhancement of the sentence by the prosecution or the complainant/victim.

163. While examining the legality, proportionality and adequacy of the sentence, the consideration by the high court as the appellate court into the sentencing, has to remain the same. It would be preposterous to thus hold that the power to hand down a fixed term sentence beyond 14 years is not available to the trial courts or the high court or that even the power of the Supreme Court to do is confined to cases of commutation of the death sentence to life imprisonment.”
that, on the same facts and evidence, the trial court (or for that matter, the high court) has no power to do so, and that only the Supreme Court has the jurisdiction to do so, which jurisdiction is also limited to when it is commuting a death sentence to life not to restrict power of the executive to remit the sentence. Such is not the legislative intent.”

“166. It is also important to note that as per *Swamy Shraddananda* (2), the third option is available to the "convicting court" (as recommended in Dalbir Singh) which is not only the Supreme Court but also the High Courts and the trial courts.”

“167. We therefore, conclude that a third sentencing option is available to the sentencing court in all cases where death penalty is one of the options. It would be exercised if the court is of the view that death sentence ought not to be imposed and that, given the power of remission of the life sentence, if exercised on completion of fourteen years of imprisonment, the imprisonment would be inadequate. The court is therefore; free to determine the length of imprisonment which would be commensurate for the offence.”

In view of *Union of India v. Sriharan*, the above observations of Delhi High court stand overruled. However, this creates more problem than the solutions. To name a few, *firstly*, the session’s court would out rightly impose death penalty even if with some deliberations, life imprisonment with fixed term could have been imposed. *Secondly*, the trial court would be deprived of the chance to individualize the sentence. *Thirdly*, The emerging jurisprudence of ‘no death penalty’ is binding upon the courts because of which trial court may choose life imprisonment for death. If the accused or the state does not appeal further, the convict may get away with lighter sentence. *Fourthly*, the accused may be convinced of his crime and may anticipate that death may be imposed upon him for the crime he committed. However, the power of the sentencing court is limited only to life imprisonment simpliciter. This assures the accused that, the conviction of the trial court be accepted in toto, the appeal against which may entail him determinate life sentences. *Fifthly*, the non availability of ‘third option’ may encourage the sentencing judge to go for consecutive sentencing in which he may specify the term imprisonments to be undergone first before life imprisonment begins. This tendency may put the accused in further predicament and jeopardy for if he appeals against, he may likely to attract determinate life sentence form the high court and if he does not appeal, he has to undergo consecutive sentences.

153 (2015) SCALE 165
5.11.2. Another lethal lottery

The death penalty happened to be a lethal lottery, which was proved by the extensive research. Some were fortunate enough to escape the hangman’s noose whereas many others were indiscriminately awarded death penalty. This indiscriminate tendency was even noted by the Supreme Court. The same situation may arise in respect of life imprisonment with fixed term. What considerations would weight which judge – nobody knows. A judge may have 20 years in mind when the case is being heard half way through and in the end he may award 35 years or with no remission at all. Though the courts have developed the third sentence on their own and handed it down in many cases, there appears to be no sentencing discipline or uniformity in choosing life term from 20 years to 35 years or no remission. Though courts may justify their choice of term from 21 to 35 years on the facts and circumstances of the cases in hand, there is no uniformity that the sentencing variables will be uniformly weighed by all courts across the institution. Interestingly judges have awarded 21 years when 20 years norm is holding the ground. What weighed the judge in awarding one more year above 20 years is unspoken. The sentencing disparity may ‘creep in’ in different form.

The fact that some judges do not believe in fixed life sentence also bears upon the case in hand. If the case were to go before the judges who doubted the proportion that fixed life sentences may not be given, such judges may simply impose the life imprisonment simpliciter! The convict would be out once he serves the minimum mandatory of 14 years by virtue of remission rules assuming that the jail manuals provide for it. On the other hand, if the case were to go before a judge who had exercised the third option frequently, such convict may get a fixed life sentence on the higher side of 20 to 35 years! The life imprisonment, therefore, should not become another lethal lottery after death penalty.

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155 As far example, Justice MadanLokur in (Sangeet & Anr. v. State of Haryana (2013) 2 SCC 452) case doubted the life imprisonment with determinate policy. Similarly in the constitutional bench in Union of India v. V. Sriharan @ Murugan&Ors, 2015 (13) SCALE 165, Abhay Manohar Sapre, J and Uday Umesh Lalit. J. did not subscribe to majority opinion, which espoused for the fixed life imprisonment proposition.
5.11.3. The purpose of indeterminate sentence\textsuperscript{156} is out of place

In order to adjudge the suitability of a release after judicial conviction, it is left to executive and remission boards to decide whether the prisoner has sufficiently reformed himself to be prematurely released. In other words, courts fix the maximum sentence to be served by the prisoner leaving the scope for early release on the basis of his conduct in prison. If the life convict is however, ordered to serve minimum 20 to 35 years with a further direction to the executive not to remit his sentence, the very purpose of indeterminate sentencing is frustrated, the role of reformation ruled out and the efficacy of prison administration undermined.

5.11.4. Difficulties in counting punishment for attempts to commit crimes

Under Section 53 of the Indian Penal Code "imprisonment for life" is one of the punishment to which the offenders are liable. The term "imprisonment for life" has not been defined anywhere in the Code. Sections 376(2) and 376-A IPC, "imprisonment for life" has been defined to mean imprisonment for the remainder of that person's natural life. Thus, while in Sections 376(2) and 376-A IPC, the "life imprisonment" is defined to mean imprisonment for the remainder of that person's natural life, other sections in the Code providing life imprisonment remain unchanged. After introduction of Section 376-A in IPC in 2013 with definition of "imprisonment for life", the Trial Court would be confronted with the problem while awarding punishment under Section 511 read with Section 376A, IPC for an offence of attempting to commit rape and inflicting injury, which causes death of a woman.

Under Section 511, IPC, punishment provided is 50% of the punishment of "life imprisonment" or 50% of the "longest term of imprisonment" provided for committing any particular offence, if no express provision is made in IPC for punishment for attempting to commit such offence. Under Section 57, IPC, in

\textsuperscript{156} The term “indeterminate” has two meanings. The meaning highlighted here involves statutes that give judges a broad range of options, not only to choose among fines, probation conditions, and prison, but also to choose a maximum term of incarceration if prison was the punishment. See, e.g., Mistretta v. United States, 488 U.S. 361, 363 (1989); Kevin R. Reitz, “Sentencing Guideline Systems and Sentence Appeals: A Comparison of Federal and State Experiences”, 91 NW. U. L. REV. 1441, 1442-43 (1997). Another meaning of “indeterminate” applies in systems that allow parole: regardless of the maximum term announced by the court, the prisoner’s actual time in prison is set by a parole board. Based on the prisoner’s behavior inside and potential for rehabilitation outside, the parole board can release a convict far earlier than the judge had decreed. See, Douglas A. Berman, “Foreword: Beyond Blakely and Booker: Pondering Modern Sentencing Process”, 95 J. CRIM. L. & CRIMINOLOGY 653, 654-55 (2005) See also Susan F. Mandiberg, “Why Sentencing by a Judge Satisfies the Right to Jury Trial: A Comparative Law Look at Blakely and Booker”, Mc George Law Review, Vol. 40, 2009, p 109, foot note no 11. It is in the second sense that the present discourse proceeds on.
calculating fraction of terms of punishment, imprisonment for life shall be reckoned as equivalent to imprisonment for twenty years. But under Section 376-A, IPC, the minimum punishment is 20 years and the longest punishment is imprisonment for life which has been defined as imprisonment for remainder of the person's natural life.

At this stage, the difficulty that would be faced by the Trial Court is to find out the terms of punishment for life imprisonment provided under Section 376-A, since the Court cannot take 20 years as provided under Section 57, IPC which is the minimum punishment provided under Section 376-A. Therefore, a clarification is required as to how many years are to be taken for calculating 50% of the term "life imprisonment" prescribed in Section 376-A, IPC.  

5.11.5. Term life imprisonment only when death is awarded!

Fixing of term life is possible only when death is awarded. What if only life imprisonment is imposed? Would the court in appeal fix term life instead of death? There is no answer it seems. Given the tendency that courts are very slow in enhancing the punishment, it is in conceivable that the life imprisonment awarded by the trial courts would be enhanced to term life imprisonment by the apex courts. This would clearly spell on the constitutional equality clause of article 21. In other words, if the trial courts out rightly impose death penalty, appeal court would modify it to life imprisonment with term. However, if the trial courts award life imprisonment there seems to be no eventuality of appeal courts imposing life imprisonment with term!

5.11.6. Would term life imprisonment give scope for bargain?

The possibility of accused demanding for term life imprisonment instead of death penalty is not ruled out. No doubt the courts would strike ‘just desert’, the element of lottery cannot be ruled out. In Subash Chander v. Krishan Lal., the trial Court had awarded death sentence but the High Court had commuted the same to life imprisonment. Subash Chander, a witness before the Trial Court filed the appeal praying for setting aside the order by the High Court of acquittal of some of the accused persons and sought awarding of death sentence to the convicted persons. In other words, he sought restoration qua them of the judgment of the Trial Court. In this case, counsel for the main accused made a statement that instead of depriving him of

158 (2001) 4 SCC 458
his life, the court could pass appropriate orders to deprive him of his liberty
throughout his life and that if sentenced to life imprisonment, he would never claim
his premature release or the commutation of his release on any ground. The court had
passed such sentence in view of the said statement.

5.11.7. Fixed life imprisonment in addition to already undergone sentence is
devastating

Courts are not only imposing life imprisonment with terms fixed like 20/25/35
years, but are also directing in some of the cases that, the period undergone as under
trial prisoners shall also not be counted in the term fixed by them! This approach is
vindicative of just desert but appears disastrous form the scheme of rehabilitation. In
AlberOraon v. State of Jharkhand,\textsuperscript{159} sentence of 30 years imprisonment without
remission in \textit{addition to sentence already undergone} for murder of woman and two
children on property/land dispute was imposed. This tendency would further
complicate the structuring of life sentencing since it impinges on constitutional right
of equality. If one judge in one cases awards structured life sentence in addition to
sentence already undergone and other judge in another case with similar facts omits to
do that, article 21 is out rightly violated, though attempts may be made to justify such
sentencing on the grounds of individualisation of punishment!

5.11.8. Costing of life imprisonment

Keeping the person confined for a longer period has a huge impact on the
economics of the prison administration. More the confinement more the expenses.
Speaking economically, there is no agreement between the productive worthiness of
the prisoner in the jail and amount spent on him for keeping him confined.

As per the NCRB annual reports, the annual expenditure per inmate on various
heads like Food, Clothing, Medical, Vocational/Educational & other welfare activities
has been on the rise. The average expenditure per inmate has gone up from Rs 19447
in 2010-11 to Rs 29538 in 2014-15. This is an increase of over 50\% in five years.
While the number of inmates in prisons has only increased by about 13\%, the average
expenditure has gone up by more than 50\%.\textsuperscript{160}

\textsuperscript{159} 2014 (58) SCALE 525
\textsuperscript{160} Rakesh Dubbudu “Expenditure per Prison inmate increased by over 50\% in 5 years “ JUNE 20,
2016 Available at https://factly.in/expenditure-per-prison-inmate-increased-50-5-years/
See also RaginiBhuyan “Prison economics and the gap between different states” available at
http://www.livemint.com/Opinion/Vr7bOdjTPNMwRU3NvzSCsM/Prison-economics-and-the-gap-
between-different-states.html for detailed break of expense by the states and revenue generation by the
prisoners.
Of all the States and UTs with more than 1000 inmates, the highest expenditure per inmate was in Delhi in the last five years. In 2014-15, the expenditure per inmate in Delhi was Rs 85193, close to three times the national average. Delhi was closely followed by Telangana with an expenditure of Rs 81550. The only exception was in 2013-14 when the expenditure per inmate was highest in Jammu & Kashmir. Of the States & UTs with more than 1000 inmates, food expenses per inmate were highest in Jammu & Kashmir followed by West Bengal & Jharkhand in 2014-15. Even in 2013-14, the food expenses per inmate were highest in Jammu & Kashmir.161

5.11.9. Government would have ultimate control over the sentence

If the sentences have been fixed with ‘judicial length’ within which the government cannot exercise remission powers, the Government would have ultimate control over the sentence. The government may further prolong the sentence. Only last year the State Government of Maharashtra declared that the offenders sentenced to life imprisonment in connection with the 1993 terrorist attack on Mumbai will have to serve a minimum of 60 years in prison before their plea for release is even considered. Given that number of offences in India carry a maximum penalty of life imprisonment, guidance for judges from a sentencing council would be welcome.162

On the other hand, the ‘judicial length of imprisonment’ would not be applicable to constitutional powers under Article 72 and 161. Practically speaking, unless the life imprisonment is ‘commuted’ to a definite period the question of remission does not arise. The commutation takes place either under section 433 or under Articles 161 and 72. Practice as on date is evident of the fact that commutations and remissions have taken place frequently under constitutional prerogatives rather than under section 433 of the Cr.PC.163 This evidently indicates that the judicial limitation would be not applicable to majority of the cases where constitutional powers have been exercised. In other words, the government can defy the orders of the courts which have fixed the term of life imprisonment by advising the President and Governor to exercise their constitutional prerogatives which would automatically

161 Supra note 160
162 Julian V. Roberts et al “Structured Sentencing In England And Wales: Recent Developments And Lessons For India” National Law School of India Review, Vol. 23(1), 2011, P 44
163 The government is not bound by procedural formalities or by public gaze limitation in advising the governor or president to exercise their constitutional powers. If the same results were to be achieved by the government by invoking Cr.P.C, the procedural and substantive checks inherent in section 432,433 and 433A have to be complied with.
nullify the ‘period fixation’ of life sentences.

5.11.10. Re-engineered calculation of life imprisonment is ill founded

The Supreme Court in Sangeet &ors. v. State of Haryana\textsuperscript{164} strongly argued for itself as under

“78. What Section 302 of the IPC provides for is only two punishments -life imprisonment and death penalty. In several cases, this Court has proceeded on the postulate that life imprisonment means fourteen years of incarceration, after remissions. The calculation of fourteen years of incarceration is based on another postulate, articulated in Swamy Shraddananda, namely that a sentence of life imprisonment is first commuted(or deemed converted) to a fixed term of twenty years on the basis of the Karnataka Prison Rules, 1974 and a similar letter issued by the Government of Bihar. Apparently, rules of this nature exist in other States as well. Thereafter, remissions earned or awarded to a convict are applied to the commuted sentence to work out the period of incarceration to fourteen years.

79. This re-engineered calculation can be made only after the appropriate Government artificially determines the period of incarceration. The procedure apparently being followed by the appropriate Government is that life imprisonment is artificially considered to be imprisonment for a period of twenty years. It is this arbitrary reckoning that has been prohibited in Ratan Singh. A failure to implement Ratan Singh has led this Court in some cases to carve out a special category in which sentences of twenty years or more are awarded, even after accounting for remissions. If the law is applied as we understand it, meaning thereby that life imprisonment is imprisonment for the life span of the convict, with procedural and substantive checks laid down in the Cr.P.C. for his early release we would reach a legally satisfactory result on the issue of remissions. This makes an order for incarceration for a minimum period of 20 or 25 or 30 years unnecessary.”

Though the reasoning of the court was overruled in Union of India v. V. Sriharan @ Murugan & Ors.,\textsuperscript{165} case, the premise of the arguments are still convincing and hold strength. Even in the above case J. Uday Umesh Lalit and J. Abhay Manohar Sapre subscribed to this opinion although they fell in minority.

5.11.11. The structured life imprisonment may violate Article 21

The court can either impose sentence of imprisonment for life or sentence of death but any other fixed term sentence is totally inconceivable in terms of the statute. In respect of an offence under Section 302, life is the minimum and the maximum is the death sentence and, therefore, the court has a choice between the two and is not entitled to follow any other path, for that would be violative of the sanctity of Article 21 of the Constitution which clearly stipulates that “[n]o person shall be deprived of his life or personal liberty except according to the procedure established by law.”

\textsuperscript{164}(2013) 2 SCC 452
\textsuperscript{165}2015(13) SCALE
Imposition of sentence for a fixed term is contrary to the procedure established by law and hence, impermissible.\(^\text{166}\)

**5.11.12. Life imprisonment without possibility of early release is dangerous than Death penalty**

It is argued at times that Life imprisonment without possibility of early release is dangerous than Death penalty itself! In the name of avoiding death courts impose harsher punishment of structured life imprisonment which may dampen the hope of life.\(^\text{167}\)

**5.11.13. Judicial inconsistency beyond comprehension- no different from another death penalty**

The reasons for introducing structured life imprisonment was to avoid the arbitrariness in imposing death penalty thereby rescuing the accused from arbitrary sentencing. The truth however is that even the structured life imprisonment also perpetuates the inequality in sentencing. The choice of 20/21/25/30/35 years or life with no remission is also an arbitrary choice. What moved the court in imposing 21 years of compulsory life imprisonment in *Ramnaresh v. State of Chhattisgarh*\(^\text{168}\) and *Brajendrasingh v. State of M.P*\(^\text{169}\) is unanswered. Further what rationality prevails in the choice of 25 years or 30 years is also not discernible. Simply because in identical cases courts have imposed a fixed number of years sentence shall not be the justification for the subsequent courts to impose similar or nearing imprisonment. The death penalty was labeled as judicial lethal lottery\(^\text{170}\) and so should be the structured life sentence!

\(^{166}\) *Vikas Yadav v. State of U.P. and Ors.* (2016), Available at [http://supremecourtofindia.nic.in/FileServer/2016-10-3_1475495470.pdf](http://supremecourtofindia.nic.in/FileServer/2016-10-3_1475495470.pdf)

\(^{167}\) In *Maru Ram* ((1981) 1 SCC 107), Krishna Iyer, J., to appreciate the despair in custody, thought it apposite to reproduce the bitter expression, from the poem, namely, *The Ballad of Reading Gaol* by Oscar Wilde. The poet wrote:-

> "I know not whether Laws be right,  
> Or whether Laws be wrong,  
> All that we know who lie in gaol  
> Is that the wall is strong;  
> And that each day is like a year,  
> A year whose days are long.”

> "Something was dead in each of us,  
> And what was dead was Hope.  
> The vilest deeds like poison weeds  
> Bloom well in prison air:  
> It is only what is good in Man”

\(^{168}\) (2012) 4 SCC 257

\(^{169}\) (2012) 4 SCC 289

5.11.14. Trial courts would invariably be forced to award death penalty

Having said that life sentence can be structured only by the high courts and Supreme Court, trial courts would invariably be forced to impose death penalty, which sentence would be corrected by the apex courts. If the trial courts is not sympathetic about life imprisonment yet considers death penalty too harsh, it would eventually be left with death penalty option only. The fact that trial courts should be allowed to have this option of vast hiatus between life and death holds true in the interest of sentencing policy.¹⁷¹

5.11.15. Inconsistency in new legislations

In order to avoid moist over the inconsistency in interpretation over life imprisonment, it seems, the legislature has come up with newer sections, which clearly mentions that life imprisonment shall be for the reminder of that person’s life. This attempt has however immensely contributed in the existing confusion. If life imprisonment were to be taken as for the whole life, the same logic shall apply to all cases and all sections of similar crimes. This certainty is however missing from the new legislations. In some sections life imprisonment is defined as imprisonment for


“35. One can always dream of the ideal law. When that will come into existence, we will have to wait and see. But I have no hesitation to agree that the ideal law ought to be that all courts - from the Sessions Court to the Supreme Court, have the sentencing options generated under Swami Sradhanandha (2). Ideal law must insist that all Judges from the level of the Sessions Judges must consider whether all the alternative options are unquestionably foreclosed before choosing to direct extinguishment of life by exercise of judicial discretion. To me, it appears that it is time that the law is changed by the legislature (or progressively interpreted judicially) to ensure and insist that a Sessions Judge who feels that the gravest form of life sentence permissible under Swami Sradhanandha is insufficient to meet the ends of justice in a case, must make a reference to the High Court and not proceed to choose to himself impose such harshest sentence. When it comes to the High Court for decision on the question of sentence (or confirmation), the ideal law must certainly insist that not 2 Judges, but at least a Bench of 5 Judges must consider the question of imposition of sentence. The system owes at least that to Indian and human civilization and to persons who are being deprived of their life by invocation of the State's power to extinguish life. I go a step further and observe that unless the 5 Judges Bench would unanimously come to the conclusion that the death sentence is the only alternative possible in the given circumstances, the conclusion will necessarily have to be reached that the alternative options are not unquestionably foreclosed. Unanimous conclusion of a 5 Judge Bench alone should under the ideal law justify the extinguishment of life. May be I am dreaming. May be that is not the law at the moment. But certainly I have no hesitation to dream that, that would be the ideal law in respect of the exercise of the dehumanizing power of the State to extinguish life if that power be constitutionally valid. The matter if and when referred to a larger Bench the larger Bench must, according to me, address itself to these questions.”
the reminders of persons life, whereas in some sections this rider is missing. Further in some sections life imprisonment is alternated punishment where minimum imprisonment is twenty years. The remission rules generally favour for executive remission after a person has served twenty years of actual imprisonment even for heinous crimes. If the minimum imprisonment for certain crimes were to be fixed as twenty years then alternated life imprisonment would never allow that criminal to avail remission benefits.

5.11.16. Structured life sentences blur the separation of powers and undermines correctional institutions

Structured life sentences by the judiciary may blur the separation between the judiciary, which hands out sentences soon after conviction, and the executive, which painstakingly calculates when a sentence has had its desired effect on the prisoner.

However, if the court holds that for some life convicts there is no prospect of release, irrespective of any reformation they may have undergone, serious questions would be raised about our correctional institutions. The court would be pre-judging and completely ruling out the prospect of any reform on the date of the sentencing. It is worth pondering whether prisoners who are sent to prison for their whole life are incarcerated merely to compensate for the failure of the prison system to help prisoners meaningfully re integrate into society.

5.11.17. Life without possibility of release is contrary to international jurisprudence

Whole life sentences have been disapproved of internationally. In Germany, it has been held to attack the essence of human dignity. The European Court for Human Rights has declared such sentences as illegal if they do not provide the prisoner a right of consideration for early release. Namibia also has ruled that such sentences would amount to cruelty at state expense and reduce the prisoner to a “thing” rather than a “person”. A prisoner who has been in jail for over 20 years awaiting execution of his death sentence told me that if judges who handed out these long sentences could

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172Section 370 (3) and (4) of the Criminal Law (Amendment) Act, 2013

“(3) Where the offence involves the trafficking of more than one person, it shall be punishable with rigorous imprisonment for a term which shall not be less than ten years but which may extend to imprisonment for life, and shall also be liable to fine.”

(4) Where the offence involves the trafficking of a minor, it shall be punishable with rigorous imprisonment for a term which shall not be less than ten years, but which may extend to imprisonment for life, and shall also be liable to fine.”


174Ibid
spend even a month in prison conditions, he would be surprised.\textsuperscript{175}

In Europe, the Grand Chamber of the European Court of Human Rights ruled in July 2013 that all persons sentenced to life imprisonment including those subject to a so-called whole life order, must have a prospect of release and that there has to be a procedure in place for reviewing whether the continued enforcement of these sentences is justified (\textit{Vinter and others v United Kingdom} 2013). The denial of all hope of release would amount to inhuman and degrading treatment that would infringe Article 3 of the European Convention on Human Rights.

When it comes to life imprisonment, there are no set, fully developed international standards. But, international human rights law allows the imposition of life sentences only in the most serious crimes and prohibits the use of Life Imprisonment without Parole (LWOP).\textsuperscript{176}

The International Covenant on Civil and Political Rights (ICCPR), which came into force in 1976 and was signed and ratified by 161 countries, including India, says that the "penitentiary system shall comprise treatment of prisoners, the essential aim of which shall be their reformation and social rehabilitation". As the non-government organisation Penal Reform International noted in 2007, the purpose of reformative punishment will not be served if a convict lives his or her whole life in detention without being released on parole.

General Comment 21 of the Human Rights Committee, which is a United Nations (UN) Committee that oversees the implementation of ICCPR obligations in State parties, notes, "Treating all persons deprived of their liberty with humanity and with respect for their dignity is a fundamental and universally applicable rule. Consequently, the application of this rule, as a minimum, cannot be dependent on the material resources available in the State party. This rule must be applied without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status."\textsuperscript{177}

The United Nations Standard Minimum Rules for the Treatment of Prisoners lays down good practice norms for the treatment of prisoners, which are to be adhered to by prison authorities and institutions.\textsuperscript{178}

\begin{footnotes}
\item[175] \textit{Ibid}
\item[176] Ipshita Sengupta “Life sentences: How long is enough?” \textit{India Together}, June 29, 2008
\item[177] \textit{Ibid}
\item[178] \textit{Ibid}
\end{footnotes}
5.12 Conclusion

Life imprisonment better serves all purposes of sentencing policy, i.e., deterrence, reformation, rehabilitation and retribution. Life imprisonment has been now a preferred sentence by the apex courts in view of inherent disparity in the death sentences. The cause of disagreement, however, is the structuring of life sentences with definite number of years. Though courts have in all benches- smaller and constitutional, retained the power to structure life imprisonment, the working of such structured sentences itself has become subject matter of arbitrary exercise. The attempted reforms by the legislature to further codify life imprisonment has only added in the mud of uncertainty as noted above. Judiciary has usurped the power to itself to define the content of life imprisonment. This usurpation though defended by constitutional bench, needs to be tested on the time line since the innovation is of recent origin. Only safeguard that must be ensured now is that whenever the courts wish to structure life sentences, such exercise must be done by a bench of three or more judges with nearing unanimity, failing which life imprisonment would become another lethal lottery as death penalty is labeled as.