

Life Imprisonment in India: When do we Open the Prison Doors?

*Shruti Bedi**

Abstract

Imprisonment for life is an authorised form of punishment under the Indian Penal Code, 1860 (IPC) and other cognate laws. Much debate and discussion has been undertaken by the Parliament, Law Commission of India, the state legislatures and the Indian judiciary. This paper seeks to throw light on the current legal position of this form of punishment with respect to its character and mode of execution in India.

Keywords: life imprisonment, imprisonment for life, life sentence, prison, IPC, sentencing, India.

Introduction

Punishments are generally imposed with the objective of preventing the commission of offences and protecting society. It not only seeks to ensure compliance with the regulatory laws on any country but imprisonment is also considered another strategy to reform the offenders.¹ Imprisonment for life is an authorised form of punishment under the Indian Penal Code, 1860 (IPC) and other cognate laws. Much debate and discussion has been undertaken by the Parliament, the Law Commission of India, the state legislatures and the Indian judiciary. This paper seeks to throw light on the current legal position of this form of punishment with respect to its character and mode of execution in India. Various aspects pertaining to the nature and duration of ‘imprisonment for life’ are critically analysed through the examination of legislative practices and judicial decisions. The paper will trace the introduction of the concept of ‘imprisonment for life’ under the Indian Penal Code, 1860 and its resulting impact exhibited

* Prof. (Dr.) of Law, University Institute of Legal Studies (UILS), Panjab University (PU), Chandigarh, India; Co-ordinator, Dept. of Law, USOL, PU; Director, Centre for Constitution & Public Policy, UILS, PU; authored two books: *Terrorism: Our World and Our Laws* (2009) and *Indian Counter Terrorism Law* (2016); and co-edited four books: *Judicial Review: Process, Powers and Problems* (Cambridge University Press, 2020); *Taking Bail Seriously: State of Bail Jurisprudence in India* (Lexis Nexis, 2020); *Law and Media* (2019) and *Electoral System: Democracy, Laws and Issues* (2019).

¹ Vageshwari Deswal, ‘Imprisonment as punishment under the IPC: Need to recast our penology’ (*The Times of India*, 30 Jan., 2020), <<https://timesofindia.indiatimes.com/blogs/legally-speaking/imprisonment-as-punishment-under-the-ipc-need-to-recast-our-penology/>> accessed 24 June 2021.

through judicial interpretations. The consequences of legislative inaction and judge-centric sentencing policy has resulted in a state of ambiguity under the Indian criminal law.

The Journey of Transition: ‘Transportation’ to ‘Life Imprisonment’

The original IPC of 1860 provided for six forms of punishment which were awarded to an offender: i) death; ii) transportation; iii) penal servitude; iv) imprisonment of two types namely a) rigorous imprisonment (with hard labour) and b) simple imprisonment; v) forfeiture of property; and vi) fine.² ‘Transportation for life’ was a form of punishment where the convicts were banished from the Indian territories to the Central jail in Andaman or other British colonies where they were made to undergo hard labour. Section 55, IPC provided for commutation of ‘transportation for life’ to a sentence of imprisonment (either description) for a term not exceeding fourteen years, without the consent of the offender.

‘Life imprisonment’ was introduced in India under the IPC in 1955 to substitute ‘transportation for life’.³ From 1956 onwards, ‘transportation’ was no longer a form of punishment on the statute books. The Indian Jails Committee had recommended that the IPC should be amended by substituting the term ‘transportation’ with ‘rigorous imprisonment’.⁴ The Parliament however did not follow the recommendation of the Indian Jails Committee and amended the IPC to substitute ‘imprisonment for life’ for all references to ‘transportation’.⁵ Resultantly, there came to be two sets of imprisonments i.e., ‘imprisonment for life’; and ‘imprisonment of two types, rigorous and simple’. This led to a state of confusion specifically as to the nature of the sentence of ‘life imprisonment’.

Imprisonment for Life: The Challenges

By the time the 1955 amendment was passed, significant changes had been brought about in the Indian criminal law with the enactment of the Constitution of India in 1950 and the protections afforded under the fundamental rights. Prisoner’s rights and protections came to be widely accepted, but many issues still continued to haunt the lives of life convicts.⁶ The present

² Indian Penal Code, 1860 (IPC), sec. 53.

³ This amendment came into force in 1956. Law Commission of India, ‘Report on the Punishment of Imprisonment for Life Under the Indian Penal Code’ Report No.39 (July 1968) 1.

⁴ See Report of the Cardew Committee, headed by Alexander Cardew (1919-20) [563].

⁵ Code of Criminal Procedure (Amendment) Act, 1955, which came into force in 1956.

⁶ Nishant Gokhale, ‘Life Imprisonment in India: A Short History of a Long Sentence’ (2018) 11(3) NUJS L. Rev. 1, 12-13.

law on life sentencing in India suffers from lack of conceptual clarity, incongruities in its application and *ad hocism* on the part of all the three organs, judiciary, executive and legislature. This part seeks to critically highlight such inconsistencies in the laws and their execution.

The 'Nature' of Imprisonment for Life

The subject of the nature of 'life imprisonment' needs a thorough examination. The current status of the law is that the two punishments, 'imprisonment for life' and 'imprisonment-rigorous or simple' are distinct and separate from each other. The relevant portions of the amended section 53 IPC, reads:

Secondly, - imprisonment for life; ...

Fourthly, - imprisonment, which is of two descriptions namely: i) rigorous, i.e., with hard labour and ii) simple.⁷

This amended section 53, IPC clearly displays that it does not attempt to define the nature of the punishment of 'life sentence' as to whether it is 'rigorous' or 'simple'. It simply substitutes 'imprisonment for life' for the term 'transportation'. Therefore, there is a complete lack of clarity as to the manner of enforcement of such sentences and the treatment to be accorded to life convicts.⁸ This ambiguity in the provision of punishment of imprisonment for life has resulted in a confused and impractical situation where the power of executing the sentence is exercised in a discretionary manner.

The Supreme Court in the case of *Naib Singh v. State of Punjab*⁹ has tried to eliminate the distinction between life imprisonment and imprisonment which can be rigorous or simple. The petitioner, a life convict, after having served fourteen years of rigorous imprisonment contended that his sentence should be deemed to be commuted. The court while relying on the 1955 amendment to IPC, rejected the contention, by stating that the substitution of

⁷ IPC, 1860, sec. 53 *Punishments- The punishments to which offenders are liable under the provisions of this Code are:*

- 1) Death;
- 2) Imprisonment for life;
- 3) Repealed by Act 17 of 1949;
- 4) Imprisonment, which is of two descriptions, namely:
 - i) Rigorous, that is with hard labour;
 - ii) Simple;
- 5) Forfeiture of property;
- 6) Fine.

⁸ B.S. Malik, 'Punishment of Imprisonment for Life: Misconceived and Unworkable' (1994) 36(2) JILI 237, 239.

⁹ *Naib Singh v. State of Punjab*, (1983) 2 SCC 454.

‘transportation’ for ‘imprisonment for life’ had not changed the *nature* of the punishment [Emphasis added]. The court relied on the decision of the Privy Council in *Pandit Kishori Lal v. King Emperor*¹⁰ which had held that a prisoner sentenced to transportation would be treated as if he were sentenced to life imprisonment with rigorous imprisonment. However, the court missed an important point as the Privy Council in *Kishori Lal* had relied on section 58, IPC¹¹. The Privy Council had interpreted section 58, IPC to mean that while the prisoner remained un-transported, the rigorous imprisonment would operate for the lifetime of the life convict.¹² Further, section 58, IPC was repealed in 1955.

Unfortunately, the court in *Naib Singh* held that a prisoner sentenced to life imprisonment would be treated as if his punishment was one of rigorous imprisonment for life. The court did not differentiate between the two situations and proceeded to use a temporary situation to perpetuate an interpretation. Moreover, after the amendment, transportation as a punishment was repealed from IPC and therefore the basis for considering life imprisonment as rigorous imprisonment for life is questionable. Even the two reports of the Law Commission of India state that the nature of life imprisonment requires legislative clarification.¹³ Additionally, the Committee on Prison Discipline in 1838 had stated that life convicts should only be sentenced to hard labour for a determined period of time, which should be followed by hard work which was profitable without any other aggravations.¹⁴

The issue arose again before the Supreme Court in 2016, wherein it issued a notice on the question whether “life imprisonment could be coupled with the condition that such imprisonment has to be rigorous imprisonment”.¹⁵ Unfortunately, the dismissal of the petition¹⁶ without any reasoned order led to a missed opportunity in settling the law on the issue. Therefore, the issue of the nature of ‘life imprisonment’ remains unresolved and life convicts

¹⁰ *Pandit Kishori Lal v. King Emperor*, ILR (1945) 26 Lah 325.

¹¹ Section 58, IPC stated that while awaiting transportation, a prisoner would be treated as if he were serving a sentence of rigorous imprisonment.

¹² Gokhale (n 6) 13.

¹³ Law Commission of India (n 3) 12. This finding was reiterated by the Law Commission of India, ‘Indian Penal Code’ Report No.42 (June 1971) 66. Also see B.S. Malik, ‘Decision of the Supreme Court in *Naib Singh v. State of Punjab*: A Critique’ (1996) 38(1) JILI 116-120, highlights that in 1962 the state of Uttar Pradesh passed an amendment to clarify that life imprisonment would be punishable as if it were punishable with hard labour.

¹⁴ Committee on Prison-Discipline, ‘Report of the Committee on Prison-Discipline to the Governor General of India’ (1838) 120.

¹⁵ Order dated December 16, 2016 in *Ram Kumar Sivare v. State of Chhattisgarh*, SLP (Crl.) 10111 of 2016. Also see ‘Can life sentence be ‘rigorous’? SC to consider’ (*The New Indian Express*, 20 Dec., 2016) <<https://www.newindianexpress.com/nation/2016/dec/20/can-life-sentence-be-rigorous-sc-to-consider-1551321.html>> accessed 26 June 2021.

¹⁶ Dismissed vide order in *Sivare* dated July 28, 2017, (MANU/SCOR/29516/2017).

are made to undergo rigorous imprisonment. Convicts undergoing life imprisonment are generally housed in the Central prisons of the concerned States where they undergo rigorous imprisonment as per the prison manual guidelines.¹⁷

Duration of ‘Life Imprisonment’

Imprisonment for life generally means that the convict will be punished with imprisonment for his natural life unless it is remitted or commuted.¹⁸ This interpretation was given by the court in *Gopal Vinayak Godse v. State of Maharashtra*.¹⁹ However since the IPC does not prescribe any duration of the sentence for life imprisonment, doubts continue to persist. The confusion stems from the fact that there are multiple sources for sentence shortening.²⁰ The sources may be traced to three paths, constitutional, legislative and regulatory. The constitutional authority of such reduction is vested in the President and the Governor who have the power to grant pardons, reprieves, respites, suspend or commute the sentence.²¹ The legislative powers are conferred on the central and state governments under the Criminal Procedure Code, 1973 (CrPC) and IPC.²² The regulatory powers are the narrowest in comparison, being limited to

¹⁷ Deswal (n 1).

¹⁸ K.I. Vibhute, ‘Choice between ‘Death’ and ‘Life’ for Convicts’ (2017) 59(3) JILI 221, 227-28.

¹⁹ *Gopal Vinayak Godse v. State of Maharashtra* (1961) 3 SCR 440. Also see, *Maru Ram v. Union of India*, (1981) 1 SCC 107, wherein the Supreme Court held that imprisonment for life meant imprisonment till the remainder of the life of the convict, unless curtailed by any commutation, remission or reprieve according to (constitutional and/or statutory) law. Also see *Ashok Kumar @ Golu v. Union of India* (1991) 3 SCC 498; *Laxman Naskar v. Union of India* (2000) 2 SCC 595; *Shri Bhagwan v. State of Rajasthan* (2001) 6 SCC 296; *Swamy Shraddananda (2) @ Murali Manohar Mishra v. State of Karnataka* (2008) 13 SCC 767; *Union of India v. V. Sriharan* (2016) 7 SCC 1; *Muthuramalingam v. State* (2016) 8 SCC 313. Also see Law Commission of India (n 3).

²⁰ Sentence shortening is a convenient general term used for remissions, respites, pardons, suspensions and commutation.

²¹ The President of India is empowered under Article 72 of the Constitution of India, 1950 and the Governors of the different states in India are empowered under Article 161 to grant pardons, reprieves, respites, suspend or commute the sentence.

²² The Code of Criminal Procedure, 1973 (CrPC), sec. 432, 433; The Indian Penal Code, 1860 (IPC), sec. 54, 55, 57. These provisions empower state and central governments to permit commutation, suspension and remission of sentences.

CrPC, sec. 432- *Power to suspend or remit sentences*

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

CrPC, sec. 433- *Power to commute sentence*

The appropriate Government may, without the consent of the person-sentenced commute –

A sentence of death, for any other punishment provided by the Indian Penal Code, 1860; A sentence of imprisonment for life, for any other punishment for a term not exceeding fourteen years or for fine; A sentence of rigorous imprisonment for simple imprisonment for any term to which that person might have been sentenced, or sentenced, or for fine; A sentence of simple imprisonment, for fine.

IPC, sec. 55- *Commutation of sentence of imprisonment for life*

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

remission which is based on the time spent in prison by the convict, his behaviour and work. These powers are bestowed on the prison authorities under the prison manuals and regulations and can be altered through administrative decisions.²³ Section 433A was inserted in the CrPC in 1978 to prevent the misuse of the power to shorten sentences.²⁴ It was enacted with the objective of denying premature release of life convicts before the completion of fourteen years of actual incarceration.²⁵ Further the period of detention that the accused has undergone during trial, can be set-off against the sentence of life imprisonment only if the concerned authority passes an order under section 432 or 433, CrPC. Without any such order, and besides the provisions of the Jail Manual, a sentence of imprisonment for life means imprisonment for the remainder of the life.²⁶

The constitutional validity of section 433A, CrPC was challenged in the famous case of *Maru Ram v. Union of India*.²⁷ While upholding this provision the court noted that though the period of fourteen years had no specific basis, it was important to accede to the foresight of the legislature.²⁸ The court further held that the constitutional power vested in the President and Governor was “untouchable and unapproachable”.²⁹ The court upheld the *Godse* case and reiterated that “imprisonment for life lasts until the last breath, and whatever the length of remissions earned, the prisoner can claim release only if the remaining sentence is remitted by Government.”³⁰ Clearly, the court emphasised that life convicts could not benefit from sentence shortening provisions unless they had served at least 14 years of the sentence and that the orders came from constitutional authorities.

IPC, sec. 57- *Fractions of terms of punishment*

In calculating fractions of terms of punishment, [imprisonment] for life shall be reckoned as equivalent to [imprisonment] for twenty years.

²³ Mahima Chowdhary, ‘Life Imprisonment: A substitute to Death Penalty?’ (*Latestlaws.com*, 11 July, 2020) <<https://www.latestlaws.com/articles/life-imprisonment-a-substitute-to-death-penalty/>> accessed 25 June 2021.

²⁴ CrPC, sec. 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 has served at least fourteen years of imprisonment.

²⁵ Also see B.S. Malik, ‘Parliament Impairs Federalism: A Critique of *Maru Ram v. Union of India*’ (1994) JILI 512, 517. Section 433A does not apply to the constitutional power conferred on the President and the Governor.

²⁶ Nitish Banka, ‘What is duration of life imprisonment?’ (*Lexspeak Legal*, 22 June, 2021) <<https://lexspeak.in/2013/06/what-is-duration-of-life-imprisonment/>> accessed 27 June 2021.

²⁷ *Maru Ram* (n 19).

²⁸ *ibid* [48, 49].

²⁹ *ibid* [59].

³⁰ *ibid* [72].

In USA, a life sentence continues till the prisoner dies. However, it is seen that its not always “imprisonment for life” as after 10 years of sentence are over, the convict is generally set out on parole.³¹ In UK the life sentence is of indeterminate length where the Home Secretary sets the “tariff” i.e., the length of the term for life convicts. After approximately 15 years the convict can be set out on parole.³² As far as India is concerned, it was laid down in *Mohd. Munna v. Union of India*³³ that life imprisonment is imprisonment for the remainder of the convict’s life. There is no provision in the IPC or CrPC wherein life imprisonment can be treated as imprisonment for 14 or 20 years without a formal remission by the appropriate government.

Though these cases eliminated the confusion regarding the issue of life imprisonment to a great extent, succeeding developments have restored ambiguity on the law of sentence shortening. The Criminal Law Amendment Acts of 2013 and 2018 have contributed to the confusion regarding those sentenced to life imprisonment³⁴. The sentencing formulation that these two amendments use is “imprisonment for life which shall mean imprisonment for the remainder of that person’s natural life”. The use of this formulation is unclear as to whether it is a reiteration of the Supreme Court’s interpretation that life imprisonment means imprisonment for the remainder of the convict’s life. If it were simply that, then there would have been no problem, but the amendments use both terms i.e., “imprisonment for life” and “imprisonment for life which shall mean imprisonment for the remainder of that person’s natural life” for different categories of offences.³⁵ The confusion pertains to the fact of disparity in usage as even though the latter sentence formulation is introduced but commensurately section 53, IPC has not been amended. Further the application of sentence shortening provisions is unclear as they have neither been repealed nor excluded and the question remains whether it would apply to convicts undergoing life imprisonment for the *remainder of his life*.³⁶

Life Imprisonment without Remission

³¹ Banka (n 26).

³² *ibid*.

³³ *Mohd. Munna v. Union of India*, (2005) 7 SCC 417.

³⁴ The 2013 amendment includes aggravated sexual offences and acid attacks, and the 2018 amendment pertains to sexual offences against minor children.

³⁵ Under the Criminal Law (Amendment) Act, 2013, the term “imprisonment for life” is used under section 326A. “Imprisonment for life which shall mean imprisonment for the remainder of that person’s natural life” is used under sections 376A, 376D and 376E. Under the Criminal Law (Amendment) Act, 2018, the term “imprisonment for life” is used under section 376(1) and “imprisonment for life which shall mean imprisonment for the remainder of that person’s natural life” is used under sections 376(3), 376AB, 376DA and 376DB.

³⁶ As per the new sentencing formulations under the amendments it is likely that sentence shortening provisions are not made applicable to convicts who are sentence to “life imprisonment meaning imprisonment for the remainder of his life” whereas may be applicable to those sentenced to “imprisonment for life” [Emphasis mine].

The confusion surrounding the issue of life imprisonment without remission was perpetuated by the case of *Swamy Shraddananda v. State of Karnataka*³⁷. There are certain cases wherein the higher courts may be reluctant to endorse death penalty because the case, in their opinion, does not fall in the rarest of rare category but that life imprisonment with remission is probably disproportionate and inadequate. The bench was apprehensive about such situations that the courts, in such situations may feel “tempted” and find themselves “nudged into endorsing the death penalty.”³⁸ Hence to overcome this situation the judiciary propounded a special category for “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 the application of remission.”³⁹ This new sentencing category was further reaffirmed by the majority in *Union of India v. V. Sriharan*⁴⁰. However, this judicial interpretation has been criticised as being violative of the “basic principle of punishment i.e. Reformation” and also for violating the fundamental rights of prisoners under Articles 14 and 21.⁴¹

Firstly, this newly created category of sentence leaves no scope for reformation of the prisoner as he knows that he can never leave the four walls of the prison and therefore there is no willingness to change his mindset. The significance of the reformatory process cannot be undermined in this manner as it leaves the prisoner with no hope whatsoever. Additionally, the mistake committed by the court in *V. Sriharan case* is that they have interpreted “imprisonment for life” as being a “euphemism of imprisonment for 14 years”.⁴² This is incorrect as remission under section 432, CrPC is granted only on the existence of various factors like behaviour, work, jail manual provisions or even the approval of the judiciary. It is not necessary that all life convicts are automatically given 14 years of imprisonment. Further the judiciary seems to have intruded onto the power exercised by the legislature by creating a new category of punishment, that too without amending the other relevant provisions of the Indian criminal law. It has overstepped its limits and violated the doctrine of separation of powers. In fact, U.U. Lalit J. in his dissenting opinion stressed that “it would not be open to the Court to make any special category of sentence in substitution of death penalty and put that category beyond

³⁷ *Shraddananda* (n 19). The three-judge bench of the Supreme Court, in this case, recalled the mechanical manner in which remission in cases of life imprisonment takes place (that normally makes the sentence of life imprisonment an imprisonment for a term of 14 years).

³⁸ *ibid* [92].

³⁹ *ibid* [91].

⁴⁰ *Union of India v. V. Sriharan* (2016) 7 SCC 191.

⁴¹ Mohit Mishra, ‘Validity of Life Imprisonment without Remission’ (2019) 9 CPJLJ 173, 173.

⁴² *ibid* 175.

application of remission, nor would it be permissible to stipulate any mandatory period of actual imprisonment inconsistent with the one prescribed under Section 433-A CrPC.”⁴³

The European Convention on Human Rights (ECHR) in *Vinter v. United Kingdom*⁴⁴, held that a life sentence without the prospect of release is violative of Article 3 of ECHR. Article 3 states that “No one shall be subjected to torture and inhumane or degrading treatment or punishment.” Therefore, even the ECHR views life imprisonment without remission as inhumane and degrading treatment.⁴⁵ This new category of sentence of life imprisonment without remission follows no clear procedure and results in injustice to the prisoner thereby violating his right to human dignity.

Consequently, the two Criminal Law Amendments and the decision in *V. Sriharan case* have reignited the ambiguity surrounding life imprisonment. The lack of coherence and certainty in life sentencing has shrouded the rights of prisoners which in turn allows discretionary misuse. No doubt the attempt was to ensure a harsher life imprisonment, however, the resulting ambiguity has intensified the debate on the working of the Indian criminal justice system.

Multiple Life Sentences

An important question that has vexed the criminal justice system is whether the courts can order life sentences to run *consecutively* or must they always run *concurrently*?⁴⁶ On account of contradictory decisions⁴⁷ pronounced previously by the apex court, a constitution bench of the Supreme Court of India in *Muthuramalingam v. State*⁴⁸ was asked to examine whether it was “legally permissible for a Court to award consecutive life sentences to a convict based on a series of murders for which the convict was tried in a single trial.”⁴⁹

The bench held that although multiple sentences of life imprisonment may be awarded for multiple murders or other such offences, such life sentences cannot be ordered to run consecutively as even a single life imprisonment ensures that the convict remains in jail for the

⁴³ *V. Sriharan* (n 40) [287] (A.M. Sapre J. concurred with the dissent). Also see Vibhute (n 18) 246-47.

⁴⁴ *Vinter v. United Kingdom*, [2013] ECHR 786.

⁴⁵ Mishra (n 41) 175-76.

⁴⁶ K.I. Vibhute, ‘Life sentence’ after ‘life sentence’ in a span of ‘life’: A penal measure!’ (2016) 58(4) JILI 447-456.

⁴⁷ In the cases of *O.M. Cherian v. State of Kerala* [(2015) 2 SCC 501]; and *Duryodhan Rout v. State of Orissa* [(2015) 2 SCC 783] it had been held that life sentences must run concurrently, whereas in *Kamalanantha v. State of T.N.* [(2005) 5 SCC 194]; and *Sanaullah Khan v. State of Bihar* [(2013) 3 SCC 52] it was held that the life sentences must run consecutively.

⁴⁸ *Muthuramalingam* (n 19).

⁴⁹ *ibid* [1].

remainder of his life.⁵⁰ Accordingly, the court unanimously held that the possibility of awarding of consecutive life sentences does not arise.⁵¹ The court relied on section 427(2), CrPC⁵² to reach such conclusion and ordered that multiple life sentences must run concurrently. It further clarified that multiple life sentences would “be superimposed 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.”⁵³ It may be pointed out here that well-established democracies like USA, Canada and South Africa allow consecutive life sentences to run back-to-back.⁵⁴ India seems to have taken an exception to this rule.

It is truly unfortunate that the sentencing theory in India is the least debated segment of criminal law. Resultantly, the judicial decisions and haphazard amendments have added to the exiting anomalies without examining the consequences.

Conclusion

The punishment of imprisonment for life pertaining to its nature and method of execution as provided under the IPC, is anomalous and impractical. The dichotomy in the sentencing policy has created an inconsistency in the provisions under the IPC. The repercussions of not clarifying whether life imprisonment is rigorous or simple are that the executive authorities are subjecting the convicts to a punishment of rigorous imprisonment rather than non-rigorous imprisonment.⁵⁵ This inconsistency has led to unfair and vague application of the sentencing policy.

In the absence of clear precedential principles or legislative rules and norms, judges are usually guided by their own predilections, values and philosophies which eventually decide the fate of the accused or the appellant. Sometimes this unguided judicial discretion has resulted in unfair and arbitrary decisions. Judicial pronouncements have been unable to lay down a strong jurisprudential foundation especially on the matter of sentencing formulations.⁵⁶ The Criminal

⁵⁰ *ibid* [34].

⁵¹ *ibid* [23, 34].

⁵² Sub-section (2) of section 427 is 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.

⁵³ *Muthuramalingam* (n 19) [34].

⁵⁴ Abhinav Sekhri, ‘No consecutive life sentences in India’ (*The Proof of Guilt Blog*, 22 July, 2016) <<https://theproofofguilt.blogspot.com/2016/07/no-consecutive-life-sentences-in-india.html>> 28 June 2021.

⁵⁵ Malik (n 8) 246.

⁵⁶ Vibhute (n 18) 262.

Law Amendment Acts of 2013 and 2018 and the decision of the apex court in *V. Sriharan* demonstrates that reliance is increasingly being placed on longer and harsher sentences. This practice exhibits an inclination towards retributive sentencing formulations which ultimately may result in exacerbating the existing problems with the prison system.

The judicial response to the issue of life sentencing in *V. Sriharan* where the constitutional bench upheld the special category of punishment i.e., imprisonment for more than 14 years but less than the full life span of the life convict and putting it completely beyond statutory remission, is an attempt to crystalise certain principles as guidance for courts on sentencing policy. However, by selectively ignoring sentence shortening measures, the executive authorities are being provided the leeway to indulge in arbitrary execution of sentences.

Despite the discrepancies in the decision-making process, the judiciary has in certain matters played a positive role by trying to overcome the legislative lapses. The apex court deserves appreciation for its decision in *Muthuramalingam* for the clear and authoritative interpretation and also for choosing to adopt a pragmatic approach. Nevertheless, it is imperative that questions regarding life imprisonment are given a serious thought especially by the legislature as the extraordinary state of law calls for an immediate parliamentary intervention to rectify the inconsistencies and incongruities. Further, it is important to remind our honourable judges that in matters where discretion is exercised, it must be done according to well established judicial principles and not arbitrarily.

References

Articles

‘Can life sentence be ‘rigorous’? SC to consider’ (*The New Indian Express*, 20 Dec., 2016) <<https://www.newindianexpress.com/nation/2016/dec/20/can-life-sentence-be-rigorous-sc-to-consider-1551321.html>>

Abhinav Sekhri, ‘No consecutive life sentences in India’ (*The Proof of Guilt Blog*, 22 July, 2016) <<https://theproofofguilt.blogspot.com/2016/07/no-consecutive-life-sentences-in-india.html>>

B.S. Malik, ‘Decision of the Supreme Court in Naib Singh v. State of Punjab: A Critique’ (1996) 38(1) JLI 116-120.

B.S. Malik, ‘Parliament Impairs Federalism: A Critique of Maru Ram v. Union of India’ (1994) JLI 512.

B.S. Malik, 'Punishment of Imprisonment for Life: Misconceived and Unworkable' (1994) 36(2) JILI 237.

K.I. Vibhute, 'Choice between 'Death' and 'Life' for Convicts' (2017) 59(3) JILI 221.

K.I. Vibhute, 'Life sentence' after 'life sentence' in a span of 'life': A penal measure!' (2016) 58(4) JILI 447-456.

Mahima Chowdhary, 'Life Imprisonment: A substitute to Death Penalty?' (*Latestlaws.com*, 11 July, 2020) <<https://www.latestlaws.com/articles/life-imprisonment-a-substitute-to-death-penalty/>>

Mohit Mishra, 'Validity of Life Imprisonment without Remission' (2019) 9 CPJLJ 173.

Nishant Gokhale, 'Life Imprisonment in India: A Short History of a Long Sentence' (2018) 11(3) NUJS L. Rev. 1.

Nitish Banka, 'What is duration of life imprisonment?' (*Lexspeak Legal*, 22 June, 2021) <<https://lexspeak.in/2013/06/what-is-duration-of-life-imprisonment/>>

Vageshwari Deswal, 'Imprisonment as punishment under the IPC: Need to recast our penology' (*The Times of India*, 30 Jan., 2020), <<https://timesofindia.indiatimes.com/blogs/legally-speaking/imprisonment-as-punishment-under-the-ipc-need-to-recast-our-penology/>>

Cases

Ashok Kumar @ Golu v. Union of India (1991) 3 SCC 498

Duryodhan Rout v. State of Orissa, (2015) 2 SCC 783

Gopal Vinayak Godse v. State of Maharashtra (1961) 3 SCR 440.

Kamalanantha v. State of T.N., (2005) 5 SCC 194

Laxman Naskar v. Union of India (2000) 2 SCC 595

Maru Ram v. Union of India, (1981) 1 SCC 107.

Mohd. Munna v. Union of India, (2005) 7 SCC 417.

Muthuramalingam v. State (2016) 8 SCC 313.

Naib Singh v. State of Punjab, (1983) 2 SCC 454.

O.M. Cherian v. State of Kerala, (2015) 2 SCC 501

Pandit Kishori Lal v. King Emperor, ILR (1945) 26 Lah 325.

Ram Kumar Sivare v. State of Chhattisgarh, SLP (Crl.) 10111 of 2016.

Sanaullah Khan v. State of Bihar, (2013) 3 SCC 52

Shri Bhagwan v. State of Rajasthan (2001) 6 SCC 296

Swamy Shraddananda (2) @ Murali Manohar Mishra v. State of Karnataka (2008) 13 SCC 767

Union of India v. V. Sriharan (2016) 7 SCC 1.

Union of India v. V. Sriharan, (2016) 7 SCC 191

Vinter v. United Kingdom, [2013] ECHR 786

Reports

Committee on Prison-Discipline, 'Report of the Committee on Prison-Discipline to the Governor General of India' (1838).

Law Commission of India, 'Indian Penal Code' Report No.42 (June 1971).

Law Commission of India, 'Report on the Punishment of Imprisonment for Life Under the Indian Penal Code' Report No.39 (July 1968).

Report of the Cardew Committee, headed by Alexander Cardew (1919-20).

Statutes

The Code of Criminal Procedure, 1973

The Indian Penal Code, 1860