

# A Life Without Hope – The ‘Other Death Penalty’?

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**Abstract:** *The irreversible nature of death sentences is well understood, but there has been little discussed or understood about the impact of sentences that condemn people to die in prison, with no prospect for release. In India, while conversations favouring abolishing of the death penalty surge every time an execution is impending similar deliberations are conspicuously missing for the ‘other death penalty’ i.e. ‘whole life sentences’. Life imprisonment as a sentence is extensively used in India, with more than 50% of all convicted prisoners being those sentenced to life. In 2015, the Supreme Court of India legitimised the imposition of whole life sentences and sentencing restricting the release of prisoners for a defined period. Ever since, such sentences are gaining popularity and are being imposed in higher number of cases each year. In this context, the paper will outline the existing provisions for the imposition of life sentences in India, including sentences limiting early release. It would also share pertinent data and analyse trends on the imposition of life sentences, in particular whole life sentences in India. It would argue of the imminent need to revisit whole life sentences, in lieu of the grave human rights concerns that besiege such sentences.*

*‘Prison is a second-by-second assault on the soul, a day to day degradation of the self, an oppressive steel and brick umbrella that transforms seconds into hours and hours into days’*

– Munia Abu Jamal<sup>2</sup>

## I. Introduction

The irreversible nature of death sentences is well understood, but what about sentences that condemn people to die in prison, with no prospect for release? In India, while conversations favouring abolishing of the death penalty surge every time an execution is impending, similar deliberations are conspicuously missing for the ‘other death penalty’ i.e. ‘whole life sentences’.<sup>3</sup> These sentences, legitimised by a five-judge bench of the Supreme Court in December 2015 in *Union of India v Sriharan alias Murugan and others*<sup>4</sup> (Sriharan verdict), are gaining popularity in India. Life term sentences now include conditions whereby either the convicted person spends the rest of their lives in prison, or have to serve imprisonment for a fixed term before consideration for early release.

The important question that arises here, which is hitherto unanswered in the Indian context, is whether such life sentences are really an alternative to capital punishment, or whether they are merely a sentence of ‘death in prison’? ‘Whole life sentences’ or ‘life without parole’ sentences have been the subject of much debate internationally. Scholars rebut such sentences by depicting how abandonment of the hope of ever living in a free society infringes upon human dignity, rooting such arguments in the right to personal development.<sup>5</sup>

With little or rather no scholarly debate around these sentences in India, this paper argues that there is an imminent need to revisit such sentences, and truly understand the grave human rights concerns that besiege such sentences. This paper is divided into three sections, the first describes the framework within which life sentences are imposed in India. The second speaks

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<sup>2</sup> Mumia Abu-Jamal, *Live from Death Row* (Addison Wesley Publishing Company 1995).

<sup>3</sup> A ‘whole life sentence’ is a sentence of life imprisonment without any possibility of parole or conditional release. For the purpose of this paper, the term ‘whole life sentence’ also includes sentences where courts place restrictions on consideration for remission prior to the completion of a specific term of his/her sentence.

<sup>4</sup> (2014) 4 SCC 242.

<sup>5</sup> Professor Dirk van Zyl Smit, Catherine Appleton, *Life Imprisonment A Global Human Rights Analysis*, (Harvard University Press 2019) 298.

specifically about whole life sentences, and analyses data on imposition of such sentences post the *Sriharan verdict*. The final section discusses such whole life sentences within the broader human rights discourse, thus emphasising on the need to better understand the impact of such sentences on the physical and mental well-being of prisoners.

## **II. Life sentences in India: Provisions, implications and use**

Under the Indian Penal Code 1860 (IPC) there are more than 50 offences that attract a sentence of life imprisonment. Imprisonment for life as a distinct punishment for certain grave offences was introduced in section 53 of the IPC in 1956. Section 45 of the IPC defines ‘life’ as “the life of a human being, unless contrary appears from the context”. These provisions, when read in conjunction indicate that life imprisonment entails a sentence for the remaining life of the offender. However, there are constitutional and statutory provisions which confer persons sentenced to life imprisonment an opportunity to seek early release from prison. For instance, Articles 72 and 161 of the Constitution of India 1950 confer the power to grant pardons, reprieves, respites or remissions<sup>6</sup> upon the President of India and the Governors of States, respectively.

Statutory law further confers powers on the executive to commute, suspend or remit sentences. Sec 432 of the Code of Criminal Procedure of 1973 (CrPC) prescribes the power of the appropriate government to suspend or remit sentences. Section 433 of the CrPC enumerates the sentences that the appropriate government has the power to commute including life imprisonment. This power is however, not without restrictions. Section 433A ensures that in cases where sentence of death imposed on a person has been commuted to life imprisonment, such person is not released from prison unless he had served at least 14 years. Additionally, Section 55 of the IPC confers powers upon the appropriate government to commute a sentence of imprisonment for life to imprisonment for a term not exceeding 14 years.

There are also provisions which permit prisoners to earn remission under the Prison Rules or other relevant Rules, based on their good behaviour or other stipulated grounds. However, there is ambiguity in the manner in which remission is computed in case of lifers, with the procedure differing across states. The Model Prison Manual 2016 provides that a life sentence shall be taken as imprisonment for twenty years for the purpose of calculation of remission.<sup>7</sup> It further provides that grant of remission to a life convict shall not mean actual remission in his sentence, and forms only one of the factors on the basis of which the Review Board considers the review of the prisoner’s case. The indeterminate nature of a life sentence was affirmed by the Supreme Court in *Maru Ram v Union of India*,<sup>8</sup> wherein the court clarified that unless one quantifies a sentence, the result of subtraction of remission from an indeterminate sentence would lead to an indeterminate quantity.

In India, the process for release of persons sentenced to life imprisonment, is routed through boards (termed as Sentence Review Boards, Advisory Boards, Premature release boards etc.) constituted by the state governments. Such a release, commonly termed as ‘pre-mature release’, is permanent in nature, wherein the prisoner is released from prison, often with no conditions or supervision. A prisoner becomes eligible to be considered for pre-mature release upon completion of conditions as laid down in the state prison rules. There are also provisions which permit for temporary release of prisoners. These are termed as parole or furlough, and

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<sup>6</sup> A pardon means a complete cancellation of the sentence; a reprieve means a temporary suspension of sentence; a respite means awarding less sentence; a remission means reducing amount of sentence and a commutation means changing one punishment to another.

<sup>7</sup> Rule 18.20.

<sup>8</sup> AIR 1980 SC 2147.

are for a specified duration, usually not exceeding 30 days in a year. However, these are available only upon completion of certain conditions laid down under the state prison rules.

The actual implication of life sentences -- whether it means a sentence for the remainder life of offenders and whether such persons have a right to be released -- has been deliberated upon by the Supreme Court on several occasions.<sup>9</sup> It was finally in the *Sriharan verdict* that this issue was laid at rest, with the court affirming that a life sentence means imprisonment for rest of the life of the prisoner, subject, to the right to claim remission, etc. as provided under Articles 72 and 161 of the Indian Constitution and under Section 432 of the CrPC.<sup>10</sup> However, it was clarified further that this right to claim remission does not entitle prisoners to a ‘right’ to be released after completion of a specific term. It only infers a right to be ‘considered’ for release through established procedures.

Life imprisonment as a sentence is extensively used in India, with more than 50% of all convicted prisoners being those sentenced to life. Interestingly, trends since 2010, as reported in the *Prison Statistics India*<sup>11</sup> indicate, that percentage of convicts undergoing life imprisonment has remained more or less constant, hovering between 54.3% to 53.5% from 2010 to 2019 (see Table 1). This trend is in contrast to trends worldwide, which indicate that, between 2000 and 2014, formal life imprisonment sentences worldwide increased by eighty-four per cent.<sup>12</sup> It is however difficult to narrow down the reasons behind this contrasting trend. Since 2016, a new form of life imprisonment viz. sentences which place restrictions on early release or prohibit release altogether, have gained popularity in India. The legal framework and debates surrounding such sentences are discussed in the next section.

Year	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019
<b>% of convicts undergoing life sentence</b>	54.3%	53.6%	54.1%	54.5%	54.5%	55.8%	54.5%	52.6%	53.7%	53.54%
<b>No. of convicts undergoing life sentence</b>	68284	68935	69133	70636	71632	74821	73975	73164	74873	77158

### **III. Imposition of ‘whole life sentences’**

Even with an affirmation that life sentences mean imprisonment till the rest of a persons’ life, courts have time and again voiced concerns over the adequacy of such sentences and whether they were commensurate with the crime committed. This, in turn, led to imposition of ‘whole life sentences’<sup>13</sup> and ‘life sentences which specify the period after which the lifer can be

<sup>9</sup> *Gopal Vinayak Godse v State of Maharashtra* (1961) 3 SCR 440; *State of Madhya Pradesh v Ratan Singh* (1976) 3 SCC 470; *Mohd Munna v Union of India* (2005) 7 SCC 417.

<sup>10</sup> *Union of India v V Sriharan @ Murugan and Others* (2014) 4 SCC 242.

<sup>11</sup> ‘Prison Statistics India’ (Crime Records Bureau, Ministry of Home Affairs, Government of India) <<https://ncrb.gov.in/en/prison-statistics-india>> accessed 25 September 2021.

<sup>12</sup> Professor Dirk van Zyl Smit and Catherine Appleton, ‘Life Imprisonment: A policy briefing, University of Nottingham’ (2018, Penal Reform International) <<https://www.penalreform.org/resource/life-imprisonment-a-policy-briefing>> accessed 26 September 2021.

<sup>13</sup> *Subash Chander v Krishan Lal and others* (2001) 4 SCC 458; *Aftab Ansari v The State of West Bengal* 2014 SCC OnLine SC 825.

considered for remission'<sup>14</sup> in numerous cases since 2001. In 2013, the legislature also amended the IPC and introduced a sentence for imprisonment of life, which would mean the remainder of that persons' natural life.<sup>15</sup> However, no corresponding amendments were made to the CrPC, leaving the power of state governments to grant remission in such cases unfettered.

In 2013, a challenge was raised in *Sangeet v State of Haryana*<sup>16</sup> in 2013, on the power of courts to nullify remission powers of the state governments. This was subsequently challenged, and the legal position was put to rest in the *Sriharan verdict*<sup>17</sup> in 2015. After much consideration, a five-judge constitutional bench of the Supreme Court upheld that the Supreme Court and High Courts could substitute the death sentence, by imposing a special category of sentence, being imprisonment for life or imprisonment for a term in excess of fourteen years, and putting that category beyond application of remission. The court did however clarify that 'a sentence of life imprisonment without remission can be imposed only in cases where the sentencing court in the first instance awarded the death penalty, and which cases have subsequently come to the High Court for confirmation'.<sup>18</sup>

However, while the issue of competence to award sentences was considered, the court did not lay down sentencing principles – leaving it solely at the court's discretion on when to award such sentences. Considering that the Supreme Court<sup>19</sup> as well as the Law Commission of India<sup>20</sup> have critiqued the application of the death sentence as being 'inconsistent, arbitrary and judge centric',<sup>21</sup> one can assume this arbitrariness will percolate into the imposition of such sentences as well. In simpler terms, one wonders that 'while it is difficult enough to judicially determine who should die, it is possibly significantly more difficult to determine who should live but never leave the prison'.<sup>22</sup>

One must note that the *Sriharan* verdict is not without critique. The lack of statutory framework for imposition of such sentences; unsubstantiated assumptions regarding early release of lifers and efforts for rehabilitation; ill-founded notion of these sentences being most appropriate alternative to the death penalty; and a disbelief in rehabilitative principles and reformation of prisoners;<sup>23</sup> are some aspects which necessitate a further review of such sentences.

*An analysis of trends since 2015:* Trends since December 2015 are indicative of how sentences restricting remission powers have gained popularity, with the numbers increasing each year. In

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<sup>14</sup> *Shri Bhagwan v State of Rajasthan* (2001) 6 SCC 296, *Prakash Dhawal Khairnar (Patil) v State of Maharashtra* (2002) 2 SCC 35, *Ram Anup Singh and others v State of Bihar* (2002) 6 SCC 686, *Haru Ghosh v State of WB* (2009) 15 SCC 551.

<sup>15</sup> Indian Penal Code 1860, ss 376A, 370 (6), 370(7), 376, 376D and 376E.

<sup>16</sup> (2013) 2 SCC 452.

<sup>17</sup> *Union of India v V Sriharan @ Murugan and Others* (2014) 4 SCC 242.

<sup>18</sup> As per Chapter XXVIII of the CrPC, when the court of sessions passes a sentence of death, the proceedings are submitted to the High Court for confirmation.

<sup>19</sup> *Santoshkumar Satishbhushan Bariyar v. State of Maharashtra* (2009) 6 SCC 498; *Shankar Kisanrao Khade v. State of Maharashtra* (2013) 5 SCC 546.

<sup>20</sup> This was mentioned several times by the Law Commission of India in its 262<sup>nd</sup> Report on the Death Penalty, wherein abolition of the death penalty was recommended, except in cases of terrorism. Law Commission of India, *The Death Penalty* (Law Com No.262, 2015).

<sup>21</sup> Law Commission of India, *The Death Penalty* (Law Com No.262, 2015) 140.

<sup>22</sup> Nishant Gokhale, 'Life Imprisonment in India: A Short History of a Long Sentence' (2018) 11(3) NUJS L. Rev.

<sup>23</sup> For more details see Madhurima Dhanuka, 'A new form of life imprisonment for India? Life Imprisonment and Human Rights' in Dirk van Zyl Smit and Catherine Appleton (eds) *Life Imprisonment and Human Rights* (Bloomsbury 2016) 119-140.

2016, the Supreme Court commuted death sentences for four persons, but in only one case they passed orders restricting release before completion of 25 years.<sup>24</sup>

In 2017, the Supreme Court commuted no sentences, however, the High Courts placed restrictions on remission powers in 14 of the 58 commutations made.<sup>25</sup> These figures further increased in 2018, wherein 7 of the 11 death sentences that were commuted to life imprisonment by the Supreme Court involved restrictions on the state government's remission powers. In 1 of these cases, the Supreme Court declared that the government could not grant remission till the end of natural life.<sup>26</sup> Similarly, for High Courts, in 10 cases<sup>27</sup> of the 58 commutations, restrictions were placed on remission powers.<sup>28</sup>

In 2019, of the 17 commutations in the 27 decisions made by the Supreme Court, 8 were eligible for remission after 14 years, 3 of them were sentenced to a fixed term of 25 years, 2 others for 30 years fixed term and 4 persons for imprisonment for natural life with no possible release.<sup>29</sup> Similarly in the High Courts, of the 54 commutations made, 27 were eligible for remission after 14 years, 2, 3, 6 and 3 persons were sentenced to fixed term sentences of 20, 30, 30 and 35 years respectively and 13 persons for imprisonment for natural life with no possible release.<sup>30</sup> Even though there appears to be no apparent reason, courts, in 2019, have imposed fixed term sentences and not sentences imposing restrictions on remission powers. The figures from 2020<sup>31</sup> were impacted by reduced court functioning amid the COVID-19 pandemic, yet one finds that whole life sentences and fix term sentences both have been imposed by the courts.

Thus, since 2015, 92 sentences have been awarded with some form of restriction on consideration of remission. Of these 29 persons have been sentenced to whole life sentences. These rising numbers point to the growing popularity of these sentences. Yet, considerations on sentencing principles and implications of such sentences on prisoners, their families, the system etc. are missing. The next section analyses such sentences within the broad human rights framework.

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<sup>24</sup> 'Death Penalty in India: Annual Statistics 2016' (Project 39A, National Law University, Delhi) <<https://static1.squarespace.com/static/5a843a9a9f07f5ccd61685f3/t/5c52d605575d1f9230d8d689/1548932625670/2016Statistics.pdf>> accessed 20 September 2021. The High Courts commuted 44 sentences, however the details of how many imposed restrictions on remission powers is not available, thus has not been included.

<sup>25</sup> 'Death Penalty in India: Annual Statistics 2017' (Project 39A, National Law University, Delhi) <<https://static1.squarespace.com/static/5a843a9a9f07f5ccd61685f3/t/5c52d6206d2a73238d45682f/1548932667514/2017Statistics.pdf>> accessed 20 September 2021; 'Death Penalty in India: Annual Statistics 2018' (Project 39A, National Law University, Delhi) <<https://static1.squarespace.com/static/5a843a9a9f07f5ccd61685f3/t/5e20bda74c57ec0e60fb7895/1579204014716/2018Statistics.pdf>> accessed 20 September 2021.

<sup>26</sup> *Vijay Kumar v State of Jammu and Kashmir* (2019) 12 SCC 791.

<sup>27</sup> 'Death Penalty in India: Annual Statistics 2018' (Project 39A, National Law University, Delhi) <<https://static1.squarespace.com/static/5a843a9a9f07f5ccd61685f3/t/5e20bda74c57ec0e60fb7895/1579204014716/2018Statistics.pdf>> accessed 20 September 2021. Total number of persons is 14.

<sup>28</sup> 'Death Penalty in India: Annual Statistics 2018' (Project 39A, National Law University, Delhi) <<https://static1.squarespace.com/static/5a843a9a9f07f5ccd61685f3/t/5e20bda74c57ec0e60fb7895/1579204014716/2018Statistics.pdf>> accessed 20 September 2021.

<sup>29</sup> 'Death Penalty in India: Annual Statistics 2019' (Project 39A, National Law University, Delhi) <<https://static1.squarespace.com/static/5a843a9a9f07f5ccd61685f3/t/5e25a02b5dfafe47d399d2ad/1579524149035/Project+39A+Annual-Statistics-04-PG-Web.pdf>> accessed 20 September 2021.

<sup>30</sup> *Ibid.*

<sup>31</sup> 'Death Penalty in India: Annual Statistics 2020' (Project 39A, National Law University, Delhi).

**Table 2: Details of cases<sup>32</sup> commuted as per *Sriharan dicta* from 2016 to 2020**

Year	Court	Whole life sentence with no possibility of remission	No consideration of release before						Total
			18 yrs	20 yrs	25 yrs	30 yrs	35 yrs	40 yrs	
2016	Supreme Court	-	-	-	1	-	-	-	1
2017	Supreme Court	-	-	-	-	-	-	-	0
	High Court	4 <sup>33</sup>	-	1	2	5	1	1	14
2018	Supreme Court	1	1	3	1	1	-	-	7
	High Court	2	-	5	4	3	-	-	14
2019 <sup>34</sup>	Supreme Court	4	-	-	3	3	-	-	10
	High Court	13	-	2	3	6	3	-	27
2020 <sup>35</sup>	Supreme Court	-	-	-	3	-	-	-	3
	High Court	5	-	1	8	1	1	-	16
<b>Total</b>		<b>29</b>	<b>1</b>	<b>12</b>	<b>25</b>	<b>19</b>	<b>5</b>	<b>1</b>	<b>92</b>

#### IV. ‘Whole life sentences’ in the human rights context

Despite challenges to life imprisonment itself as a form of punishment in several parts of the world,<sup>36</sup> ‘whole life sentences’ or more commonly termed worldwide as ‘life without parole’ (LWOP) sentences are increasingly becoming popular in other parts. Currently, LWOP sentences are formally imposed in about 65 countries.<sup>37</sup> While most European countries have abolished LWOP sentences, India and China are the newest entrants in awarding punishment in the nature of LWOP. Worldwide, 4,280 types of crimes invite sanction in the form of LWOP sentences.<sup>38</sup> Surprisingly, in some countries LWOP are sanctioned for non-violent crimes as well. For instance, in USA 24% of LWOP serving persons are serving sentences for non-violent

<sup>32</sup> Please note this table refers to the number persons upon whom this sentence was imposed.

<sup>33</sup> The NLU Report states this number as 5, but on verification one case is mentioned incorrectly.

<sup>34</sup> Interestingly in 2019 & 2020, courts awarded fixed term sentences instead of placing restriction on remission powers. (highlighted in yellow in the table).

<sup>35</sup> The figures for 2020 are lower due to impact of COVID-19 on court functioning.

<sup>36</sup> 33 countries have banned its imposition, of which 13 countries have abolished it constitutionally – Portugal, art 30; Angola, art 66, Brazil: art. 5-XLVII; Bolivia, art. 118; Cape Verde, art. 33; Colombia, art. 34; Costa Rica, art. 40; East Timor, art. 32; El Salvador, art. 27; Mozambique, art. 61; Nicaragua, art. 37; São Tomé and Príncipe, art. 37; and Venezuela, art. 44.

<sup>37</sup> Professor Dirk van Zyl Smit and Catherine Appleton, ‘Life Imprisonment: A policy briefing, University of Nottingham’ (2018, Penal Reform International) <<https://www.penalreform.org/resource/life-imprisonment-a-policy-briefing>> accessed 20 September 2021.

<sup>38</sup> Ibid.

crimes.<sup>39</sup> But what are the key challenges raised by LWOP sentences? These must be understood in the context of various international human rights documents, which outline the principles of sentencing and policy formulations that states must adhere to, including India.

Firstly, such sentences are contrary to the principle of rehabilitation. The International Covenant on Civil and Political Rights 1966 (ICCPR), requires State Parties to ‘treat all persons deprived of their liberty with humanity and with respect for the inherent dignity of the human person’. It also emphasises their positive duty to structure their penal systems with the ‘social rehabilitation’ of sentenced prisoners as their primary objective (Article 10 of the ICCPR). In 2013, the European Court of Human Rights (ECtHR), in *Vinter and others v. United Kingdom*, recognised the right to social rehabilitation specifically for life-sentenced prisoners.<sup>40</sup> The ECtHR closely linked the right of rehabilitation with the right to hope, that attached in every individual an inherent human capacity to change, to develop positively and to rehabilitate.<sup>41</sup> It was emphasised by Judge Power-Fudge, in a concurring opinion, that, ‘long and deserved though their prison sentences may be, they retain the right to hope that, someday, they may have atoned for the wrongs which they have committed’.<sup>42</sup>

It is in this reasoning that the crux of sentencing lies. If reformation lies at the heart of sentencing policies, then a LWOP sentence serves no purpose, as they condemn a person to remain in prison for the rest of his/her life. Such sentences are a declaration by the state that the person can never be reformed, and can never be fit for ‘reintegration’ into the society. Surely, prisoners, irrespective of the severity or heinous nature of their offence, must be provided an opportunity to reform themselves. In this context, an observation by the President of the *Mechanism for International Criminal Tribunals* in 2015 is relevant. On a question raised on whether individuals sentenced to life imprisonment could be released, it was emphasised that, ‘the rehabilitative principle and respect for human dignity, inter alia, require that all prisoners, including those serving life sentences, be afforded both a possibility of review of their sentences and a prospect of release’.<sup>43</sup> Thus, rehabilitation of individuals should be central to any criminal penal policy, and policies that afford no such opportunity should be deemed contrary to these principles.

This leads one to ponder, whether a whole life sentence then basically propounds disbelief in a person’s ability to ‘reform’? Is the belief of the sentencing authority, that the person can never correct his/her wrong or simply said can never be ‘reformed’ correct? This line of thinking promotes the belief that some offenders are permanent criminals, that some wrongs are unforgiveable, and that some people who cannot be saved must be banished from the social world—that, in a word, criminality is potentially immutable.<sup>44</sup> To make such an assumption at the time of sentencing, without any opportunity to revisit or review the decision at a later stage, is unjustified. Further, there are no guidelines to inform this decision-making process,

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<sup>39</sup> Ibid.

<sup>40</sup> Cases 66069/09, 130/10 and 3896/10) *Vinter and others v. United Kingdom*, 2013 ECHR [GC].

<sup>41</sup> Professor Dirk van Zyl Smit, Catherine Appleton, *Rethinking Life: A Global Human Rights Perspective* (Harvard University Press 2019) 299.

<sup>42</sup> Cases 66069/09, 130/10 and 3896/10) *Vinter and others v. United Kingdom*, 2013 ECHR Concurring opinion of Judge Power-Forde (emphasis added).

<sup>43</sup> MICT-14-83-ES *Prosecutor v. Galić* [2015] MICT 127 para 19–22. The Mechanism for International Criminal Tribunals is an international court established by the United Nations Security Council in 2010 to perform the remaining functions of the International Criminal Tribunal for the former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR) following the completion of those tribunals' respective mandates.

<sup>44</sup> Joshua Kleinfeld, “Two Cultures of Punishment,” *Stanford Law Review* 68 (2016) 950.

nor any reliance on assessment/evaluation reports on offenders. The decision is left merely at the discretion of the judges. However, in reality several factors can influence the course of a person's life once incarcerated. These may or may not enable prisoners to 'reform' their way of life, but certainly the impossibility of such 'reform' cannot or rather must not be predicted at the time of sentencing.

Further there cannot be any straight jacket formulas to prove that a human being is beyond reform. It may very well be that a person who commits less severe offences like theft may reoffend but one who commits a heinous offence may not. How does one make that assessment at the time of sentencing? And given the ambiguity, writing off people as irreformable, is inappropriate.

In India, though there is no official data on the number of persons serving whole life sentences, as per the data mentioned in the previous section, there are 29 such persons serving these sentences. No studies appear to have been conducted documenting the impact of such a whole life sentence on a prisoner. This in itself questions the purpose of imprisonment – if not reformation and rehabilitation – then what is being sought to be achieved? Studies that have documented the impact of whole life sentences on prisoners, have highlighted that LWOP prisoners experience a profound and growing sense of loneliness and loss over being no longer able to raise children, and the realisation that family members will most likely die while they are in prison.<sup>45</sup> If this is the case, then is the state justified in awarding a sentence that would not only negatively impact the prisoner, but also lead to extended and unending suffering of his/her family members? Would it not cause several mental deteriorations and leave long-lasting negative impressions upon family, particularly children?

If this is so, then one can compare the impact of LWOP sentences to that endured by death row prisoners. How is this different? Retention of such sentences merely in order to avoid capital punishment too does not make for a substantive argument in favour of the imposition of such sentences. 'No sentence should be defended just on the basis of it being the next best alternative to another sentence, without questioning the merits of the sentence itself'.<sup>46</sup> To live with the label of being 'irredeemable'; of being prematurely judged as one not fit to be 'reformed'; and to witness the impact of such unending incarceration on one's family, are factors that negate any distinction between a sentence of death and LWOP. Further, one can argue that, a death sentence at least has a date when the misery would end, but in a LWOP the wait can be long, excruciating and traumatic.

Thus, one can argue that a sentence of LWOP may actually be a harsher punishment than a death sentence in many respects. This needs further exploration, and requires in-depth research into the lives of all persons sentenced to whole life or fixed term sentences.

## **Conclusion**

If death sentences are inhumane, then LWOP are even worse. In both sentences, the prisoner must await the day of his death, or live dreading it. In a death sentence there is still certainty of when, in a LWOP there is none – and the wait to die extends to eternity. A LWOP sentence

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<sup>45</sup> Professor Dirk van Zyl Smit and Catherine Appleton, 'Life Imprisonment: A policy briefing, University of Nottingham' (2018, Penal Reform International) <<https://www.penalreform.org/resource/life-imprisonment-a-policy-briefing>> accessed 20 September 2021.

<sup>46</sup> Madhurima Dhanuka, 'A new form of life imprisonment for India? Life Imprisonment and Human Rights' in Dirk van Zyl Smit and Catherine Appleton (eds) *Life Imprisonment and Human Rights* (Bloomsbury 2016) 119-140.

gnaws away at human life bit by bit. To assume that all persons are incorrigible and beyond reform is erroneous. For those of us who have interacted with convicts undergoing life sentences, their innate 'human' nature and 'potential of reform' cannot be ignored. This is not to say that they should be afforded any sympathy for what they did, but it is to reinforce the belief that 'reformation' is possible. Certainly, one evil act should not empower the courts to write off a person forever. When hope shies away, anger strikes and this anger can manifest in several ways, causing both bodily and mental harm. In this sense, it is probably no different than slowly killing a person.

In India, the increasing use of such sentences, including sentences with restrictions on remission powers of the state is worrisome. With no discourse on the possible impact of such sentences on prisoners or their families, coupled with absence of sentencing principles to guide imposition of such sentences, there is a high likelihood of such sentences becoming the norm rather than exception. It is thus imperative that the jurisprudence surrounding life sentences develops and evolves, and the negative impact of these sentences not only on the person, but their family, be documented.