

Life Imprisonment in India from a Human Rights Perspective: Issues and Challenges

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Abstract

In many jurisdictions of the western world and international criminal courts as well as tribunals, life imprisonment is the most severe penalty that can be imposed today. Numbers of convicts serving life imprisonment is on the rise globally including India. According to the recent statistics released by the National Crime Records Bureau (of India) in 2019, over 53% of India's convicted prisoners are sentenced to life imprisonment. Such huge numbers lead to over occupancy and shortage of space in prisons. Rampant human rights violations of the prisoners are also reported. In this paper, an attempt has been made to throw light on the history of life imprisonment in India, its jurisprudence along with issues and challenges. Prisoners sentenced to life imprisonment may have more of their rights curtailed in comparison to other prisoners. From a human rights perspective, analysis of the rights of convicted prisoners and their human rights has also been discussed. Human rights are violated in the way imprisonment is implemented. Feasibility of the punishment of life imprisonment alongside human rights principles is studied in the paper. Recent developments in the law of life imprisonment including judgments and cases have been mentioned in the paper. Additionally, international conventions and treaties relating to life imprisonment and prisoners' rights are also analyzed.

Keywords: Life imprisonment, India, human rights, violations, punishment, convicts.

I. Introduction

Life imprisonment means sentence for life. In simple word life imprisonment is a form of punishment imposed by the state to a convict for committing heinous crimes such a rape, murder, terrorism etc. It has evolved as an alternative to capital punishment. Life imprisonment is allowed under human rights law and many countries around the world use it to punish some of the most serious crimes. In spite of widespread use of life imprisonment as a punishment in many countries or jurisdictions worldwide, there are problems and controversies associated with it.

In India, British brought the concept of transportation of prisoners as a reform to death penalty or mutilation which was largely in practice during Hindu and Mughal reign. The prisoners of the East India Company were transported to Andaman Island. In the year of 1955, Section 53 of Indian penal code was amended and imprisonment for life was added substituting transportation as a punishment. Thus, in India, life imprisonment was introduced in 1955 and it came into effect

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in 1956. The Section 45 of the Indian penal code gives us the definition of life imprisonment and it reads as “Life”. - The word life denotes the life of a human being unless appears from the context.¹

Life imprisonment tends to snatch the liberties of the inmates by restricting their right to family, right to privacy, right to lead to social life etc. But there are other basic rights which cannot be snatch away by any individual or organization and every single individual irrespective of their nationality, race, sex, social or political or economic background, are entitle to enjoy those rights by virtue of their birth as human being and those rights are known as human rights.

Every individual is entitled to enjoy human rights and prisoners are not an exception. All prisoners are to lead a dignified life and be treated with respect. The inmates are to be provided access to education, adequate medical assistance, adequate food and clean drinking water etc. The modern idea behind prison is for protection of the society and reformation of the convicts. There should be enough provision with a safer environment for all round development of the inmates. Any type of torture or cruelty weather physical or mental should be avoided as much as possible. But in Ground reality, scenario is different. The prisoners undergo through a series of terror in prison.

The condition of the prisons in India in which the inmates have to live is substandard. Some of the condition under which the inmates are compelled to live are- over-crowding, underfunding, violence torture and discrimination, inadequate health facilities, inadequate food and drinking water etc.

Through this paper, an attempt has been made to analyze life imprisonment in India, the condition of prisoners and the effects. International law and human rights with regards to life imprisonment has been discussed.

II. Evolution and History of Life Imprisonment in India

In ancient India i.e., during the Hindu reign, administration of justice was done based on the principle of ‘dharma’. Dharma is code of right conduct.² Dharma refers to a set of obligations that man must abide by it in order to be a part of the society to which he belongs.³ According to Mahabharata, “dharma is created for wellbeing of all creation. All that is free from doing harm to any created being is certainly dharma.”⁴The king is said to derive its authority from dharma. He is obligated to follow the path of dharma.

¹Indian Penal Code, 1860, (IPC), sec. 45

²*Logic and Philosophy Text Book for Higher Secondary Second Year*, (6thedn, Secretary of Assam Higher Secondary Education Council, 2011)

³Dr.Jutika Das and Dr.MainaSarua, *Logic and philosophy*, (4thedn, Assam Book Depot, 2001)

⁴*Logic and Philosophy Text Book for Higher Secondary Second Year*, (6th edn, Secretary of Assam Higher Secondary Education Council, 2011)

During the Mauryan reign, law courts were of two kinds i.e., 'Dharmasthiya' court of civil law and 'Kantakasodhana' or court of criminal law.⁵ Severe forms punishments such as mutilation or death penalty had been imposed to the criminals. However, during the Gupta period, penalties were lenient as there was no scope of death penalties or mutilation; instead there was a system of collection of taxes if a convict was found guilty of breakings laws of the state. A drastic change in administration of criminal justice was witnessed during the Harsha reign. According to a Chinese traveler named Hieun Tsang stated that imprisonment as a form of punishment was accustomed and the prisoners were made to work on road and in public places.⁶ Mutilation, banishments and death sentenced were also imposed to the convict based on their severity of their offences. Mutilation of hands of the thieves was in practice. In more severe crimes such as murder dacoity, treason or sex crimes death penalty was imposed.

After Mughal invasion in India, the system of administration of justice has changed dramatically. Mughal ruler inserted the religious element of Islam while administering justice. Mohammedan laws were used while giving penalties to criminals irrespective of their religion. The Mughal ruler used to rule their regime according to the principles of Quran. Punishment during the Mughal era was rigorous. Penalties such as mutilation of tongue, other body parts or death penalties by hanging, beheading or impaling, banishment, imprisonment, fines and confiscations, forfeiture of rank and title, were widely in practice.⁷

The British ruled India for almost 200 years. In the beginning of seventeenth century, the British government had passed various Charters with a dual motive of strengthening the judicial system as well as to establish British East India Company. The British government tried to bring major changes in administration of justice in order to reform the inhuman practices of Mughal. The British brought the concept of transportation of prisoners. It was seen as a reform to death penalty or mutilation which was largely in practice during Hindu and Mughal reign in India. The prisoners of the East India Company were transported to Andaman Island. Apart from Andaman Island, many convicts were sent to other parts of the world and were compelled to work as labourer in those places where there was huge demand of labourers. The penal transportation had become one of the most popular and productive form of penalty. As the convicts were made to fulfil the labour requirements in infrastructure and other works, the cost of imprisonment could be easily drawn. Transportation of prisoners prevented the Indian prisons from being over crowded.⁸ However, after the year of 1811, transportation of the prisoners from Bengal was

⁵V. Sathiya, 'Judicial Administration during Ancient period in India' (2016) 3 (2), *HuSS* <<https://www.i-scholar.in/index.php/hijrh/article/viewFile/136504/129075>> accessed 10 September 2021

⁶ibid

⁷S. P. Sangar, 'Administration of Justice in Mughal India' (1964) 26, *JSTOR*, 41 <<https://www.jstor.org/stable/44140316>> accessed 10 September 2021

⁸Nishant Gokhale, 'Life Imprisonment In India: A short History Of A Long Sentence' (2018) 11 3 *NUJSLR* 1 <<http://nujlawreview.org/2019/02/08/life-imprisonment-in-india-a-short-history-of-a-short-history-of-a-long-sentence/>> accessed 11 September 2021

stopped and the prisoners convicted for severe crimes were given life sentenced in Alipore jail but the penal transportation was restored in the 1813 due to overcrowding of prisons.⁹

Section 53 of the Indian penal code as enacted in 1880, provided for six or rather seven kinds of punishments, as follows –

“First. - Death;

Secondly. - Transportation;

Thirdly. - penal servitude;

Fourthly. - Imprisonment, which is of two description,

Namely: -

- 1) Rigorous, that is with hard labour;
- 2) Simple;

Fifthly. - Forfeiture of Property;

Sixthly. – Fine”¹⁰

Later, in the year of 1955 Section 53 of Indian Penal Code was amended and imprisonment for life was added substituting transportation as a punishment. Thus, life imprisonment as a punishment for serious offences was introduced and it came into force in 1956. Section 45 of Indian Penal code gives us the definition of life imprisonment and it reads as “Life”. – The word “life” denotes the life of a human being, unless the contrary appears from the context.¹¹

III. Indian scenario

Meaning

From the time when life imprisonment was introduced in the Indian penal system, there has been much deliberation by the Supreme Court regarding the true meaning of life imprisonment.¹² In 1961, this question came up before the apex court in the case of *Gopal Vinayak Godse v. State of Maharashtra and Others*¹³. It was held that unless the sentence of life imprisonment was commuted or remitted by appropriate authorities as per relevant penal provisions of IPC or CrPC, it was to be considered that a prisoner sentenced to imprisonment for life is bound in law to serve the life time in prison.

⁹ Ibid

¹⁰Law commission Of India, ‘Report on Punishment of Imprisonment for Life Under the Indian Penal Code’ Report No. 39 (July 1968) 1

¹¹Indian Penal Code, 1860, (IPC), sec. 45

¹² Madhurima Dhanuka, ‘A New Form of Life Imprisonment for India’ in Dirk van Zyl Smit and Catherine Appleton (eds), *Life Imprisonment and Human Rights* (Hart Publishing 2016)

¹³ *Gopal Vinayak Godse v. State of Maharashtra and Others*, 1961 SCR (3) 440

Again, the question was raised in 1976 in the case of *State of Madhya Pradesh v. Ratan Singh & Ors*¹⁴. The court held that the sentence for life imprisonment does not automatically end after serving 20 years in prison including remissions. The rules in Jail Manual or Prison Act of 1894 could not supersede the penal provisions of IPC. The appropriate authority can exercise its discretion to remit either the whole or a part of the sentence. If it chooses to refuse remitting of the sentence, no writ can be used for the release of the prisoner.

A prisoner who is sentenced for life imprisonment can be considered for remission by appropriate authorities but they have no right to be released after a fixed term in prison as was held in *Mohd. Munna v. Union of India & Ors*¹⁵. The petitioner in this case contended that he should be released from prison as he has already served 21 years in prison and should be granted compensation for his alleged detention beyond the period of 14 years. The court rejected the appeals and held that there is no provision in either IPC or CrPC under which a prisoner sentenced to life imprisonment has to be released after a period of 14 years in prison. Remission cannot be claimed as a matter of right by prisoners serving life imprisonment.

Nature

Regarding its nature, there still remains some confusion. The IPC states two distinct types of punishment under Section 53, one is 'imprisonment for life' and the other being 'imprisonment, which is of two descriptions namely i) rigorous, i.e. with hard labour and ii) simple'. This leaves a dilemma as to what the nature of life imprisonment truly is. There seems to be no clear distinction between life imprisonment and imprisonment which is either rigorous or simple.¹⁶ In the case of *Naib Singh v. State of Punjab*¹⁷, the petitioner served 14 years in prison and appealed that his sentence should be deemed to have been commuted. The Supreme Court rejected his plea and held that the 1955 amendment of the IPC substituted 'transportation' for 'imprisonment for life' but the nature of punishment remains unchanged. The court relied on the judgment of *Pandit Kishori Lal v. King Emperor*¹⁸ where the Privy Council held that a prisoner sentenced to transportation would be considered to be sentenced to life imprisonment with rigorous imprisonment. However, an important point was missed by the court while considering the case of Pandit Kishori Lal; the Privy Council relied on Section 58 of IPC which states that in the time being when a prisoner awaits transportation, they would be subject to rigorous imprisonment. Interestingly, Section 58 was later repealed in 1955. Therefore, the legal basis for considering life imprisonment to be rigorous may be questionable.¹⁹ Even the Law Commission in their reports has mentioned that the nature of life imprisonment needs a legislative clarification. Moreover, the Committee on Prison Discipline in 1838 stated that prisoners should be subject to

¹⁴ *State of Madhya Pradesh v. Ratan Singh & Ors*, 1976 AIR 1552

¹⁵ *Mohd. Munna v. Union of India & Ors*, 2005 Cr.LJ 4124 SC

¹⁶ Nishant, 'Life Imprisonment in India' (n 8)

¹⁷ *Naib Singh v. State of Punjab*, (1983) 2 SCC 454

¹⁸ *Pandit Kishori Lal v. King Emperor*, AIR 1945 PC 64

¹⁹ Nishant, 'Life Imprisonment in India' (n 8)

hard labour for a certain shorter period of time which is to be followed by hard work which was profitable without any aggravations.

There have been numerous cases where a sentence for death penalty has been substituted for life imprisonment. In *Subhash Chander v. Krishan Lal*²⁰ and others, the court held that the appellant would be subject to life imprisonment for the rest of his life and will not be entitled to commutation under any available measures. However, in this case, it was the appellant himself who appealed that in the future he would not seek any commutation if he was to be sentenced to life imprisonment. Relying on this verdict, similar orders were passed in more cases. Additionally, in some other cases, a minimum fixed tenure of time an inmate who is sentenced to life imprisonment must stay in prison before getting commutation has been adopted.

Duration

The issue of length or duration of life sentence was addressed in the case of *Swamy Shraddananda v. State of Karnataka*²¹, where after much deliberation and after relying on past judgments, the court held that the convict would be imprisoned for the rest of his life instead of death penalty. It was further held that he cannot appeal for remission. In this case, it was argued that there is a need to make a special category by virtue of which instead of death penalty, a sentence for life imprisonment can be given without an option of remission. But this stance was opposed in *Sangeet v. State of Haryana*²².

The infamous and brutal Delhi rape incident in 2012 prompted a reform in the IPC and an amendment was made in 2013. The Justice Verma Committee on Amendments to Criminal Law 2013 recommended some changes which were later incorporated by the legislature. Section 376A was added into IPC which states that a person, who commits the crime of sexual assault and inflicts injury to the victim that causes death or a persistent vegetative state, shall be subject to life imprisonment. The period of imprisonment shall not be less than 20 years and it can extend to the natural life of the prisoner or till death. Subsequently in response to another incident involving children in 2018 led to Criminal Law Amendment Act 2018 which brought in provisions for life imprisonment and even death penalty for those committing the crime of rape against minors.

Judicial innovation

In 2015, the Supreme Court in *Union of India v. Sriharan alias Murugan and others*²³ was asked to consider the validity of the court's power to substitute death penalty by life imprisonment and restriction of remission in such cases. The Constitution Bench in this case made some far reaching observations. It was held that the court can indeed place a life sentence beyond

²⁰ *Subhash Chander v. Krishan Lal*, (2001) 4 SCC 458

²¹ *Swamy Shraddananda v. State of Karnataka*, (2008) 13 SCC 767

²² *Sangeet v. State of Haryana*, (2013) 2 SCC 452

²³ *Union of India v. Sriharan alias Murugan and others*, (2016) 7 SCC 1

remission for a pre determined time. The decision was however not unanimous and was split 3:2. The dissenting judges made a point that creating such a special category would make for a new type of punishment. The court made the decision after relying on a few arguments. The court said that the IPC does not strictly lay down any prohibition on the imposition of imprisonment for any specific period within the prisoner's life span.²⁴ The CrPC via Section 433A only lays down a minimum time period before which remission cannot be given but a maximum limit for imprisonment is not stated which leaves it for the court to decide. The Court affirmed that there was enough reason to rule out remission and punish the convict for life imprisonment having regards with the proportionality of the crime committed. Further, it was held that the rights of victim was above and was to be given more weight than that of the accused.

After establishing the lawfulness of the court's decision, it went on to lay down some guidelines in this regard. A sentence of similar nature can only be imposed in cases where death penalty was awarded previously. Further it was stated that the power to impose such a punishment will be rested in the hands of high courts and the Supreme Court, not subordinate courts.

There are some major shortcomings in this judgment. The interpretation of available statutory provisions to legitimize the use of life imprisonment without remission is not accurate and unsatisfactory. In the absence of any relevant statutory provision that allows or prescribes for life imprisonment without remission, the power of the court in this regard is rather questionable. In *Vikram Singh alias Vicky and another v. Union of India and others*²⁵, the court held that prescribing punishment for crimes rest with the legislature and not courts and that the courts ought to show deference to the wisdom of the legislature. The presumption that a considerable number of prisoners sentenced to life imprisonment are released after 14 years is erroneous and ill founded. It is not backed by sufficient credible data. In order to prevent arbitrary decision making in granting of remission and to ensure that all checks are adhered to, the Supreme Court in *Mohinder Singh v. State of Punjab*²⁶ and *Sangeet and another v. State of Haryana*²⁷ held that the decision to grant remission has to be well informed, reasonable and fair to all concerned. Adhering to it, the Ministry of Home Affairs issued directions to conduct proper checks and evaluate the cases on an individual basis.

Therefore it will be wrong to conclude that a life imprisonment is normally a sentence of 14 years. Reliance upon this case in Sriharan brings to light the amount of distrust the judiciary has for the executive in their power of granting remission.²⁸ A sense of fear would prevail in the minds of prisoners who would have appealed for remission. This can also lead to lower courts using death penalty more liberally knowing that such prisoners can get a life imprisonment without remission instead. The lack of clarity and uniformity in the court's approach to life

²⁴ Madhurima, 'A New Form of Life Imprisonment for India' (n 12)

²⁵ *Vikram Singh alias Vicky and another v. Union of India and others*, (2015) 9 SCC 502

²⁶ *Mohinder Singh v. State of Punjab*, (2013) 3 SCC 294

²⁷ *Sangeet and another v. State of Haryana*, (2013) 2 SCC 452

²⁸ Madhurima, 'A New Form of Life Imprisonment for India' (n 12)

imprisoned is well emphasized. There is a need for consistency in imposing sentences for life imprisonment. Unless the court reviews and considers this aspect, the inconsistency will continue to result in varied lengths of imprisonment.²⁹

IV. Prison Condition in India

It is a well-known fact that life in prison is miserable and prisoners in India are not an exception to this fact. The prisoners go through a series of terror in prison. The basic ideas behind imprisoning the convicts are –i) for security of the society so that the convicts do not get any further scope to cause harm to the society. ii) to inculcate fear in the mind of the convicts to avoid repetition of their crimes. iii) to reform the inmate so that they could come out being a better version of themselves and be productive assets to the society. But in ground reality, the third idea is rarely achieved. Some of the rights such as right to move freely, right to family, right to privacy are taken away from the prisoners which is in fact necessary for the protection of the society, but other basic rights such a right to life, right to equality before law, right to food and water, protection from torture, right to family visits cannot be taken away from the inmates. The United Nations has also laid down ‘Basic Principles for the Treatment of Prisoners’ which was adopted and proclaimed by General assembly resolution 45/111 of 14th December, 1990. The Basic Principles for the Treatment of Prisoners includes that the prisoners shall be treated with respect and value as human beings; the prisoners shall not be discriminated on the basis of race, colour, sex language, religion, political or other opinion, national or social origin, property, birth or other status; it is desirable to respect religious beliefs and cultural percepts of the prisoners, access to health services to the prisoners, abolition of solitary confinement as a punishment.³⁰ But the actual scenario is far different as application of these basic rights can be seen rarely.

In India, the condition of prisons in which the inmates have to live is substandard. There are various problems which the inmates face during their period in jail. And when it comes to the prisoners of life imprisonment it is horrifying to even imagine as they are made to spent their life in the prison till their last breath under terrible condition.

Some of the condition of the prisoners in India is given bellow-

- i. Overcrowding of prisoners: Overcrowding is one of the most alarming factors in deteriorating the condition of the prisons in India. In the present world scenario where, global pandemic is taking a toll on all our lives in various ways, and social distancing is playing strong role as a preventive measure, overcrowding has become a serious concern. The main reason behind overcrowding of prisons in India is that the population of under trial make a huge figure.

²⁹ Ibid

³⁰ ‘Basic Principles for the Treatment of Prisoners’ (1990)

<<https://www.ohchr.org/en/professionalinterest/pages/basicprinciplestreatmentofprisoners.aspx>> accessed 21 September 2021

- ii. Shortage of staff: The prisons in India have a very low staff for attending the prisons. The ratio between the prison staff and population is approximately 1:7, which mean that only one prison officer is available for 7 prisoners.³¹
- iii. Under funding: Under funding of prisons in India lead to various problems. Capital is one of the most important factors in improving the basic conditions of prisons. Lack of adequate funds lead to low infrastructural development, inadequate medical assistance to the inmates, low staff etc.
- iv. Violence in prison: Violence in prisons has become a growing concern. Rapes, theft, physical assault have been increasing rapidly.

Apart from the conditions mentioned above, there are other conditions under which the inmates are compelled to live such as inadequate medical assistance, discrimination, torture, abuse by the staff and so forth. The inmates of life imprisonment are more severely affected as they spent their entire life in prison soon after their conviction. Many of the inmates suffer from various mental health issues such as delusion, paranoia, depression, anxiety disorders etc. The prisoners are also subjected to various social effects. The prisoners lose family attachments and become completely secluded from the social and family life.

V. What does International law say?

Life imprisonment is allowed under human rights law, and many countries around the world use it to punish some of the most serious crimes. Although each jurisdiction may have its own system of execution of the sentence, international human rights laws have set applicable limits.³² In spite of the widespread use of life imprisonment as a punishment in many countries or jurisdictions worldwide, there are problems and controversies associated with it. Several countries that have replaced capital punishment with life imprisonment are facing criticism over it and it is prohibited under Protocol 13 of the European Convention on Human Rights (ECHR) in the European system.³³

Life imprisonment is not in itself violative of any legal framework. However, there are certain limitations placed on its use and ambit. The prospect of release of prisoners serving sentence of life imprisonment has been emphasized by the European Court of Human Rights (ECtHR) and the United Nations Human Rights Committee as well. The prospect of release should be both a de jure and de facto possibility.

³¹ Shaik Ali, 'Prison in India : an Overview' (2014) 4 (12)IJAR <[https://www.worldwidejournals.com/indian-journal-of-applied-research-\(IJAR\)/recent-issues_pdf/2014/December/December_2014_1417447136_160.pdf](https://www.worldwidejournals.com/indian-journal-of-applied-research-(IJAR)/recent-issues_pdf/2014/December/December_2014_1417447136_160.pdf)> accessed 13 September 2021

³² Public International Law & Policy Group NL, 'The Legality of Life Imprisonment: Comparative Analysis of International, European, and Dutch Law' (2016) Legal Memorandum <<https://pilpnjcm.nl/wp-content/uploads/2016/09/PILPG-NL-Life-Imprisonment-Comparative-Analysis-26.05.16.pdf>> accessed 14th September 2021

³³ Aleksandra Gruevska Drakulevski, 'Current Challenges In Conforming Life Imprisonment To The International And European Standards' (2019) Law Review - Special Issue - Proceedings from the Annual International Conference - 30 years after the fall of the Berlin Wall <<http://pf.ukim.edu.mk/wp-content/uploads/2020/05/12.-Aleksandra-Gruevska-Drakulevski-1.pdf>> accessed 17th September 2021

In 1946, the Universal Declaration of Human Rights (UDHR) has endorsed via Article 1, the significance of human dignity and rights. Similarly, Article 5 of UDHR prohibits torture, cruel, inhumane or degrading treatment or punishment.³⁴ Various regional conventions also laid down rules on the same lines like European Convention on Human Rights (Article 3), American Convention on Human Rights (Article 5), and African Charter on Human and Peoples' Rights (Article 3).³⁵

The rights to human dignity, as well as prohibition of torture and cruel, inhuman, and degrading treatment or punishment were given much relevance at the global level as concepts driving the regulations of prison conditions by the International Covenant on Civil and Political Rights (ICCPR).³⁶ The ICCPR came into force in 1976 and has been monumental in recognizing the rights of prisoners. Article 7 provides that "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation." and Article 10 (1) provides that "All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person." Another notable and relevant provision is Article 10 (3) which provides that "The penitentiary system shall comprise treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation. Juvenile offenders shall be segregated from adults and be accorded treatment appropriate to their age and legal status."³⁷ The prohibition instated by Article 7 is reiterated by the United Nations Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, which entered into force in 1987.³⁸ India has still not ratified UNCAT.

In relation to children, Article 37 of the United Nations Convention on the Rights of the Child mentions that state parties have to ensure "No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age".

A landmark case concerning the prospect of release of prisoners sentenced for life imprisonment is *Vinter and others v. United Kingdom*³⁹ wherein the European Court of Human Rights (ECtHR) held that for a life sentence to remain compatible with Article 3 of the European

³⁴ Available at: <https://www.un.org/en/about-us/universal-declaration-of-human-rights>

³⁵ Dirk van Zyl Smit & Catherine Appleton, *Life Imprisonment A Global Human Rights Analysis* (Harvard University Press 2019)

³⁶ Ibid

³⁷ Available at: <https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>

³⁸ Available at: <https://www.ohchr.org/en/professionalinterest/pages/cat.aspx>

³⁹ *Vinter and others v. United Kingdom*, App Nos 66069/09, 130/10 and 3896/10, Grand Chamber Judgment of 9 July 2013

Convention on Human Rights, it had to be reducible, or in other words there had to be a prospect of the prisoner's release and the possibility of a review of the sentence.⁴⁰

VI. Human rights and life imprisonment

Life imprisonment tends to snatch the liberties of the inmates by restricting their right to family, right to privacy, right to lead a social life etc. But there are other basic rights which cannot be snatched away by any individual or organization. Every single individual irrespective of their nationality, race, sex, social or political or economic background, are entitled to enjoy those rights by virtue of their birth as human beings and those rights are known as human rights. Right to life, right to dignity, right to education, right to be treated fair by court, equal before law, no torture and inhuman treatment, no slavery, right to trial, right to as asylum, freedom of thought and religion etc. Thus, human rights cannot be taken away from any individual including any type of prisoners no matter how heinous their crime be. All the prisoners are to lead a dignified and be treated with respect even in the prisons. The inmates are to be provided access to education, adequate medical assistance, adequate food and clean drinking water etc. There are two main aims of prison i.e., reformation of the inmate and protection of the society.

The united nation in “A Pocket Book of International Human Rights Standards for Prison Officials” laid down various rights of prisoners such as⁴¹-

- i. Right to Physical and Moral Integrity: Life in prison is harsh as the inmates have no liberties however all inmates shall be treated with dignity and respect, no matter how severe the crime committed by inmate. Human dignity can never be taken away from any person as they are human by birth. The inmates shall not undergo any type of torture or ill treatment. The prisoners shall be provided promptly with written information about the regulation which applies to them and on their rights and obligation.⁴² All prisoners shall receive adequate medical assistance.
- ii. Right to an Adequate Standard of living: All the inmates shall be provided with adequate standard of living which includes access to adequate food and drinking water, clothing, accommodation and bedding. Adequate accommodation includes enough supply of air, lighting, heating, floor space and ventilation.⁴³ Adequate access to hygienic food, drinking water, and clothing are human rights. All inmates shall also be provided with adequate clothing as they are not allowed to use their own clothing with the facilities to wash and clean their clothes.
- iii. Health Rights of Prisoner: Access to adequate medical assistance is a human right. Every prisoner should be given a medical examination soon after their admission to the

⁴⁰ Available at: https://www.echr.coe.int/documents/fs_life_sentences_eng.pdf

⁴¹ ‘Human Rights and Prisons: Pocket of International Human Rights Standards for Prison Officials’ (2005) <<https://www.un.org/ruleoflaw/blog/document/human-rights-and-prisons-pocketbook-of-international-human-rights-standards-of-international-human-rights-standards-for-prison-officials/>> accessed 18 September 2021

⁴² Principles on Detention or Imprisonment, principle 13: SMR, rule 35

⁴³ SMR, rule 9 (2)

jail.⁴⁴ There shall be proper health facilities available to the prisoners. Any inmate diagnosed with serious health issue or mental sickness shall be transferred to hospital or to a specialized prison hospital.⁴⁵

- iv. Making Prisons Safe Places: The modern idea behind prison is protection of the society and reformation of the convicts. There should be enough provisions with a safer environment for all round development of the inmates. Any type of torture or cruelty whether physical or mental should be avoided as much as possible. Restraints may be used only as a precaution against escape during transfer, for no longer than strictly necessary and provided that they are removed when the prisoner appears before a judicial or administrative authority; or on medical grounds.⁴⁶ Chains and irons shall not be used as restraints.⁴⁷
- v. Making Best use of Prisons: as it has been mentioned above, the main idea of prison is reformation and social rehabilitation⁴⁸. There shall be enough provision for the development of the inmates. There shall be enough scope so that the inmate can utilize their potentialities to its best. Vocational training and education shall be provided. There shall be enough provision within the prison to work and earn. All the prisoners, those who are fit shall work. the inmates should be able to send a part of their earning to their families.
- vi. Prisoners Contact with the Outside World: In the prison there shall be adequate provision so that the prisoners remain updated with outside world. The families of the inmates can visit them. Prisoners are to be granted their request to be held in a prison near his or her home as soon as possible.⁴⁹
- vii. Complaints and Inspection Procedure: Every prisoner shall have the right to complain in case of violation of their rights. They are not to be treated brutally. The complainant shall have the provision to bring the matter before a judicial or other authority if their complaint is rejected or not responded to it in a timely manner.⁵⁰

The UN in “A Pocketbook of International Human Rights Standards for Prison Officials” mentioned about Life and long-term prisoners under Special categories of prisoners. Under this, UN talks about various aspects of life and long terms prisoners. No convicts who are under the age of 18, shall be given life imprisonment.⁵¹ The prison shall focus on the reformation of the inmates. There shall be provision available to them in order to minimize the difference between the normal life or life at liberty and prisoner’s life.⁵² The prisoners shall be treated in a manner so that their self-respect and dignity does not get harm. There shall be adequate provision to

⁴⁴Principles on Detention or Imprisonment, principle 24: SMR, rule 24

⁴⁵SMR, rule 22 (1) and (2)

⁴⁶ SMR, rule 33

⁴⁷SMR, rule 33

⁴⁸ICCPR, article 10, para 3

⁴⁹ Principles on Detention or Imprisonment, Principle 20

⁵⁰ Principles on Detention or Imprisonment, Principle 33, para 4

⁵¹ CRC, Article 10, para 3

⁵² SMR, Rule 60 (1)

communicate with their family or friends under necessary supervision.⁵³ Once the inmate serves a sufficient period of time in the prison to mark their seriousness of their offence, they should be eligible for release into the society.⁵⁴

VII. Conclusion

Life imprisonment is one of the most extreme forms of punishment. In India, life imprisonment has a long history and is closely intertwined with the long British colonial past. The British brought the concept of transportation of prisoners. Later, the law was amended and transportation was substituted by life imprisonment. The judicial interpretation and policy pertaining to life imprisonment in India is aberrant and is not justified. There is no clarity about life imprisonment, whether it is simple or rigorous and what that means for the prisoners. The stand taken by court in various judgments like in *Sriharan*, is detrimental towards prisoners sentenced to life imprisonment and is violative of the right to remission. The clear distrust and non-cooperation among judiciary and the executive in this matter is very evident. The trend of moving towards harsher punishments and allowing life imprisonment for a pre determined time without the option for remission shows that there is a tendency to rely on retributive justice and deterrent approach of criminology.

International law and human rights must be respected in the matter of life imprisonment. Human dignity and liberty of the prisoners must be protected. Social rehabilitation of the prisoners should be the main aim of life imprisonment. Efforts should be made to improve the conditions of the prison and to minimize the ill effects of life imprisonment. Particular attention should be given in making sure that the prisoners continue to have contacts with their family and outside world. Moreover, the prisoners sentenced to life imprisonment should be able to have access to counseling, support and assistance.

India in particular has a long way to go and the judiciary along with the executive should come up with concrete policies in the matter of life imprisonment. Any confusion or inconsistency in this regard should be clarified and dealt with.

⁵³SMR, Rule 37

⁵⁴ Resolution (76) 2 of 17 February 1976 of the committee of Ministers of the Council of Europe on treatment of long-term prisoners