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Imprisonment without Remission: A Dilemma in the New Sentencing Policy

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ABSTRACT

Every person has a right to be respected and treated with dignity, whether they are dressed in a suit or behind bars. Typically, prisoners are stigmatised; the government attempts to limit their contact with society and restrict their mobility. The new sentencing policy of imprisonment without remission eliminates the possibility of a prisoner being reformed which is a contradiction to the reformative theory which the nation seeks to achieve. But whether the person is allowed to roam free in the society after committing an offence is also a serious question which needs to be looked into especially when a serious offence is committed. Generally, it is observed that whenever a person has committed some serious offences, the society also is not ready to accept the person after he is released. But the rights of such persons also cannot be denied and he must be released keeping in view other factors and his conduct after the commission of offence The paper seeks to examine remission in the light of the societal structure, also incorporating the minimum sentencing criterion imposed by the courts in the recent year.

Keywords*: Reformation, Remission, Life Imprisonment, Arbitrary, Rehabilitation.*

I. INTRODUCTION

The recent new imprisonment policy where the courts have taken power into their hands of granting punishments without remission seems to be a shift from the reformative theory of punishment and an inclination towards the retributive one. Justice Oliver Wendell Holmes[3] once remarked that individuals accused of crimes often focus less on legal principles and more on how courts will decide their cases. They are less concerned as to what law is and more concerned as to how law would be implemented in their case. This observation underscores the practical importance of sentencing and its consequences. Civilized societies, while upholding the rule of law, also recognize the value of mercy. Pardoning powers, remission, and parole are not privileges but mechanisms designed to ensure humanity and fairness in administering justice. Such measures serve both individual convicts and society by fostering reform and

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[3] Holmes Oliver W."The Path of Law" *Harvard Law Review,* vol.110,1996, p. 991.

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rehabilitation.

Remission refers to a reduction in a convict's sentence, contingent on specific conditions laid down by law without changing its nature. It differs from commutation in the sense that when a sentence is commuted, the nature of punishment is altered. These are the tools designed to support rehabilitation and re-socialization, enabling prisoners to reflect on their actions, improve themselves, and reintegrate into society. Despite their crimes, prisoners retain their rights to dignity and respect, which the state must safeguard.

Punishments serve four primary purposes: deterrence, retribution, rehabilitation, and reformation.[4] Among these, reformation stands as the cornerstone of modern penal systems. Reformative justice recognizes that prisoners are individuals capable of change. Denying them the opportunity for remission disregards this potential and risks turning punishment into mere retribution. It is imperative to strike a balance where society's need for justice does not erode the convict's hope for a second chance. The theory proposes that crime is not committed against the society, but people, emotions and relationships.[5]

The idea is not merely to punish but to inspire personal growth so that when they are released they can be reintegrated back into the society. However, life imprisonment without remission conflicts with this principle, offering no incentive for prisoners to reform.

Through the concept of remission and reformative justice, it enables convicted individuals to find redemption while they restart their lives outside of prison walls. The 'imprisonment without remission' approach satisfies public calls for severe retribution in extreme situations yet we must keep rehabilitation as the central goal.

Within this framework of restorative justice, criminals are recognized as changeable human beings. When authorities deny remission to prisoners, they reject the transformative possibilities in that convict and that can transition punishment toward retribution alone. Maintaining balance between public justice requirements and prisoner opportunity for reintegration demands constant evaluation of this balance. This new sentencing policy evolved by courts by sentencing a person to imprisonment without remission seems to be a serious flaw as it closes all gates for the prisoner to transform himself and reintegrate back into the society.

When the judiciary exceeds its constitutional boundaries by imposing sentencing restrictions it weakens the conceptual framework of separation of power amongst the different wings. The

[4] Vibhute KI. *PSA Pillai Criminal Law*. LexisNexis, 2023.
[5] Marwah Akansha. "Restorative Justice and Reformation of Offenders" *ILI Law Review*, (Winter issue) 2020, p. 157.

new policy of imprisonment without remission obstructs the constitutional principle by eliminating practical opportunities for rehabilitation from the system. Life imprisonment should preserve hope, because taking away possibilities for change violates fundamental principles about human's ability to become contributing member to the society. Criminal remission decisions should employ a complete assessment that reviews multiple factors which extend beyond judge opinions and prisoner's conduct.

II. LEGAL FRAMEWORK OF REMISSION IN INDIA

The Constituent Assembly on 29th December, 1948[6] took up for debate the President's and Governor's power to grant pardon, remission or commutation, etc. The debate, however, focused on federal powers and separation of power. It was argued whether the Governor should also be given power as that of President when we are living in a federation. The proposal was to delete clause 3 of the Draft Article 59 where it was stated that the President will not interfere in the matters where the Governor is having the authority to remit or commute sentence as this was not in sync with the federation adopted by the country having a strong center. However, this argument was rejected and it was stated that the Governor also needs to possess extraordinary powers for dealing with his subjects as he is better informed of it than the President. Moreover, there are also checks on the power of the Governor by the executive.

Article 72 and Article 161 of the Constitution[7] grants the power to the President and Governor respectively, the authority to remit, commute, respite etc. subject to certain restriction incorporated under the same article itself. However, this power has to be exercised on the aid and advice of council of ministers as held in various cases.[8]

The Bhartiya Nagarik Suraksha Sanhita, 2023 deals with the power of appropriate government to remit or commute sentences exercising their discretion based on the government's remission policy. Sections 473-475 of the said Act[9] deals in details about the said power subject to certain conditions provided under them.[10]

III. REMISSION AND LIFE IMPRISONMENT: JUDICIAL EVOLUTION

Life imprisonment is a severe punishment second only to the death penalty. Over time, judicial pronouncements have clarified its meaning and implications. Earlier, there was a lot of

[6] VII Constituent Assembly Debates, Available at: http://164.100.47.194/loksabha/writereaddata/cadebatefiles/vol7.html
[7] The Constitution of India, 1950
[8] Rangrajan R., "The laws around remission policy" The Hindu, 10 January 2024, https://www.thehindu.com/news/national/the-laws-around-remission-policy-explained/article67728274.ece
[9] The Bhartiya Nagarik Suraksha Sanhita, 2023
[10] Ram Jethmalani & D.S. Chopra, The Code of Criminal Procedure, 1973, p. 2389 (1st ed. 2015)

confusion in understanding the term of life imprisonment. While some argued that it means that whole of the person's life while others contradicted by stating that it means 20 years as stated under Section 57 of the Indian Penal Code, 1860. In the catena of decisions and also in the case of *Mohd. Munna v. Union of India*,[11] the apex court ruled that life imprisonment does not automatically entitle a convict to release after 14 or 20 years unless remission is granted. This distinction underscores the judiciary's emphasis on maintaining the sanctity of life sentences while allowing for executive discretion in exceptional cases. This positions holds good also when we are dealing with the new penal law i.e. The Bhartiya Nyaya Sanhita, 2023 under Section 6. It was also stated in the cases that resort to this section is only to be taken when a fraction of term is to be calculated and not determining the extent up to which the life imprisonment may be given.

In *Gopal Vinayak Godse v. State of Maharashtra*[12], it was held that "A sentence of transportation for life or imprisonment for life must be treated as transportation or imprisonment for the whole of the remaining period of the convicted person's natural life." In *Maru Ram v Union of India*[13], the constitution bench of the apex court held that "remission is not a liberty that can be claimed, even if a person has served 20 years in prison, and that a life sentence means nothing less than lifelong imprisonment".

However, recent trends in sentencing have introduced a special category of life imprisonment i.e. 'life imprisonment without remission'. In *Swamy Shraddanand v. State of Karnataka*[14], the Supreme Court upheld such a sentence, arguing that certain heinous crimes warrant punishment beyond ordinary life imprisonment but below the death penalty. Although this addresses public sentiments to a greater extent as it is aligned with retribution and vengeance but it falls apart when we test this on the basis of reformative justice.

(A) Remission Under the BNSS

Under Section 473 of The Bhartiya Nagarik Suraksha Sanhita, 2023[15] the government has authority to shorten imprisonment period or reduce sentences subject to prescribed conditions. Under the remission process the original convictions is maintained while shortening the length of execution. The authorities possess the administrative authority to combine justice and clemency in their punishment decisions.

[11] AIR 2005 SCC 417.
[12] Gopal Vinayak Godse v State of Maharashtra, AIR 1961 SC 600.
[13] (1981) 1 SCC 107.
[14] (2008) 13 SCC 767.
[15] Jethmalani Ram and Chopra D.S. *The Code of Criminal Procedure, 1973*.Thomson Reuters,2015.

The need for procedural safeguards becomes essential to stop remissions administered arbitrarily. Before granting remission the government must receive advice from the original sentencing court as stated in Section 473(2). This ensures transparency and accountability. Judicial scrutiny, as seen in cases like *Maru Ram*[16] and *Sangeet v. State of Haryana*[17], reinforces the principle that remission should be granted based on merit rather than discretion. To ensure this various procedural and substantive checks have been imposed so that misuse of this power is not done.

(B) Checks on Arbitrary Remissions

The potential for arbitrary remissions necessitates procedural and substantive checks. Procedurally, remission applications must be initiated by the convict or their representative on his behalf. Governments cannot act *suo motu* and must adhere to established guidelines.[18] Whenever, an application is so made, the opinion of presiding judge of the trial court must be sought.[19] This also means that the collective release of convicts cannot be granted on festive occasions[20] as each release requires a separate analysis on the basis of facts and circumstances, transformation of the accused, his behavior, etc.

Substantively, Section 475 of the BNSS[21] imposes a mandatory 14-year imprisonment period for life convicts before they become eligible for remission in two situations-

Firstly, when life imprisonment is imposed on the person where death is also one of the prescribed punishment for that offence, and Secondly, death punishment was given which was commuted to life imprisonment under Section 474.[22] This provision is similar to 433A of The Code of Criminal Procedure, 1973[23] which was added in 1978. This provision aims to prevent premature releases in serious cases as earlier even those who committed serious offences were out of jail in a few years. Judicial interpretations, such as those in *State of M.P*. v. *Ratan Singh*[24] and *Ashok Kumar* v. *Union of India*[25], reaffirm the principle that remission should not undermine the gravity of life sentences.

In the recent famous case of *Bilkis Bano*[26], all the 11 convicts were released by the Gujarat

[16] (1981) 1 SCC 107
[17] AIR 2013 SC 447
[18] The Bhartiya Nagarik Suraksha Sanhita, 2023, S. 473
[19] Jethmalani Ram and Chopra D.S. *The Indian Penal Code, 1860*.Thomson Reuters, 2015.
[20] Gopal Vinayak Godse v State of Maharashtra, AIR 1961 SC 600.
[21] The Bhartiya Nagarik Suraksha Sanhita, 2023
[22] *Ibid.*
[23] The Code of Criminal Procedure, 1973.
[24] (1976) 3 SCC 470.
[25] (1991) 3 SCC 498
[26] 2024 SCC Online SC 25.

government according to their remission policy. The procedural checks in this case was not followed leading to a bunch of petitions being filed in the court. The Supreme Court in *Subhasini Ali v. State of Gujarat*[27] held that the rule of law is to prevail over the personal liberty. Nagarthana J., stated that the emotional appeal for liberty looks hollow especially after the convict abused the process set in law to get remission. Also, the trial court judge's opinion was not paid heed to while granting remission as he was not in the favour. Moreover, the appropriate authority in the present case would have the Maharastrian government and not the Government of Gujarat because the trial took place in Maharashtra.

In the case of *Rajo* v *State of Bihar*[28] the apex court explained the factors which the government should take into consideration while granting remission. The court also emphasized that a holistic approach should be taken. Sole reliance on presiding judge's comments should not be taken.

IV. JUDICIAL TRENDS IN NON-REMISSIBLE SENTENCES

The introduction of sentences mandating imprisonment for a fixed term without remission presents a significant departure from traditional principles. While these sentences address crimes that fall between life imprisonment and the death penalty, they raise questions about proportionality and judicial overreach.

Critics argue that such sentences lack consistency and transparency. For instance, in *Haru Ghosh* v. *State of West Bengal*,[29] the Supreme Court imposed a 35-year minimum term without remission, but the rationale for this specific duration was not adequately explained. Similarly, in *Dilip Premnarayan Tiwari* v. *State of Maharashtra*[30], the Court prescribed varying terms for co-accused, reflecting subjectivity.

The lack of a standardized framework for determining minimum terms undermines the reformative objective of sentencing. Judicial discretion, while essential, must be guided by clear principles to ensure fairness and uniformity. These instances clearly shows the subjectivity as there was no reason given as to why the minimum term of particular years is given in each particular case.

The landmark case of *Union of India v V. Sriharan*,[31] answered various questions pertaining to

[27] 2022 SCC OnLine SC 1083.
[28] 2023 *SCC* OnLine *SC* 1068
[29] (2009) 15 SCC 551.
[30] (2010) 1 SCC 775.
[31] 2015 SCC OnLine SC 1267.

remission. The majority placed reliance on the *Swamy Shraddhanand case*[32] and held that the courts are within their rights to pronounce sentence of imprisonment for a specified term without the possibility of remission depending upon the proportionality of the crime committed and interest of public at large. It countered the argument that it is encroachment on the power of executive by stating that the executive action in such cases is subservient to judicial pronouncements. Also, these special types of punishment can only be given by the higher courts and not by the inferior courts. Also it does not affect the constitutional power of the Governor or President under the Constitution.

The dissenting opinion in this case is of much importance as U.U. Lalit J., categorically stated that the courts cannot take away the or deny the prisoner benefit to be considered for remission. It will lessen the chances for his reformation as he will be forced to stay in prison till the last day without any ray of hope for the possibility of him being released. Also, prescribing any form of punishment is the job of legislature and not of judiciary. He placed reliance on Malimath Committee report and stated that in the committee's report this type of punishment was already suggested. Had the legislature intending so, they would have incorporated this form of punishment.

If the above scenario holds good then it may so happen that the person who was given death sentence may be released after 14 years if the executive remits his sentence. Whereas, where a person is given life imprisonment because his case doesn't fall in the rarest of rare category may have to serve in the prison for a longer duration without any possibility of being released.

The minority opinion in *V. Sriharan*[33] *case* casts serious doubts on the Supreme Court's authority to create a special category of sentences and exclude the power of pardon or remission. The minority judgment of Lalit J (concurred with by Abhay Manohar Sapre J), seems to be more appealing in terms of courts powers in the domain of punishment and rehabilitative philosophy dominating in sentencing, encapsulated that the court cannot interfere in the domain of the executive. But now unfortunately this is the law of the land.[34]

V. IMPRISONMENT WITHOUT REMISSION: A HUMAN RIGHTS PERSPECTIVE

Life imprisonment without remission challenges the fundamental principles of human dignity and reformative justice. Denying convicts the opportunity to seek remission disregards their potential for rehabilitation and redemption.

[32] Swamy Shraddananda v. State of Karnataka, (2008) 13 SCC 767.
[33] (2016) 7 SCC 1.
[34] Sood Jyoti Dogra. "Criminal law" ASIL, vol. LI, 2015 p. 408.

Right to life as enunciated in Article 21 of the Constitution[35] is one of the most important and elaborative concept. Its scope is wide and it includes a number of rights within itself. However, right to life may mean different things to different people. For a poor person, who is facing difficulty in meeting his daily needs, right to food is much more important to him than the right to speedy justice. Similarly, for a prisoner, right to speedy trial is of much more importance. The prisoner though does not have a right of remission yet he has right to be considered for remission which includes his basic right to life.

The Supreme Court, in *Shatrughan Chauhan v. Union of India*[36], emphasized that every prisoner retains the right to life and dignity, even under a death sentence. In *Maenka Gandhi v Union of India*[37], it was held that the law must be just, fair and reasonable to contradict the fundamental rights. Arbitrary denial of remission contradicts these principles, as highlighted in dissenting opinions like that of U.U. Lalit J., in *Union of India v. V. Sriharan*[38]. He argued that condemning a convict to a life without hope of release undermines the very essence of reformative justice. Also, imposition of arbitrary sentences without any criteria infringes upon the fundamental rights. Also, Article 142[39] also cannot be resorted to create this new kind of punishment as this provision does not give the authority to undermine the relevant statutory provisions and the fundamental rights.

Also, this new kind of punishment gives enormous power to the judges to impose whatsoever punishment he likes in an arbitrary manner. Also, there will be no reason for the prisoner to be reformed and thus it will be violating one of the basic essence of keeping the prisoner in prisoner i.e. his reformation.

Also, in the case of *Joseph v State of Kerala*[40], it was held that blanket exclusion of certain offences from the state's remission policy is a concerning point as this approach is arbitrary and at bay with the criminal justice system which focuses on reformation and rehabilitation.

VI. CHALLENGES IN CURRENT FRAMEWORK

Although while keeping a balanced approach in awarding punishment to convicts, the essential core is to reform the convict and rehabilitate and reintegrate him back into the society. Remission is a sort of rewarded to a convict, when either the government or president or Governor feels keeping other antecedents and other factors in consideration that the convict is

[35] The Constitution of India, 1950
[36] (2014) 3 SCC 1
[37] AIR 1978 SC 597.
[38] (2016) 7 SCC 1.
[39] The Constitution of India, 1950
[40] 2023 Live Law (SC) 815

suitable to be released so that he can reintegrate back into the society and be of some good to the society.

The major issue is the new kind of punishment being imposed when the imprisonment is given for a certain number of years without remission. If such is the case, then there is no reason why any prisoner would try to reform himself as his punishment is similar to a dark tunnel without any ray of light. Also, this type of sentence i.e. imprisonment without remission has nowhere been mentioned as a form of punishment in The Bhartiya Nyaya Sanhita, 2023. Also, this is not a new concept which has not been discussed. It was already suggested in the report of the Malimath Committee. Had the legislature intending to regard it as a form of punishment, they would have incorporated in under the statute and should have mentioned cases where these type of sentences could have been given. The courts should not extend their powers and go into the scope of legislature.

Also, another argument can be that what about those who are committing serious offences? Should they be left without any harsher punishment and be left free by exercise of the power of remission by the government. Here the executive must take a vigilant approach and should be cautious enough to see that what standards are they setting for the community. Also they must work according their manuals and remission policy of their respective governments. If such is not the case, then we can have petitions filed before the courts to help the government decide correctly as we have seen in the case of *Bilkis Bano*[41] where though the government was not vigilant enough but the court stepped in to grant justice.

VII. Conclusion

Now we see, that how 'imprisonment without remission' does not stand when we test it on the touchstone of Indian Constitution. Remission is not based on one factor but due regard must be given to all the considerations including, the antecedents of accused, his conduct during his term of sentence, opinion of the judge etc. and guidelines laid down in case of *Laxman Naskar* v *Union of India*[42] must be followed. One of the solutions could be that India should adopt periodic check-ups to measure convict advancement because this approach could benefit us. The imprisonment of the accused should be mainly for reformation and not mere hopeless existence. The problem increases because this designation of imprisonment without remission lacks clear guidelines about sentence length. Judges frequently define sentence lengths with no logical explanation which produces skepticism about fairness. An empirical framework that

[41] Bilkis Yakub Rasool v Union of India, 2024 SCC OnLine SC 25.
[42] (2000) 2 SCC 595.

combines psychological assessment with structured determination is necessary to establish fair consistency for punishments. But whether this would be true in all cases is also a question whose truth cannot be ascertained. It is suggested that a more structured and standarised approach is to be formulated so that this power is not unduly exercised and a standard approach is followed for the cases of remission.

Monitoring remission-based human rights involve critical attention. The Supreme Court stated human beings including prisoners maintain a fundamental right to dignified treatment with humane regard. Under such sentencing laws, individuals lose the substance of their fundamental rights to degrade them to bare targets of punitive consequences. The method is at odds with India's human rights principles both in domestic laws and international commitments. Blanket exclusion for remission in some offences, violate the right to dignity and the proportionality of sentencing.

Rejecting remission denies consideration of how prison affects both families and broader communities. The multiple disruptions that remission denial triggers in prisoner families demonstrate why justice needs to align accountability with compassionate rehabilitation.

India can achieve its promise of justice alongside societal equity through sentencing practices that remain consistent with constitutional values and promote fairness alongside transparency. The desire for strong punishment justifies life imprisonment without remission yet this practice must be avoided to turn into a standard policy which threatens the principles of criminal rehabilitation. It would have been added as one of the forms of punishment if the legislature had intended as if it was already in discussion in the Malimath Committee Report[43]. Society needs an approach that combines empathy with rational decision-making to create lasting effect of betterment for the community. However, it stands as law of the land due to the majority judgment in *V. Sriharan*[44] case.

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[43] Government of India, "Report of the Committee on Reforms of Criminal Justice System" (Ministry of Home Affairs, 2003).
[44] (2016) 7 SCC 1.