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Meaning, Nature and Scope of Life Imprisonment Punishment

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ABSTRACT

Life Imprisonment is one of the most basic and common form of punishment. It is used not only by the court in India, but also in other countries. The critical analysis of the punishment depicts some positive and negative aspects. Due to the negative aspects, some form of relief was given in the form of remission, commutation, pardon, etc. This power rests with the court and the government. These reliefs are provided under various provisions of IPC, C.R.P.C, and Constitution. From the above provision one basic question arises is whether Life Imprisonment means Imprisonment till Life or till 14 years or till 20 years. The answer to this question is it means Imprisonment till Life. However, when the appropriate government, in its discretion decides to commute the Life Imprisonment, then it can commute it to a particular term. But this term should not exceed 14 years. Thus, the government can in its discretion commute it to 7 years, it can commute it to 11 years, or any other term, but this term should not be more than 14 years. It cannot be 15 years or 20 years, etc. Further, by Section 57, for the purpose of calculation Life Imprisonment means 20 years. Again this does not give accused the right to be released after 20 years. This 20 years is used just for calculation purpose

Keyword: *Life Imprisonment, Commutation, Remission, Alternative to Death Sentence*

I. INTRODUCTION

The simple meaning of 'punishment' is the infliction of some kind of pain or loss upon a person for a misdeed. Punishment is the means of social control. H. L. A. Hart with Mr. Bean and Prof Flew has defined punishment in terms of five elements:

- i. It must involve pain or other consequences normally considered unpleasant.
- ii. It must be for an offence against legal rules
- iii. It must be to an actual or supposed offender for his offence.
- iv. It must be intentional, administered by human beings other than the offender.

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- v. It must be imposed and administered by an authority constituted by a legal system against which the offence is committed.²

Punishment is infliction of some sort of pain or suffering or loss, imposed intentionally under the authority of law. The infliction of pain and suffering is justified by theory of punishment

1.1. Theories of Punishment

When a person commits a crime or wrong, then punishment is inflicted on the basis of facts and circumstance. The court, after considering various parameters, apply these theory. There are 4 theories relating to punishment. These are:

Deterrent: The retributive theory assumes that the punishment is given only for the sake of it. Thus, it suggests that evil should be returned for evil without taking into consideration any consequences. There are two theories in which this theory can be divided further. They are specific deterrence and general deterrence. In specific deterrence, punishment is designed such that it can educate the criminals. Thus, this can reform the criminals that are subjected to this theory. Also, it is maintained that the punishment reforms the criminals. This is done by creating a fear that the punishment will be repeated. While a general deterrence is designed to avoid future crime. So, this is done by making an example of each defendant. Thus, it frightens the citizens to not do what the defendant did.

Retributive: Retribution is the most ancient justification for punishment. This theory insists that a person deserves punishment as he has done a wrongful deed. Also, this theory signifies that no person shall be arrested unless that person has broken the law. Here are the conditions where a person is considered as an offender is:

- The penalty given will be equivalent to the grievance caused by the person.
- Performed a crime of certain culpability.
- That similar persons has been imposed for similar offenses.
- That the action performed was by him and he was only responsible for it. Also, he had full knowledge of the penalty system and possible consequences.

Preventive: This theory has used a restraint that an offender if repeats the criminal act is culpable for death, exile or imprisonment. The theory gets its importance from the notion that society must be protected from criminals. Thus, the punishment here is for solidarity and defense. The modern criminologists saw the preventive theory from a different view. They first

² N.V. Paranjape, *Criminology & Penology including Victimology*, Central Law Publications, Allahabad, 2017

realized that the social and economic forces should be removed from society. Also, one must pay attention to individuals who show anti-social behavior. This is because of psychological and biological handicaps.

Reformative: Deterrence and retributive are examples of classical and non-classical philosophies. The reformative theory was born out of the positive theory that the focal point of crime is positive thinking. Thus, according to this theory, the objective of punishment needs to be reformation by the offender. So, this is not a punishment virtually but rather a rehabilitative process. Thus, this process helps in making a criminal a good citizen as much as possible. Furthermore, it makes the citizen a meaningful citizen and an upright straight man.

1.2. Different Kinds of Punishment

In India, the following are the forms of punishment – Capital Sentence, Life Imprisonment, Imprisonment-Simple and Rigorous, Fine, and Forfeiture of Property. After trial-the court decides the guilt of accused and after that punishment is awarded. In this court considers various factors. Apart from this, the convict can get a relief of pardon, respite, condonation, remission, etc. After considering various facts and parameters the court decides on the quantum of sentence. After the person is sentenced, the court, according to the case, considers whether to provide pardon, etc. Apart from court, the government has the power to condone, remit, etc.

1.3. Life Imprisonment as a Mode of Punishment

The topic of this project report is Life Imprisonment. Life Imprisonment as a mode of punishment serves many purpose:

- The person has to suffer his entire life in jail hence it provides deterrence against those who want to commit crime
- Further, the punishment is prescribed only for very serious offences like Murder, Rape, Waging War against the Government, etc. Hence, it solves the retributive purpose
- When Life Imprisonment is subject to probation or remission, the reformative aspect of the criminal is considered.

Due to above reasons, Life Imprisonment has been prescribed by various country as a mode of punishment. This paper analyses aspect of Life Imprisonment as under Indian Penal Code, 1860 and Code of Criminal Procedure. Further, the related articles under the Constitution are discussed.

II. STATUTORY PROVISIONS

2.1 Indian Penal Code: Section 53-55

In the Indian Penal Code, 1803, Section 53, specifically deals with different types of punishments which can be given by the Criminal Courts if the person is held liable under the Code. There are five kinds of punishments recognized under Section 53 of the Code:

- Death;
- Imprisonment for life;
- Imprisonment:
 - Rigorous Imprisonment; or
 - Simple Imprisonment.
- Forfeiture of property;
- Fine.

Considering the above punishments, the courts are supposed to follow the procedures and provisions which are prescribed under other adjective and substantive laws. As per the scheme of the Code the maximum punishment is prescribed, leaving the minimum to the discretion of the Judge. The Judge has all the means to form an opinion on the sentence which would meet the end of justice in a particular case. If the offence is grave in nature then the Code had prescribed the maximum and the minimum duration of the punishment.

Apart from this, Section 54 and 55 deals with Commutation of Death Sentence. Under S. 54 power is given to Government to commute the sentence into any other form of punishment. Under S. 55, the Appropriate government may commute sentence of Life Imprisonment to Imprisonment of either description for a certain period. This period should not exceed 14 years.

2.2 Code of Criminal Procedure, 1973

According to Section 2(x), 2(a) and 2(c) read with Schedule I, when the punishment is imprisonment for life then the

- Case is Warrant Case
- Cognizable
- Non-Bailable: Bail is not a matter of right, but discretion of court. Under S. 437, when bail is to be given the Public Prosecutor should be given fair hearing
- Triable by Court of Session

- Power of Magistrate: Session Judge or the High Court
- Investigation: After accused is produced before the Magistrate within 24 hours, and Magistrate authorizes further detention, then the maximum period of detention is 90 days³
- Trial: Procedure applicable to Warrant Case is followed. It can never be tried Summarily
- Plea Bargaining is not possible⁴
- Judgement: When Life Imprisonment is awarded then reasons for sentence awarded must be given in the judgement⁵
- Probation: Not possible when offence is punishable with death or Life Imprisonment
- Appeal: When the High Court reverses order of acquittal in appeal and sentences a person to death, Life Imprisonment, or imprisonment for a term more than 10 years, then accused has right to appeal to the Supreme Court⁶
- Commutation by Appropriate Government:
 - Death Sentence is commuted to any other form of punishment.⁷ However, when person sentenced is pregnant women, then it is commuted to Life Imprisonment⁸
 - Life Imprisonment can be commuted to Imprisonment for any term upto a maximum limit of 14 years
- When Life Imprisonment is S 433 A
 - alternate punishment with death sentence or
 - death sentence is commuted to Life Imprisonment,

Then, person shall not be released till atleast 14 years have been served-S.?
- Double Life Imprisonment: When a person is already sentenced to imprisonment for Life and he is subsequently convicted for another offence, again for Life Imprisonment, then the sentence shall run concurrently

³ Code of Criminal Procedure, 1973, S. 167

⁴ Code of Criminal Procedure, 1973, S. 265 A. Plea Bargaining is possible for offence which are not punishable with death, Life Imprisonment or Imprisonment exceeding 7 years

⁵ Code of Criminal Procedure, 1973, S. 354. In Death Sentence special reasons must be given

⁶ Code of Criminal Procedure, 1973, S. 379

⁷ Code of Criminal Procedure, 1973, S. 433 and S. 416

⁸ *ibid*

In *Ranjit Singh alias Roda v. Union Territory of Chandigarh*⁹ while commuting the death to life imprisonment, it was held that:

The two life sentences should run consecutively, to ensure that even if any remission is granted for the first life sentence, the second one can commence thereafter.

2.2.1 Section 433A CRPC

Life imprisonment where death has been commuted to life sentence has to be served for the entire life of the convicted but subject to remission; a minimum of 14 years must be spent in imprisonment. Various precedents have been set regarding this substantial point of law. Life imprisonment when death sentence has been commuted to sentence of life, in its literal meaning is equivalent to imprisonment till life ends but under various statutes its literal meaning is defeated. Life imprisonment when death sentence has been commuted to sentence of life, in its literal meaning is equivalent to imprisonment till life ends but under various statutes its literal meaning is defeated.

On the plain reading of sections 54 with 433A of Code of Criminal Procedure, it is clear that the appropriate government may, without the consent of the person sentenced, commute a sentence of death, for any other punishment provided by the IPC. But where a sentence of death imposed on a person has been commuted under S 433 into one of imprisonment for life, such person shall not be released from prison unless he had served at least fourteen years of imprisonment.

2.3 Constitution Article 72 and Article 161

The term 'pardon' has been defined as an act of grace, proceeding from the power entrusted with the execution of the law, which exempts the individual on whom it is bestowed upon, from the punishment the law inflicts for a crime he has committed. It affects both the punishment prescribed for the offence and the guilt of the offender.

In other words, grant of pardon wipes off the guilt of accused and brings him to the original position of innocence as if he had never committed the offence for which he was charged. Under Article 72 and 161, the President of India and the Governors of States have been given the power to grant pardons, reprieves, respites or remissions of punishment or to suspend, remit or commute the sentence.

Under Article 72 or 161 the President or Governor has power to

⁹ (1984) 1 SCC 31 cited in *Union of India (UOI) vs. V. Sriharan and Ors.* (2014) 4 SCC 242

- grant pardons, reprieves, respites or remissions *of punishment*, or
- suspend, remit or commute the sentence *of person convicted*

This is exercised by President, when:

- Court Martial deals with the offence
- Punishment/Sentence is for matter in which Executive Power of Union extends
- Punishment is of Death Sentence

Under Article 161, the power is exercised by Governor when punishment/sentence is for matter in which Executive Power of State extends. Pardon as a mode of mitigating the sentence of the accused has always been a controversial issue for a long time. Those who reject pardon as an effective measure of mitigating circumstances argue that the power to pardon is often misused by the executive. There is a possibility that the convict may procure his release from prison by exerting undue influence on the executive authority. To avoid these flaws, in most of the countries, there is a provision for judicial review of the pardon granted in the event of grounds for pardon being found unsatisfactory.

Some Important Definition

- ***Pardon:*** In this, complete guilt is wiped out and punishment is been done away with. Criminal becomes innocent.
- ***Reprieve:*** Temporary Suspension
- ***Respite:*** Postponement of Execution of Death Sentence
- ***Remission:*** Sentenced is reduced but character of punishment remains unchanged (432 and 433 A)
- ***Commute:*** Sentence is reduced, and nature of punishment changes. Hence, it wipes of the guilt for the earlier punishment. Accused is deemed to be guilty for new punishment (Section 55 I.P.C., 433 and 433A C.R.P.C.)

	<u>PARDON</u>	<u>REMISSION</u>	<u>COMMUTE</u>
Power	Government	Government	Government
Relief	Punishment is done away	Punishment is reduced	Punishment is reduced

Guilt	Guilt is wiped out	Guilt is not wiped out but punishment is reduced	Guilt is not wiped out but punishment is reduced
Character of Punishment	Changes Accused returns to the original position of innocence	Remains Unchanged	Changes Accused is deemed to be sentenced for the new punishment
Examples		X's sentence of Life Imprisonment was <i>remitted</i> to a term. X's sentence is for <i>imprisonment for Life</i>	X's sentence of Life Imprisonment was commuted to a term. X's sentence is for <i>imprisonment for that term</i>

In *State of Madhya Pradesh v. Ratan Singh and ors*¹⁰ the court had followed the *law laid down in Gopal Vinayak Godse v. The State of Maharashtra and Ors*¹¹ and held that: "A sentence of imprisonment for life means a sentence for the entire life of the prisoner unless the Appropriate Government chooses to exercise its discretion to remit either the whole or a part of the sentence under Section 401 of the Code of Criminal Procedure". Along with Section 53 read with Section 45 IPC, it affirmed the legal position that life imprisonment only means the entirety of the life unless it is curtailed by remissions granted under the CrPC by the Appropriate Government or under Articles 72 and 161 of the Constitution by the Executive Head, the President of India or Governor of the State.

2.4 The distinction between 'Commutation' under Section 55, Indian Penal Code 1860, and Section 433, Code of Criminal Procedure 1973

There is a thin line difference between Section 55, IPC and Section 433, Cr.P.C. Section 55 of IPC covers only the commutation of life imprisonment for a term not exceeding 14 years. Whereas Section 433 of Cr.P.C. covers the following powers of commutation to the appropriate government:-S 54 se DS commuted to any other form of punishment S. 433 A DS commuted to LI/LI alternative of DS-minimum 14 years

¹⁰ (1976) 3 SCC 470 : [1976] Supp. SCR 552

¹¹ (1961) 3 SCR 440

- Death sentence- to any other punishment can be given which is recognised under the IPC.
- Life imprisonment- to imprisonment not exceeding 14 years or fine.
- Sentence of rigorous imprisonment- to any term of simple imprisonment (within the term he is convicted) or fine.
- Sentence of simple imprisonment- Fine.

However, both provisions give power to the appropriate government to commute the sentencing of the offender without the consent of the offender. For the understanding of the section, the appropriate government can be either State or Central Government. If the order is passed under the matter which is exclusively covered by the union list, then the central government will be considered as an appropriate government. Otherwise, in all other cases, the State Government will have the power to commute the sentence.

In the case of *Harishankar, Gayaprasad Jaiswal vs State of Gujarat*,¹² the Gujarat High Court observed that Section 55 of IPC is independent of Section 433 (b) of Cr.P.C.

2.5 Conclusion

From the above provisions, the following are the modes by which a person can be sentenced to Imprisonment for Life

- When punishment is awarded by court after trial
- When death sentence is commuted to Life Imprisonment *by Government* under Section 55
- When death sentence is reversed *by judiciary*. In some cases, courts were faced with situations where they felt that the death sentence was too harsh a punishment but life imprisonment would be too mild. In those cases, courts have held that it would be within their power to bar statutory and regulatory sentence shortening for a particular period.

Imprisonment for life in terms of section 53 read with section 45 of the Penal Code only means imprisonment for rest of the life of the prisoner subject, however, to the right to claim remission, etc. as provided under Articles 72 and 161 of the Constitution to be exercisable by the President and the Governor of the State and also as provided under section 432 of the Code of Criminal Procedure.

¹² 9089 of 2017

III. MEANING OF IMPRISONMENT FOR LIFE

Life imprisonment is one of the types of punishment which is recognized under Section 53 of the IPC. Earlier this was also known as transportation for life. This punishment is given for serious crimes wherein the convicted remains in prison until his/her last breath.

Under Section 57 of the IPC is used when fractions of terms of punishment need to be calculated. However, it is important to understand that this section does not give any implied or explicit right to the prisoner to reduce his life imprisonment to 20 years of the sentence. Under some sections like Section 116, 119, 120 and 511 of the Code, the prisoners can ask for relief under this section.

3.1 Does Life Sentence mean Period of 14 Years or 20 years?

In, *Duryodhan Rout vs State Of Orissa*,¹³ the court held through Section 55, 433 and 433A life imprisonment does not mean a term of 14 years. By the sections appropriate government is conferred with power to commute Life Imprisonment to a term which should be less than 14 years. And when the term exceeds 14 years then the prisoner shall be released.

In early 1960s in *Gopal Vinayak Godse vs. The State of Maharashtra & Ors.*,¹⁴ the issue was whether life imprisonment without remission could be automatically treated as for a defined period. The court held life imprisonment must be considered as imprisonment for the whole life of prisoner that is till his natural death. Similarly transportation for life should be considered as transportation till the end of prisoner's life. For the similar issue in regard to Section 57, the court held such provision does not mean transportation for life or imprisonment for life is deemed to be for 20 years. Section 57 states for the purpose of calculation of fraction of terms of imprisonment Life Imprisonment means 20 years. Hence life imprisonment means imprisonment for the rest of life.

“A sentence of transportation for life or imprisonment for life must prima facie be treated as transportation or imprisonment for the whole of the remaining period of the convicted person's natural life”.

Then in *Maru Ram v. Union of India*¹⁵ held that

“We follow Godse's case to hold that imprisonment for life lasts until the last breath, and whatever the length of remissions earned, the prisoner can claim release only if the

¹³ (2015) 2 SCC 783

¹⁴ (1961) 3 SCR 440

¹⁵ (1981) 1 SCC 106

remaining sentence is remitted by Government.”

In *Sangeet v. State of Haryana*,¹⁶ the court reiterated same things. The meaning of life imprisonment was clarified again. And it was pointed that life imprisonment is not an imprisonment till 14 years or 20 years. It is for the rest of life. 432, 433A of Code of Criminal Procedure is discretion of appropriate government to grant or reject remission.

In *State of M.P. v. Ratan Singh*,¹⁷ Supreme Court held that a sentence of imprisonment for life does not automatically expire at the end of 20 years, including the remissions.

“A sentence of imprisonment for life means a sentence for the entire life of the prisoner unless the Appropriate Government chooses to exercise its discretion to remit either the whole or a part of the sentence under section 401 of the Code of Criminal Procedure”.

In *Union of India v Shriharan*,¹⁸ the apex court further observed that in 376A and 376D the Code itself expressly mentions that life imprisonment means “imprisonment for the remainder of that person’s natural life or with death.”

3.2 Life Imprisonment without Remission as an Alternative to Death Sentence

When death Sentence is commuted to Life Imprisonment, the the Supreme Court is some of the cases considered that Life Imprisonment would be too mild and death sentence would be too harsh. In *Dalbir Singh v. State of Punjab*,¹⁹ it was suggested that:

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

Similarly, in *Murali Manohar Mishra v. State of Karnataka*,²⁰ the apex court dealt with alternative of death penalty. The case related to special category of sentence as substitute of Death Penalty. The court stated life imprisonment could be for entire life or it could be for a

¹⁶ 2013 (2) SCC 452

¹⁷ (1976) 3 SCC 470

¹⁸ (2014) 4 SCC 242

¹⁹ (1979) 3 SCC 745

²⁰ *Swamy Shraddananda (2) alias Murali Manohar Mishra v. State of Karnataka* (2008) 13 SCC 767

term more than 14 years and less than remainder of life and alongwith this putting this beyond remission. A special category was propounded.

Thus the meaning of life imprisonment is clear. The convict has option to go for remission under 72 or 161 (by President/governor) or through 432 Code of Criminal Procedure (appropriate government). Here, president, governor, or appropriate government, all exercise discretionary power but they have duty to use this power reasonably. Use of discretion does not mean the aforementioned authorities have power to devise an entirely new form of punishment like life imprisonment beyond remission. The right of ask for remission has been expressly stipulated by statute. Once it is asked then it is for the authority to pass order on basis of reasonable considerations. The considerations must be backed by reasonable grounds and factors like gravity of crime, prisoner being in position to re-assimilate in the society. Hence, executive cannot use a blanket order to prohibit remission and prescribe life imprisonment without remission as another form of punishment. Exercise of making new acts as offences and prescribing punishments for its violation is the function of legislature. Even legislature should exercise these powers by following the principles of criminalisation. For the executive it is outside its power altogether. On similar lines when the court suggested life imprisonment beyond remission as form of punishment in rape cases, question arises whether it correct or not?

In the case of *Union of India (UOI) vs. V. Sriharan and Ors.*²¹ the Supreme Court dealt with another question that whether the ruling given by the Supreme Court in *Swamy Shraddananda alias Murlu*²² is valid? The court held it is not prescribed in the Indian Penal Code, or any of the provisions where death penalty or life imprisonment is provided for, any prohibition that the imprisonment cannot be imposed for any specific period within the life span. When life imprisonment means the whole life span of the person convicted, it can be said that the Court empowered to impose the said punishment can specify the period up to which sentence of life should remain befitting the nature of the crime committed. By doing so, it cannot be said that the Court has carved out a new punishment. It is only within the prescribed limit of the punishment of life imprisonment, having regard to the nature of offence committed by imposing the life imprisonment for a specified period would be proportionate to the crime as well as the interest of the victim, when considering the nature of punishment to be imposed. The ratio laid down in *Swamy Shraddananda (2) alias Murali Manohar Mishra v. State of*

²¹ (2014) 4 SCC 242

²² (2008) 13 SCC 767

*Karnataka*²³ that a special category of sentence, instead of death, for a term exceeding 14 years and put that category beyond application of remission is well founded and upheld.

IV. CONCLUSION

From the above analysis, it is concluded that Life Imprisonment is one of the most basic and common form of punishment. It is used not only by the court in India, but also in other countries.

The critical analysis of this form of punishment is as follows

<u>POSITIVE ASPECT</u>	<u>NEGATIVE ASPECT</u>
Neither too harsh(like Death Sentence) nor too mild(like imprisonment for short term)	Keeps the convict in jail forever. This is difficult not just for the convict but also for his family member, children, etc.
Keeps hard-core criminal away from the society	Burden on Prison System
Deterrence and Retribution	Against Reformation
	Reduce the possibility of repeated crime

Due to above negative aspects, some form of relief was given in the form of remission, commutation, pardon, etc. This power rests with the court and the government. These reliefs are provided under various provisions of IPC, C.R.P.C, and Constitution. From the above provision one basic question arises is whether Life Imprisonment means Imprisonment till Life or till 14 years or till 20 years. The answer to this question is it means Imprisonment till Life. However, when the appropriate government, in its discretion decides to commute the Life Imprisonment, then it can commute it to a particular term. But this term should not exceed 14 years. Thus, the government can in its discretion commute it to 7 years, it can commute it to 11 years, or any other term, but this term should not be more than 14 years. It cannot be 15 years or 20 years, etc. Further, by Section 57, for the purpose of calculation Life Imprisonment means 20 years. Again this does not give accused the right to be released after 20 years. This 20 years is used just for calculation purpose.

²³ *ibid*