

Legal Fiction and Unconstitutionality behind Life Imprisonment

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ABSTRACT:

Whenever a serious offender is sentenced for violating laws, a great amount of public interest is attracted during the sentence of the criminal. Even, when heavy sentencing is imposed on them through long term imprisonment or death penalty not much of the change in reduction of crime rate has been observed. The true picture depicts how the deterrent theory which is still prevalent in common countries fail to achieve its objective of setting an example so that the similar type of offence is not committed henceforth. One of such exemplary punishments is of 'Life imprisonment'. This clearly does not reflect any changes in the offence pattern, despite being one of the highest forms of punishment.

A Constitutional bench of the Apex Court has held that the life imprisonment lasts till last breath, and the remission earned by the prisoner can be claimed only if the remaining sentence is remitted by the government. A mandatory prison sentence without the certainty of being released or probation with the term which may extend up to the life time of the offender raises grave question in Indian Constitution, primarily being human dignity which has negative psychological effects associated with it as well. It is no hidden fact that how inhumane and degrading conditions are being prevailed in the prison cells which the offenders undergoing life imprisonment are subjected to, hence no purpose of being a mere severe punishment is served at its maximum. The paper would be discussing how life imprisonment violates the Constitutional value and basic human rights like dignity and right to clean and hygiene environment and others and how alternates to life imprisonment are a more promising source of reforming the society and bringing down the crime rates among many other benefits. The paper would also provide some suggestions which can be implemented for the benefit of the prisoners and the society at large.

Keywords: Life imprisonment, Constitutionality, Reformation, Inhumane and degrading conditions, Fundamental Rights.

I. INTRODUCTION:

As Justice Krishna Iyer has rightly propounded, "If every saint has a past, every sinner has a future, and it is the role of law to remind both of this."¹ Whenever, an imbalance in peace and prosperity of the society is caused punishment is imposed by the one who has power to regulate and enforce the harmony in the society. Punishment is imposed as a mechanism to take revenge to those who caused harm to the society with a view to correct such law breaking citizens.² The author of Indian Penal Code; Lord Thomas Babington Macaulay exhibited the inclination towards deterrent and retributive theory of punishment which can be observed through

¹ Mohammad Giasuddin v. State of Andhra Pradesh, (1997) AIR 1926.

² Joel Meyer, Reflections on Some Theories of Punishment, 59 J. Crim L. Criminology & Police Science 595, 595 (1968).

bare reading of the statute of 1860. Whereas, Mahatma Gandhi held contradictory values towards the theory of punishment and concentrated more on representing humanist compassionate and correctional rule as the sole procedure to civilised justice system. Inspired by both the values, the Indian socio legal system has adopted a view accepting the parallel running ideology.

By mere reason of conviction, the convicts cannot be denuded of all the fundamental rights which they otherwise possess.³ Despite being imprisoned in the prison, they are human beings and are inherently in possession of all the fundamental rights including human dignity which is at stake while serving the punishment of life imprisonment. India being a 'Welfare State' must work towards the welfare of each of its citizen and cannot by the reasoning of criminal and non-criminal can discriminate while performing one of the many duties.

It is generally presumed that termination of life imprisonment happens at the end of either 14 years or 20 years but it is not the case so, as it entirely depends upon the remission granted by the government which is discretionary in nature. Such gesture of imprisonment till last breath of the prisoner leaves him or her in the cloud of uncertainty and deprives the convict with the hope of rehabilitation and reintegration in the society.⁴ Several rights have been guaranteed to the prisoners by the Constitution of India as well as other legislations and the same has also been tried to be achieved through judicial enactments and precedents established. Thereafter, there are certain controversies which need to be discussed with respect to legal fiction and unconstitutionality of life imprisonment.

II. RESEARCH AREA AND METHODOLOGY:

The authors in this paper have used secondary qualitative form of research to draw a connection between the life imprisonment's negative effects, its necessity and its impact on the society. The authors have also explored the alternates to life imprisonment which are beneficial to the growth and development of the society as a whole as well.

III. LIFE IMPRISONMENT AND VIOLATION OF RIGHTS

The Supreme Court of India has made it clear that imprisonment for life does not implies imprisonment to be of 14 or 20 years⁵, but till last breath of the accused.⁶ Such a lifelong imprisonment implies a restriction on the innate rights granted to the convicts both under the Constitution of India along with basic Human Rights that every citizen of India is entitled for. While, studying the concept of life imprisonment it has to be borne in the

³ D. B. Mohan Patnaik v. State of Andhra Pradesh, (1975) 3 SCC 185.

⁴ G De Baco, Life Sentences and Human Dignity, 9 IJHR 411, 414-415 (2005).

⁵ Kartik Biswas v. Union of India, AIR (2005) SC 3440.

⁶ *Supra I.*

mind of readers that life imprisonment is a vast concept which comes up with the discretion of parole and remission in the sentencing of the offender.

It is pertinent to mention that some jurisdictions around the globe provide for life imprisonment without the prospect of parole (hereinafter referred as LWOP), which is in complete contradiction with the ordinary imprisonment which a convict serves in the jail. Even LWOP permits the possibility of leave in some form of executing pardon with the parole system but on ground level such practice is rarely practiced in these jurisdictions.⁷ Thus, it is clear that whichever form life imprisonment takes it infringes a wide range of rights of the prisoners and it requires attention to discuss.

A. Human Dignity:

Fundamentally, human dignity is considered to be the sole of human rights, which are observed to be violated in case of prisoners who are undergoing the punishment of life imprisonment. India being signatory to Universal Declaration of Human Rights is ought to be bounded by the international legislation. Primarily the legislation recognises all human beings to be born free with holder of equal dignity and rights.⁸ The Constitution as well as the Universal Declaration of Human Rights identifies right to life, liberty and security of the person as fundamental which shall not be compromised in any case.

Such rights shall be protected by law and all deprived of their liberty shall be treated with humanity and with respect which comes up in package with inherent dignity above all. The Preamble of Constitution of India, the Fundamental Rights and Directive Principles constituting trinity, assure to each citizen a welfare State and economic democracy with status of equality and never compromising human dignity.⁹ It is thus submitted that even the vilest offender remains inherently in possession of human dignity.¹⁰

Life imprisonment curtails the liberty of the prisoners until their death arrives and no mentioning is required to stress upon how much of a core component liberty forms with regards to human dignity.

It is a well-established principle that a convict is entitled to the precious right guaranteed by Article 21 of the Constitution.¹¹ Article 19 of the Indian Constitution gives right to the people to move freely throughout the territory of India¹² which comes up with certain reasonable restrictions.¹³

The prisoner undergoing life imprisonment is locked up in the jail till his or her death, which clearly hinders his

⁷ Dirk Van Zyl Smit, Catherine Appelon & Georgie Benford, *Life Imprisonment and Human Rights*, 2 (Dirk Van Zyl Smit & Catherine Appelon ed., 2016).

⁸ Article 1 of the Universal Declaration of Human Rights (1948)

⁹ *Kirloskar Brothers Ltd. v. Employees' State Insurance Corporation*, (1996) SCC 2 682.

¹⁰ *Gregg v. Georgia*, 428 US 153 (1976).

¹¹ *Supra* 4.

¹² INDIA CONST. article 19(1) (d).

¹³ INDIA CONST. article 19(5).

or her right to move freely within the bounds of the country. The term liberty construes something more than mere freedom from physical restraint or the bond of prison.¹⁴ The right to move freely can be curtailed for temporary period but cannot be abolished till the lifetime of the prisoner. Such an action is violative of fundamental right of the prisoner and puts the dignity of him or her at heavy stake.

Dignity is a concept, more than liberty which also significantly comprises family life, conjugal life, privacy and etc. When a life prisoner undergoes the punishment these rights are compromised and seen to be at controversy. The prisoners are restricted to very limited family access which has its implications on their mental health as they are surrounded by the company of hardened criminals which instead of reforming and making them a better human being does the very opposite especially in young offenders.¹⁵ The concept of establishment of conjugal rights even while serving the punishment shall be introduced in the present criminal justice system.

Some countries however do recognise this concept where certain rooms are allocated within the prison boundaries where the spouse pays conjugal visit for certain hours or may extend up to some days. But there serves a drawback where discrimination is very likely to happen between the prisoners having a registered marriage and the prisoners not confined in a valid marriage.¹⁶ Introduction of this concept makes the dignity of the prisoner stays. Dignity is a concept which can be inviolable and cannot be disputed at any stage and it is the duty of the State authorities to protect such noble rights.¹⁷ Life imprisonment on these grounds remains to be on the side of criticism.

If life imprisonment is to be used in the jurisdiction of any country, there is no right for the State authorities to abuse human rights and human dignity. The most common justification which is given is that life imprisonment is the appropriate punishment for the offence committed by the accused. And such stringent punishment are said to be justified for the serious offence but it does not give the right to put the dignity of the prisoner at question. There is no doubt that proper procedure is followed while examining the guilt of the accused and awarding him with life imprisonment but human rights and due process is required to ensure in any jurisdiction.

On the counter side, imposition of such heavy imprisonment which abuses the human dignity at maximum cannot be a proportionate punishment awarded by the State to have a power to punish an individual by imprisoning them until death waits.¹⁸ More subtly, life imprisonment always infringes human rights because of the way in which they are implemented and deprives them with the inherent right of dignity and fundamental

¹⁴ *Munn v. Illionis*, 94 US 113 (1876).

¹⁵ *Sahil Bali v. Union of India*, (2013)7 SCC 705.

¹⁶ Dr. Shruti Goyal, *Conjugal Rights of Prisoners*, *Bharati Law Review* 57, 61 (2018).

¹⁷ Sebastian Verelst, *Life Imprisonment and Human Rights in Belgium*, 3 *HRLV* 279, 280- 281 (2003).

¹⁸ Dirk Van Zyl Smit, Catherine Appelton & Georgie Benford, *Life Imprisonment and Human Rights*, 3- 4 (ed., 2016).

rights which comes under Article 21 of the Constitution. This argument has come before many jurisdictions disputing upon the constitutionality of life imprisonment.

Of course, the authorities are bound with their duties and responsibilities to observe no violation of human rights but in an era of human rights and under the aura of constitutional mandates, the prisoners are locked up and fed to be kept alive. Such treatment would degrade them to the levels of animals kept in zoo. Both the constitutional spirit and reformatory theory teach us to permit the prisoners to live with human dignity.¹⁹

The sentence of life imprisonment can also be compared to putting a human being as a “thing” to be put away from the society till it expires, i.e. he dies.²⁰ Human being is not commodities which can simply be put away but they are people which can be reformed and can also contribute to the development of the society. They are being with an attached infinite worth and not commodities to be dealt with as garbage waiting to be disposed of. They ought to be treated as ends themselves and not just a means to an end.²¹

B. Violation of Rule of Law:

The Indian legal thinker has cited the definition of rule of law from F.A. Hayek as he had come up with the most clear and strong definition of rule of law: “Stripped of all technicalities this means that government in all its actions is bound by rules fixed and announced beforehand. Rules which make it possible to foresee with fair certainty how the authority will use its coercive powers in given circumstances and to plan one’s individual affairs on the basis of this knowledge.”²²

As per F.A. Hayek all the actions of government are bound by fixed rules. No actions can be taken on rules which have not been announced beforehand. The rules must have a retrospective effect on the society. The rules must be announced beforehand as to be foreseeable which holds fair certainty. The doctrine of the rule of law does not deny that every legal system should consist of general, open and stable rules and particular laws which also include legal orders. The doctrine of rule of law propounds a complete social philosophy.

‘The rule of law’ means literally what it says. Taken in its broadest sense this means that people should obey the law and be ruled by it. One of such principle is that the legal orders and law must be guided by open, stable, clear and general rules in nature.

The object of the doctrine of rule of law is to have clear, open and stable rules in generality. The laws must be open and clear to give certainty in the minds of people. Therefore, certainty forms an integral part of the

¹⁹ Shyokaran & Ors., v. State of Rajasthan & Ors. (2008) CriLJ 1265.

²⁰ G de Beco, Life Sentences and Human Dignity, IJHR 411, 414 (2005).

²¹ S v. Dodo (CCT 1/01) [2001] ZACC 16 (South Africa).

²² Joseph Raz, Rule of Law and its Virtue, Oxford Scholarship Online 211, 211 (1979).

doctrine of rule of law²³ and such certainty is absent in the punishment of life imprisonment as even if there exists a concept of remission at after serving 14 years or 20 years of imprisonment.

There is uncertainty with regard to the prisoner of life imprisonment whether will he be free set and given an opportunity to rehabilitate himself or herself back in the society or not. Such uncertainty is arbitrary and unclear which gives excess power. This is in violation of equality before law and questionable to Article 14 of the Indian Constitution.

C. Medical Issues:

While the Constitution of India and the other national and international laws talk about why the prisoners should have certain rights or why the sentence of life imprisonment is completely wrong or invalid, here is one issue which is far more real on the ground level and especially affects the prisoners on a day to day basis.

This is the problem of the medical and health conditions of the prisoners. Due to this, even the prisoners who currently have existing health issues might also develop new health issues or their existing conditions might even worsen due to the hygiene factor of the prison cells. It is also due to the lack of control on the infectious diseases. This may arise due to the lack of attention to the needs of the prisoners.²⁴

Furthermore, there is no question that the treatment of the prisoners in our nation is really pitiful and the prisoners are subjected to inhuman degradation on a regular basis. The same can be blamed over enormous overcrowding in prisons which has led to social and other problems as noticed by the Supreme Court in a suo moto case.²⁵ In fact, the prominent ILI Law Review²⁶ references were made to the letter written by R.C. Lahoti J, in which he pointed out the inadequacy of reformatory schemes and theories for offenders and other prominent issues which included overcrowding of prisons, unnatural death of prisoners, lack of prison staff and existing prison staff not being undergone through proper training.

These referred case and articles clearly show that how clearly putting offenders behind the bars with such existing problems serve a satirical comment on the theory of punishment of deterrence. The crime rates are still nowhere to be seen going down in such a scenario. The protection of health is also a serious public health issue because those who return to the community or the society after their sentence is served, they become a host of diseases and infections thus making their lives after prison even harder.

But for those who have life imprisonment, these diseases are just one more addition to the host of problems

²³ Rupa Ashok Hurra v. Ashok Hura, AIR 2002 SC 1771.

²⁴ Professor Dirk Van Zyl Smit and Dr Catherine Appleton, Life imprisonment - A policy briefing, University of Nottingham, 1-11 (2018).

²⁵ Inhuman Conditions in 1382 Prison, In re (2017) 10 SCC 658.

²⁶ Ananth Kini, A Critique On Prisons In India in the Light of Re- Inhuman Condition in 1382 Prisons, II ILI Law Review 71, 73 (2017).

which they have to bear till they die, which is wrong on all the aspects because on one side our laws lay down the right to life as the most basic right and on the other side this right is being violated on such a huge level.²⁷ Prisons can be a breeding ground for many chronic or fatal diseases like HIV/AIDS or TB. WHO studies show that a death due to the “explosion” of TB and the way it thrives is just unprecedented. Also, it shall be noticed that in most of the countries of Europe or Central Asia, the rate of HIV Infection in prisons are much higher than the other areas.²⁸

It is also an estimate by the WHO that at least 75% of the women entering the European prisons are estimated to already have problems related to drugs and alcohol. The statistics suggest that women are more likely to develop mental health problems while in prisons and also that they are more likely to self-harm or even go to the extent of attempting suicide.

Women being surveyed in the Asia were found to be needing the most attention to get their lives back on the track after serving a sentence in prison and those who were serving life sentences were either found to be in a very bad condition upon their deaths or if released early, were found to be suffering from severe physical and mental health issues.²⁹ If such conditions are prevailing in the prisons then undergoing the punishment of life imprisonment impacts them negatively in mental health and puts the dignity of the prisoners at stake.

IV. STEP TOWARDS REFORMATIVE THEORY OF PUNISHMENT

With the reports published by National Crime Records Bureau there has been increase in crime rate despite being stringent punishments.³⁰ Therefore, it can be inferred from such alarming statistics that deterrent theory of punishment which we follow in the existing legal system in India has not been serving well to achieve the objective which is to minimise the criminal rate and set an example in the society.

Imprisonment which is awarded to the criminals shall be in accordance with the rights guaranteed to them by various statutes and Constitution along with international human rights approach and thus it has become a challenge where punishment is sentenced to the criminals for the acts they have committed but also not anchoring the prisons along with. The modern approach which shall be adopted by the Courts must be to reform the criminal instead of putting him behind the bars with the object to serve the punishment and branding him with the tag of hardened criminal for the life ahead of him.³¹

On the commission of crime, there are three types of reactions that may generate which are punitive approach,

²⁷ Penal Reforms International, Health, Penal Reforms International <https://www.penalreform.org/priorities/prison-conditions/key-facts/health/>

²⁸ Sven Todts, Infectious diseases in prison, 73-76 (2014)

²⁹ The Regional Office for Europe of the World Health Organization, Prisons and Health, 45-94 (2014)

³⁰ Government of India, National Crime Records Bureau, Crime Statistics (23/08/2019 23:24), <http://ncrb.gov.in/>.

³¹ Avtar Singh v. Union of India, (2016) 8 SCC 471.

therapeutic approach and preventive approach.³² Punitive approach regards criminal as a dangerous person and it is seen important to protect the society from the illegal activities by captivating the freedom, whereas therapeutic approach term the criminal as a mentally unfit person which needs treatment and lastly preventive approach which is to be considered as need of the hour aims at curing the diseased psychology by eliminating the factors which result in criminal tendencies within a person.³³

Aggravating and mitigating factors must be taken into view while pronouncing the sentence to the offender.³⁴ It is no disputed fact that harsh punishment deprives the convict of any hope re- habitation and reintegration in the society with the same amount of acceptance as was offered before the commission of the crime.³⁵ The prisoned criminals also have a right to establish themselves in the community back.³⁶

Reformative approach of punishment shall be made more incorporating in the present criminal justice system of India in order to promote rehabilitation without offending conscience to secure social justice. Various reformative practices shall be adopted such as serving to the community and to be with them to understand the community better with such values.

According to the theory of reformation, a crime is committed because there exists an imbalance between the character of the criminal and motive of the criminal. As per studies conducted, a crime is commenced because of two possibilities; first being the temptation of motive being higher and the last one may be the restrictive tendencies on the character of the criminal may be weak which thus allows him to commit such crimes which are punished with imprisonment.

This theory of reformative approach thus works towards strengthening the character of the offender so he does not become victim of his own temptation and performs as a medicine to cure criminal psychology. Reformative theory works best as it prevents the light offenders from being involved in the company of hardened criminals and become like one with such mind set which may serve as poison to the society once they are released from the jail. However, reformative theory comes with its own limitations as it cannot be applied to hardened criminals where separating them with the rest of the society becomes necessary to safeguard the interest of society and to set an exemplary punishment.

V. GLOBAL PERSPECTIVE

The punishment of life imprisonment has been succeeded in evolving controversies in various nations around the world and has been observed to be challenged on various grounds. Germany Court's doors were knocked on

³² T.K. Gopal v. State of Karnataka, (2000) 6 SCC 168.

³³ *Id.*

³⁴ Machhi Singh v. State of Punjab, (1983) 3 SCC 470.

³⁵ *Supra 21.*

³⁶ Article 10(3), International Covenant on Civil and Political Rights, 1996.

the issue of constitutionality of life imprisonment on the grounds of negative psychological effects, human dignity and re- socialisation of the prisoners undergoing the severe punishment.³⁷

With that the German Constitutional Court found that compulsory punishment of life imprisonment without the possibility of parole are unconstitutional on the grounds of violating human dignity, and according to the principle of Rechtsstaat requires a legal regulation for when the prisoner may be released. Human dignity is considered to be integral part of basic law of Germany and this concept is highly inspired by the inhuman treatment during the reign of Nazis.

Thus, inception of human dignity is seen through the Constitutional mandates of Germany.³⁸ Various questions on life imprisonment with regard to human dignity have been raised and still continuing to be raised. In the United States of America, before the Apex Court it was argued that sentence of life imprisonment is cruel.³⁹

The European Court of Human Rights had a closer look at the procedures surrounding the early release of lifers, based on the right to liberty and security of the person. Several human rights have been invoked to question the acceptability of life imprisonment. Life imprisonment as such to be inadmissible in human rights terms agreed that this form of punishment could not be accepted unconditionally. In particular the existence of a procedure for the consideration of early release that meets the requirements of due process seems to serve as a justification for this form of punishment.

VI. CONCLUSION:

The United Nations had released some rules which state that people with severe mental health issues must not be imprisoned but receive treatment.⁴⁰ At this point the reformatory approach is not paid heed to. Life imprisonment like all the crimes is a punishment to set an example to the society but what about the person who is being forced to become that example?

If the claim is that such harsh sentences will deter future crimes but what about the person who is being made as the deterrent? Isn't it being unfair on his part that he is being made to suffer so that the society can learn when on the other hand, through the reformatory approach, both the offender and the society can learn a lesson simultaneously?

Him by getting reformed and the society by getting the message that there can be some alternative to the life of crime and there can be a better future than languishing in a jail cell after committing a crime and waiting for

³⁷ Life Imprisonment Case, 45 BVerfGE 187 (1977).

³⁸ Edward J. Ebrele, Observations on the Development of Human Dignity and Personality in German Constitutional Law: An Overview, 33 LLR 201, 205-215 (2012).

³⁹ Sebastian Verelst, Life Imprisonment and Human Rights in Belgium, 3 HRLV 279, 283 (2003).

⁴⁰ The General Assembly of United Nations, United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), 70/175 (2015)

your time to come. There are still prisoners who try to reform themselves because they have the will to lead somewhat productive lives after getting the message behind the concept of their sentence and these are such people who want to reform but just because theirs is a sentence of life so they cannot fully try to change their lives but just learn their lesson and let it all fade away.

At least such people should be given a chance after carefully monitoring their activities as to whether they have actually changed or want to change or not and they should be released or given some alternative to the life sentence.

The issues highlighted in the paper also pointed out to these facts that the prisoner and the society both suffer at the implementation of such a heavy punishment and it does no one any good but only instils negative feelings and does not contribute to the development of the society. Therefore there is a need of the reformatory theory to be applied in the real sense so that both the prisoners who are ready to be reformed and the society at large can benefit from it.

VII. RECOMMENDATIONS:

There are some suggestions as to what can be done to combat so many problems which the life sentence gives to the prisoners, the authorities and the society at large because ultimately it's the society who will have to bear the cost of maintaining these prisoners for a very long period of time.

- The mandatory form of life imprisonment should be completely abolished. One of the biggest reasons of this is that they deny the judges freedom to consider whether the life sentence is actually proportionate to the crime committed specific to the facts of the case.
- Also to ensure that a proportion is being maintained between the sentence so awarded and the offense, the minimum imprisonment period should be brought down so that the judges have more freedom in awarding lesser sentences for lesser crimes.
- As far as the internal administration is concerned, the regime of the prisoners should be regulated on the basis of risk assessment and not on the category of the sentence and all the prisoners should be given the freedom to voice their complaints in regards to the regimes and they must be duly acted upon.⁴¹
- Also, there should also be regular studies conducted to assess the damaging effects of life imprisonment and there should be no additional restrictions on the prisoners as they are already there for a possibly indefinite time. Necessary measures to alleviate the conditions of the prisoners must be taken such as medical attention and proper hygiene and no abusive treatment.

⁴¹ *Id.*

- There should be regular rehabilitation programs so that those prisoners who show the will to get reformed should be moved to lighter environments such as skill training and personality development and somewhat more relaxed regimes so that they really have a chance to go back into the society if they show the willingness to do so.
- The composition of the bodies who have the task to evaluate the prisoners and to decide as to who shall go back or be released from their sentences must be strictly impartial and should have proper laws and fair procedure to evaluate and release the prisoners.
- Finally, if the prisoners who are released breach any rules related to their release must only be recalled if they pose a danger to the society and then too they must be kept in prison for the minimum period possible till there is no sign of any further danger and that period should also be reviewed at very regular intervals.

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