

ARTICLE

TITLE : CONSTITUTIONAL VALIDITY OF LIFE IMPRISONMENT

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Life imprisonment lasts till the last breath, and whatever the length remissions earned, the prisoner can claim release only if the remaining sentence is remitted by government¹ and the Supreme Court made it clear that imprisonment for life does not mean the term of imprisonment to be of 14 or 20 years.² The sentence of Life imprisonment is unconstitutional and violative of not only Part III of the Constitution but also of Human Rights of the prisoners. The imposition of lifelong imprisonment, is till the last breath of the accused.³ This implies a restriction on the innate rights granted to the prisoners as Indian Citizens, both under the Indian Constitution as well as the basic Human Rights that every Indian citizen and for that matter even every criminal possesses.

1.1 Violation of rights.

All human beings are born free and equal in dignity and rights⁴ and that Article 3 of the Universal Declaration of Human Rights, 1948 assures everyone the right to life, liberty and security of person.⁵ Every human being has an inherent right to life.⁶ This right shall be protected by law and all deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person. The Preamble of the Constitution of India, the Fundamental Rights and Directive

1 Maru Ram v. Union of India, (1980) 1 SCC 107.

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

3Supra 1.

4Article 1 of the Universal Declaration of Human Rights, 1948.

5Article 3 of the Universal Declaration of Human Rights, 1948.

6Article 6 of International Covenant on Civil and Political Rights, (1966).

Principles constituting trinity, assure to every person in a Welfare State social and economic democracy with equality of status and dignity of person.⁷

Even the vilest offender remains possessed of human dignity.⁸ The State being a Welfare State⁹, must work towards the welfare of each of its citizens and cannot under Article 14, distinguish between criminals and non-criminals when it comes to the enforcement of the fundamental rights of the citizens.

It is a well established principle that even a convict is entitled to the precious right guaranteed by Article 21 of the Constitution.¹⁰ The term liberty construes something more than just the mere freedom from physical restraint or the bond of a prison.¹¹

Article 19 & 21 but Article 14, combining to form the Golden Triangle are in question when the question of long imprisonment is brought up. The court has said that it cannot be oblivious to the fact that the treatment of a human being which offends human dignity, imposes avoidable torture and reduces the man to the level of a beast would certainly be arbitrary and can be questioned under Article 14.¹²

There is no question that the treatment of the prisoners in our country and the inhuman degradation that they are subject to on a daily basis is comparable to the aforementioned description, there is enormous overcrowding in prisons, leading to social and other problems as noticed by the Court.¹³ In fact in the prominent ILI Law Review,¹⁴ references were made to the letter written by R.C Lahoti J, in which he pointed out the inadequacy of reformatory schemes for offenders and other prominent issues which is, overcrowding of prisons; unnatural death of prisoners; inadequacy of prison staff and present staff not being adequately or properly trained.

7Kilroskar Brothers Ltd. v. Employees' State Insurance Corpn., (1996) SCC 2 682.

8Gregg v. Georgia, 428 US 153 (1976).

9Constitution of India, 1950.

10D. Bhuvan Mohan Patnaik v. Sate of A.P, (1975) 3 SCC 185.

11Munn v. Illinois, 94 US 113 (1876).

12 Sunil Batra v. Delhi Administration, (1978) CRI LJ 1741.

13Inhuman Conditions in 1382 Prison, In re (2017) 10 SCC 658.

14Ananth Kini, *A Critique On Prisons In India In The Light Of Re – Inhuman Conditions In 1382 Prisons*, II ILI Law Review, 71-3 (2017).

Life sentence has been compared to 'putting an individual in a waiting room until his death'.¹⁵ As well established in law, by virtue of Article 13¹⁶ and various cases¹⁷, all the laws are subject to fundamental rights and can be struck down, if deemed to be violative of the rights, any law made in contravention of Part III is dead from the very beginning and cannot at all be taken notice of or read for any purpose whatsoever.¹⁸

The punishment of life sentence, under the criminal jurisprudence is draconian and violative of not only the fundamental rights but also of the basic human rights and must not be followed in a progressive country like India. At a time when many European Courtiers are considering the abolishment of Life Imprisonment¹⁹, it is suggested that India must not leave itself in the same condition of countries like Saudi Arabia, Iran or Syria where primitive punishments are still practiced and the rights of convicts are profusely ignored.

1.2. Chance of reformation.

Life imprisonment possesses an intolerable threat to the human dignity of offender because it is cruel, inhuman and degrading punishment²⁰ and at the prohibition of such punishment lays the concept of proportionality of punishment to the crime.²¹ Certainty is an integral element of rule of law²² and when the sentence of life imprisonment is imposed upon the convict, it means that the convict will be in the

¹⁵ G de Beco '*Life sentences and human dignity*' The International Journal of Human Rights 411 414. (2005).

¹⁶ Constitution of India, 1950.

¹⁷ Keshavan Madhava Menon v. State Of Bombay, 1951 AIR SC 128.; Behram v. State of Bombay, 1955 CRI LJ 215.

¹⁸ Rakesh Vij v. Raminder Pal Singh Sethi, (2005) 8 SCC 504.

¹⁹ Dirk Van Zyl Smit, *Outlawing Irreducible Life Sentences: Europe on the Brink*, Federal Sentencing Reporter, Vol. 23, No. 1, Life Without Parole (October 2010), 39-48.

²⁰ Dan Van Zyl Smit, Life imprisonment as an ultimate penalty in International law: A human rights prospective, 9 CLF 26, 45 (1999).

²¹ S v. Dodo, (2001) 1 SACR 594 (CC) (South Africa).

²² Rupa Ashok Hurra v. Ashok Hurra, AIR 2002 SC 1771.

prison till his last breath and there is uncertainty upon the release of the prisoner as the release of the prisoner is upon the discretion of either the President or governor of the state²³ which violates one of the key element of rule of law.

The modern approach should be to reform a person instead of branding him as a criminal for the rest of his life.²⁴ On the commission of crime, three types of reactions may generate; the traditional reaction of universal nature which is termed as punitive approach. It regards the criminal as a notoriously dangerous person who must be inflicted severe punishment to protect the society from his criminal assaults.

The other approach is the therapeutic approach. It regards the criminal as a sick person requiring treatment, while the third is the preventive responsible for crime causation. The therapeutic approach aims at curing the approach which seeks to eliminate those conditions from the society which were criminal tendencies which were the product of a diseased psychology.²⁵ Therapeutic approach has since been treated as an effective method of punishment which not only satisfies the requirements of law that a criminal should be punished and the punishment prescribed must be meted out to him, but also reforms the criminal through various processes, the most fundamental of which is that in spite of having committed a crime, may be a heinous crime, he should be treated as a human being entitled to all the basic human rights, human dignity and human sympathy.²⁶

The most celebrated Article of Part III of our Indian Constitution is Article 21 which talks about protection of life and personal liberty; is made available to those who have been convicted by Court for an offence.²⁷ Similar Judicial thinking has also been expressed that convicts, are not by mere reason of conviction, denuded of all the fundamental rights which they have otherwise.²⁸

23 Gopal Vinayak Godse v. State of Maharashtra, (1961) AIR 600.

24 Avtar Singh v. Union of India, (2016) 8 SCC 471.; Commissioner of Police v. Sandeep Kumar, (2011) 4 SCC 644; Rajesh Kumar Yadav v. Union of India &Ors. (2017) 2 CLR 206.

25 T.K. Gopal alias Gopi v. State of Karnataka, (2000) 6 SCC 168.

26 Ibid

27 Supra 12.

28 D.B. Patnaik v. State of Andhra Pradesh, (19075) 3 SCC185

Justice Krishna Iyer has previously propounded, “If every saint has a past, every sinner has a future, and it is the role of law to remind both of this.”²⁹ The termination of imprisonment for life does not automatically expire after 14 or 20 years but is subject to any remission granted under Section 432 of The Code of Criminal Procedure, 1978³⁰ and thus the harsh punishment of life imprisonment deprives the convict of any hope of rehabilitation and reintegration in the society.³¹ Even the sentenced prisoners have a right to establish themselves in the community.³² Reformation approach to punishment should be the object of criminal law, in order to promote rehabilitation without offending community conscience and to secure social justice. Putting someone behind the bar for entire life is same as depriving that individual for entire life to reform himself and cohabit with other humans in this world.

According to the reformatory theory, a crime is committed as a result of the conflict between the character and the motive of the criminal. One may commit a crime either because of the temptation of the motive is stronger or because the restraint imposed by the character is weaker. This theory of reformation, aims at strengthening the character of man; so that he may not become an easy victim of his own temptation. This theory would consider punishment to be curative or to perform the function of a medicine.³³

The practice of awarding Life imprisonment is to be regarded as one of the brutal form of punishment which denies the offender the chance of ameliorating towards a better human but also denying him the opportunity of living and mingling in the community.

29 Mohammad Giasuddin v. State of Andhra Pradesh, (1977) AIR 1926.

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

31 G De baco, Life sentences and human dignity, 9 IJHR 411, 414 (2005).

32 Article 10(3) of International Covenant on Civil and Political Rights, 1966.

331 Nirmal Kanti Chakrabarti, Administration of Criminal Justice: Perception and Practice of Correctional Services 195 (Nirmal Kanti Chakrabarti, 1997).