Is Life Imprisonment Without Remission a ‘Fourth Category’ of Punishment?

virtuositylegal.com/is-life-imprisonment-without-remission-a-fourth-category-of-punishment

Parth Chhapolia January 9, 2026

Life imprisonment without remission is a penal sentence in which the convict remains incarcerated for their entire natural life, without the possibility of release. This form of punishment is problematic for several reasons. It raises significant human rights concerns, as it deprives individuals of any hope for release, which can be considered inhumane and degrading. The psychological impact on prisoners is severe, often leading to mental health issues such as depression and hopelessness. Additionally, it contradicts the principle of reformative justice, which aims to rehabilitate and reintegrate offenders into society. There are also concerns about judicial overreach, as courts imposing this sentence may be seen as creating a new category of punishment beyond the legislative framework. Furthermore, life imprisonment without remission disproportionately affects marginalised communities, exacerbating existing inequalities within the criminal justice system. These issues highlight the need for careful consideration and debate regarding the use of this severe form of punishment. This sentencing practice is becoming increasingly prevalent in Supreme Court decisions, serving as an alternative to the death penalty in cases where the crime is heinous, but

mitigating factors suggest potential for reformation. The Supreme Court's decisions in cases like *Swamy Shraddananda v. State of Karnataka* and *Union of India v. V. Sriharan* have established precedents for this type of sentencing.

The landmark case of *Deen Dayal Tiwari v. State of Uttar Pradesh*has recently brought significant attention to the practice of life imprisonment without remission in India. In this case, the Supreme Court commuted Deen Dayal Tiwari's death sentence to life imprisonment without the possibility of remission, highlighting a shift in the judicial approach towards severe but non-capital punishment. Tiwari was convicted of the brutal murders of his wife and four minor daughters. While the trial court deemed it a "rarest of rare" case warranting the death penalty, the Supreme Court considered mitigating factors such as his lack of prior criminal history and satisfactory conduct in jail. This decision underscores the evolving nature of sentencing in the Indian judicial system.

This article examines the historical evolution of life imprisonment in India, key judicial precedents on remission, and the emergence of life without remission as a potential fourth category of punishment. It analyses theoretical justifications, constitutional challenges, global comparisons, socioeconomic biases, and policy implications for India's penal system.

Historical Evolution of Life Imprisonment in India

The concept of long-term imprisonment, particularly life imprisonment, was not a predominant feature of the Indian penal system. In British India during the 1920s, 'transportation for life' was a form of colonial punishment under which convicts sentenced for serious crimes or political offences were forcibly relocated to penal settlements, such as the Andaman Islands, most notably the Cellular Jail in Port Blair, often referred to as "Kala Pani." However, later in 1955, the practice of transportation was abolished as a form of punishment, thereby redefining life imprisonment under the Indian Penal Code as "imprisonment for the remainder of the natural life of the convict."

In India, the concept of a life sentence has always been ambiguous. Even though Section 53 of IPC (Section 4 of BNS) distinguishes between rigorous and simple imprisonment, yet the courts have generally opined that life imprisonment is inherently rigorous. This interpretation was upheld by the Supreme Court in *Naib Singh vs State of Punjab,* even after the repeal of Section 58 of the IPC, which originally supported it. This stance contradicts the 39th law Commission's view, stating that the legislature's clarification is necessary for the nature of life imprisonment.

Life imprisonment in India means incarceration for the convict's entire natural life, as established by the Supreme Court in *Gopal Vinayak Godse v. State of Maharashtra*. The Court rejected equating it with a fixed term, holding it endures until death unless remitted by competent authorities. However, ambiguity persists due to the widespread use of sentence-shortening mechanisms across three levels. Constitutionally, Articles 72 and 161 empower the President and Governors to grant pardons, reprieves, remissions, or commutations independently of statutes. Legislatively, CrPC Sections 432–435 [BNSS Sections 472–477]

authorise governments to remit sentences under specific conditions. At the regulatory level, the Model Prisoners Act 2023, state prison manuals, and administrative orders provide routine remissions for good conduct, prison labour, or occasions such as Independence Day.

This multilayered system created considerable inconsistency. In many cases, life sentences were being routinely shortened to 10–14 years, leading to a general misconception that life imprisonment was equivalent to a fixed-term punishment. To address this issue, Parliament introduced Section 433A of the CrPC in 1978, which stipulated that prisoners convicted of an offence punishable by death, whose death sentence had been commuted to life imprisonment, must serve a minimum of 14 years before any remission could be considered. The intention was to bring uniformity and curb arbitrary or premature releases.

In *Maru Ram v. Union of India*, the constitutionality of Section 433A was challenged on the ground that it violates the fundamental rights by restricting the executive's power to remit sentences. The Supreme Court, by observing that the legislature was justified in imposing a minimum threshold for sentence shortening, upheld the validity of this section. Additionally, this judgment established a crucial distinction between statutory remission under parliamentary laws and constitutional clemency, noting that statutory provisions could not infringe upon the constitutional powers of clemency vested in the President and Governors.

Judicial Recognition of Life Imprisonment Without Remission

The creation of the fourth category of sentencing and an important shift towards life imprisonment without the possibility of remission in Indian jurisprudence on sentencing is evident from a series of landmark cases. Firstly, in 2008, the Supreme Court, under para 91 of *Swamy Sharaddananda v. State of Karnataka*, created a special category of life imprisonment for cases falling between the extremes of death and conventional life sentences. The courts could now direct incarceration for the remainder of the convict's life, without a possibility of remission. The basis for this stemmed from the fear that early release through executive clemency could frustrate the goals of justice, especially in high-profile or socially sensitive cases. Secondly, the Criminal Law Amendments in 2013 and 2018 led to the introduction of this concept where the term life imprisonment would mean imprisonment for the remainder of one's natural life, These Amendments were nor very clear regarding whether it forecloses executive and statutory remission, nor does it explain how it interacts with sentencing shortening powers under Section 432 and 435 of CrPC or the constitutional clemency power under Articles 72 and 161. Thirdly, in *Union of India v. Sriharan* (Rajiv Gandhi Assassination case), the Supreme Court reaffirmed this decision, by a 3:2 majority, that both the High Courts and the Supreme Court possess the power to impose life sentences that are immune from statutory and administrative remission. Under Para 78, it asserted that in appropriate cases, the judiciary may direct that a convict must remain in prison for the rest of their life or for a judicially determined fixed term of 20, 25, or 30 years. A judicially created sentencing structure like this marked an important transformation by creating a middle ground between the death sentence and the possibility of premature release. It was argued that the Doctrine of Separation of Powers was not adhered to, since this sentencing structure was not a creation of the legislature, but rather of the court by encroaching into the domain of the Legislature.

The Doctrine of Proportionality, founded on balance, non-vindictiveness, and natural justice questions the legitimacy of life imprisonment without remission, as permanently barring convicts from release despite potential reform risks excessive liberty deprivation contrary to India's reformative ideal. Ironically, the judgment in Sriharan, under para 72, relied on Justice Fazl Ali's sceptical view of prison reformation in Maru Ram, ignoring subsequent reforms, such as the Model Prison Manual 2016, which declares reformation as the ultimate goal. Project 39A data reveals its normalisation: 61.14 per cent of all commuted death sentences in 2022 resulted in life imprisonment without remission (Supreme Court in all 8 cases, High Courts in 56 per cent+ cases), with 92 such sentences (29 whole-life) from 2015–2022, signaling a penal shift from rehabilitation to retribution exemplified by *Deen Dayal Tiwari case*, risking erosion of dignity based justice where prisons ensure accountability but require reform prospects for true resolution. Life imprisonment without remission challenges Article 21 of the Constitution and raises an important question: Does a sentence that keeps a prisoner incarcerated for the remainder of their natural life, with no hope of release, amount to a penalty more severe than death?

From a comparative human rights perspective, the European Court of Human Rights (ECtHR) view in *Vinter v. UK* highlights that such sentences violate Article 3 ECHR by denying the "right to hope" through review mechanisms, providing India a persuasive model for balancing punishment with humane treatment. While in India, *Swamy Shraddananda* and Sriharan upheld judicial power to bar remission for dangerous offenders, but the Supreme Court lacks clarity on whether such sentences violate Article 21's protection of dignity or its mandate for just, fair, and reasonable, risking arbitrariness without structured review frameworks.

Theoretical Justifications and Criticism

The concept serves as a middle ground between the death penalty and life imprisonment, preventing the arbitrary imposition of capital punishment while still ensuring that justice is delivered. It also prioritises the protection of society by guaranteeing that dangerous criminals remain incarcerated and pose no future threat to the public. By placing sentencing authority in the hands of the judiciary rather than the executive, it ensures that decisions regarding the length and nature of punishment are made through a fair and independent process. Although the reformative theory of justice emphasises rehabilitation alongside deterrence and retribution, this ideal is not always feasible for hardened offenders who exhibit persistent violent behaviour or a high likelihood of reoffending. For such individuals, rehabilitation outside prison may be unrealistic, as they could commit similar or even more serious crimes if released. In these exceptional cases, any meaningful reform can only occur within the structured and controlled environment of the prison system, where the safety of society is not compromised.

Remission still remains a discretionary relief granted by the government, and not a fundamental right. The Supreme Court in *State of Haryana v. Mahender Singh* (2007) confirmed this, rooted in Article 72 (presidential) and Article 161 (Governor) clemency, alongside CrPC Sections 432-433 [BNSS Sections 473-474]. In *Laxman Naskar v. State of West Bengal*, the Supreme Court established guidelines for granting remission, taking into account the prisoner's conduct, prospects for reformation, and the societal impact.

A Global Context of LOPW and Socioeconomic Bias in Sentencing in India

Global approaches to life imprisonment reveal a deep philosophical divide. The United States frequently uses Life Without Parole (LWOP), emphasising permanent incapacitation, a practice debated for its human rights impact. In contrast, the UK and Europe typically reject LWOP, favouring rehabilitation with parole eligibility after 15-25 years, a stance supported by the European Court of Human Rights. Norway's model, with a 21-year maximum, epitomises this rehabilitative focus. While about 65 countries use LWOP, India's increasing adoption of it marks a shift toward a more punitive model.

The application of these sentences often reveals systemic socioeconomic bias. Marginalised communities such as Dalits, Tribals and Economically Weaker sections are disproportionately sentenced to harsher terms due to inequality and lack of legal resources, while the powerful often receive leniency. This disparity is exacerbated in India by the absence of structured sentencing guidelines, leading to arbitrary decisions.

Conclusion

In today's time, life imprisonment without remission is increasingly used as an alternative to the death penalty, raising crucial questions about judicial authority vis-a-vis prisoner rights. Various jurisdictions throughout the world have abolished capital punishment because of it being barbaric; Albert Camus in *Reflections on the Guillotine* described watching a hanging as so painful that he sought its end. Life imprisonment without giving an opportunity to get remission is no more than a punishment of death. Both forms are barbaric in their own true sense, and a distinction is not so easy to draw. In case of a death sentence, a person lives awaiting the day of his death, whereas, in life imprisonment without remission, he dreads it daily.

Punishment must be like medicine, administered for the betterment of the one being chastised. No person is beyond incurable; through education, prisoners can become societal assets, not burdens. The Supreme Court's judgment in the *Sriharan case* in 2018, as well as the recent judgment in *Deen Dayal*, aptly highlights that India is placing great faith in longer and harsher punishments. Not only are these developments conceptually opaque, but they also overlook the reformative aspect of punishment. Moreover, the legislature missed a significant opportunity to resolve the confusion surrounding remission by introducing new, more effective principles in the 2023 Criminal Law Amendments. This could be achieved by either fixing the duration of the sentence, as in the Norwegian model, or enacting a more standardised framework, thereby reducing judicial interpretation and confusion. Ultimately, all this discussion would be mere words without any actual application if substantive changes are not made to the existing prison facilities in India. Prisons must be a place where prisoners are actually reformed through education, awareness programmes or public service, rather than being a place of misery.

Authors

- Sanya Darakhshan Kishwar
  Sanya Darakhshan Kishwar is an Assistant Professor, Jindal Global Law School & Doctoral Candidate, National Law University, Delhi.

  View all posts

- Parth Chhapolia
  Parth Chhapolia is a student at Jindal Global Law School, O.P. Jindal Global University, Sonipat

  View all posts

- Syed Ahmad Nawaz Zaidi
  Syed Ahmad Nawaz Zaidi is a student at the Faculty of Law, Aligarh Muslim University, Aligarh

  View all posts