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THE DICHOTOMY OF LIFE IMPRISONMENT VS IMPRISONMENT TILL DEATH: QUESTIONING THE SUPREME COURT'S ACT OF CREATING A NEW CATEGORY OF PUNISHMENT

AUTHORED BY - ANIMESH JHA & HIMANSHU RANJAN

ABSTRACT

Every civilised criminal justice system reserve with itself, the right to inflict '*just'* punishment to an offender. Sinceeons, the concept of *'just'*punishment has vexed the criminologist and penologist alike. In ancient *Bharat*, the concept of *Prayashchita,* or what we call repentance or redemption was a cardinal factor for the kings and his courtiers in determining the justness of the punishment awarded to the wrongdoer. The story or Maharshi Valmiki and Samrat Ashok gives us a very clear idea that no man, howsoever evil, is incapable of change. In ancient *Bharat*, the concept of *Danda* (Punishment) and *Prayashchit* (Repentance and Reformation) were the two wheels which propelled the chariot of penal system. It is not untrue that the modern principles of law, namely the reformative theory of punishment is giving us nothing new, but is only reminding us of our ancient Indic values. The judgement of Supreme Court of India in *Swamy Shraddanand* case seems to overrun the ancient principle of proportionality in punishment by creating a new category of punishment- *life imprisonment beyond the scope of remission.* This paper argues against the inclusion of such punishment in our criminal justice system, both from the constitutional and policy point of view.

Introduction

The renowned jurist Salmond, was of the view that if criminals are to be sent to prison to be transformed into good citizens by physical, intellectual, and moral training, prisons must be turned into comfortable dwelling places.[1]

The Supreme Court of India, through a catena of judgements has increasingly emphasised and

[1]Anne Salmond, *Two worlds: First meetings between Maori and Europeans, 1642-1772*,UNIVERSITY OF HAWAII PRESS(1992).

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punctuated on the importance of infusing principles of 'reformation' and 'humanitarianism' in awarding punishment. In ***Narotam Singh v. State of Punjab*[2],** the Supreme Court observed-

"Reformative approach to punishment should be the object of **criminal** *law, in order to promote rehabilitation without offending community conscience and to secure social justice."*

Unfortunately, the theory of reformative justice has suffered a fatal blow from the same Supreme Court only, when it decided to create a special category of punishment through judicial fiction in ***Swamy Shraddanand @ Murli v State of Karnataka*[3]** –life imprisonment***beyond the scope of remission.***

Through this research work, our aim is to scrutinise the constitutional validity of such categoryof imprisonment created by the Supreme Courts,which has effectively tied the appropriate Government's hands from remitting the sentence of a convicted person under Code of Criminal Procedure [**CrPC**]. We also examine whether such kind of punishment in any way serve the cause of larger'public interest,' as claimed by the honourable Apex Court in *Swamy Shraddanand* and later cases.

Firstly, we map the scope of imprisonment for life as a punishment provided under the Indian Penal Code, 1860 [**IPC, 1860**]. *Secondly*, we discuss the concept of remission, its scope, and the relevant procedure under the Code of Criminal Procedure, 1973 [**CrPC, 1973**]. *Thirdly*, we briefly elaborate how the Supreme Court through a series of judgements, starting from *Swamy Shraddanand*, has been awarding a special category of punishment created through the controversial route of judicial legislation.*Fourthly*, we discuss whether awarding the aforesaid category of punishment is violative of Article 21, the fundamental right to life and personal liberty[4] and Article 14, the fundamental right to equality[5]enshrined underthe Constitution of India, 1950 [**Constitution**]. *Fifthly*, we examine whether the creation of a special category of offence is in violation of the doctrine of separation of powers enunciated under the Constitution. Finally, we analyse the impact of such kind of punishment on the prison administration and how it is antithetical the cause of 'public interest,' which the Apex Court seems desirous of protecting.

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[2]Narotam Singh v. State of Punjab, AIR 1978 SC 1542.
[3]Swamy Shraddananda v. State of Karnataka,AIR 2008 SC 3040.
[4]INDIAN CONST. art. 21.
[5]INDIAN CONST. art. 14.

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It is necessary for us to mention in this context, that the constitutional power of the President of India under Article 72 and that of the Governor[6] under Article 161 of the Constitution[7] is yet not the subject matter of discussion, particularly in our research work. Nor the power of the appropriate government to commute under Section 433 of the Cr.P.C.[8] under discussion. What isunder limited discussion in our research work is the remission power available to the appropriateGovernment under Section 432 of the Cr.P.C.[9]

I. MAPPING THE SCOPE OF THE PUNISHMENT- 'IMPRISONMENT FOR LIFE'

Under Chapter III of the IPC, 1860 [Of Punishments], **Section 53**lists down the punishment to which the offenders are liable and which the Courts are authorised to award in cases of conviction[10]. The Second clause states the punishment of 'imprisonment for life'. Section 45 provides that the word "*life*" denotes the life of a human being, unless the contrary appears from the context. The punishment of imprisonment for life was not originally present in IPC, 1860.[11] It was introduced through an amendment in the year 1956[12].There are more than 50 sections in the code which provide for the punishment of life imprisonment. It is *inter alia* awarded for heinous offences like sedition[13], murder[14], rape[15] etc.

Any Court in India is authorised to give punishment only as prescribed under the IPC, 1860 or special penal legislations. Article 20(1) of the Constitution bestows the fundamental right of protection in respect of conviction for offences on the offenders[16]. Under this, the Courts as well as quasi-judicial body are prohibited from imposing a punishment greater than what is prescribed under the law in force at the time of commission of offence. This has been affirmed by the Supreme Court in the case of ***State of West Bengal v S.K. Ghosh***[17]. It must be noted that neither Section 53 nor any of the provisions under the IPC, 1860 provides for the punishment of 'life imprisonment' *sans* remission.

[6]INDIAN CONST. art. 72.
[7]INDIAN CONST. art. 161.
[8]Code of Criminal Procedure, No. 2, Acts of Parliament, 1973 § 433 (India).
[9]Code of Criminal Procedure, No. 2, Acts of Parliament, 1973 § 432 (India).
[10]Indian Penal Code, 1860, No. 45, Acts of Parliament, 1860, § 53.
[11]Indian Penal Code, 1860, No. 45, Acts of Parliament, 1860, § 45.
[12]Indian Penal Code, 1860, Act 26 of 1955.
[13]Indian Penal Code, 1860, No. 45, Acts of Parliament, 1860, § 124A.
[14]Indian Penal Code, 1860, No. 45, Acts of Parliament, 1860, § 300.
[15]Indian Penal Code, 1860, No. 45, Acts of Parliament, 1860, § 375.
[16]INDIAN CONST. art. 20(1).
[17]State of West Bengal v. S.K. Ghosh, 1963 AIR 255.

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An insight about this issue can be taken from the provisions of CrPC under which an Additional District Judge or District Judge can sentence a person prescribed by law. Here the term 'prescribed by law' is of some significance here. The punishments that are prescribed by law are provided in Section 53 of IPC. Under Section 53, while the term 'life imprisonment' is mentioned, the term 'life imprisonment without remission' is not mentioned, raising a statutory conflict.[18] Supreme court in its discussion on this aspect, has not considered this dichotomy as the Life imprisonment is essentially different from imprisonment till death.

Remission: Meaning, Scope & relevant provisions under CrPC

The CrPC, 1973 in its definition clause does not provide what constitutes remission. However, under chapter XXIII, it provides the power of the appropriate government to suspend or remit a sentence under Section 432.[19]The Madhya Pradesh High Court in ***Babu Pahalwan v State of Madhya Pradesh & Anr*** held thatremission' means reducing the amount of sentence awarded to a convict without changing the character of sentence.[20]

Section 432(1) provides that, whenever any person has been sentenced to punishment for an offence, the appropriate government may, either conditionally or unconditionally suspend the execution of sentence or remit the whole or any part of the punishment to which he has been sentenced.[21]The power of the government to remit the sentence is not absolute. Section 433A disallows the government to release the prisoner, where a sentence of imprisonment for life is imposed on him for an offence for which death is one of the punishments provided by law, unless he has served fourteen years of imprisonment.[22]

The effect of an executive order of full remission is that, it wipes out the remaining part of the sentence that has to be served by the prisoner and thus in practice, reduces the sentence to the period already undergone in prison.[23] It must be noted that the power to grant remission is completely an executive function and the Courts do not have the power to remit the sentence.

[18]Indian Penal Code, 1860, No. 45, Acts of Parliament, 1860, § 53.
[19] Code of Criminal Procedure, No. 2, Acts of Parliament, 1973 § 432 (India).
[20]Babu Pahalwan v. State of Madhya Pradesh & Anr, 1990 (0) MPLJ 682.
[21]Code of Criminal Procedure, No. 2, Acts of Parliament,1973 § 433 (India).
[22] Code of Criminal Procedure, No. 2, Acts of Parliament, 1973 § 433A (India).
[23] Sarat Chandra Rabha v. Khagendranath, AIR 1961 SC 334.

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Punishment of Imprisonment for life 'beyond the scope of remission': Special category of punishment begotten through judicial legislation

As we have discussed in the above section, there is no absolute restriction in the CrPC, 1973 on executive's power to remit sentencesof imprisonmentfor life, awarded by trial courts.However, unfortunately, the Supreme Court of India, through the route of judicial legislation has created a special category of punishment – ***imprisonment for life beyond the scope of remission***.

It was in *Swamy Shraddhanand* Case[24] that the Supreme Court first created the judicial fiction of granting a sentence of imprisonment for life sans remission. The petitioner in this case was convicted under Section 302 and Section 201 of the IPC, 1860. The Sessions Judge had sentenced him to death for the offence of murder and to a term of five years rigorous imprisonment and fine of rupees ten thousand for causing disappearance of evidences. The Karnataka High Court upheld the conviction and the death sentence awarded to the appellant against which the petition was filed in the Supreme Court.

Interestingly, the appeal in the Supreme Court was first heard by a division bench comprising Justice S.B. Sinha and Justice M. Katju. Though the honourable divisional bench unanimously upheld the appellant's conviction, but they came to different conclusions with respect to the punishment to be awarded to the appellant. While Justice Sinha was of the opinion that in the facts and circumstances of the case, the punishment of life imprisonment, rather than death would serve the ends of justice, he made it clear that the appellant would not be released from prison till the end of his life. Justice Katju, on the other hand was ofthe view that the appellant deserved nothing but death.

An appeal arose from the judgement of division bench and was heard by a three-judge bench of the Supreme Court comprising B.N Agarwal, G.S. Singhvi and Aftab Alam JJ.

After hearing the arguments and taking into consideration relevant factors and circumstances, the three-judge bench of the apex court, writing through Justice Alamsubstituted the death sentence given to the appellant by the trial court and confirmed by the High court to

[24]Swamy Shraddanand @ Murli v. State of Karnataka, AIR 2008 SC 3040.

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imprisonment for life. However, a condition was attached to the aforesaid punishment***- the petitioner shall not be released from prison till the rest of his life.***

Justice Aftab Alam traced the genesis of this new category of punishment in a 30 years old judgement of the Supreme Court- ***Dalbir Singh and Ors v State of Punjab***.[25]

In paragraph 14 of the judgment this Court held and observed as follows:

> ***14***. ***[T]****he sentences of death in the present appeal are liable to be reduced to life imprisonment. We may add a footnote to the ruling in Rajendra Prasad case. Taking the cue from the English legislation on abolition, we may suggest that life imprisonment which strictly means imprisonment for the whole of the men's life but in practice amounts to incarceration for a period between 10 and 14 years may, at the option of the convicting court, be subject to the condition that the sentence of imprisonment shall last as long as life lasts, where there are exceptional indications of murderous recidivism and the community cannot run the risk of the convict being at large. This takes care of judicial apprehensions that unless physically liquidated the culprit may at some remote time repeat murder.*

Thus, the Supreme Court effectively made a new category of punishment- imprisonment for life till the last breath, which would be beyond the scope of statutory remission under Section 432 of the CrPC.It is very important for us to understand the rationale behind the creation of new category of punishment.

The Supreme Court, in *Swamy Shraddhanand* Case observed that there are certain cases which fall short of the rarest of rare doctrines (as propounded in the ***Bacchan Singh v State of Punjab***[26] case) and, the courts are reluctant in imposing the death sentence. However, if in such circumstances, life imprisonment that is subject to remission (which generally works out to a period of 14 years) is awarded as a punishment, the Court was of the opinion, that it would be highly disproportionate and inadequate having regard to the nature of crime committed.

To fill this gap of '*supposed*' inadequacy, the Supreme Court introduced the special category of punishment, which it announced to be 'more just, reasonable and proper course.' According to

[25]Dalbir Singh and Ors v. State of Punjab,AIR 2008 SC 2389 (India).
[26]Bacchan Singh v. State of Punjab,AIR 1980 SC 898 (India).

the Supreme Court, if in the light of the facts and circumstances of the*Swamy Shraddhanand* case, it awarded life imprisonment simpliciter, the sentence would amount to no punishment at all.[27]Therefore, to fill the '*hiatus*es' between 14 years of imprisonment and death penalty, the Court felt the necessity of introducingnew category, i.e., life imprisonment till last breath without any scope of statutory remission. The Court further noted that the formalisation of this special category of sentence would be a positive step in "*reassertion of the Constitution Bench decision in Bachan Singh (supra) besides being in accord with the modern trends in penology.*"
The view of the three-judge bench in *Swamy Shraddananda* case has been cited by Supreme Court in 73 cases, while the High Courts all over the India have cited it in 278 cases.[28]

The punishment of life imprisonment sans remission was reiterated and imposed subsequently in a catena of judgements including ***Union of India v SriHaran@ Murugan & Ors***[29] (2016), ***Sudam & Rahul kaniram Jadhav v The State of Maharashtra(2019)***[30], ***Accused X vs The State Of Maharashtra (2019)***, and recently in ***Shatrughna Baban Meshram vs The State Of Maharashtra*****(2020)**[31]
Importantly, we can observe that the purpose of the apex court in defining a new category of punishment was bona fide. However, as we will see in the parts that follow, even with the best of intentions, the Supreme Court, which is not infallible, frequently errs in ways that prove to be catastrophic for the pursuit of justice.

The challenge to Swamy Shraddananda Case In Sangeet Judgement and witnessing the last laugh of Swamy Shraddananda Principle in SriHaran Murugan Judgement

In 2012, the new category of sentence introduced by *Swamy Shraddananda* Case was examined by the Supreme Courtin ***Sangeet & Anr v State of Haryana.***[32] In this case, as many as six persons (including the appellant) were accused of various offences under the IPC, 1860 and Arms Act, 1959. Except the appellants, five other accused persons were awarded a sentence of

[27]Swamy Shraddanand, *supra*note 24.
[28]The above information has been retrieved from Manupatra Authoritative check: Interactive timeline, https://www.manupatrafastin.nlujodhpur.remotexs.in/Defaults/ExtRes/help/AuthorityCheckInteractiveTimeline.html.
[29]Union of India v. SriHaran@ Murugan & Ors, (2016) 7 SCC 1 (India).
[30]Sudam & Rahul kaniram Jadhav v. The State of Maharashtra,(2011) 7 SCC 125 (India).
[31]Accused X vs The State Of Maharashtra,(2021) 1 SCC 596 (India).
[32]Sangeet & Anr v. State of Haryana,(2013) 2 SCC 452 (India).

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rigorous imprisonment for life and payment of fine. The appellants were, on the other hand, awarded death sentence. The limited question in appeal to the apex court was the sentence awarded to the appellants.

While considering the issue of remission, the Supreme Court examined the question whether the power of the appropriate Government to grant remission can be injuncted through the decision of the Courts as espoused by the three-judge bench in *Swamy Shraddananda* Case. The division-bench of Supreme Court comprising Justice K.S Radhakrishnan and Justice Madan B. Lokur answered the question in the negative. According to the Court, "*the appropriate Government cannot be told that it is prohibited from granting remission of a sentence. Similarly, a convict cannot be told that he cannot apply for a remission in his sentence, whatever the reason"*[33].
Justice Madan B. Lokur, who authored the judgement in the *Sangeet Case* was of the opinion that,the grant of remission under Section 432 CrPC is a statutory power which is accompanied by certain substantive and procedural checks under Sub-section (2) to (5) of Section 432, Section 433-A of CrPC and State specific prison & jail manuals.Accordingly, it disagreed with the *Swamy Shraddananda* Case to the extent it prohibited the Government from exercising such power in case of sentence of life imprisonment. Importantly, in the *Sangeet Case,*the divisional bench of the Supreme Court mandated the Government to '*obtain the opinion (with reasons) of the presiding judge of the convicting or confirming Court'* before exercising power of remission under Section 432 CrPC.It is to be noted that this is contrary to the plain meaning of Section 432 CrPC, whichprovides that the Government may, at any time, '***without conditions*** *or upon anyconditions which theperson sentenced accepts, suspend the execution of his sentence or remit thewhole or any part of the punishment to which he has been sentenced'*

The overruling of the special category of punishment propounded in the *Swamy Shraddananda* Case was re-examined by a Constitutional bench in ***Union of India v V. Sriharan @, Murugan& Ors***[34] in the year 2015. In the *Sriharan case*, the Supreme Court considered 7 questions. One of which was, whether as per the principles enunciated in paras 91 to 93 of Swamy Shraddananda, a special category of sentence may be made for the very few cases where the death penalty might be substituted by the punishment of imprisonment for life or imprisonment for a term in excess of fourteen years and to put that category beyond application of remission?

[33]*Id*, ¶ 58.
[34] Union of India v V. Sriharan @ Murugan & Ors,(2014) 4 SCC 242.

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In this case, the then Chief JusticeF.M. Ibrahim Kalifulla authored the majority judgement on behalf of himself, Justice H.L. Dattu and Justice P.C. Ghose. Justice U.U Lalit dissented with the majority bench and his dissent was concurred by Justice Abhay Manohar Sapre.

The majority bench overruled the finding of divisional bench in *Sangeet Case*and upheld the principles of sentencing introduced by the *Swamy Shraddananda* case. According to Justice Kalifulla;

> *"87.* ***…. [W]****hen we consider the views expressed in Shraddananda (supra) in paragraphs 91 and 92, the same is fully justified and needs to be upheld. By stating so, we do not find any violation of the statutory provisions prescribing the extent of punishment provided in the Penal Code.* ***It cannot also be said that by stating so, the Court has carved out a new punishment****. What all it seeks to declare by stating so was that 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, whose interest is also to be taken care of by the Court, when considering the nature of punishment to be imposed."*[35]

The majority bench was, therefore reached the conclusion that the ratio laid down in Swamy Shraddananda with respect to a special category of sentence; instead of Death; for a term exceeding 14 years beyond the application of remission is well founded.

Interestingly, Justice U.U Lalit dissented with the observation of the majority bench and agreed with the ruling of thedivision bench in the *Sangeet Case*. Justice Lalit after examining all the relevant provisions and judgements eloquently held that:

> *"438.* ***[I]****n our view, it would not be open to the Court to make any special category of sentence in substitution of death penalty and put that category beyond application of remission, nor would it be permissible to stipulate any mandatory period of actual imprisonment inconsistent with the one prescribed Under Section 433A of Code of Criminal Procedure"*[36]

[35]*Id*, ¶87.
[36] *Id*, ¶ 438

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The rational of the dissenting opinion had 'separation of powers' between executive and judiciary at its heart. Justice Lalit, whose views were concurred by Justice Sapre, differentiated between the Constitutional powers of President and Governor under Article 72 and Article 161 respectively with the Central Government's power under Section 432 CrPC. The dissenting opinion observed that by putting the matters of life imprisonment beyond remissions, Justice Lalit was of the opinion that the Court would in fact be creating a new punishment.

II. SCRUTINISING THE PUNISHMENT, 'IMPRISONMENT FOR LIFE SANS REMISSION' ON THE TOUCHSTONE OF FUNDAMENTAL RIGHTS

Part III of the Constitutionguarantees certain inalienable fundamental rights to everyone. One of them being, the right to protection of life and personal liberty enshrined under Article 21.[37]According to the aforesaid provision, no person shall be deprived of his life or personal liberty except according to procedure established by law.[38]Post the ***Maneka Gandhi v Union of India*** judgement[39], the 'procedure' prescribed by law has to be fair, just and reasonable, not fanciful, oppressive or arbitrary. Another important fundamental right is the right to equality under Article 14 of the Constitution[40] which guarantees immunity against unjust, arbitrary, and disproportionate state action.

The Supreme Court of India in the case of ***State of Andhra Pradesh v. Challa Ramkrishna Reddy***[41], held that a prisoner is entitled to all the fundamental rights unless specifically curtailed by the constitution.In ***State of Maharashtra v. Prabhakar Pandurang Sanzgir***[42], the Supreme Court affirmed that every prisoner retains all such rights that are enjoyed by free citizens except the one that is lost necessarily as an incident of confinement. Consequently, in***Charles Sobaraj v. Supdt Central Jail Tihar***[43]**,** it observed that all the rights available to prisoners under Articles 14, 19 and 21 are though limited but cannot be said to be static. They are bound to or rather will rise to new human heights when challenging circumstances arise.

The imposition of life imprisonment sans remission offends both Article 21 and Article 14 of the

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[37]INDIAN CONST. art. 21.
[38]*Id.*
[39]Maneka Gandhi v. Union of India, AIR 1978 SC 597 (India).
[40]INDIAN CONST. art. 14.
[41]State of Andhra Pradesh v. Challa Ramkrishna Reddy,AIR 2000 SC 2083.
[42]State of Maharashtra v. Prabhakar Pandurang Sanzgir, 1966 AIR 424.
[43]Charles Sobaraj v. Supdt Central Jail Tihar, 1978 AIR 1514.

Constitution. It is crueller than the punishment of death sentence as the latter at least offers an aspect of certainty. There is none but William Douglas, former Associate Justice of Supreme Court of the United States, who best understood this agony when he proclaimed, ***"In death there is peace. There is terror only in the fear of death."***

The punishment of life imprisonment till last breath sans remissionforces the prisoner to helplessly await death. As the chances of re-integrating into society are shut down, howsoever good the conduct of the prisoner may be, the awarding of life imprisonment sans remission effectively sucks the "life" from the prisoner like leeches suck the blood from their prey. This is manifestly disproportionate and harsh even if we compare it with sentence of death and smacks of inhumanity, lack of reformative approach and utmost severity.

In ***Francis Coralie Mullin v. The Administrator, UT Delhi***[44] Justice Bhagwati quoted Justice Marshall:

> *"I have previously stated my views that a prisoner does not shed his basic constitutional rights at the prison gate and I fully support the court's holding that the interest of inmate."*

However, by imposing the new or special category of life imprisonment, the Supreme Court has unintentionally stripped the prisoner of his most important constitutional right- the right to life.

III. TESTING THE PUNISHMENT OF 'LIFE IMPRISONMENT SANS REMISSION' ON THE ANVIL OF THE DOCTRINE OF SEPARATION OF POWER

The doctrine of separation of power, upheld as a part of the basic structure of the Constitution[45]governs the domain of functions of the three branches, viz, legislature, the judiciary and the executive. To avoid conflicts and friction between the three pillars of the democracy- the Constitution entrusts the task of drafting laws and policies on the legislature, implementation ofsuch laws on the executive and adjudication of disputes on the judiciary. For the smooth entourage of democracy, it is quintessential that the three branches don't step on each other's jurisdiction. The aforesaid doctrine is best encapsulated by Justice B.K. Mukherjea in ***Rai Sahab Ram Jawaya v State of Punjab***[46] as:

> **"[*T*]***he Indian Constitution has not indeed recognised the doctrine of separation of powers in the absolute rigidity but the functions of the different parts or branches of the*

[44]Francis Coralie Mullin v. The Administrator, UT Delhi,AIR 1981 SC 746.
[45]**Kesavananda Bharati v. State of Kerala,** (1973) 4 SCC 225 (India).
[46]Rai Sahab Ram Jawaya v. State of Punjab, AIR 1955 SC 549.

Government have been sufficiently differentiated and consequently it can very well be said that our Constitution does not contemplate assumption by one organ or part of the State of the functions that essentially belong to another.[47]*"*

In this backdrop, it is important to understand here that awarding a sentence is a part of the trial and is a purely judicial function. The executive cannot interfere whatsoever in the manner in which the sentence is awarded by the Court.[48] However, once the sentence has been awarded to an offender, the CrPC, 1973 empowers the executive to remit, suspend or commute the sentence. The alteration with the execution of sentence is a purely administrative function[49], though it is subject to the judicial review.[50]

The decision of Supreme Court to create a new category of punishment- life imprisonment sans remission, beyond what is prescribed under Section 53 of the IPC, 1860 indicates that it has robbed the executive of its power to remit the sentence in accordance with Section 432 of the CrPC, 1973.Even with a bona fide intention, we are of the view that it is not for the Court to frame a new scheme of sentencing. It is only the legislature who is obligated under the Constitution to undertake such task.

Analysing the probable impact of the new category of Punishment on the prison administration: Is it a blow to the 'public interest'?

To analyse a sentencing policy comprehensively and critically, it is incumbent to look at the latest Prison Statistics of India Report- 2020 ["**PRI-2020**"], prepared by the National Crime Records Bureau under the aegis of Ministry of Home Affairs, Government of India.

According to PRI-2020, occupancy rate in the prisons at the end of the year stood at 118.5%.[51] The state of Uttar Pradesh reported the highest occupancy rate (177.0%) followed by Sikkim (173.8%) and Uttarakhand (168.6%) as on 31st December, 2020[52]. The number of deaths in jails

[47] *Id.*
[48] Maru Ram v. Union of India, (1981) 1 SCC 107 (India).
[49] *Id.*
[50] Baljit Singh v. State of Punjab, 1986 Cri LJ 1037 (P& H) (India).
[51] *See* Prison Statistics India, 2020, National Crime Records Bureau, Ministry of Home Affairs, Government of India, https://ncrb.gov.in/sites/default/files/PSI_2020_as_on_27-12-2021_0.pdf.
[52] *Id.*

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has increased by 7.0%, from 1,764 in 2019 to 1,887 in 2020.[53] From 160 in 2019 to 189 in 2020, the number of unnatural prison deaths has grown by 18.1%.Besides this, 156 inmates committed suicideand 3 inmates died as a result of assault by outside factors.[54]

The data regarding prison staff is more distressing. As of December 31, 2020, the sanctioned strength of jail staff was 87,961 while the actual strength was 61,296 due to unfilled vacancies. Officers (DG/Addl. DG/IG, DIG, AIG, Supdt. etc.), Jail-cadre Staff (Head Warder, Head Matron, Warder, etc.), and Correctional Staff (Probation Officer / Welfare Officer, Psychologist / Psychiatrist, etc.) had a sanctioned strength of 7,167, 65,742, and 1,315, while their actual strengths were 4,958, 46,839, and 789 respectively. As of December 31, 2020, the authorised Medical Staff strength was 3,316 whereas the actual strength was 2,232.

Justice Kalifulla in *Sriharan @ Murugan* Case[55], while unambiguously affirming the judicial fiction of sentence of life imprisonment sans remission, proclaimed that such move is ***in the interest of the public at large and the society.***

In our humble view, if the Apex Court based the creation of the new category of punishment on the infrastructure of 'public interest,' the fore coming superstructure willdefinitely lack strong foundations. Contrary to what the Court has emphasised, such category of punishment is at loggerheads with the doctrine of public interest. The reason lies in the 'hopelessness' which it heralds and harbingers on the prisoner. If the convicted person residing in jail has no chances of being released, nor is allowed the mercy of death, S/he will be living either in absolute fear or in absolute fearlessness. Both situations will severely affect the efficacy of prison administration.

If a convict is serving a punishment of life imprisonment, one of the major incentives for him to keep good conduct in prison is the hope of the sentence being remitted after completion of minimum of 14 years in jail as per the mandate of Section 433-A CrPC. However, if the Courts take away the chance of being considered eligible for remission with this new category of punishment, there will be little or no incentive of maintaining appropriate disciplined behaviour for the inmates. This may lead to increased prison violence.

[53]*Id.*
[54]*Id.*
[55]SriHaran, *supra*note 29.

To add more to this problem, Indian prisons suffer from immense over-crowding of under-trial prisoners, lack of basic amenities and inhuman liveable condition, staff shortage, inadequate prison program, poor budget for healthcare in prison and have the infamous history of unreported custodial torture and custodial deaths.

In short, it will be antithetical to the same public interest, which the Supreme Court seems to proudly endorse and safeguard.