



INTERNATIONAL JOURNAL FOR LEGAL RESEARCH AND ANALYSIS

Open Access, Refereed Journal Multi Disciplinary
Peer Reviewed Edition :

www.ijlra.com

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INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS

ISSN

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LIFE SENTENCES WITHOUT PAROLE AND PROPORTIONALITY: EVALUATING THE ETHICAL AND HUMAN RIGHTS IMPLICATIONS

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ABSTRACT

This research paper examines the ethical and human rights implications of life sentences without parole, focusing on the doctrine of proportionality in sentencing. The imposition of life imprisonment without the possibility of parole has become a contentious issue, as it deprives offenders of any chance for release or redemption. The research begins with an exploration of the concept of proportionality in sentencing, considering its significance in ensuring that punishment aligns with the severity of the offence and the culpability of the offender. Drawing on comparative legal analysis and relevant case law, this paper examines how different jurisdictions approach life sentences without parole and assesses the impact on human rights. The analysis considers the potential for violations of international human rights standards, particularly those pertaining to the prohibition of cruel, inhuman, and degrading treatment. By examining the ethical and human rights dimensions of this sentencing practice, the research aims to provide insights into potential reforms and alternatives that align with principles of proportionality and human dignity. By engaging in this examination, societies can move toward more equitable and just approaches to punishment, fostering a criminal justice system that respects the inherent dignity and rights of all individuals, even those convicted of serious crimes.

Keywords: Life Sentences without Parole (LWOP), Proportionality in Sentencing, Ethical Implications, Human Rights, Rehabilitation in Prisons

INTRODUCTION

A life sentence without the possibility of parole is a form of punishment that effectively denies the incarcerated individual any hope for release during their lifetime. It has become an increasingly prevalent sentencing practice, particularly for serious offences, across various jurisdictions. Life imprisonment without parole differs significantly from conventional life

sentences, where parole or the possibility of release after a designated period is available.¹ The concept of lifelong incarceration without any possibility of parole has sparked debates among legal experts, human rights activists, and the public due to its profound and irreversible consequences. Historically, life sentences without parole have roots in retributive justice, emphasizing the notion of punishment as retribution for the harm caused by the offence. The approach gained traction in many legal systems as a response to the perceived shortcomings of indeterminate sentencing and the concerns surrounding the potential risk to public safety associated with parole. The prevalence of such sentences has raised questions about their ethical underpinnings and alignment with principles of proportionality in sentencing.²

The doctrine of proportionality is a cornerstone of criminal sentencing, aiming to ensure that the punishment imposed corresponds to the gravity of the offence and the level of culpability of the offender. The principle seeks to strike a fair and just balance between the severity of the punishment and the harm caused by the crime. Proportionality also considers the potential for rehabilitation and the possibility of reforming offenders as an essential aspect of sentencing decisions.³ The imposition of life sentences without parole raises profound ethical and human rights implications. Questions arise about the impact on human dignity, as well as the potential for rehabilitation and redemption. Critics argue that life without parole may violate the fundamental human right to be free from cruel, inhuman, and degrading treatment or punishment, as outlined in international human rights standards. The practice has drawn scrutiny for its long-term impact on the mental health and well-being of incarcerated individuals and their families.⁴

The primary objectives of this study revolve around conducting a comprehensive examination of life sentences without parole (LWOP) within the context of the principle of proportionality, with a specific emphasis on assessing their ethical and human rights implications. The study aims to first establish a clear understanding of LWOP, tracing its historical origins and legal foundations, and subsequently, to analyse its alignment with the principle of proportionality in sentencing. Central to the research is an exploration of the ethical dimensions surrounding

¹ BRIAN JARVIS, CRUEL AND UNUSUAL: PUNISHMENT AND U.S. CULTURE 14-19 (2004).

² THOM BROOKS, PUNISHMENT: A CRITICAL INTRODUCTION 55-62 (2nd ed. 2021).

³ AHARON BARAK, PROPORTIONALITY: CONSTITUTIONAL RIGHTS AND THEIR LIMITATIONS 1-16 (2012).

⁴ VICTOR HASSAINE, LIFE WITHOUT PAROLE: LIVING AND DYING IN PRISON TODAY 36-62 (Robert Johnson et al., 5th ed. 2010).

LWOP, seeking to identify the moral justifications and ethical concerns associated with the imposition of such sentences. In tandem, the study endeavours to meticulously evaluate the human rights implications of LWOP, considering its compatibility with international human rights standards and the right to dignity and rehabilitation. Comparative analysis across jurisdictions will be conducted to discern variations in LWOP application and their relation to proportionality and human rights. Through these objectives, the study aspires to offer insights into the intricate interplay between life sentences without parole, proportionality, and the overarching ethical and human rights considerations, culminating in recommendations that strive for a balanced approach to sentencing while upholding ethical principles and human rights norms.

LIFE SENTENCES WITHOUT PAROLE: AN OVERVIEW AND CONTROVERSIES

Life imprisonment without parole, commonly referred to as LWOP, is a sentencing practice that condemns an individual to spend the remainder of their life behind bars without the possibility of parole or release. Unlike traditional life sentences, where parole hearings offer the opportunity for early release based on demonstrated rehabilitation and good behaviour, LWOP sentences ensure that the convicted person will serve their entire life term in prison. The absence of parole eligibility distinguishes LWOP from other forms of life sentences, making it a highly punitive and irreversible punishment.⁵ The origins of life sentences without parole can be traced back to the early 20th century in the United States. As an alternative to the death penalty, LWOP emerged as a means to ensure permanent incapacitation of the most dangerous criminals while avoiding the ethical and practical complexities associated with capital punishment. Over time, LWOP gained popularity as a severe sentencing option for offenders convicted of heinous crimes, particularly homicides and violent offences. Internationally, the prevalence of LWOP varies across jurisdictions. While some countries have abolished the practice, others continue to use it, though with varying degrees of frequency. The prevalence of LWOP is influenced by legal traditions, cultural norms, public opinion, and perceptions of crime and punishment.⁶

⁵ MARC MAUER & ASHLEY NELLIS, THE MEANING OF LIFE: THE CASE FOR ABOLISHING LIFE SENTENCES 15-45 (2018).

⁶ LARRY J. SIEGEL, CRIMINOLOGY: THE CORE 8-28 (7th ed. 2018).

- A. DEBATES AND CONTROVERSIES SURROUNDING LWOP:** Life imprisonment without parole is a subject of intense debates and controversies within criminal justice systems. Several key issues underpin the discussions:⁷
- i. Human Rights Concerns:** It is argued that LWOP may violate the right to be free from cruel, inhuman, and degrading treatment, as enshrined in international human rights standards. The notion of permanently cutting off an individual's hope for release raises ethical questions about the appropriate limits of punishment.
 - ii. Effectiveness as a Deterrent:** The deterrent effect of LWOP compared to other sentencing options, such as long determinate sentences or life sentences with parole, remains a contentious topic. Some studies suggest that the severity of the punishment may not significantly impact crime rates compared to other factors.
 - iii. Incarceration Costs and Overcrowding:** LWOP sentences can result in increased costs for the criminal justice system due to prolonged incarceration and medical care for elderly prisoners. Additionally, they contribute to prison overcrowding, raising concerns about the allocation of resources.
 - iv. Potential for Rehabilitation:** Critics argue that denying any possibility of release may hinder efforts at rehabilitation and the potential for positive change in offenders. Rehabilitation programs and incentives for good behaviour may be less effective if the prospect of parole is eliminated.
 - v. Disparities in Application:** Some studies indicate disparities in the application of LWOP sentences concerning race, socioeconomic status, and geography, raising questions about the fairness and impartiality of the sentencing process.

ETHICAL CONSIDERATIONS IN LIFE SENTENCES WITHOUT PAROLE

Life sentences without parole raise several ethical considerations, touching upon notions of justice, human dignity, retribution, and the potential for rehabilitation. Examining these ethical perspectives is essential in evaluating the appropriateness and legitimacy of such sentencing practices. Ethical concerns arise as LWOP deprives individuals of any hope for reintegration into society. Supporters of LWOP may argue that the gravity of certain crimes justifies the most severe form of punishment to protect society. However, opponents contend that even serious

⁷ MARIO MARAZZITI, 13 WAYS OF LOOKING AT THE DEATH PENALTY 58-75 (2015).

offenders should retain their human dignity, and alternatives that allow for potential rehabilitation should be explored.⁸

Ethical perspectives consider the importance of rehabilitation in criminal justice. Proponents may contend that rehabilitation does not guarantee the safety of society, and certain offenders may be too dangerous to release, justifying LWOP in the interest of public safety. Critics argue that LWOP denies individuals the possibility of growth, reform, and redemption. The denial of parole or release might be seen as a denial of the potential for change, challenging the principles of fairness, forgiveness, and hope.⁹

Life sentences without parole have implications beyond the individual offenders. Critics raise concerns about the financial burden of incarcerating individuals for their entire lives and the potential consequences of maintaining large numbers of prisoners serving LWOP. Ethical evaluations consider whether such resources could be better utilized for crime prevention, victim support, and the rehabilitation of offenders. Ethical perspectives assess whether the punishment might perpetuate a cycle of trauma and suffering for those connected to the incarcerated individuals.¹⁰

LWOP not only affects offenders but also has profound consequences for their families and communities. LWOP sentences can lead to feelings of hopelessness, despair, and isolation among prisoners. The realization that they will never have a chance at release or reintegration into society can be psychologically distressing. Prisoners serving LWOP may experience a lack of motivation to participate in rehabilitation programs, as they perceive no incentive to improve their behaviour or seek personal growth.¹¹ Families of individuals sentenced to LWOP often endure emotional trauma and ongoing distress. The permanent separation from their loved ones can lead to feelings of grief, anxiety, and stigmatization. Children with parents serving LWOP may face difficulties in coping with the absence of a parent and experience negative

⁸ ROB CANTON, *THE ETHICS OF PUNISHMENT* 52-58 (1st ed. 2022).

⁹ JOHN F. PFAFF, *LOCKED IN: THE TRUE CAUSES OF MASS INCARCERATION AND HOW TO ACHIEVE REAL REFORM* 105-111 (2017).

¹⁰ TODD R. CLEAR & NATASHA A. FROST, *THE PUNISHMENT IMPERATIVE: THE RISE AND FAILURE OF MASS INCARCERATION IN AMERICA* 113-136 (2014).

¹¹ SHAKA SENGHOR, *WRITING MY WRONGS: LIFE, DEATH, AND REDEMPTION IN AN AMERICAN PRISON* (2017).

consequences on their mental and emotional well-being.¹² LWOP sentences can disrupt the social fabric of communities, particularly in cases where individuals have been integral members of their neighbourhoods.¹³

Ethical considerations in life sentences without parole are complex and multifaceted. Balancing the demands of justice, human rights, societal protection, and the potential for rehabilitation requires thoughtful analysis and informed dialogue on the goals and values of the criminal justice system. Understanding these ethical dimensions is critical in shaping sentencing practices that uphold principles of fairness, humanity, and the pursuit of a just society.¹⁴

HUMAN RIGHTS STANDARDS AND LIFE SENTENCES WITHOUT PAROLE

Human rights principles emphasize the need for proportionality in sentencing, which requires punishments to be commensurate with the gravity of the offence. Human rights principles promote the idea of rehabilitation and reformation of offenders as an essential aspect of criminal justice. Considering the human rights implications of life sentences without parole is essential for safeguarding individual rights, promoting justice, and ensuring that sentencing practices align with international norms. The intersection between human rights principles and criminal justice policies is a complex area of study, offering opportunities for meaningful reforms and advancements in the pursuit of justice and human dignity.¹⁵

A. INTERNATIONAL HUMAN RIGHTS PRINCIPLES RELEVANT TO SENTENCING PRACTICES

i. Prohibition of Torture and Cruel, Inhuman or Degrading Treatment or Punishment:

Punishment: This principle is primarily derived from the Universal Declaration of Human Rights (UDHR) Article 5, the International Covenant on Civil and Political

¹² LESLIE JOHANSEN NACK, *FOURTEEN: A DAUGHTER'S MEMOIR OF ADVENTURE, SAILING, AND SURVIVAL* 210-255 (2015).

¹³ DAMIEN ECHOLS, *LIFE AFTER DEATH: A REDEMPTION STORY* (2013).

¹⁴ MICHELLE ALEXANDER, *THE NEW JIM CROW: MASS INCARCERATION IN THE AGE OF COLORBLINDNESS* 8-78 (2012).

¹⁵ DIRK VAN ZYL SMIT & CATHERINE APPLETON, *LIFE IMPRISONMENT: A GLOBAL HUMAN RIGHTS ANALYSIS* 145-168 (2019).

Rights (ICCPR) Article 7, and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)¹⁶.

- ii. Right to Fair Trial:** The right to a fair trial is recognized in the Universal Declaration of Human Rights (UDHR) Article 10 and the International Covenant on Civil and Political Rights (ICCPR) Article 14.
- iii. Proportionality:** The principle of proportionality is a fundamental aspect of human rights and is generally applied in sentencing practices, including LWOP sentences, to ensure that punishments are not excessive or arbitrary. It finds its roots in various human rights treaties and conventions, including the ICCPR and the Convention on the Rights of the Child (CRC)¹⁷.
- iv. Non-Discrimination:** The principle of non-discrimination is widely recognized across multiple international human rights instruments, including the Universal Declaration of Human Rights (UDHR) Article 2 and the International Covenant on Civil and Political Rights (ICCPR) Article 2.
- v. Best Interest of the Child:** The Convention on the Rights of the Child (CRC) is the primary international treaty that emphasizes the best interest of the child in all decisions concerning children, including sentencing and juvenile justice matters.
- vi. Presumption of Innocence:** The presumption of innocence is a well-established principle in international human rights law and is included in the Universal Declaration of Human Rights (UDHR) Article 11 and the International Covenant on Civil and Political Rights (ICCPR) Article 14.
- vii. Right to Review and Appeal:** The right to review and appeal is generally recognized in various international human rights instruments, including the International Covenant on Civil and Political Rights (ICCPR) Article 14.
- viii. Protection of Human Dignity:** Human dignity is a fundamental principle underpinning all international human rights law and is enshrined in the Universal Declaration of Human Rights (UDHR) Preamble and throughout its provisions.¹⁸

¹⁶ *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, THE UNITED NATIONS (Sept. 02, 2023, 10:40 AM), <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-against-torture-and-other-cruel-inhuman-or-degrading>.

¹⁷ *Convention on the Rights of the Child*, THE UNITED NATIONS (Sept. 02, 2023, 10:54 AM), <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-child>.

¹⁸ *Universal Declaration of Human Rights*, THE UNITED NATIONS (Sept. 02, 2023, 10:12 AM), <https://www.un.org/en/about-us/universal-declaration-of-human-rights>.

COMPARATIVE ANALYSIS OF JURISDICTIONS

A comparative analysis of different jurisdictions regarding life sentences without parole (LWOP) provides valuable insights into the diversity of sentencing practices and the approaches taken by various legal systems worldwide. Examining how different countries address LWOP offers an opportunity to understand the rationales behind the use or avoidance of this sentencing option and its alignment with human rights standards.¹⁹

A. LIFE SENTENCES WITHOUT PAROLE (LWOP) IN THE USA and UK: A COMPARATIVE ANALYSIS

Life without parole (LWOP) is a significant sentencing option in both the United States and the United Kingdom, but there are notable differences in how each country approaches and applies this form of punishment. A comparative analysis of LWOP in the USA and UK reveals distinct legal frameworks, philosophical underpinnings, and approaches to criminal justice.

- i. Prevalence and Sentencing Practices:** The USA has a higher prevalence of LWOP sentences compared to the UK. In the USA, many states use LWOP as an alternative to the death penalty for the most serious crimes, while the UK abolished the death penalty in 1965. In the UK, life sentences with parole eligibility are more common, allowing for periodic reviews of an offender's progress and potential for release.²⁰
- ii. Judicial Discretion and Parole Considerations:** In the USA, some states have mandatory LWOP sentences for certain offences, limiting judicial discretion. In contrast, the UK allows judges to impose life sentences with minimum terms (tariffs) after which offenders can be considered for parole. The parole process in the UK allows for an assessment of an offender's rehabilitation, behaviour, and risk of reoffending, providing opportunities for release under supervision.²¹
- iii. Treatment of Juvenile Offenders:** The USA and the UK take different approaches to juvenile offenders sentenced to LWOP. In the USA, the Supreme Court has limited LWOP for juvenile offenders due to their unique characteristics and potential for reform. In the UK, the Criminal Justice Act 2003 prohibits the imposition of

¹⁹ VICTOR HASSAINE, *supra* note 4, at 99-105.

²⁰ ANDREW ASHWORTH & RORY KELLY, SENTENCING AND CRIMINAL JUSTICE 120-189 (7th ed. 2021).

²¹ MARKUS D. DUBBER & TATJANA HÖRNLE, CRIMINAL LAW: A COMPARATIVE APPROACH 142-180 (1st ed. 2014).

mandatory life sentences on juvenile offenders, and there are guidelines for sentencing young offenders with an emphasis on rehabilitation.²²

- iv. **Ethical Considerations:** Both countries grapple with ethical concerns surrounding LWOP. In the USA, questions of proportionality, human dignity, and the potential for wrongful convictions are central to the debate. In the UK, the focus is on human rights principles, the possibility of rehabilitation, and the value of second chances for offenders.²³
- v. **International Human Rights Standards:** The UK's legal system operates under the European Convention on Human Rights (ECHR), which influences the approach to sentencing, including life imprisonment. The ECHR sets out guidelines for respecting human rights and proportionality in sentencing. The USA, while a signatory to international human rights conventions, has different interpretations and practices across states, leading to varying approaches to LWOP.²⁴
- vi. **Costs and Prison Overcrowding:** The cost of maintaining LWOP sentences and the potential impact on prison overcrowding differ between the two countries. The USA faces challenges with its large prison population, while the UK tends to have a lower prison population overall.²⁵
- vii. **Sentencing Reforms and Public Opinion:** The UK has undergone sentencing reforms in recent years, with an increased focus on rehabilitation and restorative justice. Public opinion and evolving societal attitudes influence sentencing policies in both countries.²⁶
- viii. **Alternatives to Incarceration:** Both countries have explored alternatives to incarceration, including community-based programs, diversionary measures, and restorative justice initiatives, recognizing that not all offenders require long-term imprisonment.²⁷

A comparative analysis of LWOP in the USA and UK highlights the complexities of sentencing practices and the influence of cultural, legal, and philosophical factors in shaping criminal justice

²² DAVID NELKEN, *COMPARATIVE CRIMINAL JUSTICE: MAKING SENSE OF DIFFERENCE* 11-71 (1st ed., 2010).

²³ FRANCIS PAKES, *COMPARATIVE CRIMINAL JUSTICE* 9-38 (4th ed. 2019).

²⁴ MARKUS D. DUBBER & TATJANA HÖRNLE, *supra* note 24.

²⁵ PHILIP L. REICHEL, *COMPARATIVE CRIMINAL JUSTICE SYSTEMS: A TOPICAL APPROACH* 76-98 (7th ed. 2017).

²⁶ DAVID NELKEN, *supra* note 25.

²⁷ BRYAN GIBSON & PAUL CAVADINO, *THE CRIMINAL JUSTICE SYSTEM: AN INTRODUCTION* 167-184 (3rd ed. 2008).

systems. While both countries share a commitment to public safety and punishment for serious crimes, their approaches to LWOP diverge in terms of judicial discretion, parole considerations, treatment of juvenile offenders, and adherence to international human rights standards. As they continue to evolve, sentencing policies in both countries seek to strike a balance between retributive justice, rehabilitation, and the promotion of a just and humane society.²⁸

B. JUDICIARY ON LWOP IN USA AND UK

- i. **Graham v. Florida:** In this landmark case, the United States Supreme Court ruled that the imposition of LWOP sentences for juvenile offenders convicted of non-homicide offences violated the Eighth Amendment's prohibition of cruel and unusual punishment. The decision held that juvenile offenders must have a meaningful opportunity for parole or release based on demonstrated maturity and rehabilitation.²⁹
- ii. **Miller v. Alabama:** Building on the Graham decision, the U.S. Supreme Court extended its prohibition on LWOP for juveniles, this time for those convicted of homicide offences. The Court held that mandatory LWOP sentences for juvenile homicide offenders were unconstitutional, emphasizing the need for individualized sentencing considerations and the consideration of youth-related factors.³⁰
- iii. **Montgomery v. Louisiana:** Following the Miller decision, the U.S. Supreme Court ruled in Montgomery that its prohibition on mandatory LWOP for juveniles must be applied retroactively. This decision made it possible for previously sentenced juvenile offenders to seek resentencing and an opportunity for parole, recognizing that juveniles have the potential for change and rehabilitation.³¹
- iv. **Vinter and Others v. the United Kingdom:** This case was brought before the European Court of Human Rights (ECHR) and involved three applicants who were serving whole-life orders in the UK. The ECHR ruled that whole-life sentences without the possibility of review or release amounted to inhuman and degrading treatment, violating Article 3 of the European Convention on Human Rights. This landmark judgment led to changes in UK law to provide for the possibility of review of whole-life sentences.³²

²⁸ PHILIP L. REICHEL, *supra* note 28.

²⁹ *Graham v. Florida*, 560 U.S. 48 (2010).

³⁰ *Miller v. Alabama*, 567 U.S. 460 (2012).

³¹ *Montgomery v. Louisiana*, 577 U.S. 190 (2016).

³² *Vinter and Others v. the United Kingdom*, [2016] III ECHR 317.

- v. **R v. McLoughlin, R v. Newell:** This case involved an appeal by three individuals who were serving whole-life orders for their involvement in murders. The UK's Court of Appeal upheld the use of whole-life orders, ruling that such sentences were permissible under UK law and proportionate in certain cases of extreme gravity. However, they emphasized that judges should consider the possibility of review in exceptional cases, in line with the ECHR's *Vinter* ruling.³³

As a result of the landmark European Court of Human Rights (ECHR) judgment in the case of *Vinter and Others v. the United Kingdom* (2013), the UK government introduced the "UK Whole Life Order Review Mechanism" through legislative changes. The specific legislation that was enacted to comply with the ECHR ruling is the Criminal Justice and Courts Act 2015. The Criminal Justice and Courts Act 2015 introduced a mechanism that allows for the possibility of review of whole-life sentences after a certain period. The Act provides that a whole-life order is subject to a "whole life order review" at the request of the sentenced individual. This review process allows for an assessment of whether exceptional circumstances exist that would justify the prisoner's release on compassionate grounds, such as terminal illness or extreme physical incapacity. Under this review mechanism, the Secretary of State can refer a prisoner's case to the High Court for consideration. The High Court, in turn, assesses whether there have been any changes in the prisoner's circumstances that warrant a potential release. If the court finds that there are exceptional reasons justifying release, the prisoner's sentence may be reconsidered, allowing for the possibility of parole or release from custody.³⁴

C. LWOP IN AUSTRALIA

Each state and territory in Australia has its own criminal laws and sentencing provisions, leading to variations in how LWOP is implemented. In most of the states of Australia, such as Western Australia, Queensland, New South Wales and the Northern Territory, there are provisions for LWOP sentences for certain serious or grave offences. Further, life sentences for other crimes in some states may include a minimum term before an offender becomes eligible for parole consideration. In that case, offenders sentenced to life imprisonment are eligible for parole consideration after serving the minimum term set by the court.³⁵ Judicial discretion plays a

³³ *R v. McLoughlin, R v. Newell*, [2014] EWCA Crim 188.

³⁴ Dirk van Zyl Smit et al., *Whole Life Sentences and the Tide of European Human Rights Jurisprudence: What Is to Be Done?*, 14 HUMAN RIGHTS LAW REV. 59, 62-78 (2014).

³⁵ FRANCIS PAKES, *supra* note 26.

significant role in sentencing in Australia, and judges have the authority to determine the appropriate punishment based on the gravity of the offence and the circumstances of each case.

- i. Veen v The Queen (No.2):** This is a landmark case in Australia that established important principles regarding sentencing for multiple offences. The case was decided by the High Court of Australia in 1988. The High Court ruled on the issue of whether the sentences for multiple offences should be cumulative (consecutive) or served concurrently (simultaneously). The case involved an offender named Raymond Veen, who was convicted of multiple serious offences, including manslaughter and sexual assault. The High Court held that, in cases involving multiple offences arising from a single course of conduct, sentences should generally be concurrent unless there are specific reasons for making them cumulative. This decision aimed to ensure that sentences are proportionate and not unduly harsh for offenders convicted of multiple crimes arising from the same incident. The Veen principle continues to be an important guiding factor in sentencing decisions in Australia, helping to ensure a fair and consistent approach when dealing with multiple offences committed during the same course of conduct.³⁶
- ii. Bugmy v The Queen:** In this case, the High Court of Australia considered the principle of proportionality in sentencing and the effect of a background of disadvantage on the offender's moral culpability. The court highlighted the need for a sentencing court to consider the unique circumstances of Indigenous offenders and the importance of rehabilitation.³⁷

D. INDIAN PERSPECTIVE ON LWOP

In India, sentencing is governed by various laws and provisions under the Indian Penal Code (IPC) and other relevant statutes. The sentencing process aims to ensure that punishments are proportionate to the gravity of the crime committed and considers various factors related to the offence and the offender. India's criminal justice system provides for various types of sentences, including imprisonment, fines, probation and more. Life imprisonment is one of the available sentences for serious offences. The country does not have a formal LWOP sentencing option. Life imprisonment typically means that the offender will be incarcerated for the rest of their life,

³⁶ Veen v The Queen (No.2), [1988] HCA 14.

³⁷ Bugmy v The Queen, [2013] HCA 37.

with the possibility of parole consideration in some cases.³⁸

Indian courts have a certain level of discretion in determining the appropriate sentence for a particular offence. They consider factors such as the nature of the crime, the criminal's intent, the impact on the victim, and any mitigating or aggravating circumstances. The Indian Penal Code allows for the death penalty in certain cases of extreme gravity, but it is used in exceptional circumstances and after careful consideration by the courts. India has a separate juvenile justice system for offenders below a certain age. Juveniles receive specialized treatment, and the focus is on their rehabilitation and reintegration into society.³⁹ The Indian legal system aims to adopt a reformatory approach to sentencing, focusing on the rehabilitation and reformation of offenders rather than just retribution. Convicts have the right to appeal their sentences, and higher courts can review and modify sentences if deemed appropriate. In many cases, convicts may be eligible for parole or early release based on their behaviour and rehabilitation efforts during their imprisonment. Remission of sentences is also possible, subject to the discretion of the appropriate authorities (Articles 72, 161 of the Constitution of India, 1950 and Sections 432, 433, 433A of the Code of Criminal Procedure, 1973).⁴⁰

The Supreme Court of India and various High Courts have issued guidelines on sentencing to ensure consistency and fairness in sentencing practices across the country. In India, the prevalent view of the courts regarding life imprisonment is that it means imprisonment for the remainder of the convict's natural life, unless there is an express order for commutation or remission of the sentence by the appropriate authority. While there have been cases where courts have sentenced offenders to imprisonment for their entire life without the possibility of parole, parole is not entirely precluded in all life imprisonment cases. The decision regarding parole eligibility lies with the authorities responsible for administering the prison system, and parole may be granted based on considerations such as good behaviour, conduct during incarceration, and the assessment of the prisoner's rehabilitation and risk to society.⁴¹

- i. **Maru Ram v. Union of India:** In this landmark case, the Supreme Court of India held that solitary confinement as a form of punishment violates the fundamental right

³⁸ V.S.R. AVADHANI AND V. SOUBHAGYA VALLI, *SENTENCING & VICTIM COMPENSATION: PRINCIPLES & PRACTICES* (1st ed. 2014).

³⁹ P. N. BHAGWATI, *DEATH PENALTY: AN AFFRONT TO HUMAN RIGHTS* (1st ed. 2011).

⁴⁰ A. LAKSHMINATH AND KOMANDURI S. MURTY, *SENTENCING JURISPRUDENCE IN INDIA: POLICIES, PROCEDURES, AND PRACTICES* (2017).

⁴¹ SURENDRA MALIK AND SUDEEP MALIK, *SUPREME COURT ON CRIMINAL PROCEDURE CODE AND CRIMINAL TRIAL-COVERING CASE LAWS FROM 1950 TO 2018* (2nd ed. 2018).

to life and personal liberty guaranteed under Article 21 of the Indian Constitution. The Court emphasized the importance of human dignity and the need to protect prisoners' rights.⁴²

- ii. **Mithu v. State of Punjab:** The Supreme Court struck down Section 303 of the Indian Penal Code, which mandated the death penalty for prisoners serving a life sentence who committed murder while in prison. The Court ruled that the imposition of a mandatory death sentence for a prisoner serving life imprisonment is unconstitutional.⁴³
- iii. **Kehar Singh v. State (Delhi Administration):** In this case, the Supreme Court of India addressed the issue of life imprisonment and commutation of the death sentence. The Court commuted the death sentence of Kehar Singh, who was convicted in the Indira Gandhi assassination case, to life imprisonment based on humanitarian grounds.⁴⁴
- iv. **Charles Sobhraj v. Superintendent, Central Jail, Tihar:** Charles Sobhraj, a notorious serial killer, was convicted and sentenced to life imprisonment in this case. The Supreme Court upheld his life sentence, emphasizing the need to protect society from dangerous individuals.⁴⁵
- v. **Prem Shankar Shukla v. Delhi Administration:** This case addressed the issue of life imprisonment and whether consecutive life sentences can be awarded for multiple offences. The Supreme Court held that multiple life sentences can be awarded for separate and distinct offences, with each sentence running consecutively.⁴⁶
- vi. **State of Punjab v. Gurmit Singh:** This case dealt with the issue of sentencing in dowry death cases. The Supreme Court upheld the life sentence awarded to the accused for the dowry death of the victim and stressed the need for deterrent sentencing to curb such offenses.⁴⁷
- vii. **Dhananjay Chatterjee v. State of West Bengal:** Dhananjay Chatterjee was convicted of the rape and murder of a schoolgirl and sentenced to death. The Supreme

⁴² Maru Ram v. Union of India, (1981) 1 SCC 107.

⁴³ Mithu v. State of Punjab, AIR 1983 SC 473.

⁴⁴ Kehar Singh v. State (Delhi Administration), 1988 AIR 1883.

⁴⁵ Charles Sobhraj v. Superintendent, Central Jail, Tihar, AIR 1978 SC 1514.

⁴⁶ Prem Shankar Shukla v. Delhi Administration, AIR 1980 SC 1535.

⁴⁷ State of Punjab v. Gurmit Singh, 1996 AIR 1393.

Court upheld the death penalty, considering the heinous nature of the crime and its impact on society.⁴⁸

viii. Machhi Singh v. State of Punjab: In this landmark case, the Supreme Court laid down the guidelines for imposing the death penalty. The Court held that the death penalty should be imposed only in the rarest of rare cases where the alternative option of life imprisonment is unquestionably foreclosed.⁴⁹

ix. Ram Deo Chauhan v. State of Assam: This case dealt with the issue of life imprisonment and the exercise of the President's power of pardon under Article 72 of the Indian Constitution. The Supreme Court held that the President's power of pardon is not limited by the judicial sentence, and he can exercise his discretion independently.⁵⁰

POTENTIAL REFORMS AND ALTERNATIVES

Recognizing the ethical and human rights concerns associated with life sentences without parole (LWOP), there is an ongoing global conversation about potential reforms and alternative sentencing practices. Exploring these options allows for the development of more balanced and rehabilitative approaches to criminal justice.

- **Resentencing and Parole Opportunities:** One reform option involves resentencing individuals currently serving LWOP to determine whether they have demonstrated rehabilitation and growth over time. Introducing parole opportunities could offer incentives for positive behaviour and a chance at reintegration into society.
- **Second Look Legislation:** Some jurisdictions have enacted "Second Look" laws, allowing for periodic reviews of LWOP sentences after a certain period. This mechanism allows judges to re-evaluate the appropriateness of the original sentence and consider an offender's conduct and rehabilitation efforts.⁵¹
- **Limited-Term Sentences with Review:** Introducing limited-term sentences with mandatory reviews provides an opportunity to reassess an offender's progress and

⁴⁸ Dhananjay Chatterjee v. State of West Bengal, 1994 SCR (1) 37.

⁴⁹ Machhi Singh v. State of Punjab, 1983 AIR 957; Bachan Singh v. State of Punjab, AIR 1980 SC 898, 1980.

⁵⁰ Ram Deo Chauhan v. State of Assam, 2001 (5) SCC 714.

⁵¹ NANCY L. COHEN, BREAKTHROUGH: THE MAKING OF AMERICA'S FIRST WOMAN PRESIDENT (2016).

conduct. After a designated period, the sentence could be reviewed to determine whether continued incarceration is necessary.⁵²

- **Geriatric Release and Compassionate Release Programs:** Geriatric release programs consider the age and health conditions of elderly inmates. Individuals who pose minimal risk to public safety due to age and infirmity may be eligible for release, reducing the burden of long-term incarceration on society.⁵³
- **Focus on Rehabilitation and Restorative Justice:** A shift towards a more rehabilitative and restorative justice approach prioritizes addressing the root causes of criminal behaviour. Implementing evidence-based rehabilitation programs in correctional facilities can enhance the chances of successful reintegration into society.⁵⁴
- **Alternatives to Incarceration:** Exploring alternatives to incarceration, such as community-based programs, diversionary measures, and restorative justice initiatives, can divert individuals away from the traditional prison system and focus on addressing underlying issues.⁵⁵
- **Youth Offender Considerations:** Reforms specific to juvenile offenders involve raising the minimum age for trying juveniles as adults, considering the unique characteristics of youth, and emphasizing rehabilitation and reformation.
- **International Human Rights Compliance:** Governments can review their sentencing policies to ensure alignment with international human rights standards and the prohibition of cruel, inhuman, or degrading treatment. Integrating human rights considerations into sentencing practices is crucial for ensuring fairness and justice.
- **Empirical Research and Evidence-Based Policies:** Policymakers can rely on empirical research to inform their decision-making process on sentencing reforms. Evidence-based policies consider the effectiveness of various sentencing options in achieving public safety, rehabilitation, and reducing recidivism.
- **Collaborative Efforts with Advocacy Groups:** Engaging with human rights advocates and legal experts can lead to meaningful reforms and informed discussions on ethical and human rights implications in sentencing practices.

⁵² BAZ DREISINGER, *INCARCERATION NATIONS: A JOURNEY TO JUSTICE IN PRISONS AROUND THE WORLD* (2017).

⁵³ ANDREW ASHWORTH & RORY KELLY, *supra* note 23, at 215-222.

⁵⁴ DANIEL W. VAN NESS ET AL., *RESTORING JUSTICE: AN INTRODUCTION TO RESTORATIVE JUSTICE* (6th ed. 2022).

⁵⁵ BAZ DREISINGER, *supra* note 55.

Promoting sentencing reforms and exploring alternative approaches to LWOP is essential in aligning criminal justice systems with human rights principles, rehabilitation goals, and societal well-being. By adopting comprehensive and balanced strategies, countries can strive to achieve more just and equitable sentencing practices that foster reformation, restoration, and the potential for second chances.⁵⁶

CONCLUSION

The research on life imprisonment without parole (LWOP) and its relation to proportionality has highlighted the complex ethical and human rights implications surrounding this severe sentencing practice. As we delved into various international human rights principles, it became evident that the concept of proportionality is fundamental in ensuring a fair and just criminal justice system. The examination of international human rights instruments, such as the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights, emphasized the need to protect individuals from cruel, inhuman, or degrading treatment, while also upholding the principles of non-discrimination and the presumption of innocence. These guiding principles underscore the importance of assessing sentences in relation to the gravity of the crime committed, as well as the unique circumstances of each offender.⁵⁷

The landmark judgment in *Vinter and Others v. the United Kingdom*⁵⁸ acted as a significant catalyst for re-evaluating LWOP sentences, urging jurisdictions to consider the possibility of review and release in exceptional cases. This shift reflects the recognition that rigid and absolute life sentences without parole may hinder the possibility of individual rehabilitation and personal growth, thus posing ethical questions regarding the concept of justice and the potential for redemption. In India, life imprisonment remains a distinct sentencing option, wherein the courts consider mitigating and aggravating factors to arrive at a proportionate punishment. The emphasis on the reformatory approach underscores the belief in the potential for personal transformation and reintegration of offenders into society.⁵⁹

Throughout this research, the ethical implications of LWOP sentences have been contemplated through various lenses, including human dignity, the best interest of the child, and the potential

⁵⁶ NANCY MULLANE, LIFE AFTER MURDER: FIVE MEN IN SEARCH OF REDEMPTION (2012).

⁵⁷ MARC MAUER & ASHLEY NELLIS, *supra* note 5.

⁵⁸ *Vinter and Others v. the United Kingdom*, [2016] III ECHR 317.

⁵⁹ MARKUS D. DUBBER & TATJANA HÖRNLE, *supra* note 24.

for societal reintegration. The absence of any hope for release raises concerns about the impact on offenders' mental well-being and the moral responsibility society bears towards promoting rehabilitation and second chances. Moreover, the exploration of alternative sentencing approaches highlights the importance of pursuing restorative justice principles that prioritize the reparation of harm caused to victims, while also addressing the underlying issues that lead to criminal behaviour. As policymakers, legal professionals, and advocates continue to address the complexities of LWOP and proportionality, the need for an inclusive dialogue becomes paramount. Striving for a criminal justice system that strikes a balance between accountability, human rights, and the potential for rehabilitation will require ongoing collaboration and comprehensive reform.⁶⁰



⁶⁰ ROB CANTON, *supra* note 8.