LAWFOYER INTERNATIONAL JOURNAL OF DOCTRINAL LEGAL RESEARCH

(ISSN: 2583-7753)

Volume 3 | Issue 1

2025

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A CRITICAL ANALYSIS OF LIFE IMPRISONMENT WITHOUT REMISSION AS AN ALTERNATIVE TO THE DEATH PENALTY IN INDIA

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I. ABSTRACT

This research critically examines the constitutionality, judicial evolution, and human rights implications of life imprisonment without remission as an alternative to the death penalty in India. The study explores how Indian courts, particularly through landmark judgments like Swamy Shraddananda v. State of Karnataka and Union of India v. V. Sriharan, have crafted this sentencing option to bridge the stark binary between capital punishment and standard life imprisonment with remission. It analyses how such judicial innovations seek to balance retribution, deterrence, and reformative justice while grappling with constitutional safeguards under Articles 14, 21, 72, and 161. The research highlights the ethical, psychological, and legal challenges posed by irreducible life sentences, particularly in the absence of review mechanisms and a codified sentencing framework. Through a comparative lens, the paper references international human rights standards including the Vinter judgment of the European Court of Human Rights and the UN's Nelson Mandela Rules to assess the compatibility of India's practices with global norms. Emphasis is placed on proportionality, dignity, and separation of powers in sentencing jurisprudence. The paper concludes with robust policy suggestions for introducing statutory review procedures, reform-oriented prison policies, and judicial training to harmonize Indian penology with constitutional and human rights principles. It argues that while life without remission offers a humane alternative to the death penalty in principle, its long-term use must be cautiously structured and periodically revisited to avoid becoming a silent and indefinite form of punishment.

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II. KEYWORDS

Life Imprisonment Without Remission, Death Penalty in India, Sentencing Jurisprudence, Judicial Discretion, Human Rights and Penal Reform.

III. INTRODUCTION

A. Background and Context

India remains among the few democracies where the death penalty is constitutionally permissible. Despite its rare imposition, capital punishment is deeply entrenched in the country's penal structure. The Supreme Court, through the landmark judgment in *Bachan Singh v. State of Punjab*, carved out the "rarest of rare" doctrine, narrowing down the scope of the death sentence to only the gravest of crimes. This test, though aimed at safeguarding against arbitrary imposition, has suffered from inconsistency and subjectivity in its application by different benches of the judiciary.[3]

The sentencing jurisprudence in India has slowly shifted, with courts often invoking the alternative of life imprisonment without remission. This emerged prominently in *Swamy Shraddananda v. State of Karnataka*, where the court, seeking to balance between the ends of justice and reformation, imposed life imprisonment sans remission. The judicial innovation was both praised and criticised. It offered a third option to judges reluctant to impose the death penalty and simultaneously dissatisfied with the possibility of executive remission in heinous crimes.[4]

The legislative framework surrounding life imprisonment has long suffered from ambiguity. The Indian Penal Code, 1860 does not expressly define "life imprisonment without remission." Section 53 merely mentions life imprisonment as a form of punishment, but the procedural understanding of it has come to mean imprisonment till the end of the convict's natural life, unless remitted by appropriate government under Section 432 of the Code of Criminal Procedure, 1973. This raises a constitutional question

[3] *Bachan Singh v. State of Punjab*, (1980) 2 SCC 684.
[4] *Swamy Shraddananda v. State of Karnataka*, (2008) 13 SCC 767.

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on whether courts can override executive clemency powers conferred under Articles 72 and 161 of the Constitution.[5]

The emerence of non-remissible life sentences has not only altered the penal sentencing philosophy but also created friction with the established doctrine of separation of powers. The judiciary's intervention in precluding remission appears to intrude upon the executive's domain. The issue resurfaced in *Union of India v. V. Sriharan*, where a Constitution Bench upheld judicial power to direct life imprisonment without remission in certain cases. The Court justified its stand by emphasizing the protection of society, deterrence, and the need to fill legislative gaps.[6]

India's criminal justice system faces an enduring dilemma: should it retain the death penalty, restrict it further, or abolish it altogether and rely solely on life imprisonment, with or without remission? According to the Law Commission of India's 262nd Report (2015), the death penalty does not serve a greater penological purpose than life imprisonment. It recommended its abolition for all crimes except terrorism-related offences. The report emphasized the arbitrary and biased imposition of capital punishment, disproportionately affecting the poor, minorities, and marginalised sections.[7]

International human rights bodies, including the United Nations Human Rights Committee, have repeatedly urged India to move toward the abolition of the death penalty. The International Covenant on Civil and Political Rights (ICCPR), to which India is a signatory, encourages nations to progressively abolish capital punishment. India's position, however, remains non-committal. Yet, the growing judicial reliance on life

[5] Indian Penal Code, 1860, § 53, No. 45, Acts of Parliament, 1860 (India); Code of Criminal Procedure, 1973, § 432, No. 2, Acts of Parliament, 1974 (India).
[6] *Union of India v. V. Sriharan*, (2016) 7 SCC 1.
[7] Law Commission of India, Report No. 262, The Death Penalty (2015), https://cdnbbsr.s3waas.gov.in/s3ca0daec69b5adc880fb464895726dbdf/uploads/2022/08/2022081670.pdf (last visited Apr. 21, 2025).

without remission signals a shift toward de facto abolition, at least in intent if not in letter.[8]

The psychological dimension of life imprisonment without remission requires closer examination. While the death penalty ends life in a single stroke, an irreducible life sentence may inflict prolonged suffering and mental agony. Critics argue this amounts to "a civil death," possibly violating the right to dignity under Article 21 of the Constitution. The European Court of Human Rights in *Vinter and Others v. United Kingdom*, held that life imprisonment without a real prospect of release breaches Article 3 of the European Convention on Human Rights, which prohibits inhuman or degrading treatment. Though not binding on India, such jurisprudence guides evolving standards of decency globally.[9]

The Indian prison infrastructure is not equipped to humanely accommodate inmates serving their entire natural lives. Overcrowding, understaffing, inadequate health facilities, and poor rehabilitation mechanisms make the execution of such sentences even more problematic. The National Crime Records Bureau (NCRB) report for 2021 highlighted that over 77% of the prison population comprised undertrials. A life sentence without remission, in this already burdened system, only intensifies the strain on state resources.[10]

B. Research Objectives

1. To critically analyse the constitutional and jurisprudential validity of life imprisonment without remission as an alternative to the death penalty in India, with specific reference to Articles 14, 21, 72, and 161 of the Constitution.

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[8] International Covenant on Civil and Political Rights, Dec. 16, 1966, 999 U.N.T.S. 171.
[9] *Vinter and Others v. United Kingdom*, (2013) ECHR 645.
[10] National Crime Records Bureau, Prison Statistics India 2021, Ministry of Home Affairs (India), https://www.ncrb.gov.in/prison-statistics-india.html (last visited Apr. 21, 2025).

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2. To evaluate the evolution of judicial interpretations and sentencing practices that led to the development of irreducible life sentences, and assess their consistency with reformative justice and proportionality principles.
3. To compare India's approach with international human rights standards and recommend policy reforms aimed at balancing retribution, deterrence, and rehabilitation in long-term sentencing.

C. Research Questions

1. Does life imprisonment without remission comply with the constitutional guarantees under Articles 14 and 21, particularly the right to life, dignity, and equality?
2. How have Indian courts justified the imposition of life without remission, and does such sentencing undermine the constitutional powers of executive clemency under Articles 72 and 161?
3. To what extent is India's sentencing model of life without parole consistent with international human rights instruments, and what policy reforms are necessary to make it more humane and constitutionally compliant?

D. Research Methodology

This research adopts a doctrinal legal research methodology, focusing on a critical examination of constitutional provisions, judicial decisions, and statutory frameworks governing life imprisonment without remission and the death penalty in India. Primary sources include the Constitution of India, the Indian Penal Code, the Code of Criminal Procedure, and landmark Supreme Court judgments such as *Swamy Shraddananda v. State of Karnataka*, *Union of India v. V. Sriharan*, and others that have shaped sentencing jurisprudence. The study also relies on constitutional debates, parliamentary records, and Law Commission Reports, particularly Report No. 262 on the death penalty, to understand the legislative and policy context of punishment in India.

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In addition to primary sources, the research engages with comparative legal analysis and qualitative interpretation of secondary materials such as peer-reviewed journals, legal commentaries, human rights reports, and international legal instruments including the International Covenant on Civil and Political Rights (ICCPR) and the European Convention on Human Rights. A comparative framework is used to assess India's penal practices against global norms, including the *Vinter* ruling of the European Court of Human Rights and the Nelson Mandela Rules. The research uses a normative and analytical approach to evaluate the compatibility of irreducible life sentences with constitutional morality, proportionality, and the reformative theory of justice.

IV. THE DEATH PENALTY IN INDIA – AN OVERVIEW

A. Historical Evolution of Capital Punishment

Capital punishment in India has its origin in colonial penal practice. The British introduced the Indian Penal Code, 1860, which codified death as a penalty for crimes like murder, treason, and waging war against the State. The colonial regime used executions to assert state control and deter rebellion. No reformative reasoning was seen in early usage.[11]

Post-independence, India retained the death penalty within the constitutional framework. Article 21 guaranteed the right to life, but courts read this right as not being absolute. Parliament neither abolished nor replaced the provision under Section 302 of IPC that prescribes death as a punishment for murder. Thus, capital punishment continued by default rather than design.[12]

In the early decades, the courts imposed death frequently. There was no clear guiding principle for sentencing. Judges relied on their discretion. This led to disparity and arbitrariness. In *Jagmohan Singh v. State of Uttar Pradesh*, the Supreme Court upheld capital

[11] Indian Penal Code, 1860, No. 45, Acts of Parliament, 1860 (India).
[12] INDIA CONST. art. 21; Indian Penal Code, 1860, § 302, No. 45, Acts of Parliament, 1860 (India).

punishment and stated that fair procedure under Article 21 includes judicial discretion during sentencing.[13]

The significant shift came in *Bachan Singh v. State of Punjab*. The Court laid down the "rarest of rare" doctrine. It ruled that death penalty should only be awarded when life imprisonment appears inadequate. The decision was a milestone in narrowing the scope for capital punishment. Yet it left "rarest of rare" undefined. This led to varying interpretations by different benches.[14]

Later in *Machhi Singh v. State of Punjab*, the Court tried to clarify the "rarest of rare" criteria. It spoke of collective conscience, brutality of the crime, and social abhorrence. The test however remained subjective. Courts often reached opposite conclusions on similar facts.[15]

India's political and legal landscape shaped the evolution of the death penalty differently from abolitionist democracies. Unlike Europe, India did not undertake statutory reforms to limit capital punishment. The judiciary became the primary driver of change. The Law Commission of India in its 35th Report (1967) supported retention of capital punishment. But decades later, its 262nd Report (2015) recommended its abolition except for terror offences.[16]

Judicial thinking also evolved. In *Santosh Kumar Satishbhushan Bariyar v. State of Maharashtra*, the Court acknowledged inconsistency in sentencing. It found that judges often fail to consider mitigating factors properly. Similarly, in *Shankar Kisanrao Khade v. State of Maharashtra*, Justice Lokur highlighted the arbitrary nature of capital sentencing and urged systemic reform.[17]

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[13] *Jagmohan Singh v. State of Uttar Pradesh*, (1973) 1 SCC 20.
[14] *Bachan Singh v. State of Punjab*, (1980) 2 SCC 684.
[15] *Machhi Singh v. State of Punjab*, (1983) 3 SCC 470.
[16] Law Commission of India, Report No. 35, Capital Punishment (1967), https://cdnbbsr.s3waas.gov.in/s3ca0daec69b5adc880fb464895726dbdf/uploads/2022/08/2022080828-1.pdf (last visited Apr. 21, 2025).
[17] *Santosh Kumar Satishbhushan Bariyar v. State of Maharashtra*, (2009) 6 SCC 498; *Shankar Kisanrao Khade v. State of Maharashtra*, (2013) 5 SCC 546.

The President's clemency powers under Article 72 and governors' powers under Article 161 have also influenced the evolution. These provisions provided a final safeguard. However, political considerations and executive delay often distorted their purpose. In *Kehar Singh v. Union of India*, the Court ruled that the President's decision cannot be challenged on merits, reducing judicial oversight on clemency.[18]

B. Constitutional Validity and Judicial Interpretations

The death penalty has withstood constitutional scrutiny in India due to its statutory recognition and judicial safeguards. Article 21 of the Constitution guarantees the right to life and personal liberty. But it also allows deprivation of life through "procedure established by law." This clause became the foundation for judicial validation of capital punishment.[19]

In *Jagmohan Singh v. State of Uttar Pradesh*, the Supreme Court upheld the constitutional validity of the death penalty. It reasoned that the procedure for sentencing under the CrPC was sufficient and that judicial discretion, when properly exercised, complied with Article 21. The Court held that capital punishment does not violate Articles 14, 19, or 21.[20]

Later in *Bachan Singh v. State of Punjab*, a five-judge bench reaffirmed the validity of the death penalty. The Court interpreted Article 21 broadly. It held that the right to life is not absolute. The death sentence could be constitutional if awarded through fair, just, and reasonable procedure. This case introduced the "rarest of rare" doctrine. It emphasized balancing aggravating and mitigating factors. Judges were directed to consider individual circumstances before imposing death.[21]

The ratio in *Bachan Singh* marked a significant jurisprudential shift. It brought Article 21 in line with evolving human rights standards. However, the Court didn't clearly define

[18] *Kehar Singh v. Union of India*, (1989) 1 SCC 204.
[19] INDIA CONST. art. 21.
[20] *Jagmohan Singh v. State of Uttar Pradesh*, (1973) 1 SCC 20.
[21] *Bachan Singh v. State of Punjab*, (1980) 2 SCC 684.

"rarest of rare." That left the doctrine vulnerable to subjective interpretation. The lack of uniformity in its application became a major concern.[22]

Machhi Singh v. State of Punjab, attempted to clarify the parameters laid down in *Bachan Singh*. The Court listed categories where death may be justified, such as extreme brutality, diabolic conduct, and collective conscience of society being shocked. But again, the case did not settle the inconsistency. Lower courts continued to vary in their approach to applying these principles.[23]

In *Mithu v. State of Punjab*, the Supreme Court struck down Section 303 of IPC as unconstitutional. The section mandated a compulsory death sentence for life convicts committing murder in prison. The Court ruled that mandatory death sentencing violates Articles 14 and 21. It stressed the need for judicial discretion even in sentencing. This decision reinforced the principle that the death penalty must be awarded only after careful judicial consideration.[24]

In *Santosh Kumar Satishbhushan Bariyar v. State of Maharashtra*, the Court acknowledged that *Bachan Singh* was often not properly followed. It found that mitigating circumstances were overlooked in many cases. It stressed that sentencing must be individualized. The ruling raised doubts on past death sentence confirmations and pointed to systemic flaws.[25]

In *Shankar Kisanrao Khade v. State of Maharashtra*, the Court questioned the consistency in death penalty jurisprudence. Justice Lokur observed that judges failed to apply the "rarest of rare" test uniformly. The Court also noted that many capital cases involved errors in investigation, evidence evaluation, or sentencing. This judgment reignited debate on whether the death penalty should exist at all.[26]

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[22] Id.
[23] *Machhi Singh v. State of Punjab*, (1983) 3 SCC 470.
[24] *Mithu v. State of Punjab*, (1983) 2 SCC 277.
[25] *Santosh Kumar Satishbhushan Bariyar v. State of Maharashtra*, (2009) 6 SCC 498.
[26] *Shankar Kisanrao Khade v. State of Maharashtra*, (2013) 5 SCC 546.

C. The "Rarest of Rare" Doctrine: Origin and Application

The "rarest of rare" doctrine began with *Bachan Singh v. State of Punjab*. A five-judge constitutional bench upheld the constitutional validity of the death penalty. It ruled that capital punishment could be imposed only in the "rarest of rare" cases when life imprisonment was unquestionably inadequate. The Court didn't define the term clearly. It left it to judicial interpretation. This gave rise to discretion and disparity in sentencing patterns.[27]

In *Bachan Singh*, the Court advised balancing aggravating and mitigating circumstances. It said the sentence of death must not be imposed arbitrarily. Mitigating factors included age, socio-economic condition, mental illness, absence of criminal history. Aggravating factors were brutality, premeditation, and impact on society. Yet the application lacked consistency. Courts often weighed factors subjectively.[28]

The doctrine was further clarified in "*Machhi Singh v. State of Punjab*". The Court listed categories where death could be justified. It included murders of extreme brutality, multiple killings, and offences that shocked the collective conscience. The phrase "collective conscience" entered capital sentencing language for the first time. Judges used it later as a ground for justifying executions. But it remained vague and open to moral interpretation.[29]

In *Machhi Singh*, the Court laid down a three-fold test. First, the crime must be extremely heinous. Second, the manner of its commission should be exceptionally depraved. Third, the crime must be socially abhorrent. Even so, courts continued to impose death on shaky legal reasoning. Similar facts produced different outcomes across High Courts.[30]

In *Santosh Kumar Satishbhushan Bariyar v. State of Maharashtra*, the Supreme Court admitted the inconsistent application of the doctrine. The Court noted that many

[27] *Bachan Singh v. State of Punjab*, (1980) 2 SCC 684.
[28] Id.
[29] *Machhi Singh v. State of Punjab*, (1983) 3 SCC 470.
[30] Id.

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decisions after *Bachan Singh* failed to conduct proper balancing of circumstances. It found some sentences upheld as death where mitigating factors were not even discussed. This violated Article 21 protections.[31]

Later, in *Sangeet v. State of Haryana*, the Supreme Court again revisited the "rarest of rare" test. It observed that the test had been diluted over time. The judgment criticised the mechanical application of the doctrine. It stressed the need to evaluate sentencing evidence separately from the trial process. It recommended judicial training in sentencing to address disparity.[32]

The doctrine has also been criticised by scholars and international observers. It permits judicial moralism to influence outcomes. Terms like "collective conscience" have no legal precision. They permit emotional judgments. This weakens uniform sentencing standards. Also, the doctrine has led to excessive discretion which violates the right to equality under Article 14.[33]

In *Shankar Kisanrao Khade v. State of Maharashtra*, Justice Lokur conducted a detailed review of capital sentencing. He concluded that many death sentences were wrongly confirmed. He observed poor consideration of mitigating evidence and trial court errors. He called for empirical studies and reform of the doctrine. But no legislative reform followed.[34]

V. LIFE IMPRISONMENT WITHOUT REMISSION – CONCEPTUAL AND LEGAL DIMENSIONS

A. Defining Life Imprisonment and the Role of Remission

Life imprisonment under Indian criminal law has long been misunderstood as a fixed-term punishment. The Indian Penal Code, 1860, does not define the exact length. Section

[31] *Santosh Kumar Satishbhushan Bariyar v. State of Maharashtra*, (2009) 6 SCC 498.
[32] *Sangeet v. State of Haryana*, (2013) 2 SCC 452.
[33] Usha Ramanathan, *Death Penalty and the Rarest of Rare Doctrine*, 43(1) Econ. & Pol. Weekly 25 (2008).
[34] *Shankar Kisanrao Khade v. State of Maharashtra*, (2013) 5 SCC 546.

53 of IPC includes life imprisonment as a form of punishment but provides no detail about its span. Courts later clarified that it means imprisonment for the entire life of the convict unless remitted by competent authority.[35]

In *Gopal Vinayak Godse v. State of Maharashtra*, the Supreme Court held that life imprisonment means the remainder of a person's natural life. The Court emphasized that unless remitted, it doesn't expire after 14 years. Many believed wrongly that 14 years was the standard term. That misconception arose from Section 433A of CrPC which imposes a minimum of 14 years before remission can be considered for certain categories of lifers.[36]

Remission is not automatic. It's an act of grace by the State. Section 432 of the CrPC empowers the appropriate government to remit the whole or part of the sentence. It may reduce the sentence without altering the conviction. Section 433 gives additional power to commute a sentence of life imprisonment to a lesser sentence. However, these powers must be exercised in accordance with established rules, fairness and reasonableness.[37]

Constitutionally, Articles 72 and 161 grant clemency powers to the President and Governors respectively. These powers are independent of statutory provisions. In *Kehar Singh v. Union of India*, the Court ruled that the President can scrutinize the entire case record and may grant clemency on any ground. The clemency power is judicially reviewable only on limited grounds like mala fides or arbitrariness.[38]

The shift in jurisprudence started with *Swamy Shraddananda v. State of Karnataka*. The Court introduced a new category of punishment life imprisonment without remission. It held that in cases where death sentence is too harsh but life with remission is too lenient,

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[35] Indian Penal Code, 1860, § 53, No. 45, Acts of Parliament, 1860 (India).

[36] *Gopal Vinayak Godse v. State of Maharashtra*, AIR 1961 SC 600; Code of Criminal Procedure, 1973, § 433A, No. 2, Acts of Parliament, 1974 (India).

[37] Code of Criminal Procedure, 1973, §§ 432–433, No. 2, Acts of Parliament, 1974 (India).

[38] *Kehar Singh v. Union of India*, (1989) 1 SCC 204.

the Court can impose life imprisonment for the remainder of natural life. The Court justified this as necessary to prevent early release in heinous crimes.[39]

This judicial innovation was upheld by the Constitution Bench in *Union of India v. V. Sriharan*. The Court ruled that judicial power includes prescribing a fixed term of life imprisonment without remission. It declared that such a sentence does not violate Articles 72 or 161 as these powers remain intact but are only postponed. The Court viewed this as a balance between victims' rights and the interests of justice.[40]

The role of remission, however, is closely tied to the principle of reformation. The reformative theory of punishment argues that imprisonment must allow scope for rehabilitation. In *Maru Ram v. Union of India*, the Supreme Court upheld the validity of Section 433A. It recognized the need for checks on remission but maintained that reformation is a vital aspect of sentencing. Excessive restriction on remission defeats this goal.[41]

B. Statutory Framework: BNS, BNSS, and Prison Rules

The Bharatiya Nyaya Sanhita, 2023, classifies punishments under Chapter II and retains imprisonment for life as one of the gravest penal consequences for serious crimes. The term is legally equated to imprisonment for twenty years, unless otherwise provided, but in practice it often implies incarceration for the convict's entire natural life where remission is statutorily excluded.[42]

Life imprisonment assumes varied characteristics depending on statutory conditions attached to remission, suspension, or commutation. Under Section 474 of the BNSS, the "appropriate government" may commute sentences, including life imprisonment,

[39] *Swamy Shraddananda v. State of Karnataka*, (2008) 13 SCC 767.
[40] *Union of India v. V. Sriharan*, (2016) 7 SCC 1.
[41] *Maru Ram v. Union of India*, (1981) 1 SCC 107.
[42] The Bharatiya Nyaya Sanhita, No. 45 of 2023, § 4, Gazette of India, Extraordinary, Part II, Sec. 1 (Dec. 25, 2023).

without the convict's consent.[43] However, a specific statutory bar exists in cases where life imprisonment is awarded for offences that also carry the possibility of a death sentence. In such cases, Section 475 of the BNSS categorically mandates that the convict shall not be released from prison unless they have served at least fourteen years of imprisonment.[44]

This provision marks a key doctrinal break from prior judicial interpretations under the old Code of Criminal Procedure and the Indian Penal Code, where the scope for executive clemency through remission was expansive and discretionary. The legislative shift now clearly prioritizes punitive certainty over administrative discretion, particularly for heinous crimes. Courts too must navigate this statutory framework while exercising sentencing discretion, especially in capital cases where life without remission becomes a real sentencing alternative.[45]

The BNSS, 2023 in Chapter XXXIV (Sections 472–476) further codifies the principles regarding execution, suspension, remission, and commutation of sentences. Section 475, for example, introduces a hard minimum by stating that even in commuted life sentences, prisoners cannot be released unless they serve a mandatory term of fourteen years.[46] This also applies where a sentence of death is commuted into life imprisonment. The same chapter delineates separate rules where the concurrence of the Central Government is necessary, for instance, in offences investigated by central agencies, or where central government property is involved.[47]

This leads to a diminished role of administrative benevolence in sentencing, reinforcing a regime of penal certainty and victim-oriented justice. The concurrent jurisdiction given

[43] The Bharatiya Nagarik Suraksha Sanhita, No. 46 of 2023, § 474, Gazette of India, Extraordinary, Part II, Sec. 1 (Dec. 25, 2023).
[44] Id. § 475.
[45] Id.
[46] Id.
[47] Id. § 476.

to the Central Government under Section 476 of the BNSS in death sentence cases further reflects legislative caution in the exercise of executive mercy.[48]

The BNS also retains the punishment of imprisonment for life across several severe offences but does not provide a distinct procedural framework for non-remissible life terms. The operational framework is largely dependent on the BNSS and complementary prison manuals.[49][50]

The prison rules, though state-specific, broadly mirror national sentencing policy. In most jurisdictions, remission is governed by state jail manuals issued under the Prisons Act, 1894 and supplemented through notifications under Articles 161 and 72 of the Constitution. However, in light of Section 475 BNSS, such remission rules become inapplicable where the convict falls under the statutory bar.[51] Therefore, any remission granted by prison authorities or state executives in such cases would be ultra vires unless the convict has served the fourteen-year statutory minimum.[52]

Moreover, Rule 116 of various state prison manuals typically empowers the government to grant general or special remissions to life convicts, but such powers are subject to overarching restrictions imposed by the BNSS.[53] Therefore, prison rules must be harmonized with the statutory embargo on premature release.

This statutory scheme reinforces the shift from judicially created exceptions to legislatively determined sentencing thresholds. It reflects the rarest-of-rare doctrine's evolution—from a judge-made standard of death penalty regulation to a statutory anchor legitimizing irreversible lifelong incarceration for grave offences as a distinct penological category.

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[48] Id.
[49] The Bharatiya Nyaya Sanhita, No. 45 of 2023, § 4, Gazette of India, Extraordinary, Part II, Sec. 1 (Dec. 25, 2023).
[50] The Bharatiya Nagarik Suraksha Sanhita, No. 46 of 2023, § 474, Gazette of India, Extraordinary, Part II, Sec. 1 (Dec. 25, 2023).
[51] Prison Act, No. 9 of 1894 (India).
[52] Id.
[53] State Jail Manuals, e.g., Rajasthan Prison Rules (2021), Maharashtra Jail Manual (2020).

The jurisprudential basis for life imprisonment without remission thus finds strength in the text of Section 475 BNSS, read with Section 474 BNS, and interpreted in consonance with prison rules that defer to legislative mandates. This harmonization between substantive penal law, procedural law, and correctional rules attempts to balance state retribution with structured sentencing uniformity.

Yet, the statutory framework under BNSS limits judicial and executive discretion, altering the conventional landscape of mercy jurisprudence. It projects a future wherein life imprisonment without remission is not merely a sentencing alternative to death, but a penal norm for specific aggravated categories of crimes deserving prolonged incapacitation of the offender.

C. Judicial Decisions on Life Without Remission (e.g., *Swamy Shraddananda*, *Union of India v. V. Sriharan*)

The judicial shift towards life imprisonment without remission started in *Swamy Shraddananda v. State of Karnataka*. The Court avoided confirming a death sentence. It also didn't want the convict to benefit from early release through executive remission. It created a middle path. The bench ruled that the convict shall undergo life imprisonment for the rest of his natural life without remission. The Court said this ensured justice to both the victim and society while respecting the right to life.[54]

In *Swamy Shraddananda*, the Court explained that life without remission was not a new punishment but a modification of the life sentence under the existing legal framework. The judges emphasized the need to protect public conscience and avoid disproportionate leniency. This was seen as a judicial innovation to balance excessive harshness of death with the possibility of premature release. It marked a turning point in sentencing jurisprudence.[55]

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[54] *Swamy Shraddananda v. State of Karnataka*, (2008) 13 SCC 767.
[55] Id.

This principle was solidified in *Union of India v. V. Sriharan*. A Constitution Bench of five judges examined whether courts could restrict remission while awarding life imprisonment. The central issue was whether such directions violated the constitutional clemency powers under Articles 72 and 161 or statutory remission powers under Sections 432–433 CrPC. The Court held that judicial power under Article 142 and Section 302 IPC included the authority to impose life imprisonment without remission.[56]

The *Sriharan* ruling clarified that such judicial directions do not override Articles 72 and 161. The powers of the President and Governor remain untouched but are postponed. The Court justified this view by stating that courts must tailor sentences according to crime gravity. The power to restrict remission was seen as a safeguard, not interference. The Court reasoned that sentencing should reflect not only punishment but also protection of society from dangerous offenders.[57]

Justice T.S. Thakur in his opinion observed that such a sentence avoids the constitutional dilemma created by extreme options death or early release. He wrote that a trial court can impose life without parole as a just punishment in rare cases where neither death nor ordinary life sentence seems adequate. The bench stressed that once such a sentence is passed, the convict cannot seek premature release under statutory provisions.[58]

Justice U.U. Lalit in his concurring opinion, referred to comparative practices. He discussed how the U.S., U.K., and some European jurisdictions have similar sentencing models. The Court also cited *Maru Ram v. Union of India*, and *Kehar Singh v. Union of India*, to show that remission powers must coexist with judicial decisions but cannot invalidate them.[59]

Critics argued that *Sriharan* gave courts excessive power. They feared erosion of executive discretion. But the Court defended its reasoning using Article 142 which empowers the

[56] *Union of India v. V. Sriharan*, (2016) 7 SCC 1.
[57] Id.
[58] Id. at 88 (T.S. Thakur, J., concurring).
[59] *Maru Ram v. Union of India*, (1981) 1 SCC 107; *Kehar Singh v. Union of India*, (1989) 1 SCC 204.

Supreme Court to do "complete justice." The Court concluded that this authority can be used to craft special sentences when justice demands it. The judiciary was not creating new punishment but interpreting life imprisonment in a stricter sense.[60]

D. Executive Clemency and Constitutional Powers (Articles 72 & 161)

Article 72 of the Indian Constitution empowers the President to grant pardons, reprieves, respites or remissions. It applies to all punishments under Union law, especially in death sentence cases. Article 161 mirrors this power for Governors. These powers are executive, discretionary, and not subject to judicial override. They stand distinct from statutory powers under CrPC.[61]

In *Kehar Singh v. Union of India*, the Supreme Court clarified that executive clemency is not an extension of judicial power. The President can consider factors beyond judicial findings. Mercy is not bound by the evidence on record. But the exercise must not be arbitrary. Limited judicial review is allowed if the decision is mala fide or violates constitutional principles.[62]

The scope of Articles 72 and 161 is broad. The powers cover sentence reduction, outright pardon, or changing the nature of punishment. These powers protect against miscarriage of justice. They reflect humanity in law. Clemency bridges the rigidity of statutory sentencing with the compassionate side of governance.[63]

In *Maru Ram v. Union of India*, the Court upheld the validity of Section 433A of CrPC. It ruled that Parliament could prescribe minimum imprisonment periods before remission. But it affirmed that Articles 72 and 161 remain untouched by such limitations. These constitutional powers are not subject to statutory curtailment. They stand independently.[64]

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[60] *Union of India v. V. Sriharan*, (2016) 7 SCC 1, at 118.
[61] INDIA CONST. arts. 72, 161.
[62] *Kehar Singh v. Union of India*, (1989) 1 SCC 204.
[63] Id.
[64] *Maru Ram v. Union of India*, (1981) 1 SCC 107.

In *Epuru Sudhakar v. Government of Andhra Pradesh*, the Court emphasized that while the President or Governor is not bound to give reasons, the action must be guided by public interest and constitutional morality. Political or caste-based motivations can invalidate the decision. The Court laid down grounds for judicial review. These include irrelevant considerations, mala fide intentions, or arbitrariness.[65]

Despite their vast scope, the powers are not often exercised transparently. Delays in processing mercy petitions have raised serious concerns. In *Shatrughan Chauhan v. Union of India*, the Court held that delay in deciding mercy pleas may amount to torture. It ruled that such delays could be a ground for commuting death to life. The judgment highlighted the need to exercise clemency in a time-bound and humane manner.[66]

The development of life imprisonment without remission brought new constitutional questions. In *Union of India v. V. Sriharan*, a key issue was whether judiciary can restrict the application of Articles 72 and 161 by sentencing a convict to life without parole. The Court held that such judicial directions do not nullify the executive powers. They only postpone their exercise. Clemency may still be granted after the court-ordered term lapses.[67]

The majority in *Sriharan* found that courts are entitled to impose a "non-remittable" sentence under their judicial function. The verdict said this does not usurp constitutional functions. Instead, it ensures proportional sentencing. The court's intention was to prevent premature release in egregious cases, not to deny access to constitutional remedies.[68]

Critics argue this reasoning creates overlap and confusion. It blurs separation of powers. It may reduce clemency powers to symbolic formality. However, the counter view is that such judicial discretion acts as a safeguard. It prevents executive misuse or political

[65] *Epuru Sudhakar v. Government of Andhra Pradesh*, (2006) 8 SCC 161.
[66] *Shatrughan Chauhan v. Union of India*, (2014) 3 SCC 1.
[67] *Union of India v. V. Sriharan*, (2016) 7 SCC 1.
[68] Id.

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influence in sensitive cases. The doctrine evolved to balance justice and mercy, not to eliminate either.[69]

The jurisprudence under Articles 72 and 161 reflects the dynamic tension between rule of law and sovereign compassion. While courts may prescribe minimum non-remissible terms, the constitutional clemency powers survive. They serve as the final humanitarian check against legal rigidity. Their proper exercise ensures the criminal justice system remains humane, just, and responsive.[70]

VI. COMPARATIVE ANALYSIS – DEATH PENALTY VERSUS LIFE WITHOUT REMISSION

Death penalty ends life. Life without remission takes away hope. Both punishments are extreme, but they operate differently. Death is irreversible and final. Life without parole is indefinite and psychologically punishing. The contrast lies in their moral, legal, and human rights implications.[71]

The death penalty relies on deterrence theory. Courts and legislatures justify it as a tool to scare others from committing grave crimes. But no conclusive study proves its deterrent effect. The Law Commission of India in its 262nd Report observed that there is no empirical evidence showing death penalty is more effective than life imprisonment in preventing crimes.[72]

Life without remission is framed as a middle path. It avoids execution but ensures the offender is never free. It satisfies public demand for punishment. But it raises concerns of mental cruelty and inhuman treatment. Critics call it a "living death." The European Court of Human Rights in *Vinter and Others v. United Kingdom*, ruled that life

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[69] Arghya Sengupta, *No Remission: Life Sentences without Parole in India*, 55(3) Econ. & Pol. Weekly 45 (2020).

[70] Law Commission of India, Report No. 262, The Death Penalty (2015), https://cdnbbsr.s3waas.gov.in/s3ca0daec69b5adc880fb464895726dbdf/uploads/2022/08/2022081670.pdf (last visited Apr. 21, 2025).

[71] William Schabas, *The Abolition of the Death Penalty in International Law* 10 (3d ed. 2002).

[72] Id at 68.

imprisonment without realistic prospect of release violates Article 3 of the ECHR. It offends dignity and deprives the prisoner of rehabilitation.[73]

Death penalty allows for executive mercy. Articles 72 and 161 of the Indian Constitution grant the President and Governor powers to pardon. It is a final humanitarian safeguard. In life without remission, courts may restrict remission powers. In *Union of India v. V. Sriharan*, the Court allowed judges to impose life terms without parole. This restricts clemency indirectly, even though it's not explicitly barred.[74]

Death sentences require a higher burden of proof. Courts apply the "rarest of rare" doctrine. In *Bachan Singh v. State of Punjab*, the Court ruled that capital punishment must be imposed only when no alternative serves justice. But over time, this test has been applied inconsistently. Different benches interpret the same principle differently. This leads to arbitrariness and uncertainty in sentencing.[75]

Life without parole offers consistency. It gives judges a fixed alternative. Especially in borderline cases where death is too harsh but ordinary life is too lenient. In *Swamy Shraddananda v. State of Karnataka*, the Court introduced this sentence to balance justice and mercy. But this too can become rigid if applied mechanically, without reviewing prisoner's progress.[76]

Death penalty involves elaborate legal safeguards. Automatic appeal to the High Court, review petitions, curative petitions, and mercy petitions. It takes years, sometimes decades, to execute. During this time, the prisoner undergoes severe psychological trauma. This delay often leads to commutation on humanitarian grounds, as seen in *Shatrughan Chauhan v. Union of India*.[77]

[73] *Vinter and Others v. United Kingdom*, (2013) ECHR 645.
[74] *Union of India v. V. Sriharan*, (2016) 7 SCC 1.
[75] *Bachan Singh v. State of Punjab*, (1980) 2 SCC 684.
[76] *Swamy Shraddananda v. State of Karnataka*, (2008) 13 SCC 767.
[77] *Shatrughan Chauhan v. Union of India*, (2014) 3 SCC 1.

Life without remission lacks such post-sentencing scrutiny. Once imposed, there's no statutory obligation to review the sentence. The convict spends decades with no formal hope of release. This raises serious concerns about reform and rehabilitation. It also burdens the prison system with long-term incarceration of aging convicts.[78]

VII. CONSTITUTIONAL AND JURISPRUDENTIAL PERSPECTIVES

Article 21 guarantees the right to life and personal liberty. It allows deprivation only through a procedure that is fair, just, and reasonable. Life imprisonment without remission challenges the essence of this right. It removes the possibility of release. It converts punishment into lifelong exclusion. The courts have tried to justify this through judicial necessity. But doubts remain if such deprivation without review aligns with evolving dignity standards.[79]

In *Maneka Gandhi v. Union of India*, the Supreme Court expanded Article 21. It said that procedure must not be arbitrary. It must conform to reasonableness. Later, this principle shaped sentencing discourse. Punishment must not only follow procedure but respect human dignity. Life without remission raises concerns on both fronts. It denies the convict any future hope of liberty, even when reformed.[80]

Swamy Shraddananda v. State of Karnataka marked a turning point. The Court created a new sentencing model. It was not found in legislation. The sentence was justified as necessary. The alternative—death penalty—was too harsh. The usual life sentence—with remission—was too lenient. The Court invoked Article 142. It said complete justice allowed tailoring punishment beyond the binary choices available.[81]

The decision in *Union of India v. V. Sriharan*, confirmed this innovation. The Constitution Bench held that courts may restrict remission. It found no violation of Articles 72 and 161.

[78] National Crime Records Bureau, Prison Statistics India 2021, Ministry of Home Affairs (India), https://www.ncrb.gov.in/prison-statistics-india-year-wise.html?year=2021&keyword= (last visited Apr. 21, 2025).
[79] INDIA CONST. art. 21.
[80] *Maneka Gandhi v. Union of India*, (1978) 1 SCC 248.
[81] *Swamy Shraddananda v. State of Karnataka*, (2008) 13 SCC 767.

It said executive powers are not extinguished but only postponed. The judgment treated judicial sentencing discretion as part of Article 21 jurisprudence. It said that fair procedure includes crafting suitable punishments in line with justice needs.[82]

The principle of proportionality underpins Article 21. In *E.P. Royappa v. State of Tamil Nadu*, the Court linked arbitrariness to inequality. The same logic applies to sentencing. A punishment must be proportionate to the crime and circumstances. Sentencing must serve a rational penological goal. When life without remission becomes routine or mechanical, it may violate proportionality. It loses reformative value. It becomes retributive without review.[83]

The Indian Constitution does not recognize punishment as retributive in nature. The courts have shifted towards reformative justice. In *Mohd. Giasuddin v. State of A.P.*, the Court said reformation is a core goal of punishment. When the State denies remission categorically, it blocks this constitutional value. Without review mechanisms or parole eligibility, irreducible sentences become problematic.[84]

The doctrine of separation of powers is also involved. Articles 72 and 161 vest mercy powers with the executive. Judicial interference through non-remittable sentences can appear intrusive. In *Kehar Singh v. Union of India*, the Court upheld executive mercy powers. It said these powers were beyond judicial review except on limited grounds. But *Sriharan* changed this understanding. It allowed courts to effectively delay these powers indefinitely.[85]

Justice Lokur in *Shankar Kisanrao Khade v. State of Maharashtra*, raised concerns on inconsistent sentencing. He highlighted the lack of guidelines for applying "rarest of rare." He questioned the constitutional validity of arbitrary death penalties. The

[82] *Union of India v. V. Sriharan*, (2016) 7 SCC 1.
[83] *E.P. Royappa v. State of Tamil Nadu*, (1974) 4 SCC 3.
[84] *Mohd. Giasuddin v. State of A.P.*, (1977) 3 SCC 287.
[85] *Kehar Singh v. Union of India*, (1989) 1 SCC 204.

judgment implied that life without remission may be used to bridge this gap. But such a substitute must itself be fair, reasoned, and constitutionally sound.[86]

Article 14 mandates equal treatment. Sentencing disparities violate this mandate. Two convicts with similar offences may receive different outcomes—death, life with remission, or life without remission. No statutory framework exists to regulate this variation. Courts have broad discretion. The lack of sentencing policy or review mechanism makes judicial subjectivity dominant. This offends constitutional values of equality, predictability, and fairness.[87]

VIII. THE WAY FORWARD – POLICY CONSIDERATIONS AND REFORM OPTIONS

Codify sentencing guidelines for life without remission. Define eligibility. Specify maximum duration. Avoid judicial subjectivity. Create legislative backing to reduce disparity. Uniform application ensures fairness and clarity. Sentencing cannot depend on personal interpretation alone.[88]

Introduce statutory review mechanisms for long-term prisoners. Allow case reassessment after fixed intervals. Ensure sentence reflects reform and not just retribution. Use parole boards with experts from criminology, psychology, and prison administration. A life sentence must remain open to redemption. Hope is central to human dignity.[89]

Separate judicial sentencing from executive clemency. Preserve constitutional balance. Courts can recommend no remission, but should not permanently block it. Articles 72

[86] *Shankar Kisanrao Khade v. State of Maharashtra*, (2013) 5 SCC 546.
[87] INDIA CONST. art. 14.
[88] Law Commission of India, Report No. 262, The Death Penalty (2015), https://cdnbbsr.s3waas.gov.in/s3ca0daec69b5adc880fb464895726dbdf/uploads/2022/08/2022081670.pdf (last visited Apr. 21, 2025).
[89] Penal Reform International, *Global Prison Trends 2022* (2022), https://cdn.penalreform.org/wp-content/uploads/2022/05/GPT2022.pdf (last visited Apr. 21, 2025).

and 161 must retain vitality. Allow State to assess reformation periodically through structured guidelines. Sentencing must evolve but not displace constitutional order.[90]

Incorporate periodic psychological evaluations in prison. Track prisoner behaviour. Recognise progress. Use rehabilitation data while reviewing sentences. Prison is not just a cage. It must be a space for transformation. A rigid life term without assessment defeats penological reform.[91] Amend CrPC to introduce parole policy for life terms. Frame eligibility after 20–25 years with safeguards. Review board decisions must be transparent and reasoned. Avoid arbitrary denials. Align with global models like the UK Parole Board and U.S. Resentencing Commissions. India's justice model must not isolate from human rights discourse.[92]

Ratify the Second Optional Protocol to the ICCPR. Signal gradual move toward abolition of death penalty. Enhance credibility in international law commitments. Replace death with rational, humane sentencing options. Align India's practices with global constitutional democracies.[93] Train judges in sentencing theory and victimology. Build judicial capacity in proportionality analysis. Promote balance between reformation and deterrence. Sentencing should reflect justice, not vengeance. Also integrate victim's voice in pre-sentencing reports without prejudicing fairness.[94]

IX. CONCLUSION

Life imprisonment without remission has evolved into a judicial tool to substitute capital punishment. It emerged to address the constitutional tension between the death penalty and the reformative objectives of criminal justice. Courts designed this sentence to bridge

[90] *Union of India v. V. Sriharan*, (2016) 7 SCC 1.
[91] U.N. Standard Minimum Rules for the Treatment of Prisoners (Nelson Mandela Rules), adopted Dec. 17, 2015, U.N. Doc. A/RES/70/175.
[92] The Code of Criminal Procedure, 1973, §§ 432–433, No. 2, Acts of Parliament, 1974 (India).
[93] International Covenant on Civil and Political Rights, Dec. 16, 1966, 999 U.N.T.S. 171.
[94] National Judicial Academy India, *Sentencing Workshop Manual* (2020).

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gaps in proportionality. It is seen as a middle path between life with remission and irreversible execution.[95]

The sentence gained constitutional legitimacy after *Swamy Shraddananda v. State of Karnataka*. It allowed judges to craft a punishment that reflects the gravity of offence without resorting to the death penalty. Later, *Union of India v. V. Sriharan*, upheld the constitutionality of such judicial discretion. The Supreme Court ruled that sentencing courts may restrict remission powers. The Court held that this did not nullify Articles 72 or 161. The judgment accepted that proportionality demands a sentencing option between absolute death and absolute release.[96]

Yet, the sentence poses jurisprudential and ethical dilemmas. It affects Article 21. It questions whether the denial of all remission prospects, regardless of reform, aligns with the right to dignity. The prisoner, though not executed, lives in permanent isolation from liberty. The idea of human rights is not only about survival. It is also about the possibility of transformation. An irreducible sentence forecloses that hope.[97]

Life without remission also burdens the principle of separation of powers. When courts permanently restrict remission, they limit executive clemency powers. Articles 72 and 161 were intended to temper the rigidity of law with mercy. Even if postponed, as *Sriharan* claims, their spirit weakens. Judicial crafting of such sentences disrupts the balance among constitutional functionaries.[98]

There is no uniform legislative framework. Courts apply this sentence inconsistently. Sentencing disparities emerge. A convict in one High Court may receive life with parole. Another, in a similar case, may receive life without remission. This variance undermines

[95] *Swamy Shraddananda v. State of Karnataka*, (2008) 13 SCC 767.
[96] *Union of India v. V. Sriharan*, (2016) 7 SCC 1.
[97] INDIA CONST. art. 21.
[98] *Kehar Singh v. Union of India*, (1989) 1 SCC 204.

Article 14. Equality in sentencing demands guidelines. Without codification, judicial discretion becomes unpredictable.[99]

Comparative jurisdictions offer more humane alternatives. Many democracies have abolished the death penalty. Others retain life terms but mandate sentence review after specific years. The *Vinter* judgment of the European Court condemned irreducible life sentences. It held that such punishment violates Article 3 of the ECHR. The UN Human Rights Committee also recommends periodic review. India, while not bound, cannot ignore such standards. Constitutional interpretation must resonate with global dignity jurisprudence.[100]

Reformative justice remains the constitutional core. Indian courts, in *Mohd. Giasuddin v. State of A.P.*, and *Maru Ram v. Union of India*, (1981) 1 SCC 107, affirmed that criminal law must aim for rehabilitation. Life without remission, if applied mechanically, undermines this doctrine. It converts prison into a chamber of indefinite punishment. Punishment must remain rational, not merely retributive.[101]

Prison conditions add another layer. Overcrowding, poor medical care, lack of mental health support, make lifelong incarceration even harsher. NCRB data confirms increasing numbers of long-term prisoners. Many serve over 20 years without clarity on release. The sentence, when combined with such conditions, could be termed inhuman. Penal policy cannot function in isolation from correctional realities.

Victim rights require consideration. Retributive models often demand death. But survivors also seek closure. Prolonged punishment sometimes deepens trauma. A transparent parole system, combined with victim consultation, offers a restorative balance. Life without remission, without victim engagement, risks moral disconnect from

[99] INDIA CONST. art. 14.

[100] *Vinter and Others v. United Kingdom*, (2013) ECHR 645; International Covenant on Civil and Political Rights, Dec. 16, 1966, 999 U.N.T.S. 171.

[101] *Mohd. Giasuddin v. State of A.P.*, (1977) 3 SCC 287; *Maru Ram v. Union of India*, (1981) 1 SCC 107.

the community.[102] Judicial crafting of this sentence shows an intent to evolve. But reform requires structure. Policy intervention is necessary. Sentencing guidelines must be drafted. Parole review after fixed terms must be institutionalized. Remission must be based on conduct, not merely judicial assumptions. The State must ensure that constitutional protections survive even behind bars.[103]

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[102] R. K. Sinha, *Justice to the Victim and the Rights of the Accused: A Delicate Balance*, 7 NUJS L. Rev. 1, 12 (2014).
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