IN THE SUPREME COURT OF BANGLADESH
APPELLATE DIVISION

PRESENT:

Mr. Justice Syed Mahmud Hossain,
Chief Justice

Mr. Justice Muhammad Imman Ali

Mr. Justice Hasan Foez Siddique

Mr. Justice Mirza Hussain Haider

Mr. Justice Abu Bakar Siddiquee

Mr. Justice Md. Nuruzzaman

Mr. Justice Obaidul Hassan

CRIMINAL REVIEW PETITION NO.82 OF 2017.

(From the judgment and order dated 14.02.2017 passed by this Division in Criminal Appeal No.15 of 2010).

Ataur Mridha alias Ataur — Petitioner.

=Versus=

The State — Respondent.

For the Petitioner	:	Mr. Khandker Mahbub Hossain, Senior Advocate, instructed by Mr. Syed Mahbubar Rahman, Advocate-on-Record.
For the Respondent	:	Mr. Mahbubey Alam, Attorney General,(now dead) Mr. A.M. Aminuddin, Attorney General with Mr. Biswajit Debnath, Deputy Attorney General instructed by Mr. Haridas Paul, Advocate-on-Record.
As Amici Curiae to assist the Court :		Mr. Rakanuddin Mahmud, Senior Advocate with Mr. A.F. Hassan Ariff, Senior Advocate and Mr. Abdur Razzaque Khan, Senior Advocate.

Date of hearing : 20.06.2019, 11.07.2019, 24.11.2020.

Date of judgment: 01.12.2020.

J U D G M E N T

SYED MAHMUD HOSSAIN,C.J.: I have had the privilege of going through the judgments written by my brothers Muhammad Imman Ali,J. and Hasan Foez

Siddique,J. While concurring with the judgment and order written by my brother Hasan Foez Siddique,J. I would like to add a few sentences since the question involved in this criminal review petition is of greater public importance.

Facts of the case and the relevant decisions have fully been noticed in the majority judgment. I, therefore, avoid repetition.

The core question in this criminal review petition is what is meant by life imprisonment in the context of the provisions of the Penal Code, the Criminal Procedure Code, the Prisons Act and the Jail Code.

Imprisonment for life prima facie means the whole of the remaining life. The term "imprisonment for life" has not been defined in any of the statutes including the Penal Code. Section 45 of the Penal Code defined the word "life" as follows:

> **"45. The word "life" denotes the life of a human being, unless the contrary appears from the context."**

Section 53 of the Penal Code states about various forms of punishments. Section 53 of the Penal Code runs as follows:

> **"53. The punishments to which offenders are liable under the provisions of this Code are,-**
> **Firstly,-Death;**
> **Secondly,-Imprisonment for life;**
> **Thirdly,-Omitted by the Criminal Law (Extinction of Discriminatory Privileges) Act 1949(Act No.II of 1950);**

> Fourthly,-Imprisonment, which is of two descriptions, namely:-
>
> (1) Rigorous, that is, with hard labour;
>
> (2) Simple;
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> Fifthly,-Forfeiture of property;
>
> Sixthly,-Fine.
>
> Explanation.-In the punishment of imprisonment for life, the imprisonment shall be rigorous.

Section 53 of the Penal Code is almost similar to section 53 of the Indian Penal Code except that the explanation appended to section 53 of the Penal Code has not been incorporated in section 53 of the Indian Penal Code. Section 55 of the Penal Code provides that Government has the power to commute the sentence of imprisonment for life to a term not exceeding 20 years. On the other hand, in India Government has the power to commute imprisonment for life to a term of either description not exceeding 14 years. In our case too it was 14 years but in 1985 by the Penal Code (Amendment) Ordinance,1985 (Ordinance No.XLI of 1985) 20 years was substituted for 14 years. For better appreciation section 55 of the Penal Code is quoted below:

> "55. Commutation of sentence of imprisonment for life-In every case in which sentence of imprisonment for life shall have been passed, the Government may, without the consent of the offender, commute the punishment for imprisonment of either description for a term not exceeding twenty years."

According to section 57 of the Penal Code fractions of terms of punishment of imprisonment for life shall be calculated as equivalent to rigorous

imprisonment for 30 years. In India, the language of section 57 of the Indian Penal Code is almost similar but in their case the period shall be reckoned as equivalent to imprisonment for 20 years. For better understanding, we should have a look on section 57 of the Penal Code, which is quoted below:

> "57. Fractions of terms of punishment-In calculating fractions of terms of punishment, imprisonment for life shall be reckoned as equivalent to rigorous imprisonment for thirty years."

With a view to giving a meaningful interpretation of imprisonment for life some of the provisions of the Code of Criminal Procedure are also required to be considered.

At the very outset it would be relevant to consider the introduction of section 35A of the Code of Criminal Procedure which was not in the original Code of Criminal Procedure. Section 35A of the Code of Criminal Procedure was first introduced by way of amendment of the Code of Criminal Procedure by Ordinance No.12 of 1991, which was subsequently enacted by way of amendment of the Code of Criminal Procedur,1898 (Act V of 1898). The then section 35A introduced by the Ordinance No.12 of 1991 is quoted below:

> "35A. Term of imprisonment in cases where convicts are in custody.- Where a person is in custody at the time of his conviction and the offence for which he is convicted is not punishable with death or imprisonment for life, the Court may, in passing the sentence of imprisonment, take into consideration the continuous period of his custody immediately preceding his conviction.
>
> Provided that in the case of an offence for which a minimum period of sentence of imprisonment is specified by law, the sentence shall not be less than that period."

However, the Ordinance was repealed by the Act No.16 of 1991 but at the time of enactment the proviso appended to section 35A was omitted.

Having gone through the section 35A of the Code of Criminal Procedure as introduced by Act No.16 of 1991, we find that when an accused is sentenced to death or imprisonment for life or sentenced for an offence which is punishable with death or imprisonment for life he is not entitled to get the benefit of section 35A of the Code of Criminal Procedure for deduction of sentence for the period during which he was in custody prior to his conviction and sentence. Section 35A introduced by Act No.16 of 1991 conferred a discretionary power on the Court to take into consideration the continuous period of custody of a convict prior to his conviction provided that his offence was not punishable with death or imprisonment for life.

In India, the corresponding section is 428 of the Indian Code of Criminal Procedure, 1973 which runs as under:

> "428. Period of detention undergone by the accused to be set-off against the sentence of imprisonment.- Where an accused person has, on conviction, been sentenced to imprisonment for a term, not being imprisonment in default of payment of fine, the period of detention, if any, undergone by him during the investigation, inquiry or trial of the same case and before the date of such conviction, shall be set-off against the term of imprisonment imposed on him on such conviction, and the liability of such person to undergo imprisonment on such conviction shall be restricted to the remainder, if any, of the term of imprisonment imposed on him:
>
> Provided that in cases referred to in section 433A, such period of detention shall be set-off against the period of fourteen years referred to in that section."

On consideration of section 428 of the Indian Code of Criminal Procedure, it appears that an accused who is convicted for imprisonment for a term the period of detention, if any, undergone by him during the investigation, inquiry or trial before the date of conviction shall be entitled to set-off against the term of imprisonment imposed on him on conviction. A convict is entitled to the benefit of section 428 of the Indian Code of Criminal Procedure irrespective of the fact that he has been sentenced to suffer imprisonment for life and since the right

of set-off is mandatory the period undergone by the convict before such conviction shall be set-off from his term of imprisonment. The proviso appended thereto provides that in cases referred to in section 433A such period of detention shall be set-off against the period of 14 years referred to in that section. Before adding the proviso to section 428 in 2005, the words, "imprisonment for life" were conspicuously absent in section 428 of the Indian Code of Criminal Procedure. For such reason in *Kartar Singh and Others vs. State of Haryana, AIR 1982 SC 1439* the Supreme Court of India held that the benefit of set-off contemplated in section 428 of Code of Criminal Procedure would not be available to life convicts. But this decision was overruled in *Bhagirath and others Vs. Delhi Administration, AIR 1985 SC 1050* wherein the court held:

> " 5. The neat and, we believe, the simple question for decision is whether imprisonment for life is imprisonment "for a term". The reason why it is urged that imprisonment for life is not imprisonment for a term is that the latter expression comprehends only imprisonments for a fixed, certain and ascertainable period of time like six months, two sears, five years and so on. Since the sentence of life imprisonment, as held by this Court in *Gopal Vinayak Godse v. The State of Maharashtra,(1961) 3 SCR 440* is a sentence for life and nothing less and since, the term of

> life is itself uncertain the sentence of life imprisonment is for an uncertain term, that is to say, that it is not imprisonment for a term.
>
> 6.....The relevant question and, the only one, to ask under Section 428 is : Has this person been sentenced to imprisonment for a term ? For the sake of convenience, the question may be split into two parts. One, has this person been sentenced to imprisonment? And, two, is the imprisonment to which he has been sentenced an imprisonment for a term? There can possibly be no dispute that a person sentenced to life imprisonment is sentenced to imprisonment. Then, what is the term to which he is sentenced? The obvious answer to that question is that term to which he has been sentenced is the term of his life. *Therefore, a person who is sentenced to life imprisonment is sentenced to imprisonment for a term."*

The Supreme Court of India then held in ***Bhagirath*** ***(supra)*** *that the question of setting off the period undergone by an accused before his conviction order is passed against the sentence of life imprisonment only arises when an appropriate authority passes an order under Section 432 or Section 433 of the Code. In the absence of such order, imprisonment for life would mean, imprisonment for the remainder of life.* (Emphasis supplied)

In 2005, long after *Bhagirath* case (ibid) was decided, the legislature added a proviso to the section 428 of the Code of Criminal Procedure, 1973 by an amendment that clarifies that the life convicts would also get the benefit of section 428. The language of section 428 of the Indian Code of Criminal Procedure is mandatory in nature. In the case of *Ranjit Singh Vs. State of Panjab (2010)12 SCC 506,* the view taken in *Bhagirath* (supra) was affirmed and the benefit of set-off mentioned in section 428 of the Indian Code of Criminal Procedure was given to the life convict. In the judgment under review reliance was placed on the case of *Kartar Singh and others (supra)* though the said case was overruled in the case of Bhagirath (supra).

In India, the reason which impelled introduction of section 433A of the Code of Criminal Procedure was that sometimes due to grant of remission even murderers sentenced or commuted to imprisonment for life were released at the end of 5 to 6 years. In order to circumvent this, the legislature incorporated section 433A of the Indian Code of Criminal Procedure by Act No.45 of 1978 providing that where a sentence of imprisonment for life is imposed on conviction of a person for an offence for which death is one of the punishments provided by law or where the sentence of death imposed on a person has been commuted under section 433 into one

of imprisonment for life such person shall not be released from prison unless he had served 14 years including set-off as mentioned in section 428. By the aforesaid section, the Indian legislature has put a fetter on the appropriate Government by restricting its power of remission and commutation in case of a life convict to 14 years of actual imprisonment.

On consideration of original section 35A of the Code of Criminal Procedure in Bangladesh and section 428 of the Indian Code of Criminal Procedure, we find that the original section 35A was introduced in 1991 but not in line with section 428 of the Indian Code of Criminal Procedure.

In Bangladesh subsequently section 35A of the Code of Criminal Procedure was substituted by section 2 of the Code of Criminal Procedure (Amendment Act,2003) (Act No.XIX of 2003). The substituted section 35A is reproduced below:

> "Deduction of imprisonment in cases where convicts may have been in custody-(1) Except in the case of an offence punishable only with death, when any court finds an accused guilty of an offence and, upon conviction, sentences such accused to any term of imprisonment, simple or rigorous, it shall deduct from the sentence of imprisonment, the total period the accused may have been in custody in the meantime, in connection with that offence.

> (2)If the total period of custody prior to conviction referred to in sub-section (1) is longer than the period of imprisonment to which the accused is sentenced, the accused shall be deemed to have served out the sentence of imprisonment and shall be released at once, if in custody, unless required to be detained in connection with any other offence; and if the accused is also sentenced to pay any fine in addition to such sentence, the fine shall stand remitted."

On comparison of original section 35A and substituted section 35A, we find that the legislature knowing full well did not give the benefit of the discretionary power of the Court under section 35A to a person sentenced to imprisonment for life by the aforesaid un-amended provision. The legislature keeping in mind about the original section substituted section 35A where it has been stated that the benefit of section 35A will not be available in the case of an offence punishable only with death. This substituted section 35A also allowed the Court to deduct the sentence from the sentence of imprisonment for life the total period during which the accused was in custody in connection with that offence. By using the words 'except' and 'only' in section 35A the legislature intended to give the

benefit of section 35A to the accused who have been sentenced to imprisonment for life also.

In the judgment under review, it has been held that section 35A of the Code of Criminal Procedure is not applicable to an offence punishable with death or with imprisonment for life. But the original section 35A of the Code of Criminal Procedure has not been taken into consideration at the hearing of Criminal Appeal Nos.15-16 of 2010 from which this criminal petition for review has arisen. The judgment under review reveals that a convict cannot claim deduction of the period in custody prior to his conviction as of right and that it is a discretionary power of the Court and that it cannot be applicable in respect of an offence which is punishable with death (should have been imprisonment for life). Another finding of the judgment under review is that though the word 'only' is used in section 35A, the legislature without considering section 401 of the Code of Criminal Procedure and section 53 of the Penal Code has inserted the word 'only' but the use of word 'only' will not make any difference since under the

scheme of the prevailing laws any remission/deduction of sentence has been reserved to the Government only.

Having gone through substituted section 35A of the Code of Criminal Procedure, it appears that there is no scope to say that the power conferred on the Court is a discretionary power. The language used in amended section 35A is clear and unambiguous and that the Court cannot disregard the intention of the legislature expressed in plain language and is to deduct the period of actual detention from imprisonment for life prior to his conviction.

It is a cardinal rule of construction that normally no word or provision should be considered redundant or superfluous in interpreting the provisions of a statute. In the field of interpretation of statues, the Courts always presume that the legislature inserted every part thereof with a purpose and the legislative intention is that every part of the statute shall have effect. It may not be correct to say that a word or words used in a statute are either unnecessary or without any purpose to serve, unless there are compelling reasons to say so looking to the scheme of the statute and having

regard to the object and purpose sought to be achieved (*Sankar Ram & Co. Vs. Kasi Nicker and others (2003)11 SCC 699)*.

"Ut res magis valeat quam pereat"-the literal meaning of this maxim is that it is better for a thing to have effect than to be made void. According to Maxwell, the function of a Court is to interpret a statute according to intent of the legislature and in doing so it must bear in mind that its function is *jus dicere not jus dare*: the words of a statute must not be overruled by the judges, but reform of law must be left in the hands of Parliament(Maxwell-Interpretation of Statutes, 12th edition, page-1-2). It is a cardinal rule of construction that normally no word or provision should be considered redundant or superfluous in interpreting the provisions of a statute.

In the case of *Shafiqur Rahman Vs. Idris Ali, (1985) 37 DLR (AD)71* it has been held that a cardinal principle of construction is that it must be presumed that the legislature does not use any word unnecessarily or without any meaning or purpose.

In the case of *Shamsuddin Ahmad, Advocate Vs. Registrar, High Court of East Pakistan (1967) 19 DLR (SC) 483,* it has been held that it is an universally accepted rule of construction that no words in a statute are redundant or surplusage. Meaning must be given to every word in a statute reading its provisions as a whole in a fair and impartial manner in the ordinary and general sense.

In view of principle expounded in the cases referred to above, it cannot be said that the word 'only' is used in section 35A of the Code of Criminal Procedure without considering section 401 of the Code of Criminal Procedure and section 53 of the Penal Code.

Under substituted section 35A of the Code of Criminal Procedure, an accused is entitled to deduction of the actual period during which he was in custody prior to passing of his sentence from his sentence of imprisonment for life.

In India, from the case of *Pandit Kishori Lal Vs. The King-Emperor (1944) 26 ILR (Lahore)Privy Council 325*, till date the consistent view is that life imprisonment means the whole of remaining life. But in most of these

cases, the dispute arose when the executive did give remission under different sections of the Indian Code of Criminal Procedure and when the Court debarred the executives from exercising the power of remission or from exercising such power until certain period.

It has already been discussed that in the context of Bangladesh from the date of partition of India till pronouncement of the judgment under review, the consistent practice was that imprisonment for life be reckoned as 20 years rigorous imprisonment which is by subsequent amendment increased to rigorous imprisonment for 30 years as contained in amended section 57 of the Penal Code.

It is, however, true that section 57 of the Penal Code is for calculating fractions of terms of punishment for imprisonment for life which shall be equivalent to rigorous imprisonment for 30 years. Though section 57 of the Penal Code was enacted for calculating the fractions of the imprisonment for life, the period of imprisonment for life always deems to be rigorous imprisonment for 30 years (prior to amendment of section 57, it was rigorous imprisonment for 20 years). We were blessed with

legendary Judges in this Court and while passing sentence under section 302 of the Penal Code, they used the statutory words".....punished with death or imprisonment for life....." without adding the words "till the end of the natural life of the convict" which are not in the statute. What would be the tenure of imprisonment for life has been left open to the executive who may or may not give remission. But under section 35A of the Code of Criminal Procedure power has been vested in the Court to deduct the period of incarceration undergone by the convict prior to passing of the verdict of sentence from the total period of sentence awarded.

In exercise of the power conferred by section 59, sub-section (5)of the Prisons Act,1894 (IX of 1894) Rules were made in chapter XXI of the Jail Code to regulate the shortening of sentences by grant of remission. Any remission calculated by jail authorities under the provisions of the Jail Code are to be referred to the Government for release under section 401 of the Code of Criminal Procedure. But such remission recommended by the Jail Authority cannot be turned down by the Government without

assigning any valid reason in writing as the rules relating to remission under Chapter XXI of the Jail Code were made under the mandate of section 59(f) of the Prisons Act,1894.

In order to give a harmonious construction of sections 45 and 53 of the Penal Code, we have to read those two sections in conjunction with sections 55 and 57 of the Penal Code and section 35A of the Code of Criminal Procedure and we are of the view that imprisonment for life should be reckoned to a fixed period of rigorous imprisonment.

Interpretation of law is absolutely within the domain of Court and this question was settled long ago by the John Marshall, CJ in 1805 A.D. in the case of Marbury Vs. Madison (5 U.S. 137). Marshall's famous lines in that case are, "It is emphatically the province of the judicial department to say what law is." Those famous lines are inscribed on the wall of U.S. Supreme Court in Washington, D.C.

The power of commutation and remission as contained in the Penal Code, Code of Criminal Procedure and the Jail Code are within the domain of the executive Government and such privilege may be

extended by the Government to the convicts undergoing imprisonment for life.

But the Courts have the jurisdiction in certain circumstances to pass an order directing that the accused shall not be entitled to the benefit of Penal Code, the Code of Criminal Procedure and the Jail Code in respect of commutation, deduction and remission and the details of such authority of the Court have been explained in the judgment written by my brother Hasan Foez Siddique,J.

In the light of the findings made before, I am of the view that the impugned judgment should be reviewed and a definite time frame has to be provided for imprisonment for life till the question is resolved by the legislature once and for all.

CJ.

MUHAMMAD IMMAN ALI, J:-This criminal review petition is directed against the judgement and order dated 14.02.2017 passed by this Division in Criminal Appeal No. 15 of 2010 maintaining the conviction passed by the High Court Division and commuted the order of sentence to imprisonment for rest of his natural life.

The facts of the case in brief are that Druto Bichar Tribunal, Dhaka vide its judgement and Petition order dated 15.10.2003 convicted the petitioner, Ataur Mridha @ Ataur and two others under

sections 302/34 of the Penal Code and sentenced them to death in Druto Bichar Tribunal Case No.34 of 2003. Reference was made to the High Court Division for confirmation of the sentence of death, which was registered as Death Reference No.127 of 2003. The petitioner filed Criminal Appeal No.3895 of 2003 and Jail Appeal No.739 of 2003before the High Court Division against the said judgement and order of the Druto Bichar Tribunal. After hearing the death reference and the criminal appeal along with the jail appeal, the High Court Division by judgement and order dated 30.10.2007 acceptedthe reference, dismissed the appeal, thus maintained the conviction, and confirmed the sentence of death of the petitioner and the other two absconding condemned convicts. The petitioner filed Criminal Petition for Leave to Appeal No.116 of 2008 and co-convict Md. Anwar Hossain filed Criminal Petition for Leave to Appeal No.136 of 2008 before this Division, which upon hearing leave was granted and the cases were registered respectively as Criminal Appeal Nos.15 and 16 of 2010.By the judgement and order dated 14.02.2017 this Division dismissed both the appeals and maintained the conviction but commuted the sentence of death of the appellants to “imprisonment for rest of the life”.

The appellant in Criminal Appeal No.15 has filed the instant petition to review the judgement and order of this Division.

On behalf of the petitioner, it was argued that this Division committed error apparent on the face of the record in failing to

reconcile with the previously pronounced judgement of a co-equal Bench of the same Division dated 13.04.2013. This was on the same point of law as reported in 19 BLC (AD) 204 and as such has rendered the impugned judgement of the Appellate Division as being *'per incuriam'* and, thereby, created judicial anarchy and the resulting in inconsistency and uncertainty in the law of the land relating to computation of period of custody for convicts who have been sentenced to imprisonment for life. This Division committed error apparent on the face of the record in failing to harmoniously interpret the provisions of Article 152 of the Constitution of the People's Republic of Bangladesh, section 57 of the Penal Code, 1860, section 35A of the Criminal Procedure Code, 1898, section 59 of the Prisons Act, 1894, Chapter XXI (remission) of the Jail Code and the previous judgement of a co-equal Bench of the same Division, and as such, the impugned judgement is liable to be reviewed by this Division in order to ensure certainty and consistency in the law of the land. This Division committed error apparent on the face of the record in failing to appreciate that Rule 751 of Chapter XXI of the Jail Code which provides that 'life convict means a prisoner whose sentence amounts to 30 years imprisonment' having been framed pursuant to section 59 of the Prisons Act, 1894 (Act No.IX of 1894) falls within the definition of law as contained in Article 152 of the Constitution of the People's Republic of Bangladesh, and as such, the findings of this Division in the impugned judgement that 'this conversion of life sentence into one of fixed term by the Jail Authority is apparently without jurisdiction'

suffers from infirmity in law and is liable to be set aside. This Division committed error apparent on the face of the record inasmuch as the impugned judgement, without assigning proper reason, negated the application of the provision of section 35A of the Code of Criminal Procedure, 1898 regarding computation of periodof custody for life convicts thereby frustrating the intention of the legislature as contemplated by the Code of Criminal Procedure (Amendment) Act, 2003 (Act No.XIX of 2003), and as such, the impugned judgement having usurped the functions of the Legislature and violated the principle of separation of powers, the same is bad in law and liable to be set aside for ends of justice.

It was further argued that at the time of hearing the appeals of the convicts before this Division, the facts of the occurrence and the trial culminating in conviction of the accused of offences under sections 302/34 of the Penal Code were not under challenge. The only prayer in the appeal was for commutation of the sentence of death to one of imprisonment for life. By the impugned judgement and order, the death sentence of the appellants was commuted, but the life imprisonment was for the rest of the appellants' life. And that is now under challenge in this review.

On a broader perspective, in this review we are concerned with sentencing in cases where serious and the most heinous offences are committed which result in imposition of the death sentence or imprisonment for life, but primarily the point in issue is the length of

the period that a convict would serve when sentenced to imprisonment for life.

Sentencing is never an easy task for any judge, more so because it concerns the life/liberty of a citizen, though convicted of a crime, whose interests are also protected by the Constitution and the law. In the absence of sentencing guidelines, the decision on the sentence to be awarded is bound to be subjective and guided by the perception and degree of abhorrence created in the mind of the trial/appellate judge. It is also human nature for some persons to be more disgusted by certain types of offences, while others may have a different perception about the commission of any particular type of crime. Equally, some may be abhorred to the extreme by a crime that is against a child as opposed to an adult victim. Hence, subjectivity in sentencing will remain and will be guided by human vagaries, until objective criteria are set out in guidelines. Of course, it cannot be denied that such objective and sometimes mathematical guidelines will take away the human element often applied by judges in exercising their discretion. But unless guidelines are given, uniformity in the sentencing process cannot be achieved. Moreover, in our criminal justice process, there is no date fixed for a separate sentence hearing; hence, there is no scope for the accused to plead any mitigating facts or extenuating circumstances which might help to reduce his sentence.

The matters in issue in this review have been elaborately and painstakingly discussed by my esteemed, learned brother Hasan Foez Siddiqui, J. and I need not repeat the same. Suffice it to say that the matter before us concerns the duration of

a sentence of imprisonment for life; whether it is till the end of the last breath of the prisoner or whether it can be for a term which may end at any time after the date of conviction and before the prisoner dies.

The other substantive issue arising in this case relates to whether the convict, who has been sentenced to imprisonment for life, is entitled to deduction of the period spent in jail during the trial from his sentence. It is in this regard that I could not agree with the majority view and feel constrained to write a separate judgement expressing my own views.

In the impugned judgement this Division took into consideration the definition of 'life' under section 45 read with section 57 of the Penal Code. The sum and substance of the decision is that in offences punishable with death which are commuted to imprisonment for life, there is necessity to direct that the prisoner serves in prison for the rest of his natural life in view of the gross and heinous nature of the offence. It was further held that deduction of the period of custody during enquiry, investigation or the trial process would not be allowable taking in aid section 35A of the Code of Criminal Procedure. Reliance was placed, amongst others, on the decision of the Indian Supreme Court in the case of **Swami Shraddananda vs. The State of Karnataka and another, (2016) SCC 1**.In this regard, it was held that,*"Section 35A of the Code of Criminal Procedure is not applicable in case of an offence punishable with death or imprisonment for life. An accused person cannot claim the deduction of the period in custody prior to the conviction as of right. It is a discretionary power of the court"*. Perhis Lordship Mr. S.K. Sinha, C.J.

To appreciate the provision of deduction of any period of custody from the ultimate sentence of imprisonment imposed upon any convict, it is necessary to consider that the idea behind incarcerating any convicted criminal is to ensure that he does not commit any further offence, that society is kept secure from his criminal activity and that he realises his wrong and is deterred from engaging in any further criminal activity. The obvious result of incarceration is that the convict

criminal is deprived of his liberty and is confined in institutional custody, i.e. prison.

There is no difficulty in understanding that if a convicted person is sentenced to imprisonment for ten years and during the period before his conviction, he had suffered five years in jail, then the five years of custody before conviction would be deducted from his final order of sentence of imprisonment because he would have already suffered the loss of liberty inside the jail while the trial was going on.

This provision giving benefit of deduction of time spent in custody by the convict before his conviction was enacted by the Code of Criminal Procedure (Second Amendment) Ordinance, 1991 by introducing section 35A of the Code of Criminal Procedure, which provided for deduction from the period of sentence awarded any period that the convict spent in custody before his conviction. At that time, the provision did not apply to convicts sentenced to death or imprisonment for life. Section 35A of the Code was amended in 2003, as a result of which the deduction of the period of custody before conviction was made mandatory for those convicts who were sentenced to imprisonment for life. Thus, the amendment in 2003 purposely gave benefit to a convict imprisoned for life to have that period of pre-conviction custody deducted from his sentence. Hence, when any convict is sentenced to imprisonment for life it shall be the duty of the Court to deduct the period spent in custody before his conviction from the sentence awarded. There can be no doubt that the provision is mandatory.

Before amendment in 2003 section 35A provided as follows:

“35A. Term of imprisonment in cases where convicts are in custody- Where a person is in custody at the time of his conviction and the offense for which he is convicted is not punishable with death or imprisonment for life, the Court may in passing the sentence of imprisonment, take into consideration the continuous period of his custody immediately preceding his conviction.

Provided that in the case of an offence for which a minimum period of sentence of imprisonment is specified by law, the sentence shall not be less than that period." [s.2 The Code of Criminal Procedure (Second Amendment) Ordinance 1991.]

This provision was amended by s.2 of the Code of Criminal Procedure (Amendment) Act, 2003, which is currently in force and provides as follows:

"35A. Deduction of imprisonment in cases where convicts may have been in custody.- (1) Except in the case of an offence punishable only with death, when any Court finds an accused guilty of an offence and upon conviction, sentences such accused to any term of imprisonment, simple or rigorous, it shall deduct from the sentence of imprisonment, the total period the accused may have been in custody in the meantime, in connection with that offence."

The word "may" appearing in the earlier law was changed to "shall". Hence, there cannot be any doubt that the provision is now mandatory, and the duty is upon the Court to make the deduction of the period spent by the convict in custody before pronouncement of judgement from the sentence awarded.

A Court cannot take away the benefit given to a citizen by law. When a law is enacted by a democratic Parliament every citizen is duty bound to abide by it. Equally, no Court of law can ignore a mandatory provision of a validly enacted statute without first striking down that provision as *ultra vires* the Constitution.

Accordingly, in the case of any convict sentenced to any term of imprisonment, including imprisonment for life, the Court passing sentence shall deduct the total period spent by the convict in custody in connection with that offence before the date of his conviction, as provided by section 35A of the said Code.

However, to give effect to the provision of law, in case of any convict sentenced to imprisonment for life, difficulty arises because there is no quantification of life imprisonment; it is an indeterminate period. The Legislature could easily have added a provision in aid of section 35A of the Code that for the

purpose of the deduction, life imprisonment shall be taken to be equivalent to 30 years (or any other figure deemed appropriate by the Legislature).The problem can be solved just as easily by a small legislative amendment to that effect. However, until such time, in calculating what is the duration of a life sentence, the yardstick provided in section 57 of the Penal Code for calculating fractions of a sentence of life, may be used in aid of section 35A of the Code of Criminal Procedure. Alternatively, the benefit can be given by reference to the other benefits provided under the Jail Code where rule 751 provides that life convict means, for a class I and class II prisoner, imprisonment for 25 years, and 20 years for a class III prisoner. In the same vein, the benefit of deduction may be given by use of the provision under section 57 of the Penal Code, as was suggested by the Supreme Court of Pakistan in **Bashir and 3 Others Vs. The State, PLD 1991 (Supreme Court) 1145**, per Rustam S. Sidhwa, J. who pointed out that "in respect of a sentence of imprisonment for life which is treated as one for 25 years under Section 57 of the Penal Code, but it is basically for the limited purpose of the remission system." Certainly, rather than deny the benefit to a convict because of a lacuna in the law, the Court should follow the Latin maxim "ubi jus, ibi remedium", meaning, where there is a right, there is a remedy. Undoubtedly, the right to a remedy is a fundamental right recognised in all legal systems. In the present scenario, the right to have the period of under-trial custody deducted from the ultimate sentence, including sentence of life imprisonment, is a right enshrined in law and cannot be taken away due to inadequacy in the system in not specifying the yardstick with which to calculate the deduction from the sentence of imprisonment for life, which is clearly intended to be allowed under the amended law.

It must be clearly understood that whereas the benefits by way of remission, commutation, pardon etc. are discretionary, the benefit of deduction under section 35A of the Code of Criminal Procedure is mandatory. The grant of benefits by way of remission etc. under the Jail Code and the Code of Criminal Procedure are not

within the function of the Court, whereas the deduction mentioned under section 35A is a duty imposed squarely upon the Court.

On the question of sentence, I have to say first and foremost that the Supreme Court is neither above nor beyond the law of the land and is bound to award a sentence which is permitted by law. Hence, when awarding sentence for an offence under section 302 of the Penal Code, just as the Supreme Court could not award a sentence of "rigorous imprisonment for 20 years", it cannot also award a sentence of "imprisonment for rest of the life". Neither of those two punishments mentioned is permitted by the Penal Code. Section 302 provides that, "Whoever commits murder shall be punished with death, or imprisonment for life, and shall also be liable to fine." Without amendment of the Penal Code, when an accused is convicted of an offence under section 302 of the said Code, the Supreme Court or any other Court cannot award any sentence of fixed term of imprisonment for a finite number of years nor "imprisonment for the natural life" or any such term. Equally, when commuting the sentence of death, a Court cannot award any sentence other than that provided by the law, which in the case of conviction under section 302 would have to be "imprisonment for life".

Moreover, there is no provision in the law to distinguish between a convict who has been sentenced to imprisonment for life at the first instance and a convict whose sentence of death is commuted to one of imprisonment for life. In both cases, imprisonment for life must have the same meaning. The fact of commuting the sentence from death to imprisonment for life signifies that the culpability or heinousness is recognised by the appellate Court as lesser than was perceived by the trial Court. That is not to say that two convicts having exerted different degrees of heinousness in the commission of murder, will not be treated differently when exercising any discretion to release the prisoner from custody under any law which allows such release. Whichever authority, be it executive or judicial, considers early release, must take into consideration the propensity of the convict to do further harm to the community.

The wording of section 45 of the Penal Code is such that sentence of life imprisonment *per se*means that the imprisonment shall be for the rest of the convict's natural life. To give the section any other interpretation would, in my humble opinion, be wrong. Hence, to mention that the life imprisonment would be for the "rest of the convict's natural life" would be superfluous. In the case of **Rokia BegumVs. State,13ADC(2016)311**,it was held that to say that life sentence means 22½ years' of imprisonment "as used in Bangladesh is utterly a misnomer; indeed it appears to be an erroneous interpretation."The interpretation of the term "life imprisonment" in the Penal Code means 'life till death'. However, that is not to say that any convict sentenced to imprisonment for life will necessarily end his days in prison until he dies. The sentence, unless reversed on appeal, will remain, but still the prisoner may be released due to benefits provided by any other law. As I shall discuss later, provisions of other statutes and laws are to be implemented according to the demands of those statutes and laws. Hence, where the Constitution or provision of another law allows the convict to be released from jail before he dies, then that provision is equally worthy of implementation, if any other required qualifications of that law is met. This aspect will be discussed below.

At this juncture one may profitably look to see how India and Pakistan, who have similar legal provisions, have dealt with the matter of life imprisonment. The Penal Code of Bangladesh has the same origin as that of India and Pakistan. However, over the years Pakistan appears to have settled views regarding the meaning of life imprisonment. The Supreme Court of Pakistan has held in some cases that life imprisonment means imprisonment till the end of the convict's life but went on to conclude that it is the accepted view that life imprisonment means imprisonment for 25 years. This has been decided in view of the provision in section 57 of the Pakistan Penal Code, rule 140 of the Pakistan Prison Rules, 1978 framed under the Prisons Act which provide that "imprisonment for life" would mean 25 years. With respect, such view does not do justice to the language used in section 57 of the said Code, which provides that, "**57. Fractions of terms of**

punishment. In calculating fractions of terms of punishment, imprisonment for life shall be reckoned as equivalent to rigorous imprisonment for 25 years." [the corresponding period of imprisonment in section 57 of the Penal Code is 20 years in the case of India and 30 years in the case of Bangladesh].

In my humble opinion, the section quoted above does not say that life imprisonment is equivalent to 25 years, nor should we overlook the fact that the equivalence is meant for the purpose of reckoning/calculating fractions of terms of imprisonment, for example, to give benefit of awarding a lesser sentence to a convict who abets the commission of an offence which is not committed in consequence of that abetment [section 116 Penal Code]. Similarly, for the purpose of giving benefits of remission under the Jail Code, life imprisonment is to be reckoned as 25 or 20 years, depending on the gravity of the offence. Thus, quantifying the term "imprisonment for life" to any duration measured in years is a legal fiction created in order to give benefit. Hence, it can be categorically stated that life imprisonment is not 20 or 25 or 30 years, but for the sake of calculating any benefit to be given to a convict, it can be reckoned to be equivalent to a finite term of years.

The Supreme Court of India has decisively taken the view that life imprisonment means till the end of the convict's natural life. Bangladesh, in my humble opinion, has now correctly taken the same view. The most quoted decision in this regard is **Vinayak Godse v. The State of Maharastra and others, AIR 1961 SC 600**, where the Indian Supreme Court held, per K. Subba Rao, J.

> "Section 57 of the Indian Penal Code has no real bearing on the question raised before us. For calculating fractions of terms of punishment the section provides that transportation for life shall be regarded as equivalent to imprisonment for twenty years. It does not say that transportation for life shall be deemed to be transportation for twenty years for all purposes; nor does the amended section which substitutes the words "imprisonment for life" for "transportation for life" enable the drawing of any such all-

> embracing fiction. A sentence of transportation for life or imprisonment for life must prima facie be treated as transportation or imprisonment for the whole of the remaining period of the convicted person's natural life."

A similar view was taken by the English Court of Appeal in **R. v. Foy, 1962 All ER 246**, where it was held as follows:

> "Life imprisonment means imprisonment for life. No doubt many people come out while they are still alive, but, when they do come out, it is only on license, and the sentence of life imprisonment remains on them until they die."

Thus, clearly there is the recognition that even a convict sentenced to imprisonment for life may yet leave the prison before he dies. However, one must consider that just as the sentence of death is the end of all hopes, it is the end of everything, so is the sentence of life imprisonment till the end of the convict's natural life. In the USA this is termed as life without parole and in England the Courts have the discretion to specify a "whole life order", which means that the convict will spend his whole life behind bars. The only hope that remains in the prisoner is that he will live and breathe the air within the prison precincts until his death within the walls of the prison. It is a fate worse than death because the prisoner will continue to breath every moment in the knowledge that he will never again live with his family and within the community where he spent the best part of his life. A similar observation was made in the decision of **Rokia Begum**, cited above where reference was made to the case of the Yorkshire Moors murders where both convicts had been sentenced to imprisonment for life. One of the convicts died in prison and the other convict was declared insane and repeatedly asked to be allowed to die. That case clearly shows that for a criminal sentenced to imprisonment for life meaning the rest of his life, death would have been a less punitive option. Hindley who was sentenced to imprisonment for life in 1966 just after the death penalty was abolished wrote in a letter; "I knew I was a selfish

coward but could not bear the thought of being hanged. Although over the years wish I had been" (as reported on BBC news dated 29.02.2000).

Commuting the sentence of death to imprisonment for life is in a way giving back hope to the convict that one day, maybe soon he will re-join his family. Having commuted the death sentence, telling any convict that he will spend the rest of his life in jail until the day he dies is taking away the goodness in life; it is worse than the sentence of death. It takes away the hope that he may once again live a normal life within the community, amongst his loved ones. Every day he will live with the thought that he will die within the precincts of the jail and only his dead body will be given back to his family for burial.

The Constitution, the Penal Code, the Code of Criminal Procedure and the Jail Code allow for pardon, reprieve, respite, commutation, reduction, suspension and remission of sentence. Taking away such powers would tantamount to overriding the Constitution/statute, which cannot be done by any Court or Tribunal. It is Parliament which has the constitutional mandate to enact laws. Courts of law are mandated to ensure that the law is implemented. Courts cannot make law. The High Court Division has power to declare any law enacted by Parliament to be ultra vires the Constitution but cannot make law or suggest how any law is to be formulated or enacted.

The President has a prerogative power under article 49 of the Constitution to grant pardons, reprieves and respites and to remit, suspend or commute any sentence passed by any court, tribunal or other authority. This is confirmed by the Penal Code and Code of Criminal Procedure. Section 55A of the Penal Code provides that the Government’s power to commute any sentence shall not derogate from the right of the President to grant pardons, reprieves, respites or remissions of punishment. The power of the President and power of the Government are constitutional/statutory powers which cannot be whimsically taken away. The Supreme Court has no authority to question the exercise of prerogative power of the President and only has the limited power to declare a statute or any provisions

therein as ultra vires the Constitution, but until such time as it is declared ultra vires, the provisions of the statute are binding on all.

Hence, the provisions of the Constitution, the Penal Code, Code of Criminal Procedure, Jail Code, containing Rules enacted under power given in section 59 of the Prisons Act 1894 and any other law giving benefits to an accused or convicted person, are nevertheless discretionary. But discretion is to be exercised in favour of the accused or convicted person where the circumstances demand. Any remission calculated by the jail authorities under the provisions of the Jail Code are to be referred to the Government under section 401 of the Code of Criminal Procedure, to be considered for release of the prisoner. It is the discretion of the Government whether to exercise the powers of suspension or remission of sentence under section 401 of the Code of Criminal Procedure. The Government may require the Judge who passed the order of conviction or who confirmed the conviction on appeal to state his opinion as to whether the application should be granted or refused. It is also provided in section 401 of the Code of Criminal Procedure if any condition on which a sentence has been suspended or remitted is not fulfilled, the Government may cancel the suspension or remission, in which event the convict will have to undergo the unexpired portion of the sentence. This reinforces the view that the sentence of the convict remains as it was ordered by the trial Court and that only the punishment is suspended or modified.

It must be noted, however, that neither the constitutional power of the president nor the statutory power of the Government authorizes or in any way interferes with the order of conviction. Any conviction and sentence passed upon an accused found guilty of an offence remains valid until and unless it is overturned by any appellate or revisional court. Hence, the grant of pardon by the President allows the convict to go free but does not efface the finding of guilt and the conviction pronounced by the Court, nor does it extinguish the sentence. Similarly, any suspension, commutation, remission etc. of any sentence does not cancel or efface the order of sentence passed by the Court. The action of the

President/Government simply allows the convict freedom from incarceration. The conviction and sentence remain on the record.

On the other hand, should a convict who has committed an abominable act which makes one shudder to the bone and for which the trial Judge expresses his abomination and orders that the convict ought not to be let out at all until he dies, for the sake of protecting the society from him, be released? Even in those circumstances there may arise some extenuating situation when humanity would call for his release. In that case it would not be right to put the judiciary in a straitjacket and compel an order requiring the convict never to be released. That would be tantamount to taking away the right of the Court to exercise discretion to act with common humanity. When any extenuating circumstance is brought to the notice of the Court, even if the original order was for the convict to die in jail, the Court may decide to release the convict for any specified length of time or release specifying conditions, considering the safety and security of the community. That gives the convict some hope that he will not necessarily die in jail. The other side of the coin is that, in any event, the President or the Government can at any time exercise power under the Constitution/the relevant law to grant his release.

It does not make sense to tell a convicted person that the death sentence is commuted to imprisonment for life, but he will not be permitted to leave the prison till his last breath because essentially the convict is being told that he is being sentenced to die in prison.

The conviction is never effaced other than by reversal on appeal or by way of revision. The sentence is for life and unless reduced on appeal or through revision it will remain so. If he is released before his death, it does not mean that the sentence is lesser than life. His sentence remains, but he gets the benefit of provisions of law which allow reduction of his period of incarceration or early release. His release into freedom may be curtailed in case of breach of any conditions and the sentence is revisited/revived resulting in his return to custody to serve out the rest of the unexpired sentence.

The Penal Code in section 54 provides that “In every case in which sentence of death shall have been passed, the Government may, without the consent of the offender, commute the punishment for any other punishment provided by this Code.”Section 55 of the said Code provides that in every case in which sentence of imprisonment for life shall have been passed, the Government may, without the consent of the offender, commute the punishment for imprisonment of either description for a term not exceeding 20 years. Section 55A of that Code provides that nothing in section 54 or section 55 shall derogate from the right of the President to grant pardons, reprieves, respites or remissions of punishment. Section 402A of the Code of Criminal Procedure provides that the powers conferred by sections 401 and 402 of the said Code upon the Government may, in the case of sentences of death, also be exercised by the President.

Mr. Khandker Mahbub Hossain arguing in favour of the review, brought to our notice several decisions of the Supreme Court of India wherein life sentence was awarded specifying that the terms of imprisonment shall not be less than 20 years, 25 years, or 30 years. He pointed out that, on the other hand, the Supreme Court of Pakistan has consistently held that life imprisonment is to be taken as equivalent to 25 years' rigorous imprisonment. He pointed out that the Courts in the United Kingdom when passing a life sentence specify the minimum term or tariff which an offender must spend in prison before becoming eligible to apply for parole. For example, where murder is committed with a knife or other weapon, the starting point is 25 years before which the prisoner would not be considered for release on parole. Exceptionally, it is specified that the offender will spend the rest of his life in prison. This is termed as a “whole life order” and is applied in the most serious cases such as those of serial killers. The position in the United States of America is that in most States it is required that a prisoner be considered for parole after a certain period of time as specified by the Court. He submitted that since in Bangladesh the criminal jurisprudence had developed considering life

imprisonment to be 30 years in prison, that should be allowed to continue until such a time as and when the law is changed.

It appears that the argument on behalf of the review petitioners has stemmed from the interpretation of section 57 of the Penal Code, which provides, "In calculating fractions of terms of punishment, imprisonment for life shall be reckoned as equivalent to rigorous imprisonment for thirty years." According to Mr. Khandker, the interpretation of this provision has always been to the effect that a sentence of imprisonment for life shall mean imprisonment for 30 years. In addition, the prisoner has been entitled to remission and other deductions under different provisions of law, such as the Penal Code, Code of Criminal Procedure, Prison Act and the Jail Code. He submitted that the provision appearing in section 45 of the Penal Code must be read harmoniously with the provisions in section 53, 54 and 55A of the Penal Code, which clearly indicate that life imprisonment need not necessarily be for the entire remaining life of the prisoner. However, for the reasons stated above, I would agree with Mr. Khandaker that life imprisonment need not necessarily mean incarceration for the rest of the prisoner's life, but I am constrained to take the view that the provision in section 57 of the Penal Code does not mean that imprisonment for life is equivalent to imprisonment for 30 years.

I may add at this juncture that the benefits of remission, deduction etc. available to a convict under the Code of Criminal Procedure will not be available to any convict serving a sentence for an offence under the International Crimes (Tribunals) Act, 1973, because section 23 of the said Act specifically excludes the application of the provisions of the Criminal Procedure Code, 1898 in any proceedings under the said Act. For ease of reference section 23 of the Act, 1973 is quoted below:

> *"23. The provisions of the Criminal Procedure Code, 1898 (V of 1898), and the Evidence Act, 1872(I of 1872), shall not apply in any proceedings under this Act."*

Finally, there is one other aspect that I wish to advert to regarding sentencing policies. We find that in many countries, including England, after a

sentence of life imprisonment is imposed the Judge may specifically order that the prisoner is not to be released before the expiry of a term of years which can be any number of years ranging from 10 to 60 years or even for the rest of his natural life, so long as the Judge follows the sentencing guidelines issued by the appropriate authority. In the past the Lord Chief Justice sitting in the Court of Appeal issued sentencing guidelines by way of judgments. The Sentencing Council for England and Wales was established in April 2010, replacing the Sentencing Guidelines Council and the Sentencing Advisory Panel, its predecessor bodies.

Since 2008, following the decision in **Swamy Shraddananda v. State of Karnataka (2008) 13 SCC 767,** the Supreme Court of India has adopted the practice of expressing in the judgement that the convict shall not be released until after the expiry of a fixed number of years specified by the Court. In the **Shraddananda** case, it was observed that where the death sentence would not be appropriate, and the Court strongly felt that a sentence of life imprisonment subject to remission normally works out to a term of 14 years would be grossly disproportionate and inadequate, the Court may be tempted to impose the death sentence. It was decided that "*A far more just, reasonable and proper course would be to expand the options and to take over what, as a matter of fact, lawfully belongs to the Court i.e. the vast hiatus between 14 years' imprisonment and death.*" Their Lordships went on to hold that *"...we are clearly of the view that there is a good and strong basis for the Court to substitute a death sentence by life imprisonment or by a term in excess of fourteen years and further to direct that the convict must not be released from the prison for the rest of his life or for the actual term as specified in the order, as the case may be.*"This has been followed in subsequent decisions. Some of those have been discussed in the majority judgement and hence I shall refrain from repeating those. The type of sentencing order passed by the Supreme Court of India is similar to the practice followed by the English Courts and is abundantly appropriate giving the Court the discretion to ensure that a convict who committed a most heinous crime is not let loose into society at its

peril. However, the scheme followed in England and Wales is based on official authoritative guidelines, whereas the decisions of the Supreme Court of India are based on authority of earlier judgement of the same Court and are open to subjective opinions based on the individual judge's perception of the gruesomeness or heinousness of the crime.

In Bangladesh there is no specific authority to issue any sentencing guidelines and as a result Judges are guided only by the sentences provided in the Penal Code and other special laws, and life sentence, in some cases, turns out to be a relatively lenient sentence, when under the earlier interpretation convicts were released after expiry of 22½ years in custody. It is in this backdrop that many Judges choose the sentence of death for crimes which they consider to be most heinous since that effectively is the harshest punishment.

Some guiding principles may be gleaned from the judgements of this Division, but those are only in relation to specific cases. There are no general guidelines which may be followed by the Judges of the trial Court. Had there been any provision in our law or in guidelines for gradation of the life sentence or for expressing the view that the convict shall not be released during his lifetime, or for a specified number of years, then perhaps the Judges would opt for the longer life imprisonment, rather than the death penalty. The sentence would still be "imprisonment for life" but the Judge would be able to pronounce the minimum number of years that the convict would serve in prison, thereby reflecting the heinousness of the crime.

Moreover, as we have explained above, the trial procedure does not allow for any effective plea in mitigation after the verdict is pronounced. As a result, sentencing in most cases is arbitrary and there is no scope for the accused to plead for a lesser sentence or for the trial

Judge to consider any mitigating circumstances since there was no opportunity to place any before him. The reintroduction of a date to be fixed for sentence hearing which existed in our law earlier, would go some way towards allowing the accused to plead mitigation or extenuating circumstances at the time of sentence hearing.

The provision of a sentence hearing in conjunction with the ability of judges to specify the minimum number of years that a convict is to serve in custody before early release would result in a fairer and more rational sentence.

In the light of the above discussion, the following are the conclusions that I would draw:

1. In view of section 45 of the Penal Code, “life imprisonment” mentioned in passing sentence on any convict found guilty of any offence means the whole of the remainder of the natural life of the convict, i.e. unless the sentence is set aside or modified by an appellate authority it will remain in force until his death. This will be applicable to anyone sentenced to imprisonment for life at the conclusion of a trial, appeal, revision or review and anyone whose sentence of death is commuted to imprisonment for life. However, early release may be ordered to give effect to benefits accruing under any other law.
2. In section 57 of the Penal Code, the phrase “imprisonment for life shall be reckoned as equivalent to rigorous imprisonment for thirty years” is applicable for the purpose of calculating fractions

of terms of punishment occurring in the Penal Code where calculation of fractions of terms of punishment is mentioned.

3. Remission or reduction of sentence is discretionary and cannot be claimed as of right and shall, in the case of a sentence of imprisonment for life, be subject to approval by the Government, as provided in the Code of Criminal Procedure and the Jail Code. In case of benefits to be given under the Jail Code, the duration of imprisonment for life shall be calculated in accordance with rules 751(f) of the said Code. A convict sentenced to imprisonment for life shall be entitled to be considered for release at any time before his death on account of remission for the period allowed by the jail authority due to good behaviour or services rendered while in prison, as provided by the Jail Code. But these are matters beyond the function of any Court.
4. The discretion of the President to grant pardons, reprieves, respites and to remit, suspend or commute any sentence under the Constitution, the Penal Code and the Code of Criminal Procedure shall not be fettered in any manner.
5. Early release may be subject to any reasonable condition to be imposed by the sentencing Court as mentioned in section 401(2) to (4A) of the said Code. Despite any reduction of sentence by way of remission or otherwise, it must be explained to the convict that the sentence of imprisonment for life shall remain and that he may be sent back to jail to serve the rest of his

sentence if he is found in breach of any condition imposed upon him at the time of his early release.

6. There is no distinction between life imprisonment awarded on commuting sentence of death to imprisonment for life and the sentence of imprisonment for life awarded by any Court of first instance or appellate or revisional Court. But when considering early release, the authority concerned shall consider whether it is appropriate to do so in view of the heinousness of the offence and the safety and security of the public.

7. Time which any convict spends in custody before the date of his conviction shall be deducted by the Court at the time of pronouncing sentence. The aggregate period spent in custody shall be ascertained from the jail authority. As an ad-hoc measure, until appropriate amendment is made in aid of section 35A of the Code, in case of awarding sentence of imprisonment for life, the deduction of custody period during trial shall be made on the basis that life imprisonment is equivalent to rigorous imprisonment for 30 years.

In view of the above discussion, the judgement under review calls for interference and the review petition is accordingly disposed of in the light of the observations above.

J.

Hasan Foez Siddique, J: This criminal review petition is directed against the judgment and order dated 14.02.2017 passed by this Division in Criminal Appeal No.15 of 2010 maintaining the order of

conviction of the review petitioner and commuting the sentence of death with a direction to suffer imprisonment for rest of his natural life.

Earlier Druto Bichar Tribunal, Dhaka by its judgment and order dated 15.12.2003 convicted the petitioner Ataur Mridha @ Ataur and Anwar Hossain under sections 302/34 of the Penal Code and sentenced them to death in Druto Bichar Tribunal Case No.111 of 2003 on the charge of killing one Jamal on 16.12.2001 when he was gossiping with P.W.2 Aftabuddin, P.W.4 Abdul Barek and P.W.5 Md. Yeamin, beside the road adjacent to Charbag Madrasha. The accused persons shot the victim causing his death on the spot. He preferred Criminal Appeal No.3895 of 2003 in the High Court Division and the Tribunal sent the case record in the High Court Division for confirmation of sentence of death, which was registered as Death Reference No.127 of 2003. The High Court Division heard the said criminal appeal and death reference together and accepted the death reference and dismissed the criminal appeal by a judgment and order dated 29.10.2007 and 30.10.2007. Against the same, the petitioner preferred Criminal Appeal No.15 of 2010 in this Division wherein this Division maintained the conviction but commuted the sentence to imprisonment for rest of his natural life by a judgment and order dated 14.02.2017. The petitioner now has preferred this review petition for consideration.

Mr. Khandaker Mahbub Hossain, learned Senior Counsel appearing for the review petitioner, without entering into the merit of the case, simply submits that in view of the provision of Section 57 of the Penal Code, Section 35A of the Code of Criminal Procedure,

Section 59 of the Prisons Act, 1894 and chapter XXI of the Jail Code the petitioner is entitled to get reduction and remission of sentence, the order of awarding sentence to the petitioner till his natural death deprives him from getting statutory benefits which has caused a failure of justice. He submits that a life convict is entitled to have the benefits in two stages, those are: (1) deduction and (2) remission, but the judgment under review rendered those benefits nugatory. He further submits that the Government is empowered to suspend/remit/commute the sentence of life convict exercising its power conferred under sections 401 and 402 of the Code of Criminal Procedure read with section 55 of the Penal Code. According to Mr. Hossain, for the purpose of calculating the period of sentence of imprisonment for life, the same should be reckoned as equivalent to rigorous imprisonment for 30 years as the base term, otherwise, the interpretation of section 57 of the Penal Code would result in apparent discrimination and intention of the legislature would be frustrated and rendered a portion of section 397 of the Code of Criminal Procedure nugatory. He, lastly, submits that formulation of a reasoned and comprehensive sentencing guideline is the only solution in this regard and, thus, he proposed the formation of a sentencing Commission to be constituted by experienced personalities to table the same for consideration. Mr. Hossain in his submission relied upon the cases of Union of India and others Vs. Dharam Paul reported in MANU/SC/0627/2019; Sachin Kumar Singhraha Vs. State of Madhya Pradesh reported in AIR 2019(SC) 1416; Dnyaneshwar Suresh Borkar Vs. State of Maharastra reported in

AIR 2019 SC 1567; Nanda Kishore Vs. State of Madhya Pradesh reported in 2019(1) SCALE 500; Viral Gyanlal Rajput Vs State of Maharastra reported in (2019) 2 SCC 311; Babasaheb Maruti Kamble Vs. State Maharastra reported in 2018(15) SCALE 235. Tattu Lodhi Vs. State of Madhya Pradesh reported in (2016) 9 SCC 675; Amar Singh Yadab Vs. Estate of UP reported in (2014) 13 SCC 443; Sahib Hossain Vs. State of Rajstan reported in (2013) 9SCC 778; Gurvail Singh and others Vs. State of Punjab reported in (2013) 2 SCC 713 and some other cases.

Mr. Mahbubey Alam, learned Attorney General appearing for the State, submitted that the sentence of imprisonment for life means imprisonment for the remainder of that person's natural life. He submitted that there is no scope to make any interpretation that life sentence means other than that of a person's natural life. He, further submitted that when Penal Code provides for only two kinds of punishments under sections 302/34 that is, death or imprisonment for life; the court, cannot introduce a third category of punishment which would be contrary to the provisions of law. He, lastly, submitted that the prescription of sentence is within the domain of the legislature and the Court can only impose such sentence what has been provided for by the legislature. Mr. Alam relied upon the following decisions:-

Kishori Lal Vs. Emperor reported in AIR 1945 (PC)64; Gopal Vinayek Godse Vs State of Maharastra reported in (1961) 3 SCR 440; State of Madhya Prodesh Vs. Ratan Singh and others reported in (1976) 3 SCC 470; Dalbir Singh and others Vs. State of Punjab reported in (1979) 3

SCC 745; Kartar Singh and others Vs. State of Hariyana reported in (1982) 3SCC 1; Ashok Kumar @ Gulu Vs. Union of India reported in (1991) 3SCC 498; Maru Ram VS. Union of India reported in (1981) 1 SCC 107; Subash Chander Vs. Krishan Lal and others reported in (2001) 4 SCC 458; Mohammad Munna Vs. Union of India and others reported in (2005) 7 SCC 417; Swamy Shraddananda @ Murali Monohar Misra (2) Vs. State of Karnataka reported in (2008) 13 SCC 767; Sangeet and another Vs. State of Haryana reported in (2013) 2 SCC 452; Union of India Vs. V. Sriharan @ Marugan and others reported (2016) 7SCC and Vikas Yadav Vs. State of Uttar Pradesh (2016) 9 SCC 541.

In course of hearing of this matter, this Court requested Mr. Rakanuddin Mahmud, Mr. A.F. Hassan Ariff, and Mr. Abdur Razzaque Khan, learned Senior Counsel to assist the Court as *amici curiae* who by appearing in the Court made their valuable submissions.

Mr. Rakanuddin Mahmud submits that the meaning of imprisonment for life is that a convict sentenced to imprisonment for life shall enter into the Jail vertically and come out horizontally, that is, he shall suffer imprisonment for the rest of his natural life. Mr. Ariff, learned Senior Counsel, submits that the provision of section 45 of the Penal Code defining life has made meaning of “life” flexible, which is apparent from the second portion of the section, that is, the words “unless the contrary appears from the context.” He submits that it is true that section 57 of the Penal Code is a deeming provision and not substantive statute limiting life sentence to 30 years but it is significant

that the legislature has deemed life sentence to mean 30 years duration. He submits that if sections 45 and 57 of the Penal Code are read with sections 35A and 397 of the Code of Criminal Procedure there is a strong case for the argument that life sentence denotes 30 years of imprisonment. Mr. Abdur Razzaque Khan, learned Senior Counsel submits that Supreme Court of India has expressly considered the Constitutional provision and the amended Criminal Procedure Code, 1973, particularly, sections 428, 432, 433and 433A which provisions are absent in our Criminal Procedure Code and in absence of such statutory provisions in our jurisdiction the Indian decisions have no relevance for consideration in awarding sentence of life imprisonment for the rest of natural life without any remission.

The point for consideration and decision, in this case, is whether a sentence of life imprisonment passed against an accused means imprisonment for the remaining biological life of the convict or any period shorter than that.

Life imprisonment is permissible under human rights law and many states around the world use it to punish some of the most serious crimes. Despite their widespread use as a form of punishment in many jurisdictions, life sentences remain controversial. Some scholars deem a life sentence as tantamount to the death penalty because it constitutes a death sentence in itself. It has replaced capital punishment as the most common sentence imposed for heinous crimes worldwide. As a consequence, it has become the leading issue in international criminal justice system. Life imprisonment sentences cover a diverse range of

practices, from the most severe form of life imprisonment without parole, in which a person is explicitly sentenced to die in prison, to more indeterminate sentences in which, at the time of sentencing, it is not clear how long the convict will spend in prison. The jurisprudence developed in this area of law raises many questions which remain unanswered and a lot still remains to be known about the punishment of "life imprisonment". The main reason for imposing indefinite sentences is to protect the community. The aim of general deterrence is to punish individuals who have committed crimes in order to send a message to others who might be contemplating criminal acts that they too will suffer punishment if they carry out their plans. An offender can then be kept behind bars until it is determined that the offender would not pose any danger to society. Generally, serious criminal behaviour is most common during young adulthood and then gradually tapers off. The term life imprisonment is used to cover different realities. Important aspect is, can a life sentence for the remaining period of convicts natural life be justified considering the flaws of our criminal justice system. Recently Katie Reade in an article "life imprisonment: A Practice in desperate need of reform" has described a testimonial from a prisoner serving life without parole with the following words:

"Life in prison is a slow, torturous death. May be it would have been better if they had just given me the electric chair and ended my life instead of a life sentence, letting me rot away in Jail. It serves no purpose. It becomes a burden on everybody." "It's like going deep sea diving. Going all the way down into the depths and losing your

oxygen.” The concept of life imprisonment is confining a prisoner behind the walls of a jail waiting only for death to set him free. In some jurisdiction, it literally means that a prisoner spends the rest of his natural life in prison without the possibility of parole. In other jurisdictions, prisoners are sentenced to life imprisonment on the understanding that they will be considered for parole after serving a set number of years.

The term “life imprisonment” has not been specifically defined in the Penal Code. Generally, life imprisonment is a sentence, following criminal conviction, which gives the State the power to detain a person in prison for life, that is, until he dies there. In order to understand the correct legal position in regard to the true character and mode of carrying out of sentences of imprisonment for life, the history of life sentence and of relevant statutory provisions governing the nature and mode of its execution, provided for in the Penal Code, Criminal Procedure Code, Prisons Act, Prisoners Act and Cognate Laws, have to be examined along with views of the Apex Courts. It is useful to reproduce some provisions of law for consideration of the point raised, that is, as to whether imprisonment for life means till the end of convict’s life with or without any deduction and remission. Those provisions of law are as follow:-

Sections of Penal Code

45. “Life”- The word “ life” denotes the life of a human being, unless the contrary appears from the context.

46. “Death”- The word “death” denotes the death of a human being, unless the contrary appears from the context.

53.Punishment- The punishments to which offenders are liable under the provisions of this Code are-

Firstly,- Death;

Secondly, - [Imprisonment for life];

Thirdly, - [Omitted by the Criminal Law (Extinction of Discriminatory Privileges) Act 1949 (Act No. II of 1950)].

Fourthly, - Imprisonment, which is of two descriptions, namely:-

(1)Rigorous, that is, with hard labour;

(2) Simple;

Fifthly,- Forfeiture of property;

Sixthly, - Fine.

[Explanation.- In the punishment of imprisonment for life, the imprisonment shall be rigorous.]

53A. Construction of reference to transportation- (1) Subject to the provisions of sub-section (2), any reference to “transportation for life” in any other law for the time being in force shall be construed as a reference to “imprisonment for life”.

(2) Any reference to transportation for a term or to transportation for a shorter term (by whatever named called) in any other law for the time being in force shall be deemed to have been omitted.

(3) Any reference to “transportation” in any other law for the time being in force shall-

(a)if the expression means transportation for life, be construed as a reference to imprisonment for life;

(b)if the expression means transportation for any shorter term, be deemed to have been omitted.

54. Commutation of sentence of death.- In every case in which sentence of death shall have been passed, [the Government] may, without the consent of the offender, commute the punishment for any other punishment provided by this Code.

55. Commutation of sentence of imprisonment for life- In every case in which sentence of [imprisonment] for life shall have been passed, [the Government]may, without the consent of the offender, commute the punishment for imprisonment of either description for a term not exceeding [twenty] years.

55A. Saving for President prerogative- Nothing in section fifty-four or section fifty-five shall derogate from the right of the President to grant pardons, reprieves, respites or remissions of punishment.

57. Fractions of terms of punishment- In calculating fractions of terms of punishment, [imprisonment] for life shall be reckoned as equivalent to [rigorous imprisonment for thirty years.]

64. Sentence of imprisonment for non-payment of fine- In every case of an offence punishable with imprisonment as well as fine, in which the offender is sentenced to a fine, whether with or without imprisonment,

and in every case of an offence punishable with imprisonment or fine, or with fine only, in which the offender is sentenced to a fine,

it shall be competent to the Court which sentences such offender to direct by the sentence that, in default of payment of the fine, the offender shall suffer imprisonment for a certain term, which imprisonment shall be in excess of any other imprisonment to which he may have been sentenced or to which he may be liable under a commutation of a sentence.

65.Limit to imprisonment for non-payment of fine, when imprisonment and fine awardable.- The term for which the Court directs the offender to be imprisoned in default of payment of a fine shall not exceed one-fourth of the term of imprisonment which is the maximum fixed for the offence, if the offence is punishable with imprisonment as well as fine.

66. Description of imprisonment for non-payment of fine- The imprisonment which the Court imposes in default of payment of a fine may be of any description to which the offender might have been sentenced for the offence.

Sections 35A, 397, 401,402 and 402A of the Code of Criminal Procedure as follows:-

35A. (1) Except in the case of an offence punishable only with death, when any court finds an accused guilty of an offence and, upon conviction, sentences such accused to any term of imprisonment, simple or rigorous, it shall deduct from the sentence of imprisonment, the total period the accused may have been in custody in the meantime, in connection with that offence.

(2) If the total period of custody prior to conviction referred to in sub-section (1) is longer than the period of imprisonment to which the accused is sentenced, the accused shall be deemed to have served out the sentence of imprisonment and shall be released at once, if in custody, unless required to be detained in connection with any other offence; and if the accused is also sentenced to pay any fine in addition to such sentence, the fine shall stand remitted.

397. When a person already undergoing a sentence of imprisonment, or transportation, is sentenced to imprisonment, or transportation, such imprisonment, or transportation shall commence at the expiration of the imprisonment, or transportation to which he has been previously sentenced, unless the Court directs that the subsequent sentence shall run concurrently with such previous sentence;

Provided that, if he is undergoing a sentence of imprisonment, and the sentence on such subsequent conviction is one of transportation, the Court may, in its discretion, direct that the latter sentence shall commence immediately, or at the expiration of the imprisonment to which he has been previously sentenced.

Provided, further, that where a person who has been sentenced to imprisonment by an order under section 123 in default of furnishing security is, whilst undergoing such sentence, sentenced to imprisonment for an offence committed prior to the making of such order, the latter sentence shall commence immediately.

401.(1) When any person has been sentenced to punishment for an offence, the Government may at any time without conditions or

upon any conditions which the person sentenced excepts, suspend the execution of his sentence or remit the whole or any part of the punishment to which he has been sentenced.

(2) Whenever an application is made to the Government for the suspension or remission of a sentence, the Government, may require the presiding Judge of the Court before or by which the conviction was had or confirmed to state his opinion as to whether the application should be granted or refused, together with his reasons for such opinion and also to forward with the statement of such opinion a certified copy of the record of the trial or of such record thereof as exists.

(3) If any condition on which a sentence has been suspended or remitted is, in the opinion of the Government not fulfilled, the Government may cancel the suspension or remission, and thereupon the person in whose favour the sentence has been suspended or remitted may, if at large, be arrested by any police officer without warrant and remanded to undergo the unexpired portion of the sentence.

(4) The condition on which a sentence is suspended or remitted under this section may be one to be fulfilled by the person in whose favour the sentence is suspended or remitted, or one independent of his will.

(4A) The provision of the above sub-sections shall also apply to any order passed by a Criminal Court under any section of this Code or of any other law, which restricts the liberty of any person or impose any liability upon him or his property.

(5) Nothing herein contained shall be deemed to interfere with the right of the President to grant pardons, reprieves, respites or remissions of punishment.

(5A) Where a conditional pardon is granted by the President any condition thereby imposed, of whatever nature, shall be deemed to have been imposed by a sentence of a competent Court under this Code and shall be enforceable accordingly.

(6) The Government may, by general rules or special orders, give directions as to the suspension of sentences and the conditions on which petitions should be presented and dealt with.

402.(1) The Government may, without the consent of the person sentenced, commute any one of the following sentences for any other mentioned after it:-

death, transportation, rigorous imprisonment for a term not exceeding that to which he might have been sentenced, simple imprisonment for a like term, fine.

(2) Nothing in this section shall affect the provisions of section 54 or section 55 of the Penal Code.

402A. The powers conferred by sections 401 and 402 upon the Government may, in the case of sentences of death, also be exercised by the President.

The punishment of imprisonment for life as regards its nature and mode of execution and consequently its workability or executability, has been a subject matter of a wide-ranging debate in the higher echelons of the polity. To substantiate his submission, learned

Attorney General first cited the case of Kishori Lal Vs. Emperor reported in AIR 1945 (Privy Council) 64. In that case it was observed, “So, in India, a prisoner sentenced to transportation may be sent to the Andamans or may be kept in one of the jails in India appointed for transportation prisoners where he will be dealt with in the same manner as a prisoner sentenced to rigorous imprisonment. The appellant was lawfully sentenced to transportation for life ; at the time when he made his application to Monroe J. he was confined in a prison which had been appointed as a place to which prisoners so sentenced might be sent. Assuming that the sentence is to be regarded as one of 20 years, and subject to remission for good conduct, he had not earned remission sufficient to entitle him to discharge at the time of his application and it was therefore rightly dismissed, but, in saying this, their Lordships are not to be taken as meaning that a life sentence must and in all cases be treated as one of not more than 20 years or that the convict is necessarily entitled to remission.”

He next relied on the case of Gopal Vinayek Godse Vs. State of Maharastra reported in (1961) 3 SCR 440 which was called as mother judgment of the Supreme Court of India in this regard. In that case it was observed, “Section 57 of the Indian Penal Code has no real bearing on the question raised before us. For calculating fractions of terms of punishment the section provides that transportation for life shall be regarded as equivalent to imprisonment for twenty years. It does not say that transportation for life shall be deemed to be transportation for twenty years for all purposes; nor does the amended section which

substitutes the words imprisonment for life " for “transportation for life” enable the drawing of any such all-embracing fiction. A sentence of transportation for life or imprisonment for life must prima facie be treated as transportation or imprisonment for the whole of the remaining period of the convicted person's natural life.”

He next cited the case of State of Madhya Pradesh Vs. Ratan Singh and others reported in (1976) 3 SCC 470. In which it was observed, “From a review of the authorities and the statutory provisions of the Code of Criminal Procedure the following propositions emerge: (1) that a sentence of imprisonment for life does not automatically expire at the end of 20 years including the remissions, because the administrative rules framed under the various Jail Manuals or under the Prisons Act cannot supersede the statutory provisions of the Indian Penal Code. A sentence of imprisonment for life means a sentence for the entire life of the prisoner unless the appropriate Government chooses to exercise its discretion to remit either the whole or a part of the sentence under section 401 of the Code of Criminal Procedure; (2) that the appropriate Government has the undoubted discretion to remit or refuse to remit the sentence and where it refuses to remit the sentence no writ can be issued directing the State Government to release the prisoner; (3) that the appropriate Government which is empowered to grant remission under section 401 of the Code of Criminal Procedure is the Government of the State where the prisoner has been convicted and sentenced, that is to say, the transferor State and not the transferee State where the prisoner may have been

transferred at his instance under the Transfer of Prisoners Act; and (4) that where the transferee State feels that the accused has completed a period of 20 years it has merely to forward the request of the prisoner to the concerned State Government, that is to say, the Government of the State where the prisoner was connected and sentenced and even if this request is rejected by the State Government the order of the Government cannot be interfered with by a High Court in its writ jurisdiction."

In the case of Maru Ram Vs. Union of India reported in (1981) 1 SCC 107 Mr. V.R. Krishna Iyer, J. observed, "A Constitution Bench, speaking through Subba Rao, J., took the view that a sentence of imprisonment for life was nothing less and nothing else than an imprisonment which lasted till the last breath. Since death was uncertain, deduction by way of remission did not yield any tangible date for release and so the prayer of Godse was refused. The nature of a life sentence is incarceration until death, judicial sentence of imprisonment for life cannot be in jeopardy merely because of long accumulation of remissions. Release would follow only upon an order under Section 401 of the Criminal Procedure Code, 1898 (corresponding to Section 432 of the 1973 Code) by the appropriate Government or on a clemency order in exercise of power under Arts. 72 or 161 of the Constitution. Godse (supra) is authority for the proposition that a sentence of imprisonment for life is one of "imprisonment for the whole of the remaining period of the convicted person's natural life". It was further observed, "A possible confusion

creeps into this discussion by equating life imprisonment with 20 years imprisonment. Reliance is placed for this purpose on section 55 IPC and on definitions in various Remission Schemes. All that we need say, as clearly pointed out in Godse, is that these equivalents are meant for the limited objective of computation to help the State exercise its wide powers of total remissions. Even if the remissions earned have totalled upto 20 years, still the State Government may or may not release the prisoner and until such a release order remitting the remaining part of the life sentence is passed, the prisoners cannot claim his liberty. The reason is that life sentence is nothing less than life-long imprisonment. Moreover, the penalty then and now is the same-life term. And remission vests no right to release when the sentence is life imprisonment. No greater punishment is inflicted by Section 433A than the law annexed originally to the crime. Nor is any vested right to remission cancelled by compulsory 14 years jail life once we realise the truism that a life sentence is a sentence for a whole life."

Krishna Ayer, J. finally concluded, " We repulse all the thrusts on the vires of Section 433A.. Maybe, penologically the prolonged terms prescribed by the Section is supererogative. If we had our druthers we would have negatived the need for a fourteen-year gestation for reformation. But ours is to construe not construct, to decode, not to make a code." " We uphold all remissions and short-sentencing passed under Articles 72 and 161 of the Constitution but release will follow, in life sentence cases, only on Government making an order en masse or individually, in that behalf." "We hold that Section 432 and s. 433 are

not a manifestation of Articles 72 and 161 of the Constitution but a separate, though similar, power, and Section 433, by nullifying wholly or partially these prior provisions does not violate or detract from the full operation of the constitutional power to pardon, commute and the like.” “ We follow Godse's case (supra) to hold that imprisonment for life lasts until the last breath, and whatever the length of remissions earned, the prisoner can claim release only if the remaining sentence is remitted by Government.” “We declare that Section 433A, in both its limbs (i.e. 'both types of life imprisonment specified in it), is prospective in effect. To put the position beyond doubt, we direct that the mandatory minimum of 14 years' actual imprisonment will not operate against those whose cases were decided by the trial court before the 18th December, 1978 (directly or retroactively, as explained in the judgment) when Section 433A came into force. All 'lifers' whose conviction by the court of first instance was entered prior to that date are entitled to consideration by Government for release on the strength of earned remissions although a release can take place only if Government makes an order to that effect. To this extent the battle of the tenses is won by the prisoners. It follows, by the same logic, that short-sentencing legislations, if any, will entitle a prisoner to claim release thereunder if his conviction by the court of first instance was before Section 433A was brought into effect.” “ In our view, penal humanitarianism and rehabilitative desideratum warrant liberal paroles, subject to security safeguards, and other humanizing strategies for inmates so that the dignity and worth of the human person are not

desecrated by making mass jails anthropoid zoos. Human rights awareness must infuse institutional reform and search for alternatives."

In the case of Kartar Singh and others Vs. State of Hariyana reported in (1982) 3 SCC 1 Supreme Court of India has observed, "In the first place a perusal of several sections of the Indian Penal Code as well as Criminal Procedure Code will show that both the Codes make and maintain a clear distinction between imprisonment for life and imprisonment for a term; in fact, the two expressions 'imprisonment for life' and 'imprisonment for a term' have been used in contra-distinction with each other in one and the same section, where the former must mean imprisonment for the remainder of the natural life of the convict (vide: definition of 'life' in Section 45 I.P.C.) and the latter must mean imprisonment for a definite or fixed period. For instance sec. 304 I.P.C. provides that punishment for culpable homicide not amounting to murder shall be imprisonment for life or imprisonment of either description for a term which may extend to ten years'; Section 305 provides that punishment for abetment of a suicide of a child or insane person shall be 'death or imprisonment for life or imprisonment for a term not exceeding ten years'; Section 307 provides that punishment for an attempt to commit murder accompanied by actual hurt shall be imprisonment for life or imprisonment of either description which may extend to ten years; so also, voluntarily causing hurt in committing robbery is punishable under sec. 394 with imprisonment for life or with rigorous imprisonment for a term which may extend to ten years. Sec. SS I.P.C. uses the two expressions in contra-distinction with each other

and says that an appropriate Government may in every case in which sentence of imprisonment for life shall have been passed commute the punishment for imprisonment of either description for a term not exceeding fourteen years; similarly, Section 433(b) Cr. P.C. uses the two expressions in contra-distinction with one another. Having regard to such distinction which is being maintained in both the Codes it will be difficult to slur over the distinction on the basis that life convicts should be regarded as having been sentenced to life-term or to say that the two could be understood as interchangeable expressions because basically the life term of any accused is uncertain. Further, sec. 57 I.P.C. or the Remission Rules contained in Jail Manuals are irrelevant in this context. Section 57 I.P.C. provides that imprisonment for life shall be reckoned as equivalent to imprisonment for twenty years for the specific purpose mentioned therein, namely, for the purpose of calculating fractions of terms of punishment and not for all purposes; similarly Remissions Rules contained in Jail Manuals cannot override statutory provisions contained in the Penal Code and the sentence of imprisonment for life will have to be regarded as a sentence for the remainder of the natural life of the convict. The Privy Council in Pandit Kishori Lal's case and this Court in Gopal Godse's case have settled this position once and for all by taking the view that a sentence for transportation for life or imprisonment for life must be treated as transportation or imprisonment for the whole of the remaining period of the convicted person's natural life. This view has been confirmed and followed by this Court in two subsequent decisions-in Ratan Singh's

case (supra) and Maru Ram's case (supra). In this view of the matter, life convicts would not fall within the purview of sec. 428, Cr. P.C. Having regard to the above discussion, it is clear that the benefit of the set off contemplated by sec. 428 Cr. P.C. would not be available to life convicts.”

His next citation is the case of Ashok Kumar @ Gulu Vs. Union of India and others reported in (1991) 3 SCC 498, it was observed in that case, “Counsel for the petitioner next submitted that after this Court's decision in Bhagirath's case permitting the benefit of set off under Section 428 in respect of the detention period as an undertrial, the ratio of the decision in Godse's case must be taken as impliedly disapproved. We see no basis for this submission. In Godse's case the convict who was sentenced to transportation for life had earned remission for 2963 days during his internment. He claimed that in view of Section 57 read with Section 53A, IPC, the total period of his incarceration could not exceed 20 years which he had completed, inclusive of remission, and, therefore, his continued detention was illegal.” “Section 57 of the Indian Penal Code has no real bearing on the question raised before us. For calculating fractions of terms of punishment the section provides that transportation for life shall be regarded as equivalent to imprisonment for twenty years. It does not say that transportation for life shall be deemed to be transportation for twenty years for all purposes; nor does the amended section which substitutes the words "imprisonment for life" for "transportation for life" enable the drawing of any such all embracing fiction. A sentence

of transportation for life or imprisonment for life must prima facie be treated as transportation or imprisonment for the whole of the remaining period of the convicted person's natural life.

This interpretation of section 57 gets strengthened if we refer to sections 65, 116, 120 and 511, of the Indian Penal Code which fix the term of imprisonment thereunder as a fraction of the maximum fixed for the principal offence. It is for the purpose of working out this fraction that it became necessary to provide that imprisonment for life shall be reckoned as equivalent to imprisonment for 20 years. If such a provision had not been made it would have been impossible to work out the fraction of an in-definite term. In order to work out the fraction of terms of punishment provided in sections such as those enumerated above, it was imperative to lay down the equivalent term for life imprisonment. ”

His next cited case is Subash Chander Vs. Krishan Lal and others reported in (2001)4SCC 458 wherein it was observed, “ However, in the peculiar circumstances of the case, apprehending imminent danger to the life of Subhash Chander and his family in future, taking on record the statement made on behalf of Krishan Lal, we are inclined to hold that for him the imprisonment for life shall be the imprisonment in prison for the rest of his life. He shall not be entitled to any commutation or premature release under Section 401 of the Code of Criminal Procedure, Prisoners Act, Jail Manual or any other statute and the Rules made for the purposes of grant of commutation and remissions.”

In the case of Swamy Shraddananda @ Murali Monohar Misra (2) Vs. State of Karnataka reported in (2008) 13 SCC 767, Supreme Court of India has observed,

“At this stage, it will be useful to take a very brief look at the provisions with regard to sentencing and computation, remission etc. of sentences. Section 45 of the Penal Code defines "life" to mean the life of the human being, unless the contrary appears from the context. Section 53 enumerates punishments, the first of which is death and the second, imprisonment for life. Sections 54 and 55 give to the appropriate Government the power of commutation of the sentence of death and the sentence of imprisonment for life respectively. Section 55A defines "appropriate Government". Section 57 provides that in calculating fractions of terms of punishment, imprisonment for life shall be reckoned as equivalent to imprisonment for twenty years. It is now conclusively settled by a catena of decisions that the punishment of imprisonment for life handed down by the Court means a sentence of imprisonment for the convict for the rest of his life.”

It was further observed,

“It is equally well-settled that Section 57 of the Penal Code does not in any way limit the punishment of imprisonment for life to a term of twenty years. Section 57 is only for calculating fractions of terms of punishment and provides that imprisonment for life shall be reckoned as equivalent to imprisonment for twenty years. Gopal Vinayak Godse (supra) and Ashok Kumar alias Golu (supra). The object and purpose of

Section 57 will be clear by simply referring to Sections 65, 116, 119, 129 and 511 of the Penal Code."

"This takes us to the issue of computation and remission etc. of sentences. The provisions in regard to computation, remission, suspension etc. are to be found both in the Constitution and in the statutes. Articles 72 and 161 of the Constitution deal with the powers of the President and the Governors of the State respectively to grant pardons, reprieves, respites or remissions of punishment or to suspend, remit or commute the sentence of any person convicted of any offence. Here it needs to be made absolutely clear that this judgment is not concerned at all with the Constitutional provisions that are in the nature of the State's sovereign power. What is said hereinafter relates only to provisions of commutation, remission etc. as contained in the Code of Criminal Procedure and the Prisons Acts and the Rules framed by the different States."

It was further observed:

"From the Prisons Act and the Rules it appears that for good conduct and for doing certain duties etc. inside the jail the prisoners are given some days' remission on a monthly, quarterly or annual basis. The days of remission so earned by a prisoner are added to the period of his actual imprisonment (including the period undergone as an under trial) to make up the term of sentence awarded by the Court. This being the position, the first question that arises in mind is how remission can be applied to imprisonment for life. The way in which remission is

allowed, it can only apply to a fixed term and life imprisonment, being for the rest of life, is by nature indeterminate."

Mr. Alam, thereafter, cited the case of Union of India Vs. V. Sriharan @ Marugan and others reported in (2016) 9SCC 541. In that case it was observed, "Section 53 IPC envisages different kinds of punishments while section 45 IPC defines the word "life" as the life of a human being unless the contrary appears from the context. The life of a human being is till he is alive that is to say till his last breath, which by very nature is one of indefinite duration. In the light of the law laid down in Godse and Maru Ram, which law has consistently been followed the sentence of life imprisonment as contemplated under section 53 read with section 45 IPC means imprisonment for rest of the life or the reminder of life of the convict. The terminal point of the sentence is the last breath of the convict and unless the appropriate Government comments the punishment or remits the sentence such terminal point would not charge at all. The life imprisonment thus means imprisonment for rest of the life of the prisoner."

On the other hand, Khandkar Mahbub Hossain appearing for the petitioner first relied on the case of Union of India (UOI) and others Vs. Dharam Pal (MANU/SC/0627/2019). In the cited case it observed, "In our considered opinion, having regard to the totality of facts and circumstances, and for the reasons mentioned supra, it would be appropriate to direct the release of the Respondent after the completion of 35 years of actual imprisonment including the period already undergone by him."

He next cited the case of Sachin Kumar Singhraha Vs. State of Madhya Pradesh reported in AIR 2019 SC 1417. In that case it was observed,

“Therefore, with regard to the totality of the facts and circumstances of the case, we are of the opinion that the crime in question may not fall under the category of cases where the death sentence is necessarily to be imposed. However, keeping in mind the aggravating circumstances of the crime as recounted above, we feel that the sentence of life imprisonment simpliciter would be grossly inadequate in the instant case. In this respect, we would like to refer to our observations in the recent decision dated 19.02.2019 in Parsuram v. State of M.P. (Criminal Appeal Nos. 314315 of 2013) on the aspect of nonremissible sentencing:

As laid down by this Court in Swamy Shraddananda (2) v. State of Karnataka, (2008) 13 SCC 767, and subsequently affirmed by the Constitution Bench of this Court in Union of India v. V. Sriharan, (2016) 7 SCC 1, this Court may validly substitute the death penalty by imprisonment for a term exceeding 14 years, and put such sentence beyond remission. Such sentences have been awarded by this Court on several occasions, and we may fruitfully refer to some of these decisions by way of illustrations. In Sebastian alias Chevithiyan v. State of Kerala, (2010) 1 SCC 58, a case concerning the rape and murder of a 2 year old girl, this Court modified the sentence of death to imprisonment for the rest of the appellant’s life. In Raj Kumar v. State of Madhya Pradesh, (2014) 5 SCC 353, a case concerning the rape and

murder of a 14 year old girl, this Court directed the appellant therein to serve a minimum of 35 years in jail without remission. In Selvam v. State, (2014) 12 SCC 274, this Court imposed a sentence of 30 years in jail without remission, in a case concerning the rape of a 9 year old girl. In Tattu Lodhi v. State of Madhya Pradesh, (2016) 9 SCC 675, where the accused was found guilty of committing the murder of a minor girl aged 7 years, the Court imposed the sentence of imprisonment for life with a direction not to release the accused from prison till he completed the period of 25 years of imprisonment.

In the matter on hand as well, we deem it proper to impose a sentence of life imprisonment with a minimum of 25 years' imprisonment (without remission). The imprisonment of about four years as already undergone by the accused/appellant shall be set off. We have arrived at this conclusion after giving due consideration to the age of the accused/appellant, which is currently around 38 to 40 years."

Accordingly, the following order is made:

"The judgment and order of the High Court affirming the conviction of the accused/appellant for the offences punishable under Sections 376(A), 302 and 201(II) of the IPC and under Section 5(i)(m) read with Section 6 of the POCSO Act stands confirmed. However, the sentence is modified. The accused/appellant is hereby directed to undergo a sentence of 25 years' imprisonment (without remission). The sentence already undergone shall be set off. The appeals are disposed of accordingly."

In the case of Shri Bhagwan vs. State of Rajasthan (2001) 6 SCC 296, Indian Supreme Court held as under:

“Therefore, in the interest of justice, we commute the death sentence imposed upon the appellant and direct that the appellant shall undergo the sentence of imprisonment for life. We further direct that the appellant shall not be released from the prison unless she had served out at least 20 years of imprisonment including the period already undergone by the appellant.”

In Prakash Dhawal Khairnar (Patil) vs. State of Maharashtra With State of Maharashtra vs. Sandeep @ Babloo Prakash Khairnar (Patil) (2002) 2 SCC 35, Supreme Court of India has observed,

“In this case also, considering the facts and circumstances, we set aside the death sentence and direct that for murders committed by him, he shall served out at least 20 years of imprisonment including the period already undergone by him.”

In Ram Anup Singh and Ors. vs. State of Bihar (2002) 6 SCC 686, a three-Judge Bench of the Supreme Court of India held as follows:

“Therefore, on a careful consideration of all the relevant circumstances we are of the view that the sentence of death is not warranted in this case. We, therefore, set aside the death sentence awarded by the Trial Court and confirmed by the High Court to appellants Lallan Singh and Babban Singh. We instead sentence them to suffer rigorous imprisonment for life with the condition that they shall not be released before completing an actual term of 20 years including the period already undergone by them.”

In Nazir Khan and Ors. vs. State of Delhi (2003) 8 SCC 461, Supreme Court of India concluded, “Considering the gravity of the offence and the dastardly nature of the acts and consequences which have flown out and, would have flown in respect, of the life sentence, incarceration for the period of 20 years would be appropriate. The accused appellants would not be entitled to any remission from the, aforesaid period of 20 years.”

In Haru Ghosh vs. State of West Bengal (2009) 15 SCC 551, Indian Supreme Court held as under:

“That leaves us with a question as to what sentence should be passed. Ordinarily, it would be the imprisonment for life. However, that would be no punishment to the appellant/accused, as he is already under the shadow of sentence of imprisonment for life, though he has been bailed out by the High Court. Under the circumstance, in our opinion, it will be better to take the course taken by this Court in the case of Swamy Shraddananda (cited supra), where the Court referred to the hiatus between the death sentence on one part and the life imprisonment, which actually might come to 14 years' imprisonment. In that case, the Court observed that the convict must not be released from the prison for rest of his life or for the actual term, as specified in the order, as the case may be.

We do not propose to send the appellant/accused for the rest of his life; however, we observe that the life imprisonment in case of the appellant/accused shall not be less than 35 years of actual jail sentence,

meaning thereby, the appellant/accused would have to remain in jail for minimum 35 years.”

In Ramraj @ Nanhoo @ Bihnu vs. State of Chhattisgarh (2010) 1 SCC 573, it was held, “In the present case, the facts are such that the petitioner is fortunate to have escaped the death penalty. We do not think that this is a fit case where the petitioner should be released on completion of 14 years imprisonment. The petitioner's case for premature release may be taken up by the concerned authorities after he completes 20 years imprisonment, including remissions earned.”

In “Neel Kumar @ Anil Kumar vs. The State of Haryana (2012) 5 SCC 766, it was held as follows:

“Thus, in the facts and circumstances of the case, we set aside the death sentence and award life imprisonment. The Appellant must serve a minimum of 30 years in jail without remissions, before consideration of his case for pre-mature release.”

In Sandeep vs. State of UP (2012) 6 SCC 107, it was observed as follows:

“Taking note of the above decision and also taking into account the facts and circumstances of the case on hand, while holding that the imposition of death sentence to the accused Sandeep was not warranted and while awarding life imprisonment we hold that accused Sandeep must serve a minimum of 30 years in jail without remissions before consideration of his case for premature release.”

In the case of Gurvail Singh @ Gala and Anr. vs. State of Punjab (2013) 2 SCC 713, it was concluded:

"Considering the totality of facts and circumstances of this case we hold that imposition of death sentence on the Appellants was not warranted but while awarding life imprisonment to the Appellants, we hold that they must serve a minimum of thirty years in jail without remission. The sentence awarded by the trial court and confirmed by the High Court is modified as above. Under such circumstance, we modify the sentence from death to life imprisonment. Applying the principle laid down by this Court in Sandeep (supra), we are of the view that the minimum sentence of thirty years would be an adequate punishment, so far as the facts of this case are concerned."

"It is clear that since more than a decade, in many cases, whenever death sentence has been commuted to life imprisonment where the offence alleged is serious in nature, while awarding life imprisonment, this Court reiterated minimum years of imprisonment of 20 years or 25 years or 30 years or 35 years, mentioning thereby, if the appropriate Government wants to give remission, the same has to be considered only after the expiry of the said period."

Imprisonment for life occupies an important place in our penological history which is one of the most severe punishments available for sentencing. Earlier transportation for life, which involved sending of a convict in exile, had been authorised as one form of punishment for certain serious crimes by the East India Company's Government under the "General Regulations" long before the said punishment was enacted in the Penal Code in 1860. Lord Cornwalls

sent the first batch of Indian convicts into punishment to Bencoolen in S.W. Sumatra in 1787.

The very fact that transportation to the Andamans started soon after the rebellion of 1857. Prisoners transported from the Indian territories of the Company and later British India accounted for over twenty-eight percent of prisoners transported from British colonies. Transportation, it stated, was a “weapon of tremendous power”, as “crossing the black water” invoked a sense of “indescribable horror”. It was decided in 1811 that no more prisoners would be transported from Bengal. Prisoners convicted of serious crimes would be sentenced to life imprisonment and would be held in the then newly constructed Alipore jail. This policy was however abandoned by 1813 as the jail was over-crowded. Transportation re-started and got a further impetus with the British acquisition of Mauritius. From 1815 Indian prisoners were transported there. In 1817 more offences in India were made punishable by transportation. By 1826, the Bombay Presidency too began transporting prisoners to Mauritius. In 1837, draft of the Indian Penal Code as well as the Committee’s report in 1838, though not immediately implemented, expressed a strong preference for transportation over life imprisonment. It was the years after the 1857 rebellion that saw a large number of Indian prisoners being transported to the Andamans. In 1921, the Indian Jails recommended that deportation to the Andamans should cease except in regard to such prisoners as the Governor General in Council may, by special or general order, direct. The furore over maltreatment of prisoners

continued and the British government announced that year that the penal settlement in the Andamans would be gradually abolished. While the number of prisoners in the Andamans reduced by nearly half, over the next decade, resistance to prisoner repatriation came from an unexpected quarter. Since the passage of the Government of India Act in 1919, prisons had become a subject for the provinces. Resultantly, while the British Government in India resolved to largely end transportation, it was legally powerless to compel provincial governments to take the convicts back. Even a decade after the announcement to close the penal settlement, in 1932 the Secretary of State for India noted that the Andaman Cellular Jail would remain open. It scarcely helped that by the time Kishori Lal v. King Emperor was heard by the Privy Council in 1944, the Andaman Islands were under Japanese occupation. The case was of a prisoner involved in the nationalist movement who sought release since he had served over fourteen years (with remissions) of imprisonment. Although he was sentenced to transportation, he remained un-transported and was confined at the Lahore Jail and subject to discipline as if he were a prisoner sentenced to rigorous imprisonment. The Privy Council ruled that "A sentence of transportation no longer necessarily involves prisoners being sent overseas or even beyond the provinces in which they were convicted." It acknowledged that "at the present day transportation is in truth but a name given in India to a sentence for life". A prisoner sentenced to transportation was to be held in a prison in India and would be subject to such penal discipline as if the prisoners

were sentenced to rigorous imprisonment. With this, the Privy Council accorded its seal of approval to the practice of treating un-transported prisoners as those sentenced to life imprisonment and subject to rigorous labour. In India from 1956 transportation no longer remained a punishment even on the statute books. It was perhaps the first formal acknowledgement of the punishment of “imprisonment for life”, the IPC was amended to substitute it for all references to transportation. Life imprisonment, however, appears to have a much longer history.

(Relied on: Life Imprisonment in India: A Short History of a Long Sentence- by Nishant Gokhale)

The issue to be considered is as to whether the imprisonment for life means till the end of convict’s life with or without any deduction and remission. How long is a life sentence likely to be.

Life imprisonment is the most severe penalty in 149 countries. Few countries have the death penalty as their most severe punishment for crimes. Life imprisonment has become a contentions contemporary international sentencing issue. Although the sanction of life imprisonment has different meanings in different countries, in the majority cases those sentenced to life imprisonment become eligible for release after a certain period. 67 States retain life imprisonment as a punishment for offences committed. In some countries when a person is sentenced to life imprisonment, it means that such a person will spend the rest of his or her life in prison. Sometimes, Life imprisonment is called “penal servitude for life”. Although in certain countries degrees of legislated determinacy are attached to life sentences, in general such

sentences are, by their very nature, indeterminate. In Africa the meaning of life imprisonment in nine African countries are as follows;

1. Kenya----------life
2. Tanzania----------life
3. Zimbabwe--------- life (In June 2016 it was held by the Constitutional Court that life imprisonment without the possibility of parole is unconstitutional)
4. Ghana---------- life
5. South Africa----- Prisoner will be imprisoned for the rest of his life but still the law affords a prisoner the opportunity to be released on parole after serving 25 years or he reaches the age of 65years.
6. Uganda---------- 20 years
7. Malawi---------- life
8. Botswana--------- life or another period may be sentenced any shorter time.
9. Mouritius------- life

In Mexico- life imprisonment is an indeterminate sentence. Its term may range from 20 years up to a maximum of 40 years.

In the USA- life imprisonment generally continues till the prisoner dies. Sometimes life terms are given in sentences are disproportionate to the prisoner is expected to live, for example, a 300 years sentence for multiple murders. In actuality, a life sentence does not always mean “imprisonment for life”. Once a period of 10 years or more is over, the convict can be set out on parole.

In Canada- Life imprisonment is an indeterminate length with parole. Ineligibility period is of 25 years.

In Malaysia-Imprisonment for life means that it is until death whereas life imprisonment convicts have to serve minimum of 30 years.

In Myanmar- Life imprisonment means the entire life in prison which is guaranteed under the Code of Criminal Procedure. The minimum duration of life imprisonment is of 14 years.

United Kingdom- In the UK, “imprisonment for life” means a prison sentence of indeterminate length. In many cases, the Home Secretary sets the “tariff”, i.e. the length of the terms, for life imprisonment convicts. He has to undergo sentence about 15 years before he can be paroled out. In England- the life sentence does not mean incarceration of the convict for the rest of his life. The total period for which the lifer may remain in prison can either be determined by the sentencing Court or the Home Office (reference may be made to sections 269 and 277 of the Criminal Justice Act 2003). If a convict sentenced to life imprisonment is to be released after a certain period then he is under a licence (issued in term of section 238 of the Criminal Justice Act, 2003). The 2003 Act removed the general power of the Secretary of State to review a life sentence and order a release.

Germany- Prior to 1977, all life sentence in Germany were imposed without the possibility of parole. In 1977 the German Constitutional Court found that mandatory sentences of life imprisonment without possibility of parole in all cases are unconstitutional. In 1981, parole was allowed for life imprisonment.

New Zealand- Life imprisonment has been the most severe criminal sentence in New Zealand since the death penalty was abolished in 1989. Offenders sentenced to life imprisonment must serve a minimum of 10 years imprisonment before they are eligible for parole.

France- In France, convict of life imprisonment is required to serve a safety period of 18 to 22 years before he becomes eligible for parole.

UAE- Life imprisonment equals 25 years

China- Convicts of life imprisonment can be eligible for parole after 13 years of the original sentence having been actually served.

Turkey- Convicts of life imprisonment can be paroled after serving at least 36 years.

Australia- In the most extreme cases, the sentencing Judge may refuse to fix a non-parole period which means that the prisoner will spend the rest of their life in prison.

International Criminal Court- People sentenced to life imprisonment will not be considered for conditional release until they have served 25 years.

Some countries, such as Brazil, Colombia, Norway, Portugal and Spain, have recently replaced life or indeterminate sentences with fixed-term sentences. In general, however, life sentences are being retained. In some countries, judicial systems establish a minimum period that a life-sentence prisoner must serve before being considered

for release. For example, the Canadian Criminal Code provides for a minimum penalty of 10 years of imprisonment for second-degree murder and a minimum of 25 years of imprisonment for first –degree murder before parole can be considered. In Sri Lanka, a life sentence prisoner may be eligible for parole after having served 6 years. In Japan and Republic of Korea the eligibility for parole after having served for 10 years, Denmark and Finland 12 years. Austria, Belgium, Switzerland 15 years etc.

Pakistan Supreme Court comprising Justice Sarder Raza, Justice Khalilur Rehman Ramday, Justice Faquir Muhammad Khoker, Justice M. Javed Buttar and Justice Syed Tassaduq Hussain Jilani invited legal opinion of the Attorney General and Advocates- general of all the four provinces for assisting the Court in reaching a conclusion. Pakistan Supreme Court observed that the provisions of Section 57 of the Penal Code which reckon 25 years imprisonment as imprisonment for life, only stipulate the calculation of the punishment term which is necessary because certain offences are a fraction of the term of imprisonment prescribed for other offences. Another question passed by the Supreme Court of Pakistan relates to remission which the Government gives to convicts from time to time and which leaves a great impact on the period of sentence in the prison. In Abdul Malik V. The State reported in 2006 PLD SC-365 it was observed that, “Crime and punishment have vexed Prophets, reformers, Judges and criminologists ever since the advent of organized human living. At the jurisprudential plane, the issues raised have varied in time and space

and the theories of punishment i.e. retribution, deterrence, prevention and reformation or rehabilitation are various facets of the age old human odyssey to devise ways and means to deter, to punish, to reform the deviant behaviour and to balm the aggrieved. As the basic human elements remain the same, the struggle continues."

It was further observed, "It is true that the term 'life imprisonment' has not been specifically defined in Pakistan Penal Code; Section 57 of the Code provides that for the purpose of calculating fractions of the term of punishment, 'life' shall mean imprisonment for 25 years."

"Rule 140 of the Pakistan Prisons Rule which bears the heading, 'Release of lifers and long term prisoners' defines 'life imprisonment' in following terms:- Rule 140- (1) Imprisonment for life will mean twenty five years rigorous imprisonment and every life prisoner shall undergo a minimum of fifteen years substantive imprisonment.

The case of all prisoners sentenced to imprisonment for life shall be referred to Government, through the Inspector General, after they have served fifteen years substantive imprisonment for consideration with reference to section 401 of the Code of Criminal Procedure."

The cases of all prisoners sentenced to emulative periods of imprisonment aggregating twenty five years or more shall also be submitted to Government, through the Inspector General, when they have served fifteen years substantive sentence for orders of the Government.

Although transportation for life means or sentence for the remaining span of the natural life of the convict, yet it has been accepted as being of twenty years' duration in view of the provisions contained in section 52 of the Pakistan Penal Code."

Likewise, in Dilawar Hussain V State case (2013 SCMR 1582) while referring to section 57 of the Code, Pakistan Supreme Court held that the term 'life imprisonment' means 25 years imprisonment. Referring to rule 140 of the Pakistan Prisons Rules, 1978, which provides that 'imprisonment for life will mean 25 years rigorous imprisonment and every prisoner shall undergo a minimum of 15 years of substantive imprisonment'. In Pakistan, the concept of remission or commutation of sentence under section 401 Cr.PC read with Prison rules, then he will have to wait till the completion of twenty five.

Section 45 of Penal Code- The word " life" denotes the life of a human being, unless the contrary appears from the context. The Physiological definition of life is a system capable of performing functions such as eating, metabolizing, excreting, breathing, moving growing, reproducing and responding to external stimuli. According to Black's Law Dictionary life means that state of animals, humans and plants or of an organized being. The words "unless the contrary appears from the context" used in the definition of "life" to mean unless a different intention appears from the Penal Code. That is, unless a different intention appears in the Penal Code life shall be deemed to be of a human's life. That definition of life is flexible. The legislature was not unmindful to define the word life in the Penal Code. Keeping in the

mind some other provisions like section 57 the legislature purposely defined ‘life’ and made the definition of the same flexible. Section 57 of the Penal Code is a deeming provision and such provision for the purpose of calculating the fraction of imprisonment for life reckoned the ‘life’ imprisonment for a period of 30 years. Under section 57 of the Penal Code life imprisonment does not mean imprisonment for 30 years for all purposes but calculation of fractions. In other purposes where calculation is needed, how such calculation will be made. For example section 65 of the Penal Code provides that the term for which the Court directs the offender to be imprisoned in default of payment of a fine shall not exceed one fourth of the term of imprisonment which is the maximum fixed for the offence, if the offence be punishable with imprisonment as well as fine. Section 511 provides that whoever attempts to commit the offence punishable with imprisonment for life shall be punished with imprisonment for a term which may extend to one-half of the imprisonment for life. In respect of the offences punishable under Sections 116, 119 and 120 of the Penal Code identical provisions have been provided.

When an offender commits an evil voluntarily, it is justified to give him the same in return. It is to be presumed that once the offender has committed an evil, he has paved way for infliction of punishment on him hence. From ancient time human civilization has been maintaining the order in society by developing rules and regulations which are ideally followed by the people. Punishing the wrongdoer or treating him appropriately is one of the vital functions of the criminal

justice administration. The main purpose of the sentence broadly stated is that the accused must realize that he has committed an act which is not only harmful to the society of which he forms an integral part but is harmful to his own future both as an individual and as a member of the society.

There is no guidance to the Judge in regard to selecting the most appropriate sentence of the cases. The absence of sentencing guidelines is resulting in wide discretion which ultimately leads to uncertainly in awarding sentences. A statutory guideline is required for the sentencing policy. Similarly, a properly crafted, legal framework is needed to meet the challenging task of appropriate sentencing. The judiciary has enunciated certain principles such as deterrence, proportionality, and rehabilitation which are needed to be taken account while sentencing. The proportionality principle includes factors such as mitigating and aggravating circumstances. The imposition of these principles depends on the fact and circumstances of each case. The guiding considerations would be that the punishment must be proportionate. The unguided sentencing discretion led to an unwarranted and huge disparity in sentences awarded by the courts of law. The procedure prescribed by law, which deprives a person of life and liberty must be just, fair and reasonable and such procedure mandates humane conditions of detention preventive or punitive. The main aim of punishment in judicial thought, however, is still the protection of society and the other objects frequently receive only secondary consideration when sentences are being decided. While deciding on quantum of sentence as accused

getting away with lesser punishment would have adverse impact on society and justice system. Sentencing for crimes has to be analysed on the touchstone of three tests viz. crime test, criminal test and comparative proportionality test.

The legislature defines the offence with sufficient clarity and prescribes the outer limit of punishment and a wide discretion in fixing the degree of punishment within that ceiling is allowed to the Judge. On balancing the aggravating and mitigating circumstances as disclosed in each case, the Judge has to judiciously decide what would be the appropriate sentence. In judging an adequate sentence, the nature of the offence, the circumstances of its commission, the age and character of the offender, the injury to the individuals or to the society, whether the offender is a habitual, casual or a professional offender, affect of punishment on the offender, delay in the trial and the mental agony suffered by the offender during the prolonged trial, an eye to correction and reformation of the offender are some amongst many factors that have to be taken into consideration by the Courts. In addition to those factors, the consequences of the crime on the victim while fixing the quantum of punishment because one of the objects of the punishments is doing justice to the victim. A rational and consistent sentencing polices requires the removal of several deficiencies in the present system. An excessive sentence defects its own objective and tends to undermine the respect for law. On the other hand, an unconscionably lenient sentence would lead to a miscarriage of justice and undermine the people’s confidence in the efficacy of the administration of criminal

justice. Sentencing process should be stern where it should be, and tempered with mercy where it warrants to be, otherwise departure from just desert principle results into injustice (State of Punjab V. Rakesh Kumer, AIR 2009 SC 891). In Criminology sentencing is largely thought to have four purposes: retributive, rehabilitation, deterrence and incapacitation. Justice Krishna Iyer observed that sentencing is a means to an end, a psycho-physical panacea to cure the culprit of socially dangerous behaviour and hence the penal strategy should strike a balance between sentimental softness towards criminal, masquerading as progressive sociology and terror-cum-torment-oriented sadistic handling of criminal, which is the sublimated expression of judicial severity, although ostensibly imposed as deterrent to save society from further crimes. (Krishna Iyer J. perspectives in criminology, law and social change.). One of the prime objectives of the criminal law is imposition of an appropriate, adequate, just and proportionate sentence commensurate with the nature and gravity of the crime and the manner in which the crime is done. Lord Denning appearing before the Royal Commission on "Capital Punishment" expressed that the punishment inflicted for grave crimes should adequately reflect the revulsion felt by the great majority citizen for them. It is a mistake to consider the object of punishment as being deterrent or reformative or preventive and nothing else----------.

The present criminal law system of the country contains various lacunae that need to be filled up so as to make the criminal justice system more stringent. Many penal Statutes prescribe the maximum

punishment for offences, leaving the discretion to the courts to determine the quantum of sentence that can be imposed upon the offender. Certain provisions in the Penal Code relating to awarding punishment for imprisonment for life is required to be noticed. For example: (a) Offences punishable only with imprisonment for life, like being a thug (sec. 311), (b) extortion by threat of accusation of unnatural offence. (sec. 388) etc. Similarly, certain guidelines and policies need to be introduced by the legislature for bringing fairness and consistency while awarding sentences in criminal cases. The age-old colonial punishment system is not suitable to manage the crimes and to diminish its allied bad effects on society by imposing proper punishment to the persons responsible for the offence committed with no delay. Supreme Court of India in Dananjoy Chatterjee @ Dhanu V State of West Bengal reported in (1994) 2 SCC-220 observed that "Today there are admitted disparities. Some criminals get very harsh sentences while many receive grossly different sentences for an essentially equivalent crime and a shockingly large number even go unpunished, thereby encouraging the criminals and in the ultimate making justice suffer by weakening the system's credibility." In Swamy Shraddananda V. State of Karnataka reported in (2008) 13 SCC 767 it was observed,

> "The inability of the Criminal Justice System to deal with all major crimes equally effectively and the want of uniformity in the sentencing process by the Court lead to a marked imbalance in the end results. On the one hand, there appears a small band of

> cases in which the murder convict is sent to the gallows on confirmation of his death penalty by this Court and on the other hand, there is a much wider area of cases in which the offender committing murder of a similar or a far more revolting kind is spared his life due to lack of consistency by the Court in giving punishments or worse the offender is allowed to slip away unpunished on account of the deficiencies in the Criminal Justice System. Thus the overall larger picture gets asymmetric and lop-sided and presents a poor reflection of the system of criminal administration of justice."

The reasonable determination period of imprisonment with regard to offences where life imprisonment is provided is a necessity and call for appropriate amendment for prescribing determinate punishment keeping in view the gravity of the offence. This Court feels that it is the primary obligation of the Legislature to carry out necessary amendments in the cases where imprisonment for life is provided to make aware the convict/prisoner how much period he has to undergo in prison. Otherwise, the approach of reformative, rehabilitative and corrective system will be only a futile exercise. Otherwise also, to keep a prisoner behind bars is a financial burden on the State exchequer and for that reason, it is imperative to fix some determinate punishment by making amendments.

In Gopal Vinayak Godse v. State of Maharashtra (supra) it was held that sentence for imprisonment for life ordinarily means imprisonment for the whole of the remaining period of the convicted

person's natural life. A convict undergoing such sentence may earn remissions of his part of the sentence under the Prison Rules but such remissions in the absence of an order of a Government remitting the entire balance of his sentence under this section does not entitle the convict to be released automatically before the full life term is served. It was observed that though under the relevant rules a sentence for imprisonment for life is equated with the definite period of 20 years, there is no indefeasible right of such prisoner to be unconditionally released on the expiry of such particular term, including remissions and that is only for the purpose of working out the remissions that the said sentence is equated with definite period and not for any other purpose. In Union of India Vs. V. Sriharan Murugan & others (supra), it was observed that life imprisonment means the end of one's life, subject to any remission granted by the appropriate Government under section 432 of the Code of Criminal Procedure which, in turn, is subject to the procedural checks mentioned in the said provision and further substantive check in section 433 A of the Code. The sentence of life imprisonment means imprisonment for the rest of life or the remainder of life of the convict. Such convict can always apply for obtaining remission either under Articles 72 of 161 of the Constitution of India or under Section 432 Cr.P.C. and the authority would be obliged to consider the same reasonably. In Maru Ram V. Union of India, (supra), a Constitutional Bench of the Supreme Court observed that the inevitable conclusion is that since in section 433-A of the Code of Criminal Procedure, which deals only with life sentences, remissions

lead nowhere and cannot entitle a prisoner to release. Further , in Laxman Naskar V. State of W.B and another, reported in (2000) 7 SCC 626, after referring to its decision in the case of Gopal Vinayak Godse (Supra), the Supreme Court of India reiterated that sentence for imprisonment for life, ordinarily, means imprisonment for the whole of the remaining period of the convicted person's natural life; that a convict undergoing such sentence may earn remissions of his part of the sentence under the Prison Rules, but such remissions, in the absence of an order of an appropriate Government, remitting the entire balance of his sentence under section 433 of the Code of Criminal Procedure does not entitle the convict to be released automatically before the full life term is served. In Union of India Vs. V. Sriharan @ Murugan, (supra) one of the questions, which arose for consideration before the Constitution Bench of Supreme Court, was: Is it legally permissible for a Court, as held in Swami Shraddananda (supra), to award, instead of the death penalty, imprisonment for life and making the sentence of imprisonment beyond application of remission. Having referred to the cases of Godse (supra), Maru Ram (supra), and Ratan Singh (supra), the Constitution Bench of the Supreme Court, in Sriharan (supra), held that in exceptional cases, death penalty, when altered to life imprisonment, would only mean rest of one's life span. In Laxman Nashkar V. State of W.B. reported in (2000) 7 SCC 626 the Supreme Court of India reiterated that sentence for imprisonment for life, ordinarily means imprisonment for the whole of the remaining period of the convict's natural life; that a convict undergoing such sentence

may earn remissions of his part of sentence under the Prisons Rules, but such remissions, in the absence of an appropriate Government, remitting the entire balance of his sentence does not entitle the convict to be released automatically before the life term is served. Therefore, where the life imprisonment, in the light of the decisions in Godse (supra), Maru Ram (supra), and Ratan Singh (supra), means a person's life span in incarceration the Court cannot be said to have committed any wrong in directing while awarding sentence of imprisonment for life, that the convicted person shall remain incarcerated for the rest of his life.

The position at law is that unless the life imprisonment is commuted or remitted by the Government under the relevant provisions of law, a prisoner sentenced to life imprisonment is bound by law to serve the life term in prison. However, we feel it relevant here to state a passage from Maru Ram (supra) where Krishna Iyer J., to appreciate the despair in custody, thought it appropriate to reproduce the filter expression, from the poem, namely, "The Ballad of Reading Gaol" by Oscar Wilde. The poet said:

"I know not whether Laws be right,
Or whether Laws be wrong,
All that we know who lie in gaol
Is that the wall is strong ;
And that each day is like a year,
A year whose days are long."

It was further quoted in that judgment:

"Something was dead in each of us,

And what was dead was Hope.

* * *

The vilest deeds like poison weeds

Bloom well in prison air:

It is only what is good in Man"

Indian Supreme Court consistently held that imprisonment for life means imprisonment for the whole remaining period of the convict's natural life. That is, the "last word" on the lifers' early release is entrusted to the political power. Indian Legislature recently enacted some penal provisions which have been incorporated in the Indian Penal Code. For Example, Sections 376A, 376D, 376E. Contents of which are as follows:

Section-376A. **Punishment for causing death or resulting in persistent vegetative state of victim**.-Whoever, commits an offence punishable under sub-section (1) or sub-section (2) of section 376 and in the course of such commission inflicts an injury which causes the death of the woman or causes the woman to be in a persistent vegetative state, shall be punished with rigorous imprisonment for a term which shall not be less than twenty years, but which may extend to imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life, or with death.

Section 376-D. Gang rape.- Where a woman is raped by one or more persons constituting a group or acting in furtherance of a common intention, each of those persons shall be deemed to have committed the

offence of rape and shall be punished with rigorous imprisonment for a term which shall not be less than twenty years, but which may extend to life which shall mean imprisonment for the remainder of that person's natural life, and with fine;

Provided that such fine shall be just and reasonable to meet the medical expenses and rehabilitation of the victim;

Provided further that any fine imposed under this section shall be paid to the victim.

Section 376-E. Punishment for repeat offenders.- Whoever has been previously convicted of an offence punishable under section 376 or section 376A or section1 376AB or section 376D or section 376DA or section 376DB and is subsequently convicted of an offence punishable under any of the said sections shall be punished with imprisonment for life which shall mean imprisonment for the remainder of that person's natural life, or with death.

In those provisions after the words "imprisonment for life" the words "which shall mean imprisonment for the remainder of the person's natural life" have been incorporated. Inspite consistent views of Indian Supreme Court that "imprisonment for life" means imprisonment for the whole of the remaining period of the convict's natural life, the Indian Legislature incorporated the words "which shall mean imprisonment for the remainder of that person's natural life" in the legislation which is a new category of punishment and the same was enacted not being satisfied with the interpretation of the definition life imprisonment given by the Supreme Court of India. If according to

section 45 of the Penal Code life does mean life then what was the necessity to bring the aforesaid penal provision. That is, conclusion arrived at by the Supreme Court of India is not final and absolute. There is still a lot of confusion on the meaning of life sentence.

Can it be said that life imprisonment is a death sentence and the same amounts to putting a life convict in a waiting room until his death? Life without parole is no different from a death sentence that ends with the lethal injection. In such circumstances question arose whether or not life imprisonment is a lesser punishment than the death?

In Sriharan's case, (2016) 7SCC 1 Indian Supreme Court taking into consideration of the cases of Godse, AIR 1961 SC 600 and Maru Ram (1981) 1SCC 107, which were consistently followed in the subsequent decisions in Sambha J; Drishan J; (1974) 1SCC 196; Ratan Singh (1976) 3SCC; Ranjit Singh (1984) 1SCC 31; Ashok Kumer, (1991) 3SCC 498 and Subash Chander, (2001) 4SCC 458, has observed that imprisonment for life in terms section 53 read with section 45 of the Penal Code only means imprisonment for rest of the life of the prisoner subject, however, to the right to claim remission etc. In Vikash Yadav V State of U.P. reported in (2006)9SCC 541 it was questioned the propriety of the sentence as the High Court has imposed a fixed term sentence, i.e., 25 years for the offence under section 302 IPC and 5 years for the offence under section 201 IPC with the stipulation that both the sentences would run consecutively and it was observed by the Supreme Court of India that the imposition of fix term sentence on the appellants by the High Court can not be found fault with simple

modification in the sentence i.e. the sentence under sections 201/34 IPC shall run concurrently. In Dalbir Singh V. State of Panjab, (1979) 3 SCC 745 following Rajendra Prashad V State of U.P, V. R. Krishna Iyer and D.A. Desai JJ observed that life imprisonment "strictly means imprisonment for the whole of the man's life but in practice amounts to incarceration for a period between 10 years and 14 years" which may at the option of he convicting court, be subject to the condition that the sentence of imprisonment shall last as long as life lasts where there are exceptional indications of murderous recidivism and the community cannot run the risk of the convict being at large.

But Indian Supreme Court has started putting judicial breaks over the exercise of remission powers by the executive by prescribing the length of life imprisonment, for example to 15/20/25/30/35 years before which no remission shall be granted. This approach is in line with age old sentencing without parole concept appeared in American and English sentencing procedure where Judges retain the authority. The indeterminacy of life imprisonment and the potential loss of liberty until the offender dies, lend it to criticism that it is a grossly disproportionate sentence.

In Union of India V. Dharam Paul (MANU/SC/0627/2019), respondent Dharam Paul was earlier convicted under sections 376 and 452 of the Penal Code and sentenced to R.I. for 10 years. In that case, he got bail, thereafter, he killed 5 family members of the prosecutrix. Then he was tried and sentenced to death under section 302, 34 of the Penal Code. High Court and Supreme Court of India upheld the death

sentence. He filed a mercy petition before the Governor which was rejected. He then filed a mercy petition before the President of India which was rejected after 13 years 5 months and date of execution of the sentence was fixed. Meanwhile, he got an order of acquittal in the case of section 376, 457 of the Penal Code. In that juncture, he filed a writ petition on the grounds of delay in deciding his mercy petition by the President. The High Court Division allowed his writ petition and commuted the sentence of death to imprisonment for life. Thus, Union of India preferred an appeal. The Supreme Court of India in that appeal directed to release the respondent Dharam Paul after completion of 35 years of actual imprisonment including the period already undergone by him. In the case of Shachin Kumar Singhara, (MANU/SC/0352/2019) the appellant Shachin was convicted for the offence punishable under sections 363, 376(A), 302 and 201(2) of the Penal Code and section 5(1)(m) read with section 6 of the Protection of Children from Sexual Offences Act 2012 and he was sentenced to death. The High Court of Madhya Prodesh at Jabalpur confirmed the sentence of death in appeal preferred by Sachin. The Supreme Court of India observed that the crime, in question, may not fall under the category of cases where the death sentence is necessary to be imposed. However, keeping in mind the aggravating circumstances of the crime it was held that the sentence of life imprisonment simpliciter would be grossly inadequate. Accordingly, Supreme Court ordered to impose a sentence of life imprisonment with a minimum period of 25 years imprisonment without remission. It was further ordered that the

sentence already undergone shall be set off. In the case of Nanda Kishore Vs. State of Madhya Pradesh (MANU/SC/0046/2019) the appellant was convicted for offences under sections 302,363, 366, and 376(2)(i) of the Penal Code and sentenced to death which was confirmed by the Madhya Pradesh High Court. The charge against the appellant was the commission of rape and murder of a girl aged about 8 years. The Supreme Court of India allowed the appeal in part and modified the sentence to that of life imprisonment with an actual period of 25 years without any benefit of remission. In the case of Viran Gyanlal Rajput Vs. State of Maharastra (ICL 2018 SC 1179), the appellant was convicted for the offences punishable under sections 302 and 201 of the Penal Code and under sections 10 and 4 of the Protection of Children from Sexual Offences Act, 2012 for kidnapping, rape and murder of a 13 years old girl and causing disappearance of evidence. He was sentenced to death for the offence under section 302 of the IPC; R.I. for 10 years and a fine of rupees 200, in default, to suffer rigorous imprisonment for one year under section 366 of the IPC R.I. for 7 years and the fine of rupee 200, in default, to suffer rigorous imprisonment for one year under section 10 of the Protection of Children from Sexual Offences Act and R.I. for 7 years and the fine of rupees 200, in default, to suffer rigorous imprisonment for one year under section 201 of the IPC. Overturning the appellant's conviction under section 10 of the Act, lacking a specific charge for the same, the High Court maintained the other order of conviction and sentence. Supreme Court of India disposing of the appeal observed that, "a

sentence of life imprisonment simpliciter would not be proportionate to the gravity of the offence committed, and would not meet the need to respond to crime against women and children in the most stringent manner possible. Moreover, though we have noticed above that the possibility of reform of the accused is not completely precluded, we nevertheless share the conscious of the trial Court and the High Court regarding lack of remorse on behalf of the appellant and the possibility of reoffending. Finally, it commuted the sentence of death awarded to the appellant to life imprisonment, out of which the appellant shall mandatorily serve out a minimum of 20 years without claiming remission. In the case of Amar Singh Yadav Vs. State of U.P. appellant was convicted for the offence under sections 302, 301 and 436 of the IPC, the appellant was sentenced to suffer imprisonment for life on the count of section 307, R.I. for 7 years on count of section 436 and also sentenced to death and to pay fine of rupee 10,000/- on count of section 302 of the IPC. Supreme Court of India disposed of the appeal holding that the imposition of death sentence to the accused Amar Singh Yadab was not warranted. Accordingly, it commuted the sentence to life imprisonment with an observation that he must serve a minimum period of 30 years in jail without remission before consideration of his case for premature release. In the case of Shri Bhagwan V. State of Rajasthan, (2001)6 SCC 296 Indian Supreme Court commuting the sentence of death directed that the appellant shall not be released from the prison unless she had served out at least 20 years of imprisonment including the period already undergone by the appellant. In Prakash

Dhawal Khairnar (Patil) V. State of Maharashtra, [(2002) 2SCC 35] Indian Supreme Court setting aside sentence of death directed that the appellant to serve out at least 20 years imprisonment including the period already undergone by him. In Nazir Khan and others V. State of Delhi, (2003) 8 SCC 461 Indian Supreme Court held that considering the gravity of the offence and the dastardly nature of the acts and consequences which have flown out and, would have flown in respect, of the life sentence, incarceration for the period of 20 years would be appropriate. The accused appellants would not be entitled to any remission. In the case of Haru Ghosh V. State of West Bengal, (2009) 15SCC it was concluded, “we do not propose to send the Appellant/accused for the rest of his life; however we observe that the life imprisonment in the case of the Appellant/accused shall not be less than 35 years of actual jail sentence, meaning thereby, the Appellant/accused would have to remain in jail for minimum 35 years.

In India whenever death sentence has been commuted to life imprisonment where the offence alleged is serious in nature, while awarding life imprisonment, Supreme Court reiterated minimum years of imprisonment of 20 years or 25 years or 30 years or 35 years. But there is no indefeasible right of such Prisoner to be unconditionally released on the expiry of such particular term including remissions and that is only for the purpose of warring out the remissions. The Courts have been even more unclear on where to draw the line.

There can be no sentence worse than that which consumes the full span of a man’s life. Unlike death penalty cases, life sentences

receive no special consideration on appeal in the Appellate Division under article 103 of the Constitution which limits the possibility they will be reduced or reversed. Spending entire life in jail, growing sick and old, and dying there, is a horrible experience. It is “the extended death penalty” known officially as life imprisonment with reduction or remission. It is a “secret death penalty” as Pope Francis wrote in his recent encyclical “Freatelli Tutti”. He has suggested that all prisoners deserve the “right to hope” and said, “if you close hope in a cell, there is no future for society.”

Whether a convict of imprisonment for life is entitled to get the benefit of section 35A of the Criminal Procedure and if he is so entitled how the same would be given and what would be length or duration of the period life imprisonment to be served by a life convict, that is, how the same would be calculated is relevant to decide.

In the original Code of Criminal Procedure, provision of section 35A was not provided. Section 35A was first incorporated in the Code of Criminal Procedure by the Code of Criminal Procedure (Amendment) Act, 1991 (Act No.16 of 1991) on 5th May, 1991. Contents of which run as follows:

Section 35A: Term of imprisonment in cases where convicts are in custody- where a person is in custody at the time of his conviction and the offence for which he is convicted is not punishable with death or imprisonment for life, the court may, in passing the sentence of imprisonment, take into consideration the continuous period of his custody immediately preceding his conviction.

That is, under Act No.16 of 1991 it was the discretion of the Court to take into consideration of the continuous period of custody of a convict while passing the sentence in connection with the same case. The said provision was not applicable in respect of the offence for which he is convicted if not punishable with death or imprisonment for life.

Thereafter, the Legislature enacted a new provision incorporated in Section 35A in the Code of Criminal Procedure deleting the earlier provision by the Code of Criminal Procedure (Amendment) Act, 2003 (XIX of 2003) which runs as follows:

> "35A. (1) Except in the case of an offence punishable only with death, when any court finds an accused guilty of an offence and, upon conviction, sentences such accused to any term of imprisonment, simple or rigorous, it shall deduct from the sentence of imprisonment, the total period the accused may have been in custody in the meantime, in connection with that offence.
>
> (2) If the total period of custody prior to conviction referred to in sub-section (1) is longer than the period of imprisonment to which the accused is sentenced, the accused shall be deemed to have served out the sentence of imprisonment and shall be released at once, if in custody unless required to be detained in connection with any other offence; and if the accused is also sentenced to pay any fine in addition to such sentence, the fine shall stand remitted.
>
> Upon analyzing the provision of section 35A (1) it appears that:

(1) An accused who is guilty of an offence, not punishable only with death, is entitled to get the benefit of deduction from the sentence awarded.

(2) It is a statutory mandate to deduct from the sentence of imprisonment.

(3) Intention of the legislature is clear from such newly enacted provisions that in order to give benefit of the accused persons when the Court finds them guilty of offence except for the offence punishable with death, the provision has been incorporated."

In the judgment under review it was stated,

"Section 35A of the Code of Criminal Procedure is not applicable in case of an offence punishable with death or imprisonment for life. An accused person cannot claim the deduction of the period in custody prior to the conviction as of right. It is a discretionary power of the Court. It cannot be applicable in respect of an offence which is punishable with death. Though the word 'only' is used in section 35A, the legislature without considering section 401 of the Code of Criminal Procedure and section 53 of the Penal Code has inserted the word 'only' but the use of word 'only' will not make any difference since under the scheme of the prevailing laws any remission/reduction of the sentence has been reversed to the government only." (underlined by us)

In the Code of Criminal Procedure (Amendment) Act, 2003 “except in the case of an offence punishable only with death” were substituted and the “words” “or imprisonment for life” were deleted. Similarly, deleting the word “may” the word “shall” was substituted and also provided that, ‘it (Court) shall deduct from the sentence of imprisonment’. Question is, in view of the amendment, whether the observation under review is legally sustainable or not. (underlined by us)

The use of the word ‘shall’ raises a presumption that the particular provision is imperative. Hidayetullah J in Sinik Motors V. State of Rajasthan (AIR 1961 SC 1480) observed that ‘shall’ is ordinarily mandatory but it is sometimes not so interpreted if the context or intention otherwise demands. In the case of State of U.P.V. Babu Ram (AIR 1961 SC 751) it was further observed by the Supreme Court of India that when a statute uses the word ‘shall’ prima-facie it is mandatory but the Court may ascertain the real intention of the legislature by carefully attending to the whole scope of the statute. If different provisions are connected with the same word ‘shall’ and if with respect to some of them the intention of the legislature is clear that the word ‘shall’ in relation to them must be given an obligatory or a directory meaning, it may indicate that with respect to other provisions also, the same construction should be placed (Hari Vishnu Kasnath V. Ahmed Ishaque AIR 1945 SC 233) . If the word ‘shall’ has been substituted for the word ‘may’ by an amendment, it will be a very strong indication that the use of ‘shall’ makes the provision imperative.

In Maxwell on the Interpretation of Statutes it has been stated that if the language of the statute is equivocal and there are two reasonable meanings of that language, the interpretation which will avoid the penalty is to be adopted. Similarly, statutes dealing with jurisdiction and procedure are, if they relate to the infliction of penalties, strictly construed. Compliance with procedure provisions will be stringently exacted from those proceeding against the person liable to be penalized, and if there is any ambiguity or doubt it will, as usual, be resolved in his favour. Section 35A has been enacted and incorporated as a procedural law which prescribes the procedures and methods for enforcing rights and duties and for obtaining redress.

The criminal law in its wider sense consists of both the "substantive criminal law" and procedural criminal law: The substantive Criminal law defines offences and prescribes punishment for the same whereas the procedural criminal law facilitates to administer the substantive law and to protect in society against criminals and lawbreakers. In absence of procedural law, the substantive criminal law would be of not much importance because without the enforcement mechanism, the threat of punishment held out to the law breakers by the substantive criminal law would remain formality and empty practice. The Code of Criminal Procedure is complimentary to the Penal Code and failure of the Procedure in criminal laws would seriously affect the substantive criminal law. The substantive criminal law by its very nature cannot be self-operative. In absence of procedural law, the substantive criminal law could be almost

worthless. By incorporating Section 35A in the Code of Criminal Procedure by the Code of Criminal Procedure (Amendment) Act, 2003 the legislature has provided the provision of deduction of imprisonment in cases where convicts may have been in custody except in the case of an offence punishable only with death. The Legislature did not use the word “only” unconsciously. The word ‘only’ has been used in Section 35A to restrict the exception in case of an offence punishable with death. That is, in case of an offence punishable with death alone will not get the benefit of Section 35A. That is, the category of offence is one which is punishable with death. In case of other clauses of offences not punishable with death, the provision of deduction of imprisonment in cases where convicts may have been in custody.

Thus, the convicts who are convicted and sentenced of the offences not punishable only with death are entitled to get the benefit of section 35A of the Code of Criminal Procedure in respect of the period of their imprisonment which was spent during investigation or inquiry or trial in a particular case. To deny the benefit of section 35A of the Code of Criminal Procedure the convict sentenced to life imprisonment would be to withdraw the mandatory application of a benevolent statutory provision.

Mr. Ariff specifically points out that the provisions of section 397 of the Code of Criminal Procedure lend support to above contemplation that life sentence has a terminus and ascertainable in terms of years. In view of Section 397 of the Code of Criminal Procedure after serving sentence awarded in one case the sentence of

another case, if awarded shall start to run. Unless the first imprisonment is terminable at a certain point of time in terms of fixed years the second conviction and sentence can not run.

Section 45 of the Penal Code defining the meaning of ‘life’ has weighed heavily in determining that life sentence extends to natural life of the convict. Section 45 of the Penal Code in defining life is flexible. If we consider the words “unless the contrary appears from the context” together, the said flexibility would be apparent. In other words, indirectly it has been said that different intention of the legislature appears in the Penal Code which is opposed to the general meaning of ‘life’. That is, the definition of “life” provided in section 45 of the Penal Code that, ‘the life of a human being’ is not conclusive, final and absolute definition in view of the next wordings, those are, ‘unless the contrary appears from the contest.’

Section 65 of the Penal Code provides the term for which the Court directs the offender to be imprisoned in default of payment of a fine shall not exceed one-fourth of the term of imprisonment which is the maximum fixed for the offence, if the offence be punishable with imprisonment as well as fine. Section 65 provides the limit to imprisonment for non-payment of fine when imprisonment and fine awardable. For example, an offence punishable under Section 302 of the Penal Code provides the punishment with death or imprisonment for life, and shall also be liable to fine. If an accused is convicted under section 302 of the Penal Code and sentenced to imprisonment for life and to pay fine of taka 50,000/-, in default, of payment of fine amount,

he is to suffer rigorous imprisonment for a further period which may be one-fourth of the whole period or any lesser period than that as specified by the Court. If the accused fails to pay the fine amount how he will serve out the sentence against the defaulted amount when the duration of imprisonment for life means till the convict's last breathing in jail.

In a leading German case on life imprisonment (45 B Verf GE 187, Decision, 21 June 1977) the German Federal Constitutional Court had recognized that it would be incompatible with the provision on human dignity in the Basic Law for the State forcefully to deprive a person of his freedom without at least providing him with some day regain that freedom. It was that conclusion which led the Constitutional Court to find that, the prison authorities had the duty to strive towards a life sentenced prisoner's rehabilitation and that rehabilitation was constitutionally required in any community that established human dignity as its centerpiece. In Vinter and others V. United Kingdom (Application No.66069 of 2009-9th July, 2013) the Grand Chamber of the European Court of Human Rights ruled that all offenders sentenced to life imprisonment had a right to both a prospect of release and a review of their sentence. Failure to provide for these twin rights meant that the applicants had been deprived of their right under Article 3 of the European Convention on Human Rights (ECHR) to be free from inhuman or degrading treatment or punishment. In that judgment it was observed that all the prisoners need to be able to retain some hope for a better future in which they can again become full members of society.

That judgment recognizes, implicitly, that hope is an important and constitutive aspect of the human person.

Retributive justice combines features of both corrective and distributive justice. The corrective dimension consists in seeking equality between offender and victim by subjecting the offender to punishment and communicating to the victim a concern for his or her suffering. As Justice Laurie Ackermann of the South African Constitutional Court observed in the case of S.Vs. Dodo (CCT/1/01), “To attempt to justify any period of penal incarceration, Let alone imprisonment for life..... without inquiring into the proportionality between the offence and the period of imprisonment, is to ignore, if not to deny, that which lies at the very heart of dignity. Human beings are not commodities to which price can be attached; they are creatures with inherent and indefinite worth, they ought to be treated as ends in themselves, never merely as means to an end.” Committee of Ministers of the Council of Europe in 2003 made detailed recommendations on the treatment of such prisoners to avoid the destructive effects of imprisonment, and to increase and improve the possibilities for the prisoners to be successfully resulted in society and to lead a law abiding life following their release. The 2003 recommendation on conditional release (Parole) provides that Parole should be considered for all prisoners. European Prison Rules emphasized that the regime for all sentenced prisoners should be designed to enable them to lead a responsible and crime-free life. Prof. Jessica Henry has written extensively on the need to incorporate de facto life sentences into the

boarder conversation about the life sentences overall. She notices that there is difficulty in setting a term of years to define virtual life since the age of the individual at the time of prison admission is a critical component of the calculation. It is to be remembered that whether a convict receives much pain as was inflicted by him on his victim. A convict, till his natural death, dies every day before his death punishment should be a means to a certain end, not an end in itself. UK Supreme Court concluded in Osborn V. The Parole Board (2013 UK SC 61) that human dignity requires a procedure that respects the persons whose rights are significantly affected by the decisions. It was observed that human dignity required that prisoners serving indeterminate sentences be given a hearing before the Parole Board when possible release was being considered and when the Parole Board was asked to advise on their possible transfer to open conditions. Justice should not only be done, but should manifestly and undoubtedly be seem to be done.

The principles of statutory interpretation dictate that a statute must be construed as a whole. The words which are capable of only one meaning must be given that meaning. The ordinary words must be given ordinary meanings. If the provisions of sections 45, 53, 55, 57 and 65 of the Penal Code, sections 35A, 397, 401 and 402 of the Code of Criminal Procedure and some other provisions of Penal Code and Criminal Procedure Code, the Prisons Act and Rules framed thereunder are construed as per rules of interpretation it may be observed that the

assertion “imprisonment for life” means imprisonment for whole of the remaining period of convict’s natural life is not final conclusion.

Administrative instructions regarding the various remissions are to be given to the prisoners from time to time in accordance with the Prisons Act and Rules framed thereunder. The provisions contained in the Prisons Act are only procedural in nature. The Preamble to the Act itself states that the Act is meant to consolidate the law relating to prisoners confined by order of a Court. Rules provide for a procedure to enable the Government to remit the sentence under section 401 of the Code of Criminal Procedure on a consideration of the relevant factors, including the period of remission earned.

The situation has been changed or created because of enactment of new provision incorporated in section 35A of the Code of Criminal Procedure deleting the earlier provision providing that except in the case of an offence punishable **only** (emphasis supplied) with death, when any court finds an accused guilty of an offence and, upon conviction, sentences such accused to **any term of imprisonment** (emphasis supplied) it shall deduct from the sentences of imprisonment, the total period the accused may have been in custody in the meantime, in connection with that offence.

In view of the deletion of the words, “imprisonment for life” from the legislation enacted earlier in the Code of Criminal Procedure (Amendment) Act, 1991 and by enacting the Code of Criminal Procedure (Amendment) Act, 2003 the legislature, who envisaged and prescribed punishment of “imprisonment for life” and used the word

"shall deduct," thereby, made the provision of section 35A of the Code of Criminal Procedure mandatory and expressed its intention to give some benefit to the convicts of life imprisonment, the life convicts are entitled to get statutory deduction if they are so entitled. The purpose is clear that the convicted person is given the right to rekon the period of his sentence of imprisonment he was in custody as an under trial prisoner. In our decision under review we failed to look the reality and practical effect of the mandatory statutory provision of deduction of sentences of life imprisonment.

It is relevant here to mention that in order to give such benefits Supreme Court of Bangladesh, High Court Division issued Circular No.12/17 dated 29.05.2017 accordingly. Contents of the said circular run as follows:-

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বিষয়ঃ **The Code of Criminal Procedure, 1898 এর 35A** ধারার বিধান অনুসরণ প্রসঙ্গে ।

The Code of Criminal Procedure, 1898 এর 35A ধারা অনুযায়ী শাস্তি কেবলমাত্র মৃত্যুদন্ড এরুপ অপরাধ ব্যতীত অন্যান্য অপরাধের ক্ষেত্রে সশ্রম বা বিনাশ্রম যে কোনো প্রকারের কারাদন্ড প্রদানক্রমে প্রচারিত রায় বা আদেশে আসামীর মামলা বিচারাধীন থাকা অবস্থায় আসামী কর্তৃক কারা হেফাজতে থাকা/অবস্থানরত সময়কাল তার মোট দন্ডের সময়কাল হতে বিয়োগ (deduct) হবে । যদি একই অপরাধের জন্য মামলা বিচারাধীন থাকা অবস্থায় আসামীর কারা হেফাজতে থাকা/অবস্থানরত সময় মোট দন্ডের সময়কালের অধিক হয়, তবে আসামী তার দন্ড ভোগ সম্পন্ন করেছে বলে গণ্য হবে এবং অন্য কোনো অপরাধের কারণে কারাগারে আটক রাখার প্রয়োজন না হলে অবিলম্বে তাকে মুক্তি প্রদান করতে হবে । এরুপ ক্ষেত্রে আসামীকে যদি কারাদন্ডের অতিরিক্ত অর্থদন্ড প্রদান করা হয় তাহলে আসামীর উক্ত অর্থদন্ড মওকুফ হয়েছে মর্মে গণ্য হবে ।

২। কিন্তু লক্ষ্য করা যাচ্ছে যে, অনেক ক্ষেত্রেই আদালত ও ট্রাইব্যুনালের রায়ে কারাদন্ডপ্রাপ্ত আসামীর মোট কারাদন্ডের সময়কাল হতে মামলা বিচারাধীন থাকা অবস্থায় আসামীর কারা হেফাজতে থাকা/অবস্থানরত সময়কাল বিয়োগের বিষয়ে কোনো প্রকার নির্দেশনা প্রদান করা হচ্ছে না বা হলেও সাজা পরোয়ানায় (Conviction Warrant) তা উল্লেখ করা হচ্ছে না। ফলে কারা কর্তৃপক্ষ আসামীর দন্ডের মোট মেয়াদ হতে মামলা বিচারাধীন থাকা অবস্থায় আসামীর কারা হেফাজতে অবস্থানকালীন সময়কাল বিয়োগ করা হতে বা উক্ত সময়কাল কারাদন্ডের মোট মেয়াদ হতে অধিক হলে আসামীকে তাৎক্ষণিকভাবে মুক্তি প্রদান করতে (যদি না অন্য অপরাধে তাকে কারাগারে আটক রাখা আবশ্যক হয়) কিংবা ক্ষেত্রমতে, কারাদন্ডের অতিরিক্ত অর্থদন্ড মওকুফ গণ্য করা হতে বিরত থাকছে, যা আইনগত বিধি বিধানের লংঘন।

৩। এমতাবস্থায়, ফৌজদারী মামলায় আদালত ও ট্রাইব্যুনালসমূহ-কে আসামীকে দোষী সাব্যস্তক্রমে কারাদন্ড প্রদান করতঃ প্রদত্ত রায় বা আদেশে এবং সাজা পরায়ানায় কারা কর্তৃপক্ষের প্রতি The Code of Criminal Procedure, 1898 এর 35A ধারার বিধান মতে সশ্রম বা বিনাশ্রম যে কোনো প্রকারের কারাদন্ডপ্রাপ্ত আসামীর মোট কারাদন্ডের সময়কাল হতে মামলা বিচারাধীন থাকা অবস্থায় আসামীর কারা হেফাজতে থাকা/অবস্থানরত সময়কাল বাদ দেওয়ার এবং উক্ত সময়কাল কারাদন্ডের মোট মেয়াদ হতে অধিক হলে আসামীকে তাৎক্ষণিকভাবে মুক্তি প্রদান (যদি না অন্য অপরাধে তাকে কারাগারে আটক রাখা অবশ্যক হয়) ও কারাদন্ডের অতিরিক্ত অর্থদন্ড মওকুফ গণ্য করার আদেশ সুস্পষ্টভাবে রায়ে ও সাজা পরোয়ানায় উল্লেখ করার নির্দেশ প্রদান করা গেল।

৪। সর্বোপরি The Code of Criminal Procedure, 1898 এর 35A ধারার বিধান মতে আদালত ও ট্রাইব্যুনালসমূহের রায় বা সাজা পরোয়ানায় (Conviction Warrant) কোনো কারাদন্ড প্রাপ্ত আসামীর মামলা বিচারাধীন থাকা অবস্থায় কারা হেফাজতে থাকা/অবস্থানরত সময় বিয়োগের (deduct) বিষয়/নির্দেশনা উল্লেখ না থাকলেও কারা কর্তৃপক্ষ কর্তৃক উক্ত আইনের বিধান মতে আসামীর মোট কারাদন্ড হতে মামলা বিচারাধীন থাকা অবস্থায় আসামী কর্তৃক কারা হেফাজতে থাকা/অবস্থানরত সময় বাদ দিতে এবং উক্ত সময়কাল কারাদন্ডের মোট মেয়াদ হতে অধিক হলে আসামীকে তাৎক্ষণিকভাবে মুক্তি প্রদান (যদি না অন্য অপরাধে তাকে কারাগারে আটক রাখা আবশ্যক হয়) ও কারাদন্ডের অতিরিক্ত অর্থদন্ড মওকুফ গণ্য করতে আইনত কোনো বাধা নেই।

৫। উল্লেখ্য যে, যদি একজন আসামী একই সময়ে একাধিক বিচারাধীন মামলায় আটক হয়ে কারা হেফাজতে অবস্থান করে, সেক্ষেত্রে প্রত্যেক মামলায় আসামী কবে প্রথম গ্রেফতার হয়ে কারা হেফাজতে অবস্থান করা শুরু করেছে এবং/অথবা জামিনের শর্ত ভঙের জন্য গ্রেফতার হয়ে সময়ে সময়ে কারাগারে অবস্থান করেছে তার মোট সময়কাল প্রত্যেক মামলার মোট কারাদন্ডের মেয়াদ হতে বিয়োগ (deduct) করতে হবে। কেননা, একজন আসামী প্রতিটি আলাদা মামলায়

যে কারাদন্ড প্রাপ্ত হয়, তার প্রত্যেকটি ক্ষেত্রে 35A ধারায় প্রদত্ত সুবিধা ভোগ করতে অধিকারী। আরা উল্লেখ্য যে, 63 DLR(AD)18 মামলার 41 নম্বর প্যারা ও 63 DLR(2008)363 মামলার রায়ের আলোকে The Code of Criminal Procedure, 1898 এর 35A ধারার বিধান ভূতাপেক্ষভাবে প্রয়োগযোগ্য বিধায় ফৌজদারী কার্যবিধিতে 35A ধারা সংযুক্তির পূর্বে যে সব মামলা দায়ের হয়ে চলমান আছে সে সব মামলার প্রত্যেক আসামী এ ধারায় প্রদত্ত সুবিধা ভোগের অধিকারী হবেন।

(আবু সৈয়দ দিলজার হোসেন)
রেজিষ্ট্রার, হাইকোর্ট বিভাগ।"

In Bangladesh, life sentence has become a complex patchwork of judicial and executive orders. A young person sentenced to imprisonment for life could theoretically, serve many more years in custody than an older person. Conversely, an older person has a significantly greater chance of serving the balance of his life in jail. Many prisoners serving life sentences will likely die in prison. Society should find a human way of handling life sentence. If complete bar to get release of all life convicts is provided it would fail to satisfy the principle of truth in sentencing. The imprisonment until death has some negative effects within the prison system such as ageing of the prison population and the creation "super-inmate". Generally, most of the prisoners come from poor and vulnerable communities. Critics suggest that to impose whole life tariffs denies the prisoner's human rights because it offers no possibility of release and thus no hope for the future. International human rights law allows the imposition of life sentences "only in the most serious crimes" and prohibits the use of life imprisonment without parole. Life imprisonment, without the possibility of release, leads to indefinite detention is prison, and is known to cause physical, emotional and psychological distress. Prisoners could suffer from ill-health, social isolation, loss of personal

responsibility, identity crises, and may even be driven to suicide. The prison is a terrible place to cope with a serious ailment. In the dark and dank dungeons of our prisons, life is a killer, mentally and physically. Our prisons are so chock-a-block with inmates that there are not enough spaces for them to sleep. The enormous increase in prison populations has led to severe prison overcrowding. The incarceration rates continued to climb throughout the last few decades. In some jail, prisoners have reported sleeping in shifts because there are not enough room in cells for them all to lie down at the same time. Overcrowding increases the stress put on the inmates. Adam Gopnic in "The caging of America why do we lock up so many people" has said, "----- no one who has been inside a prison, if only for a day, can ever forget the feeling. Time stops. A note of attenuated panic, of watchful paranoia, anxiety and boredom and fear mixed into a kind of developing fog, covering the guards as well as the guarded-----." The International Covenant on Economic, Social and Cultural Rights (ICESR) states that prisoners have right to the highest attainable standard of physical and mental health. In India the Krishna Iyer Committee recommended induction of more women in the police force in view of their special role in tackling women and child offenders.

It is undoubtedly true that society has a right to lead a peaceful and fearless life, without-roaming criminals creating havoc in the lives of ordinary peace-loving people. Equally strong is the foundation of a reformative theory which propounds that a civilized society cannot be achieved only through punitive attitudes and vindictiveness. The object

and purpose of determining quantum of sentence has to be 'socio-centric' following the relevant law. A civil society has a 'fundamental' and 'human' right to live free from any kind of psycho fear, threat, danger or insecurity at the hands of anti-social elements. The society legitimately expects the Courts to apply doctrine of proportionality and impose suitable and deterrent punishment that commensurates with the gravity of offence. The measure of punishment in a given case must depend upon the atrocity of the crime, the conduct of the criminal and the defenceless and unprotected state of the victim. Imposition of appropriate punishment is the manner in which the Courts respond to the society's cry for justice against criminals. Undue sympathy to impose inadequate punishment would do more harm to the justice system that undermines the public confidence in the efficacy of the law. Simultaneously it is to be borne in mind of all that criminal justice would look hollow if justice is not done to the victim of the occurrence. A victim of occurrence cannot be "a forgotten man" in the criminal justice system. It is he who has suffered the most. His family is ruined particularly in case of murder. An honour which is lost or life which is suffered out cannot be recompensed but then compensation will at least provide some solace. Bangladesh regards itself as progressive in many aspects of criminal justice system. "Allah commands justice, righteousness, and spending on ones relatives, and prohibits licentiousness, wrongdoing, and injustice----" (The Holly Qur'an 16:90) "---- Take not life, which Allah has made sacred, except by way of justice and law. Thus does He command you, so that you may

learned wisdom, ”---- (The Holly Qur’an 6:151). Life and death are acts of the Divine and the divine’s authority has been delegated to the human Courts of law to be only exercised with utmost caution.

If we read Sections 45, 53, 55 and 57 of the Penal Code with Sections 35A and 397 of the Code of Criminal Procedure together and consider the interpretations discussions above it may be observed that life imprisonment may be deemed equivalent to imprisonment for 30 years. The Rules framed under the Prisons Act enable a prisoner to earn remissions- ordinary, special or statutory and the said remissions will be given credit towards his term of imprisonment.

However, if the Court, considering the facts and circumstances of the case and gravity of the offence, seriousness of the crime and general effect upon public and tranquillity, is of the view that the convict should suffer imprisonment for life till his natural death, the convict shall not be entitled to get the benefit of section 35A of the Code of Criminal Procedure. In the most serious cases, a whole life order can be imposed, meaning life does mean life in those cases. In those cases leniency to the offenders would amount to injustice to the society. In those cases, the prisoner will not be eligible for release at any time. The circumstances which are required to be considered for taking such decision are: (1)surroundings of the crimes itself; (2) background of the accused; (3) conduct of the accused; (4) his future dangerousness; (5) motive; (6) manner and (7)magnitude of crime. This seems to be a common penal strategy to cope with dangerous offenders in criminal justice system.

Bentham, Auston Hart, Kelsen and some other jurists said that law making is the task of legislature, not of judiciary. In England, this principle is strictly followed. In Magor and St Mellons Rural District Council V. Newport Corporations [(1951) 2 All E Q 839] the House of Lords overruled the decision of Lord Denning in the Court of Appeals, holding it to be "a naked usurpation of legislative powers". There is separation of powers in the Constitution between three organs of the state, and one organ should not ordinarily encroach into the domain of another, otherwise, there will be chaos. Of all the organ of the state, it is only judiciary which can define the limits of all three. This great power must therefore be exercised by the judiciary, with the utmost humility and self restraint. Judicial activism is not an unguided missile, and must not become judicial adventurism. Courts decision should have a jurisprudential base. A judge makes a decision in accordance with law and customs of the land. He can not introduce new law but make constructive interpretation and work out the implications of legal considerations. In the exercise of the judicial power, the Court should within the legally imposed restrictions act by adopting the best interpretations. Only the legislature is legally empowered to enact law fixing a definite period of life imprisonment resolving dichotomy and put an end to the ambiguity.

However, with the development and fast changing society, the law cannot remain static and the law has to develop its own principles. In view of discussions made above, it can be said that imprisonment for life may be deemed equivalent to imprisonment for 30 years.

In order to avoid any controversy it is relevant here to mention that punishment awarded by the International Crimes Tribunal under the International Crimes (Tribunals) Act,1973 (Act XIX of 1973) is to be regulated/controlled/guided following the provisions provided under article 47(3), 47A (1) and (2) of the Constitution and as per provisions of International Crimes (Tribunals) Act, 1973 and Rules framed thereunder. A convict under the said Act is not entitled to get benefit of Section 35A of the Code of Criminal Procedure.

In view of the facts and circumstances, the discussion made above the review petition is disposed of with the following observations and directions:

1. Imprisonment for life prima-facie means imprisonment for the whole of the remaining period of convicts natural life.
2. Imprisonment for life be deemed equivalent to imprisonment for 30 years if sections 45 and 53 are read along with sections 55 and 57 of the Penal Code and section 35A of the Code of Criminal Procedure.
3. However, in the case of sentence awarded to the convict for the imprisonment for life till his natural death by the Court, Tribunal or the International Crimes Tribunal under the International Crimes (Tribunal) Act, 1973 (Act XIX of 1973), the convict will not be entitled to get the benefit of section 35A of the Code of Criminal Procedure.

Considering the facts and circumstances, the sentence awarded to the review petitioner is modified to the extent that he is sentenced to

suffer imprisonment for life and to pay fine of taka 5000/-, in default, to suffer rigorous imprisonment for 2(two) months more.

We express our gratitude to the learned ***amici curiae*** for their gracious assistance.

(It is to be mentioned here that during the course of the hearing of this matter, Mr. Mahbubey Alam, the then Attorney General died on 27.09.2020 of COVID-19. He gave much labour in this case and assisted the Court. Thereafter, the matter was reheard upon reconstituting the bench with newly elevated Judge Obaidul Hasan, J. Then Mr. A.M. Aminuddin, newly appointed Attorney General appeared for the State who adopted the submissions made by late legend Mahbubey Alam.)

J.

Mirza Hussain Haider, J: I have gone through the judgment delivered by my brother, Muhammad Imman Ali, J. and my brother Hasan Foez Siddique, J. I agree with the reasoning and findings given by Hasan Foez Siddique, J.

J.

Abu Bakar Siddiquee, J: I have gone through the judgment delivered by my brother, Muhammad Imman Ali, J. and my brother Hasan Foez Siddique, J. I agree with the reasoning and findings given by Hasan Foez Siddique, J.

J.

Md. Nuruzzaman, J: I have gone through the judgment delivered by my brother, Muhammad Imman Ali, J. and my brother Hasan Foez

Siddique, J. I agree with the reasoning and findings given by Hasan Foez Siddique, J.

J.

Obaidul Hassan, J: I have gone through the judgment delivered by my brother, Muhammad Imman Ali, J. and my brother Hasan Foez Siddique, J. I agree with the reasoning and findings given by Hasan Foez Siddique, J.

J.

Courts Order

The review petition is disposed of with the following observations and directions by majority decision:

1. Imprisonment for life prima-facie means imprisonment for the whole of the remaining period of convicts natural life.
2. Imprisonment for life be deemed equivalent to imprisonment for 30 years if sections 45 and 53 are read along with sections 55 and 57 of the Penal Code and section 35A of the Code of Criminal Procedure.
3. However, in the case of sentence awarded to the convict for the imprisonment for life till his natural death by the Court, Tribunal or the International Crimes Tribunal under the International Crimes (Tribunal) Act, 1973 (Act XIX of 1973), the convict will not be entitled to get the benefit of section 35A of the Code of Criminal Procedure.

Considering the facts and circumstances, the sentence awarded to the review petitioner is modified to the extent that he is sentenced to suffer imprisonment for life and to pay fine of taka 5000/-, in default, to suffer rigorous imprisonment for 2(two) months more.

C.J.

J.

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The 1st December, 2020
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