

**The Impact of Ataur Mridha Case on Prevailing Life-Sentence System in  
Bangladesh: An Appraisal and Review**

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## **Abstract**

A determinate sentencing system in Criminal Law of a country provides an idea of offense and its specific term of punishment to serve. It upholds the consistency in criminal justice system. But it is a bitter truth that, in Bangladesh there is no existence of specific sentencing guideline. This thesis analyzes the existing life-sentencing system of Bangladesh and tries to show the perplex circumstances in legal system of Bangladesh for the absence of specific sentencing guideline. Thus the main focus of this research is to find out that how much the judgment held by the Appellate Division in the case *Ataur Mridha vs The State* in Bangladesh is justified and ensures the rights of the life convicts and its effect on the existing legal system of Bangladesh. It aims to uphold the analytical discussions of the cases of other countries but predominantly Indian and Bangladeshi cases from the perspective of legal provisions and judicial decisions. These questions are also explored from the perspective of a range of jurisdictions that draw on empirical research. This thesis paper is prepared on the basis of a qualitative research by content analysis which shows the precedent by the Appellate Division is contradictory and repugnant to many existing laws of Bangladesh. The result comes out from the research focuses on the absurd consequence for the prisoners by the Appellate Division and the violation of their rights both in domestic law.

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# Chapter 1

## Introduction

In criminal justice system, sentencing guideline is one of the most important parts for establishing a rational and keeping consistency in sentence practicing. 'It is often articulated that sentencing is an art and not a science'.<sup>1</sup> In Bangladesh the penal laws give the judges a wide discretionary power to exercise for sentencing the offenders. It may be specifically mentioned that in 1978 provisions for separate sentence hearing was inserted in the Code of Criminal Procedure<sup>2</sup>, 1898 for trial in Sessions Courts and Magistrate Courts but both were repealed by the Ordinance of 1982.<sup>3</sup> Therefore it is a great disadvantage for the criminal justice system in Bangladesh that there is no system or procedure in our criminal justice administration, nor any rule to exercise such discretion.<sup>4</sup>

Imprisonment in its pure and simple form is a kind of punitive reaction, its object being primarily to deprive the offender of his liberty which is the most serious damage which can be caused to a human being, next only to deprivation of life by death sentence.<sup>5</sup> In Bangladesh, imprisonment for life is also a punitive measure and a common mode of punishment under section 53 of the Code is being used frequently for grave and severe offences since from the early period of time. There are only two provisions which are section 55 and 57 of the Penal Code, 1860 inflict life imprisonment. A simple reading of these sections provides that imprisonment for life is not to mean the imprisonment till death.<sup>6</sup> But all of a sudden, from the year of 2017, dispute raised about the tenure, nature and object of life imprisonment starting from the judgment of *Ataur Mridha* case where the Court constantly asserted that the prisoner shall have to suffer rest of his natural life till death and such type of cases would be beyond the application of remission.

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<sup>1</sup> Ashworth, A., Sentencing and Criminal Justice, Butterworths, 200, p. 34.

<sup>2</sup> Section 265K(2) reads thus: 'Where in any case under this chapter, the Magistrate finds the accused guilty, but does not proceed in accordance with the provisions of section 349 or section 562, he shall after hearing the accused on the question of sentence, pass sentence upon him according to law.'

<sup>3</sup> Section 265K(2) reads thus: 'Where in any case under this chapter, the Magistrate finds the accused guilty, but does not proceed in accordance with the provisions of section 349 or section 562, he shall after hearing the accused on the question of sentence, pass sentence upon him according to law.'

<sup>4</sup> *State vs Mir Hossain* 56 DLR (HD) 124.

<sup>5</sup> Ahmed Siddique, Criminology-Problems and Perspectives, 2<sup>nd</sup> Edn, Eastern Book Company, pp. 75

<sup>6</sup> Section 55 of the Penal Code, 1860 reads thus: *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* and 57 reads thus: *In calculating fractions of terms of punishment, imprisonment for life shall be reckoned as equivalent to rigorous imprisonment for thirty years.*

Basically this judgment raised huge controversies and confusions in the existing legal provisions and criminal justice system in Bangladesh. Therefore this thesis paper mainly aims to analyze critically the effect and justification of the precedent of *Ataur Mridha* case on the existing legal system of Bangladesh.

In order to do that, this thesis paper has been divided into six chapters. Firstly, introduction of this thesis paper is given in the first chapter which describes the purpose of the research along with methodology, scopes and limitations. Secondly, the second chapter attempts to discuss the historical background of life imprisonment focusing the philosophical origin of life imprisonment. After that, the third chapter of this thesis paper discusses the current life sentencing process in Bangladesh which gives a glimpse of the statutory provisions as well as the judicial precedents of Bangladesh before the judgment of *Ataur Mridha* case. Next, the fourth chapter describes laws relating to life imprisonment in some commonwealth countries. Subsequently, a critical analysis on the life sentencing system is deliberated in the fifth chapter which discusses the complexities relating to laws, constitution, existing legal system, rules of construction, international law and impact in practical life separately. Lastly the paper concludes with its finding of the overall research in the sixth chapter.

#### **A) Research Methodology:**

This thesis is mainly a qualitative research which depends on content analysis. This qualitative study seeks to understand the viability of the judgment of a recent case *Atatur Mridha vs The state* and how it keeps impacts on the convict's life and existing legal system of Bangladesh. For this study, descriptive research method was utilized. In this study, various statutes and primary sources as well as secondary sources have been applied. This paper also focuses on the legitimacy of the judgment and rights of the life convicts from various aspects. For this purpose, this thesis is based on primary sources including domestic statutes, case laws rules, regulations and secondary sources including books, commentaries on statutes, articles, periodicals, reports and other sources from internet.

#### **B) Scope and Limitations:**

The thesis paper focuses on the sentencing guidelines regarding imprisonment for life. The limitation of this research is the non-availability of resources. Moreover denying permission to visit the prisons of life convicts, non-availability of Bangladesh's cases in internet and most importantly failure of primary data collection and conducting interview in judiciary

sectors due to their privacy and security issues and time constraints involved in this research. However this research paper draws its conclusion by analyzing all juridical provisions, decisions and including existing scenario in Bangladesh.

## Chapter 2

### A Brief Historical Background of Life Imprisonment

In ancient period, according to Hindu Sastras, it was king's power to punish the law-breaker and protect the law-abider. According to Manu, 'king was Danda Chhatra Dhari i.e., holder of Danda (punishment) and Chhatra (protector).'<sup>7</sup> King was the sole authority to punish the offenders in order to keep and maintain peace in the society.

In earlier times, crime was attributed to the influence of 'evil spirit' or 'free-will' of the offender. So the society preferred severe and deterrent punishment for the offender for his act of voluntary perversity which was believed to be challenge to God or religion.<sup>8</sup> Prescribed forms of punishment were not designed like today rather given in barbaric and cruel ways and nature. Therefore the consequence of committing a crime meant rush and cruel punishment which most of the time caused death to the offenders.

According to the *preventive theory*<sup>9</sup>, the method for prevention of crime is 'prisonisation'. It was a mode for elimination of crime from the society. 'A belief was that, imprisonment is the best mode of punishment because it serves an effective measure which contains all as deterrence, retribution and prevention. Traditionally it was held that imprisonment should be used only for the custody of offenders until such time as they could conveniently be dealt with'.<sup>10</sup>

From very earlier times punishments were given to offenders by inhuman and irrationalized methods. Most popular forms of corporal punishment have been solitary confinement, flogging or whipping and transportation. Some critics even suggest that the provision of solitary confinement should be scrapped from the statute book because it is considered as human torture by the U.N. Human Rights Charter.<sup>11</sup> Later, more civilized society and rational minds of human brought a radical change in the nature of punishments.<sup>12</sup> For being inhuman and unusual in nature, the Whipping Act of 1909 was abolished in 1955; subsequently imprisonment was substituted in transportation in 1985. Since then corporal punishments were being abolished throughout the world and imprisonment has become the most common

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<sup>7</sup> Manu Smriti VII 8

<sup>8</sup> Barnes & Teeters: New Horizons in Criminology. (3<sup>rd</sup> Ed) p. 216

<sup>9</sup> Ahmed Siddique, Criminology, Eastern Book Company, 2nd Edn. P.75.

<sup>10</sup> Ibid.

<sup>11</sup> Prof. N.V. Paranjpe: Criminology & Penology with Victimology. p.313

<sup>12</sup> Sue Titus Reid, Crime and Criminology, 4<sup>th</sup> Edn, pp. 481 & 482.



method of punishment which is of two kinds; imprisonment for a term and imprisonment for life.

Thus the advent of modern, structured and rationalized forms of punishment have evolved gradually in the civilized society and became less cruel by various sort of penal laws. The Penal Code, 1860 thus provide a new dimension of modern and rationalized punishment in which section 53 of this Code prescribes five kinds of punishments which are-

1. Death Penalty (Capital Punishment)
2. Imprisonment for life which was substituted for the word 'Transportation' by the Amendment of 1985.
3. Imprisonment which is of two kinds- simple and rigorous.
4. Forfeiture of property and
5. Fine.

## Chapter 3

### Current Life Sentencing Practices in Bangladesh

This chapter discusses the current practice of life sentence in Bangladesh and for this purpose this chapter has been divided into two parts- a) statutory provisions and b) judicial precedents as to life imprisonment structure in Bangladesh.

However the exact period of 'life imprisonment' is a gray and confusing area for the lawyers, the Jail authority as well as the Court, after the judgment of *Ataur Mridha* case. Because the meaning of 'imprisonment for life' is neither defined in the Penal Code nor in any other Act. Nevertheless this term can be interpreted by various legal provisions and judicial decisions with explanation by the Courts as well as by other circumstances which are discussed in this chapter.

#### A. Glimpse of the Statutory Provision:

**i) The Penal Code, 1860 and the Code of Criminal Procedure, 1898 of Bangladesh:** To enunciate a specific and literal meaning of life imprisonment, the word "life" can be taken into consideration. Section 45 of the Penal Code, 1860 provides that- the word "life" denotes the life of a human being, unless the contrary appears from the context. In calculating fractions of terms of punishment, imprisonment for life shall be reckoned as equivalent to rigorous imprisonment for thirty years.<sup>13</sup> Besides 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.<sup>14</sup> Now the word "commute" may be seen as an arguable word and may be interpreted in different way by the courts. Therefore to be more specific, it can be said that in law, a commutation is the substitution of a lesser penalty for that given after a conviction for a crime. The penalty can be lessened in severity, in duration, or both.<sup>15</sup>

This power of commutation is given to the Government extraordinarily in the Penal Code, 1860 as well as in the Code of Criminal Procedure, 1898. Commutation of sentence of imprisonment for life is specially provided in section 55 of the Penal Code, 1860 which states

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<sup>13</sup> Section 57 of the Penal Code, 1860.

<sup>14</sup> Section 54 of the Penal Code, 1860.

<sup>15</sup> Larson, Aaron. "How to Apply for a Pardon or Commutation of Sentence".

<<https://www.expertlaw.com/library/criminal-law/how-apply-pardon-or-commutation-of-sentence>> accessed on March 10,2019.

that- in every case in which sentence of imprisonment for life shall have been passed, the appropriate Government may, without the consent of the offender, commute the punishment for imprisonment of either description for a term not exceeding fourteen years. ‘The Government can commute a sentence under this section but that is done as a matter of grace and not in the exercise of judicial discretion.’<sup>16</sup> However, in Bangladesh the first legislative piece on probation was sections 562-564 of the Code of Criminal Procedure, 1898 but later repealed by the Probation of Offenders Ordinance, 1960.<sup>17</sup>

Moreover life convicts can have a remedy for inordinate delay in trial proceedings by the deduction of trial period from the total imprisonment. states that - 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.<sup>18</sup> But ‘every such judgment shall contain the point or points for determination, the decision thereon and the reasons for the decision.’<sup>19</sup>

#### **ii) The Jail Code, 1920 of Bangladesh:**

The Jail Code, 1920 of Bangladesh exclusively provides some legal provisions for the life convicts. Jail code, 1920 states that, life convict means a prisoner whose sentence amounts to 30 years imprisonment.<sup>20</sup> The rule of ‘removal of prisoners’ provides that the Government may, by general or special order, provide for the removal of any prisoner confined in a prison under, or in lieu of, a sentence of imprisonment or transportation.<sup>21</sup> Hence under the purview of this provision, a life convict may get commutation of sentence from the Government made rules.

#### **iii) Constitution of the People’s Republic of Bangladesh:**

The constitution of Bangladesh which is the supreme law of Bangladesh also confers rights upon the president for prisoners. ‘The Constitution became an important instrument at the hands of both judiciary and the legislature with which to reshape the criminal justice

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<sup>16</sup> Zahurul Huq, Law and Practice of Criminal Procedure, Bangladesh Law Book Company, pg.774.

<sup>17</sup> Tureen Afroz, Sentencing Practices, BILIA, November 2007.

<sup>18</sup> Section 35A of the Code of Criminal Procedure 1898.

<sup>19</sup> Section 367(1) of the Code of Criminal Procedure, 1898.

<sup>20</sup> Rule 751(f) of the Jail code 1920.

<sup>21</sup> Section 29(2) of the Prisoners Act, 1900.

processes towards a due process structure'.<sup>22</sup> According to article 49 of the Constitution, the President shall have power to grant pardons, reprieves and respites and to remit, suspend or commute any sentence passed by any court, tribunal or other authority. Besides it is one of the fundamental rights that torture or cruel, inhuman, or degrading punishment or treatment is absolutely prohibited.<sup>23</sup> Moreover if we look into the chapter of 'fundamental rights' certain rights can be guaranteed for the life convicts, for instances right to equality and equal protection of law<sup>24</sup> and to be treated in accordance with the law<sup>25</sup>, right to life and liberty<sup>26</sup> by the Constitution.

## **B. Role of Judicial Precedents in Shaping Up the Life Imprisonment Structure in Bangladesh:**

From the early period of history, the nature of punishment has been changed with time. Transportation of life was a method of punishment by which the criminals were taken far away from the society as a consequence of his heinous nature of crime. Transportation was one for life and another for a shorter term. But in the Penal Code, nowhere the duration of transportation for life was defined or specified. In 1985, imprisonment for life was substituted in the place of transportation but yet confusions and debate were still in force about the meaning and duration of imprisonment for life. If we look into the cases of the early period, it is crystal clear that imprisonment for life was given for a specified period.

This point will show that until the Appellate Division's opinion in *Ataur Mridha* case fully released on 24<sup>th</sup> April, 2017, although there were always confusions as to the tenure, imprisonment for life in Bangladesh used not to mean imprisonment for the rest of the convict's life.

Considering the cases *G.L. Bhattacharya vs The State*<sup>27</sup> (1964) and *Farid Khan vs The State*<sup>28</sup>, the rule laid down by full bench of this Court will have to be followed, namely, that for all purposes the aggregate sentence with have to be treated as 20 years and remissions will also have to be allowed on that applicability. Sometimes it was also indicated from cases that life imprisonment was given for any specified period but not for the whole life. In *Farid Ali*

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<sup>22</sup> Ridwanul Hoque, Criminal Law and the Constitution: The Relationship Revisited, BILIA, November, 2007.

<sup>23</sup> Article 35(5), People's Republic of Bangladesh.

<sup>24</sup> Article 27, People's Republic of Bangladesh.

<sup>25</sup> Article 31, People's Republic of Bangladesh.

<sup>26</sup> Article 32, People's Republic of Bangladesh.

<sup>27</sup> *G.L. Bhattacharya vs The State* 16 DLR (SC) 442

<sup>28</sup> *Farid Khan vs The State* 1965 PLD 31

*vs The State*<sup>29</sup> case- Imprisonment for life need not be ordered to be served for 30 years which has no legal basis. Commutation of sentence is provided for under section 55 of the Penal Code, 1860.

Before this decision, in Bangladesh the Appellate Division in only one case commuted a death sentence to imprisonment for the rest of the convict's life. This happened to Sukkur Ali, an under-aged convict, who was awarded the death for the offence of rape and murder under a 1995 law.<sup>30</sup> In another case involving international war crimes and crimes against humanity, the Appellate Division commuted the sentence of death to an imprisonment till the rest of life as this was thought to be 'proportionate to the gravity of the crimes' committed by the accused.<sup>31</sup>

By referring to the AD's observation, in *Rokeya Begum v. State*<sup>32</sup>, that life convicts do get released within 22 to 22 and a half years, the Chief Justice remarked that "the above views are not correct views and accordingly these are taken to be not in conformity with law". His Lordship then continued:

"There is no doubt about the actual period of sentence to be suffered by a life convict. The Chief Justice has faced the same question when he has visited different jails. Life convicts complained to the Chief Justice about the exact period to be undergone by them. It is under this juncture the law is required to be settled by this court."<sup>33</sup>

So according to the explanation of this case, indeed it appears to be an erroneous interpretation. The way it has been interpreted, the word "life" does not bear its normal linguistic meaning. In other words, a person sentenced to imprisonment for life does not necessarily spend his life in prison, although section 45 of the Penal Code defines "Life" as the life of a human being unless the contrary appears from the context. Moreover, Jail Code

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<sup>29</sup> *Farid Ali vs The State* 4 MLR (1999) HC 23

<sup>30</sup> This is another controversial decision. Scope of this paper does not allow me to comment in detail on this here. Interested reader may have a look at: Andrew Novak (2015), "The abolition of the mandatory death penalty in Bangladesh: a comment on Bangladesh Legal Aid and Services Trust v. Bangladesh", 15(2) Oxford University Commonwealth Law Journal, 277-285, and Ridwanul Hoque (2010), "The case of Shukur Ali: Mandatory death penalty and the 'hard case' phenomenon", the Daily Star, Issue 195 Law & Our Rights, 20 November, 2010. For the decisions, see *BLAST v Bangladesh* 1 SCOB [2015] AD 1; *BLAST v Bangladesh* (2010) 30 BLD (HCD) 194; and *State v. Sukur Ali* (2004) 9 BLC (HCD) 238.

<sup>31</sup> In Criminal Appeal Nos. 39-40 of 2013. It is to be noted that imprisonment of the whole-life sentence was possible in case of those trials because of the specific provision of the International Crimes (Tribunals) Act 1973, s. 20(2) of which provides that "[u]pon conviction of an accused person, the Tribunal shall award sentence of death or such other punishment proportionate to the gravity of the crime as appears to the Tribunal to be just and proper"

<sup>32</sup> *Rokeya Begum V. State* 4 CLR (AD) 147.

<sup>33</sup> *Ibid*, see para 23.

effectively means that a person sentenced to imprisonment for life will be released after spending a maximum of 21/22 years in prison.

But reaching at the year of 2017, in the case of *Ataur Mridha* case- ‘it is certain to create more confusions than the Court seeks to eliminate that can be noted the following dictums:

- a) Life imprisonment within the meaning of section 53 read with section 45 of the Penal Code means imprisonment for rest of the life of the convict.
- b) If the High Court Division or this court commutes a sentence of death to imprisonment for life and directs that the prisoner shall have to suffer rest of his natural life, such type of cases would be beyond the application of remission.
- c) The government exercises the power of remission which is executive power while the court gives punishment to an accused which is a judicial power and this executive power shall not prevail over the judicial power.
- d) The appeal, is therefore, dismissed with commutation of the sentence of the appellants to imprisonment for rest of the life.’<sup>34</sup>

Eventually, from the above discussions and case references, we are inclined to think that, life imprisonment used to denote imprisonment for a specified period. It was not regarded as whole life which in a conflicting concept with the observation and principle of *Atatur Mridha* case.

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<sup>34</sup> Ridwanul Hoque, Speech paper, Constitutionalism and the Concept of Whole-Life Sentence in Bangladesh; Work- in-progress; BILIA, Symposium on Imprisonment for Life as Imprisonment Till Death; 20 May 2017.

## Chapter 4

### Laws Governing the Life Sentence in Some Commonwealth Countries

For the leading commonwealth countries with the practiced of whole-life sentence, the death penalty remains prohibited. In other such countries, there are chances for the convicts to be freed on parole or to have their life-terms periodically suspended. Also, there are often long-term determinate sentence even for serious crimes.<sup>35</sup> For instance, in England, according to The Criminal Justice Act 2003 some guidelines are seen for how long murderers should spend in prison before being considered for parole. Though Judges are not obliged to follow the guidelines, however must give reasons in court if they depart from them.<sup>36</sup> No person under age 21 can be sentenced to whole life imprisonment.<sup>37</sup>

Canada has also the parole system. However, the eligibility of parole differs by the virtue of offences. The first degree murder and high treason carry a full parole ineligibility period of twenty-five years along mandatory sentence of life imprisonment.<sup>38</sup> For Second degree murder, the ineligibility is ten to fifteen years.<sup>39</sup>

Like Bangladesh, there was ambiguity about the computing of imprisonment of life in India. There was misconception about life imprisonment for fourteen years or twenty.<sup>40</sup> However, with some cases the view has changed. Now, Life imprisonment means whole of the remaining period of the convicted person's natural life unless it is curtailed by remissions validly granted under the Code of Criminal Procedure<sup>41</sup> or by the appropriate Government or under articles 72 and 161 of the Indian Constitution by the Executive Head.<sup>42</sup> The Indian Supreme Court itself specified in some earlier cases that the accused person must spend at least 20 years in prison before being entitled for remission.<sup>43</sup> Section 376(2) of the Indian Penal Code

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<sup>35</sup> Ridwanul Hoque, Constitutionalism and the Concept of Whole-Life Sentence in Bangladesh; Work-in-progress; BILIA Symposium on Imprisonment for Life as Imprisonment Till Death; 20 May 2017.

<sup>36</sup> Schedule 21 of the Criminal Justice Act 2003.

<sup>37</sup> Ibid.

<sup>38</sup> Section 745.6 of the Canadian Criminal Code

<sup>39</sup> Section 745.6 (2.1) of the Canadian Criminal Code

<sup>40</sup> *Union of India v. Sree Horan*, (2016) 7 SCC 1

<sup>41</sup> *Jayawant Dattatraya Suryarao V. State of Maharashtra*, (2001) 10 SCC 109

<sup>42</sup> *State of M.P. V. Ratan Singh*, (1976)3 SCC 470

<sup>43</sup> Dhananjay Mahapatra (2012), "Will life term now mean 30 years in Jail?", The Times of India, 16 May, 2012. <<http://timesofindia.indiatimes.com/india/Will-life-term-now-mean-30-years-in-jail/articleshow/13156614.cms>>. But see a conflicting observation in *Union of India v. Sree Horan* (2016) 7 SCC 1, on which see a report titled "Life imprisonment can't simply end after 20 years: Supreme Court". Available at: <<http://www.deccanchronicle.com/nation/current-affairs/300616/life-imprisonment-cant-simply-end-after-20-years-supreme-court.html>>.

provides that if a member of the police commits the crime of rape on a woman, his maximum punishment shall be life imprisonment, meaning the rest of the remainder of his life.<sup>44</sup> It means that, in other cases, life imprisonment in India does not or should not mean whole-life sentence.

There is a quite similar development in Pakistan, where Pakistani parliament in October 2016 enacted a law that set a minimum term of 25 (mandatory prison term) years for the life-termers convicted for so-called honour killings.<sup>45</sup> This had the object of providing for stern punishment for the offence of honour killing that was on the rise.<sup>46</sup>

After considering the situation in other commonwealth countries, my point of view is that, there are absences of guidelines in the judgment of *Ataur Mridha* case. Accordingly the lordship of *Ataur Mridha* case has failed to consider these cases and Criminal Justice Act 2003 into Consideration like he did from Indian jurisdiction.

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<sup>44</sup> This rule was introduced in 2013 via the Criminal Law (Amendment) Act 2013.

<sup>45</sup> For a report, visit <<https://www.theguardian.com/world/2016/oct/06/pakistan-honor-killing-law-prison-sentence>>. Earlier in 2004, the Pakistani Supreme Court observed in passing that there is no law in the country which declares that life imprisonment means 25 years in prison. For a report, visit <<https://www.dawn.com/news/377527>> accessed in 5<sup>th</sup> March, 2019.

<sup>46</sup> Ridwanul Hoque, Constitutionalism and the Concept of Whole-Life Sentence in Bangladesh; Work-in-progress; BILIA Symposium on Imprisonment for Life as Imprisonment Till Death; 20 May 2017.



## Chapter 5

### The Legal Complexity in the Life Sentencing System in Bangladesh Fructified by the Ataur Mridha Case: A Critical Approach

In the previous chapters we can see the legal provisions regarding imprisonment for life and judicial decisions by which a conclusion can be hold that life imprisonment was being used as for a specific term since early period. But still there is a debate as to the duration of life imprisonment. In *Ataur Mridha* case, the Court held that life imprisonment means imprisonment till death and not subject to any remissions. This case is mentionable because of the complexities in its reasoning given by the Court and to focus on the complexities, this chapter is divided into four parts which are arguments of law, constitutional aspect, problems regarding different legal systems, rules of construction and impacts in practical life. They are given in brief as follows:

#### A. Arguments of Law:

The term “imprisonment for life” raises the first question that is what does the term “life” actually mean. Section 45 of the Penal Code 1860 of Bangladesh denotes that life means the life of a human being, unless the contrary appears from the context. Even in the *Ataur Mridha* case the Court repeatedly referred section 45 of the Penal Code and stated that life will be interpreted as the whole life of human being.<sup>47</sup> In this view, life imprisonment is indicated as imprisonment for the rest of life. But on a similar context, the judgment of *Rokeya Begum vs The State*<sup>48</sup> case states that ‘imprisonment for life as used in Bangladesh is utterly a misnomer; indeed it appears to be an erroneous interpretation. The way it has been interpreted, the word “life” does not bear its normal linguistic meaning. In other words, a person sentenced to imprisonment for life does not necessarily spend his life in prison, although section 45 of the Penal Code defines’.<sup>49</sup> Therefore a controversial situation arises when the Courts are giving different opinions in the similar subject matter.

Secondly the Court repeatedly uttered the term “commutation power”<sup>50</sup>. The court interpreted this power as a power only exercisable by the judiciary and involving non-interference by the

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<sup>47</sup> Ibid, see para 18 & 19.

<sup>48</sup> *Rokeya Begum vs The State* 4 CLR (AD) 147

<sup>49</sup> Ibid, see para 23.

<sup>50</sup> Ibid, see para 83, 85 & 88.

executive.<sup>51</sup> Here the interpretation can be said virtually wrong. This is because nowhere of any statutes of Bangladesh confers the power of commutation to the Court. Rather this power is exceptionally given to the Government.<sup>52</sup> Even the Constitution which is the Supreme Law of Bangladesh confers on the President the power of granting amnesty, to grant pardons, reprieves and respites and to remit, suspend or commute any sentence passed by any court, tribunal or other authority.<sup>53</sup> Therefore it is clear enough that the power of commutation is only conferred upon the Government and the President of the country. But if the case is that life imprisonment shall mean whole life of the prisoner and till death, question arises that how would the Government commute the punishment for imprisonment for a term not exceeding twenty years in exercise of section 55 of the Penal Code. For instance, the Government wants to commute twenty years of total imprisonment of a life convict. If the life convict has to spend the whole life in prison, then how shall the time of commutation be counted from the total imprisonment? It is also not possible to predict the time of the prisoner's death. Therefore the entire power of the Government regarding commutation of sentence and the purpose of this provision become frustrated and the provisions in this regard have made ineffective.

To be added that the Attorney-General for Bangladesh, however, made a preliminary comment that the verdict 'will be applicable to all those who are in prison now.'<sup>54</sup> It means that, if the commutation power is not exercised and the judgment of *Ataur Mridha* case is upheld and accordingly life convicts have to spend their whole life in prison, then the confusing area is the consequences for those prisoners who are residing in jail. We know that criminals cannot be punished by making new laws because ordinarily, a canon of interpretation of penal legislation does not permit penal provisions to have retrospective effect.<sup>55</sup> No criminal proceedings are generally maintainable in respect to acts done before the commencement of the statute. Thus criminal laws with retrospective effect are totally unfair and unjust. Having criminal laws with retrospective effect is against the right to life.<sup>56</sup> But the decision of Appellate Division unsettles the convict's right retrospectively.

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<sup>51</sup> Ibid, see para 83

<sup>52</sup> Section 54,55 of the Penal Code, 1860., section 401, 402 of the Code of Criminal Procedure, 1898.

<sup>53</sup> Article 49, Constitution of the People's Republic of Bangladesh.

<sup>54</sup> See a report titled "Life imprisonment means jail for rest of life: Full SC verdict published", available at: <<http://bdnews24.com/bangladesh/2017/04/25/life-imprisonment-means-jail-for-rest-of-life-full-sc-verdict-published>>.

<sup>55</sup> Nikit Bala, Retrospective Operations of Criminal Law <<http://www.legalserviceindia.com/article/1191-Retrospective-Operations-Of-Criminal-Law.html>>

<sup>56</sup> Nikit Bala, Retrospective Operations of Criminal Law <[14 | Page](http://www.legalserviceindia.com/article/1191-</a></p></div><div data-bbox=)

Beside this contention, the life convicts who are already released after the completion of twenty or thirty years, they will be either liable to be imprisoned again for the rest of their life in effect of the judgment or not. If they are liable, this will violate the principle of “double jeopardy.” Because no person shall be prosecuted and punished, vexed or tried twice for the same offence more than once.<sup>57</sup> This doctrine prohibits a person from being punished twice for the same offence.<sup>58</sup> And if they are not liable to be imprisoned again, it will be injustice for the remaining life convicts in jail because they are not supposed to be discriminated against sentences. Thus it shows that the reasoning given by the Court in Ataur Mridha case creates absurd circumstances to be followed.

‘The High Court Division (hereinafter referred as HCD) or Appellate Division (hereinafter referred as AD) commuted a sentence of death to imprisonment for life and directed that the prisoner shall have to suffer rest of his natural life; such type of cases would be beyond the application of remission.’<sup>59</sup> Here the AD held to mean that, when the AD or HCD commutes the death sentence to whole life sentence which would not subject to grant of remission by the government<sup>60</sup> whereas The question of remission is exclusively within the province of the appropriate Government<sup>61</sup> The lesser sentence, pardon or remission is one of the powers of the Government or President, where the Court does not have any right to interfere in this matter. It will be clearer if we see the principle of *Iqbal vs Bangladesh*<sup>62</sup> case, which is power to suspend or remit sentence is within the absolute discretion of the Government or the President under section 401 of the Code of Criminal Procedure and the Court cannot give any direction in this regard.

On the other hand, if the Court does not direct that the life convict would suffer imprisonment for the rest of his life, then this type of sentence would be subject to remissions. In that case, problem would arise as to the length of the minimum term for the purpose of reckoning remissions that would it be 30 years under section 57 of the Penal Code? If so, is there any

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[Retrospective-Operations-Of-Criminal-Law.html](#)>

<sup>57</sup> Section 26 of the General Clauses Act, 1897, section 403 of the Code of Criminal Procedure, 1898, Article 32(2) of the Constitution of the People’s Republic of Bangladesh.

<sup>58</sup> *Ibrut vs The Commander-in-chief, Royal Pakistan Navy* 8 DLR (1956) AD 128.

<sup>59</sup> Ridwanul Hoque, Speech paper, Constitutionalism and the Concept of Whole-Life Sentence in Bangladesh; Work- in-progress; BILIA, Symposium on Imprisonment for Life as Imprisonment Till Death; 20 May 2017.

<sup>60</sup> For a support to this view, see M. Jashim Ali Chowdhury (2017), “Life imprisonment verdict: A contextual reading”, the Daily Star, Dhaka, 16 May 2017. As argued in this paper, judicial creation of even this limited type of whole-life sentence would be difficult to justify on the ground of principles of constitutionalism.

<sup>61</sup> *Md. Munna vs Union Of India & Ors* AIR 2005 SC 3440.

<sup>62</sup> *Iqbal vs Bangladesh* 1 BLD 107, See para 36

necessity to award a whole-life sentence?<sup>63</sup> For that purpose, AD referred number of Indian cases; therefore it is also mentionable that in India sometimes direction regarding the term of life sentence converted from death sentence can be made that the petitioner shall serve 30 years in jail without remission<sup>64</sup> which does not comply with the above statement of the Court and also not referred by the Court in this regard. Rather the Court constantly held that, the accused will not be awarded remissions of sentence by the application of the Bengal Jail Code. It was stated that the sentence of imprisonment for life is one of indefinite duration, the remission earned by a prisoner do not in practice help such a convict, as it is not possible to predicate the date of his death.<sup>65</sup> On the other hand, in the judgment of the case *Rokeya Begum vs The State*- it was stated that the Jail Code,1920 effectively means that a person sentenced to imprisonment for life will be released after spending a maximum of 22 ½ years in prison.<sup>66</sup>

In the *Ataur Mridha* case it is noticeable that the entire trial proceeding was held taking almost six years in the custody. In such cases the Code of Criminal Procedure of Bangladesh considers the time period in custody and authorizes the deduction of that total period in the meantime except in case of death sentence.<sup>67</sup> But the judgment shows that the Court has wrongly considered section 35A and stated that the exception of this provision should include “life imprisonment” as well. It means that deduction of the custody period will be caused except in case of death sentence as well as life imprisonment. But question arises in this regard that how logical it is for the Court to ignore a provision based upon a mere opinion. It can be hold that the Court had made an error regarding the rule of construction. It is well settled principle of law that as the statute is an edict of the Legislature, the conventional way of interpreting or construing a statute is to seek the intention of legislature.<sup>68</sup> The courts should recognize limitations on their powers in interpreting statute and they should recognize that the legislature is supreme and must be followed to the extent that it has passed laws which are clear and constitutional.<sup>69</sup> Accordingly if the words of a statute are explicit certain and unambiguous, then there is no safer guide than those words themselves which are to

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<sup>63</sup> Ridwanul Hoque, Speech paper on the Constitutionalism and the Concept of Whole-Life Sentence in Bangladesh; Work-in-progress; BILIA Symposium on Imprisonment for Life as Imprisonment Till Death; 20 May 2017.

<sup>64</sup> *Gurvail Singh vs The State of Panjab* 2008 13 SCC 767.

<sup>65</sup> *Ataur Mridha & ors. Vs The State* 2017 (2) LNJ (AD) 35, see para 25.

<sup>66</sup> *Rokeya Begum vs The State* 4 CLR (AD) 147, see para 23.

<sup>67</sup> Section 35A of the Code of Criminal Procedure, 1898.

<sup>68</sup> Farhana Reza, Interpretation of Statutes & General Clauses Act, 1897, Hira Publication, p.22.

<sup>69</sup> Ibid

constructed in their ordinary and natural sense and they do in the said circumstance best declare the intention of the legislature.<sup>70</sup>

The natural meaning of section 35A denotes the set-up of the custody period from imprisonment for life. But the Court referred an Indian case where benefit of set-off was not available to life convicts under the purview of section 428 of the Indian Code of Criminal Procedure.<sup>71</sup> But after 1982 many remarkable cases were held having the benefit of set-off for life convicts. For instances, in *Laxman Naskar Vs. State of West Bengal*<sup>72</sup> Learned Additional Public Prosecutor Shri. Loney submitted that petitioner as on 28-2-2005 has undergone 24 years, 4 months, 26 days imprisonment including set off period, State remission and other remission. Accordingly in *Bhagirath v. Delhi Administration*<sup>73</sup> it was held that and the writ petition and direct that, the period of detention undergone by the two accused before us as under trial prisoners, shall be set off against the sentence of life imprisonment. The Court in the *Ataur Mridha* case thus mentioned only an older Indian case but did not regard the later and recent cases in India where set-off was allowed against life convict. Moreover, where the CrPC of Bangladesh authorizes such set-off for life convicts, the Court cannot ignore this law and take Indian law into consideration. Therefore the Court in this case has no such scope to alter a natural meaning of a provision and give reasoning by throwing his possible opinion. And now if set-off is allowed in life imprisonment and if life imprisonment would mean whole life sentence, then the vital question arises that how the trial period can be deducted from the whole life sentence since the date of death of the prisoner is totally unpredictable.

The AD in *Ataur Mridha* case takes section 57 into consideration only in case of awarding sentence in terms of fractions of sentence prescribed for a principle offence. For example “sedition” as per section 124A of the Penal Code, 1860 is punishable with imprisonment for life and if somebody fails, the Penal Code would not define the punishment expressly. Rather section 511 of the Code would require the court to award a sentence of maximum half of life imprisonment prescribed in section 124A and only in this circumstances, section 57 would set up in reckoning life imprisonment as thirty years imprisonment; a half fraction of life imprisonment for this case would be fifteen years.<sup>74</sup> The AD holds that except helping us

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<sup>70</sup> *Ali Ekbar vs Bangladesh* 26 DLR (1974) 394.

<sup>71</sup> *Katar Singh vs State of Haryana*, AIR 1982 S.C. 1439.

<sup>72</sup> *Laxman Naskar Vs. State of West Bengal* AIR 2000 SC 2762.

<sup>73</sup> *Bhagirath v. Delhi Administration* 1985 2 SCC 580, para 17. See also *Chandran vs State Of Kerala* 2005 (4) KLT 962

<sup>74</sup> M Jashim Ali Chowdhuri, The Daily Star, Life imprisonment verdict: A contextual reading, May 16, 2017.

determine the fractions applicable to offenses like above, section 57 has no other role to play with the tenure of life imprisonment.<sup>75</sup>

On the other hand, in the Penal Code “fine” is one of the methods of punishment. Accused can be punished with fine only under some sections like 141, 176, 177, 201, 202, 212, 216 etc. or in addition to any term of punishment. When an offence punishable with imprisonment as well as fine, it shall be competent to the Court to order that in default of payment of the fine, the offender shall suffer imprisonment for a certain term.<sup>76</sup> In the *Atatur Mridha* case, the offender is charged for murder. The prescribed form of punishment for murder is death or imprisonment for life, and shall also be liable to fine.<sup>77</sup> Here the convict person has to pay fine in addition to life sentence mandatorily. If he fails to pay the fine, he will be awarded a sentence of imprisonment which the court shall direct and that 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.<sup>78</sup> ‘Now it begs a question of how an imprisonment can be added to whole-life sentence’<sup>79</sup> and what would be the fraction from life sentence applicable to default of payment of fine. Besides it can be noted that the amendment of section 57 of the Penal Code to insert “30 years” instead of “25 years” in 1985 indicated that the legislature did not intend to mean the imprisonment for life as whole life sentence, rather aware of the problem of inadequacy of life sentence in Bangladesh.

After the above analysis the precedent with the existing legal provisions of laws, it can be concluded that ‘the legislature will only legislate, the executive will execute the laws passed by the legislature, and the judiciary is to apply laws to individual cases and in the discharge

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<sup>75</sup> Ibid.

<sup>76</sup> Section 64 of the Penal Code, 1860, Read thus: When 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.

<sup>77</sup> Section 302 of the Penal Code, 1860.

<sup>78</sup> Section 65 of the Penal Code, 1860.

<sup>79</sup> Ridwanul Hoque, Constitutionalism and the Concept of Whole-Life Sentence in Bangladesh; Work-in-progress; BILIA Symposium on Imprisonment for Life as Imprisonment Till Death; 20 May 2017.

of duty, each organ should confine itself to its own jurisdiction and should not encroach on the jurisdiction of other organs.’<sup>80</sup>

### **B. Constitutional Aspect:**

This point focuses on the question that how much the judgment of the case is constitutional. We know that, the judgment of either division of the Supreme Court has binding effect upon all the subordinate courts.<sup>81</sup> Therefore according to article 111 of the constitution, the judgment of the *Ataur Mridha* case is binding upon all the courts subordinate to it. On the other hand, Constitution is the Supreme Law of Bangladesh and no person shall be subjected to torture or to cruel, inhuman, or degrading punishment or treatment.<sup>82</sup> Because the legitimate constitutional expectation of a convict that they would not have to die in jails as life-convicts. Articles 31 and 32 of the Constitution provide that no action detrimental to a citizen’s life and liberty can be taken except in accordance with law. It is the inalienable right of every citizen which is guaranteed as a fundamental right in Part-III of the Constitution. ‘All existing law inconsistent with the provisions of this Part shall, to the extent of such inconsistency, become void on the commencement of this Constitution and the State shall not make any law inconsistent with any provisions of this Part, and any law so made shall, to the extent of such inconsistency, be void,’<sup>83</sup> the consequence of such violation of the Constitutionally guaranteed right automatically invalidate the precedent.

Additionally, it is the right of everyone to judicially enforce fundamental right under article 44 and to issue writs to enforce these rights under article 102(1) of the Constitution. In this sense, the rights of the prisoners are also incorporated in the Constitution which should not be violated. This is because when any act or any provision is in conflict with its substantive parent law or constitutional law, it is substantive ultra vires. The legal effect of substantive ultra vires is null and void.<sup>84</sup>

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<sup>80</sup> Dr. S. M. Hassan Talukder, Development of Administrative Law in Bangladesh: Outcomes and Prospects, Bangladesh Law Research Centre, p.219.

<sup>81</sup> Article 111, Constitution of the People’s Republic of Bangladesh.

<sup>82</sup> Article 35(5) of the Constitution, People’s Republic of Bangladesh.

<sup>83</sup> Article 26 and 7(2) of the Constitution, People’s Republic of Bangladesh.

<sup>84</sup> Dr. S. M. Hassan Talukder, Development of Administrative Law in Bangladesh: Outcomes and Prospects, Bangladesh Law Research Centre, p.150.

### C. Problems Regarding Different Legal Systems:

The AD apparently holds the position that, the remission is generally granted by the Jail authority under Chapter XXI of the Jail Code and the executive would not have power to remit when the court awards “imprisonment for the rest of the life” of the convict.<sup>85</sup> This reasoning is subject to serious questioning from the perspective of jurisprudential legitimacy. Because the Court infers that the Jail Code, 1920 is not a law. It is a mere administrative instruction. Therefore remission granted in case of imprisonment for life commuted from death sentence is without jurisdiction of the Jail authority. But in post-Independence India, imprisonment for life remained, for many years, an imprisonment not exceeding 14 years.

As per the Jail Code, 1920 in Bangladesh also, 14 years in prison was the minimum term before a life-convict can be released. Rule 751 of the Jail Code is noted as "the case of life convicts who are not released by the Government at the expiry of 14 years will be governed by rules 770 and 771 of the Jail Code,1920".<sup>86</sup> Rule 751 (inserted in 1908) defined life convict as the one whose sentence amounts to 25 and 20 years, depending on the gravity of his or her offence. These three rules of the Jail Code, 1920 were part of secondary implementing legislation framed by the then Governor-General in Council (equivalent to the executive government in today's Bangladesh) under section 59(5) of the Prisoners Act 1894.<sup>87</sup> So it evident that the rules made by the Government under section 59(5) of the Prisoners Act, 1984 is a law and this power of making rules cannot be curtailed by the judicial decision denying the remission.

Secondly the AD denied granting any remission referring three Indian cases *Gopal Vinayak Godse vs State of Maharashtra*<sup>88</sup>, *State of Madhya Pradesh vs Ratan Singh*<sup>89</sup> and *Sitaram Barelal vs State of Madhya Pradesh*<sup>90</sup> where remissions were not granted in life sentence. It also committed an academic fault here. Firstly the cases the Court referred do not have binding effect or authoritative value for being cases of India and not even persuasive effect.

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<sup>85</sup> *Ataur Mridha & ors. Vs The State* 2017 (2) LNJ (AD) 35 , see para 25.

<sup>86</sup> According to rule 770, such a life-convict's release can be considered by the Government under s 401 of the CrPC (for which the convict has to apply). Under r. 771, the Superintendent can still release the life-convict who is not subject to rr 751 and 770 “on the expiry of their sentences” if he earns remissions.

<sup>87</sup> Ridwanul Hoque, Constitutionalism and the Concept of Whole-Life Sentence in Bangladesh; Work-in-progress; Symposium on Imprisonment for Life as Imprisonment Till Death; BILIA, 20 May 2017.

<sup>88</sup> *Gopal Vinayak Godse vs State of Maharashtra* AIR 1961 SC 600

<sup>89</sup> *State of Madhya Pradesh vs Ratan Singh* AIR 1976 SC 1552

<sup>90</sup> *Sitaram Barelal vs State of Madhya Pradesh* AIR 1969 MP 252



Because the circumstances of the cases are not similar with the context of Bangladesh.<sup>91</sup> In these cases, the petitioner did not serve actual 15 years in jail whereas section 433A of the Indian Code of Criminal Procedure puts restriction that, sentence of imprisonment of life cannot be commuted exceeding 14 years. Hence if the convict earns remission under the Jail Code but not completed 14 years, conflicts with section 433A of the Indian CrPC, the provision of CrPC prevails. This is because; The Constitution of India establishes a federal structure to the Indian government. The laws can be divided into two kinds: state law and central law. The Jail Code is a state law which varies from state to state whereas the Indian CrPC is a central law.<sup>92</sup> It is to be noted that, according to the Indian constitution, in case of conflict between central law and state law on a subject listed in the Concurrent list, the central law prevails over the state.<sup>93</sup> On the other hand Bangladesh has no such division regarding the states and laws. The CrPC and section 59(5) of the Prisons Act, 1894 of Bangladesh are both equally treated as central laws.

Thirdly the Court had referred only those three older cases of India mentioned above where remissions were not granted for the aforesaid reasons. But later on, in India many cases were given judgment by granting remissions. Similarly, a convict cannot be told that he cannot apply for a remission in his sentence, whatever be the reason.”<sup>94</sup> In these cases the petitioners could successfully get remissions. Even in Bangladesh remissions are been granted from early period. *Bhattacharya vs The State*<sup>95</sup> and *Farid Khan vs The State*<sup>96</sup> cases can be set as example. In such cases the rule laid down by full bench of this Court will have to be followed, namely, that for all purposes the aggregate sentence with have to be treated as 20 years and remissions will also have to be allowed on that applicability.

Thus it is apparent from the above reading that, the Court did not consider the context of Bangladesh in case of remission, it only referred to those portions of the Indian judgment which support its statements but did not explain the whole circumstance of the cases. Besides the Court referred the previous Indian cases but not the latest and recent judgments where remissions were granted. Hence the application of Indian jurisprudence in Bangladeshi

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<sup>91</sup> Dr. Muhammad Mahmudur Rahman, Symposium on Imprisonment for Life as Imprisonment Till Death; BILIA, 20 May 2017.

<sup>92</sup> Ibid.

<sup>93</sup> < <https://www.quora.com/According-to-the-Indian-constitution-in-case-of-conflict-between-central-law-and-state-law-on-a-subject-listed-in-the-Concurrent-List-the-central-law-prevails-over-the-state-But-it-also-says-executive-power-rests-with-states-unless-specified-What-does-it-mean-here>> accessed on 30<sup>th</sup> March.

<sup>94</sup> *Sangeet & Anr vs State Of Haryana* (2013) 2 SCC 452.

<sup>95</sup> *Bhattacharya vs The State* 16 DLR (SC) 442

<sup>96</sup> *Farid Khan vs The State* 1965 PLD 31

context is fundamentally wrong. Lastly it is important to mention that, there was no issue between the parties regarding remission in the case. Courts should deal and give decision only on disputes, arguments and the vital issues arose between the parties. Nevertheless the Court created this issue and gave a huge explanation in its judgment. Therefore this judgment cannot be taken as precedent for the consecutive academic faults of the Court.

#### **D. Rules of Construction:**

From the above analysis of the existing legal provisions about life imprisonment, it is clear that the precedent has been made out by taking section 45 of the Penal Code in literal interpretation which is not only contradictory with the legal provisions and precedents but also leads to an absurd result. It supplies an irrational result that is unlikely to be the legislature's intention. However 'where a plain construction will lead to absurd result and fail to carry out the purpose the legislature had in view, the court has the power to supply the true meaning and fill in the gap.'<sup>97</sup> It can generally be done by applying golden rule of construction. The precedent makes a part of statute ineffective and meaningless if the word "life" is taken as its linguistic meaning. In such a case, 'where the literal meaning of the words used in a statutory provision would manifestly defeat its object by making a part of it meaningless and ineffective, it is legitimate and even necessary to make wider interpretation so as to give meaning to all parts of the statute and to make the whole of it effective and operative.'<sup>98</sup> However there is a universal principle that if a penal provision is reasonably capable of two interpretations, that interpretation which is most favorable to the accused must be adopted.<sup>99</sup>

Moreover the above discussions have inclined to state that, the AD did not read statute as a whole and ignored the intention of the law makers which brings inconsistency, injustice and repugnancy between one provisions to another. In such circumstances, the Court had to take aid from harmonious construction which could modify the language used in a statutory provision to bring it in conforming to the intention of the lawmaker. Because where an interpretation which results in hardship, injustice, inconvenience or anomaly should be avoided and that which supports the sense of justice should be adopted.<sup>100</sup>

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<sup>97</sup> *Abdus Sattar vs Arag Ltd* 16 DLR (1964) AD 637.

<sup>98</sup> Farhana Reza, *Interpretation of Statutes & General Clauses Act, 1897*, Hira Publication, p.61

<sup>99</sup> *Sweet vs Parsley [1970]* AC 132.

<sup>100</sup> *Ibid*, p.79.

## **E. International Human Rights Conventions:**

The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, commonly known as the United Nations Convention against Torture (UNCAT) is an international human rights treaty, under the review of the United Nations, that aims to prevent torture and other acts of cruel, inhuman, or degrading treatment or punishment around the world.<sup>101</sup>

‘The principal international human rights documents clearly protect the human rights of prisoners. The International Covenant on Civil and Political Rights (ICCPR) and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment both prohibit torture and cruel, inhuman, or degrading treatment or punishment, without exception or derogation. In addition, it mandates that all persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person. Several additional international documents flesh out the human rights of persons deprived of liberty, providing guidance as to how governments may comply with their international legal obligations. The most comprehensive such guidelines are the United Nations Standard Minimum Rules for the Treatment of Prisoners (known as the Standard Minimum Rules), adopted by the U.N. Economic and Social Council in 1957.’<sup>102</sup> In the context of a life sentence, Article 3 of the European Convention on Human Rights, which prohibits torture and inhuman or degrading treatment or punishment, must be interpreted as requiring reducibility of the sentence. It follows from this conclusion that, where domestic law does not provide for the possibility of such a review, a whole life sentence will not measure up to the standards of Article 3 of the Convention and ‘the incompatibility with Article 3 on this ground already arises at the moment of the imposition of the whole life sentence and not at a later stage of incarceration.’<sup>103</sup> Hereby life sentence till death can be declared as inhuman, degrading punishment and unjustified under the perspective of Human Rights Conventions.

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<sup>101</sup> <[https://en.wikipedia.org/wiki/United\\_Nations\\_Convention\\_against\\_Torture](https://en.wikipedia.org/wiki/United_Nations_Convention_against_Torture)> accessed on 3<sup>rd</sup> March, 2019.

<sup>102</sup> Human Rights Watch Prison Project, International Human Rights Standards Governing The Treatment of Prisoners, < <https://www.hrw.org/legacy/advocacy/prisons/stdnrds>.> accessed on 3<sup>rd</sup> March, 2019.

<sup>103</sup> *Vinter and Others v. the United Kingdom* ECHR 9 Jul 2013.

## **F. Impact in Practical Life:**

However now life convict means a whole life convict, who has to spend in prison till his death. It leads to a consequence for which the prison system will get old-age home soon. It is illogical in Bangladesh as a developing country to give shelter a huge number of prisoners till their death whereas Bangladesh's poverty rate has dropped 7.2 percentage points to 24.3 percent in six years, according to a survey by the country's statistical agency.<sup>104</sup> Hence it will be a huge burden on the Government and the convicts cannot be adapt in society as human resources again.

To be added that convicts are deprived from the opportunity of reformation. Therefore the objects of the punishment in the criminal justice system are rehabilitation, deterrence and retribution at the same time. But now the precedent by the AD only conveys deterrence which frustrates its core object "rehabilitation". The use of deterrence should not be sole purpose rather rehabilitation should be emphasis in prison system.<sup>105</sup>

It is also can be enunciated that, there is no legal provisions in Bangladesh allowing greater punishment in the appeal stage. It can be possible only in case of an appeal made by the Government on the ground of inadequacy,<sup>106</sup> otherwise the Court cannot enhance the sentence unless the accused is given an opportunity of showing cause against such enhancement. However though in an appeal sentenced cannot be enhanced but this may be done in revision.<sup>107</sup> In legal sense, the court commuted the sentence into life imprisonment from death penalty and it may not amount to an enhancement of sentence. But from practical perspective, it is however a more difficult task than death penalty to spend the whole life in prison. Such a punishment is arguably "a fate worse than death".<sup>108</sup> Reference may be made to the famous case of the Moors murder where the two accused were sentenced to imprisonment for life and never released. One of the convicts died in prison and other convict

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<sup>104</sup> <<https://bdnews24.com/economy/2017/10/18/poverty-rate-has-dropped-to-24.3-percent-bbs-survey>> accessed in 31st March, 2019.

<sup>105</sup> Taqbir Huda, "Life Imprisonment as Imprisonement till Death: Jurisprudential Issues", (The Daily Observer 2017, < <http://www.observerbd.com/details.php?id=75378>> accessed 7<sup>th</sup> March, 2019.

<sup>106</sup> 417A, the Code of Criminal Procedure, 1898. Also see section 423(1)(b) that- in an appeal from a conviction, (1) reverse the finding and sentence, and acquit or discharge the accused, or order him to be retried by a Court of competent jurisdiction subordinate to such Appellate Court or sent for trial, or (2) alter the finding, maintaining the sentence, or, with or without altering the finding, reduce the sentence or, (3) with or without such reduction and with or without altering the finding, alter the nature of the sentence, but, subject to the provisions of section 106, sub-section (3), not so as to enhance the same.

<sup>107</sup> *GMM Rahman vs State* 62 DLR (AD) 410. Also see 439(1) & 439(2), the Code of Criminal Procedure, 1898.

<sup>108</sup> *Rokeya Begum vs The State* 4 CLR (AD) 147, see para 24.

was declared insane and has been repeatedly asking to be allowed to die.<sup>109</sup> This case clearly shows that while imprisonment for life means the whole life in jail, death would be a softer option. In this view commuting the death sentence to life sentence and directing it to be the whole life is equal to an enhancement of punishment from practical sense of life.

Additionally, every citizen has the right to hold a legitimate expectation. The doctrine of legitimate expectation means citizens may legitimately expect to be treated fairly.<sup>110</sup> This doctrine has been developed by the Courts both in the context of reasonableness and natural justice.<sup>111</sup> Such expectation in legal world may arise either from express promise or from existence of regular practice which the applicant can reasonably expect to continue.<sup>112</sup> Therefore in cases where there is no legal right, he may still have legitimate expectation of receiving the benefit or privilege.

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<sup>109</sup> Ibid.

<sup>110</sup> Dr. S. M. Hassan Talukder, Development of Administrative Law in Bangladesh: Outcomes and Prospects, Bangladesh Law Research Centre, p.204.

<sup>111</sup> Ibid.

<sup>112</sup> C.K. Takwani, Lectures on Administrative Law (3<sup>rd</sup> edn.) p. 278.

## Chapter 6

### Conclusion

In the criminal justice system, sentencing practices play an important and crucial role. But this research paper shows that Bangladesh does not have any sentencing guidelines to follow at present. This leads to a very disadvantageous to the criminal justice system in Bangladesh, because ‘choice of an appropriate sentence in a particular situation bears enormous consequence not only on the individual convict but also on the society at large.’<sup>113</sup> Therefore the object of this thesis was to analyze critically the controversies upon the life sentencing system and the effect of the precedent from *Ataur Mridha* case on the existing legal system of Bangladesh. In *Ataur Mridha* case the Appellate Division in this case held that, life imprisonment will be deemed as imprisonment through whole of a convict’s natural life and till his death. Therefore the main objects of this research was to find out that, to what extent this precedent is accommodated as well as justified with the existing legal system. Though the case is still pending in revision, this paper describes that the precedent conflicts with the existing legal provisions and judiciary precedents in every spheres of the existing legal system. And finally this paper concludes with the question that how much ethical and legitimate it is, when the court uses its discretionary power by violating existing legal provisions, judicial precedents and basic principles of criminal law. Since it is considered that court is a place which ensures people’s rights, grants remedy for them and in case of occurrence of penal offences, court has to take punitive measures, therefore I opine in this regard that, in no way the court is expected and allowed to take a decision by encroachment its ambit and beyond the law. But in this case the court holds an unusual stand as against the offenders depending some vague reasoning. Therefore I would conclude by the statements that this precedent is ultra vires, repugnant and leads to injustice for the prisoners and should not be followed thereby. Rather the courts should follow sentencing structures and guidelines where all legal provisions will be constructed harmoniously other than contradictorily.

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<sup>113</sup> Tureen Afroz, Sentencing Practices, BILIA, November 2007.

## Bibliography

### Books:

1. Ashworth, A., Sentencing and Criminal Justice, Butterworths (Cambridge University Press, 5<sup>th</sup> ed, 2010)
2. Siddique, Ahmed., Criminology-Problems and Perspectives, (Eastern Book Company, 2<sup>nd</sup> ed, 1993)
3. Teeters, Barnes., New Horizons in Criminology (Prentice-Hall, 3<sup>rd</sup> ed, 1959)
4. Prof. Paranjpe N.V., Criminology & Penology with Victimology (Central Law Publications, 1<sup>st</sup> ed, 2014)
4. Reid, S.T., Crime and Criminology (Holt Mc Doughal, 4<sup>th</sup> Edn, 1985)
5. Huq, Zahurul., Law and Practice of Criminal Procedure (Bangladesh Law Book Company, 14<sup>th</sup> ed, 2015)
6. Dr. Talukder, S. M. Hassan., Development of Administrative Law in Bangladesh: Outcomes and Prospects (Bangladesh Law Research Centre, 1<sup>st</sup> ed, 1997)
7. Reza, Farhana., Interpretation of Statutes & General Clauses Act, 1897 (Hira Publication, 2<sup>nd</sup> ed, 2014)
8. Takwani, C.K., Lectures on Administrative Law (Eastern Book Company, 2<sup>nd</sup> ed, 1994)

### Judicial Decisions:

1. Ataur Mridha & ors. Vs The State 2017 (2) LNJ (AD) 35
2. *State vs Mir Hossain* 56 DLR (HD) 124.
3. *G.L. Bhattacharya vs The State* 16 DLR (SC) 442
4. *Farid Khan vs The State* 1965 PLD 31
5. *Farid Ali vs The State* 4 MLR (1999) HC 23
6. *Rokeya Begum V. State* 4 CLR (AD) 147.
7. *Union of India v. Sree Horan*, (2016) 7 SCC 1
8. *Jayawant Dattatraya Suryarao V. State of Maharashtra*, (2001) 10 SCC 109
9. *State of M.P. V. Ratan Singh*, (1976)3 SCC 470

10. Ibrut vs The Commander-in-chief, Royal Pakistan Navy 8 DLR (1956) AD 128.
11. Md. Munna vs Union Of India & Ors AIR 2005 SC 3440.
12. Iqbal vs Bangladesh 1 BLD 107
13. Gurvail Singh vs The State of Panjab 2008 13 SCC 767
14. Ali Ekbbar vs Bangladesh 26 DLR (1974) 394.
15. Katar Singh vs State of Haryana, AIR 1982 S.C. 1439.
16. Laxman Naskar Vs. State of West Bengal AIR 2000 SC 2762
17. Bhagirath v. Delhi Administration 1985 2 SCC 580
18. Chandran vs State Of Kerala 2005 (4) KLT 962
19. Gopal Vinayak Godse vs State of Maharashtra AIR 1961 SC 600
20. State of Madhya Pradesh vs Ratan Singh AIR 1976 SC 1552
21. Sitaram Barelal vs State of Madhya Pradesh AIR 1969 MP 252
22. Sangeet & Anr vs State Of Haryana (2013) 2 SCC 452.
23. Bhattacharya vs The State 16 DLR (SC) 442
24. Farid Khan vs The State 1965 PLD 31
25. Abdus Sattar vs Arag Ltd 16 DLR (1964) AD 637
26. Sweet vs Parsley [1970] AC 132.
27. Vinter and Others v. the United Kingdom ECHR 9 Jul 2013.
28. GMM Rahman vs State 62 DLR (AD) 410
29. Emperor vs Abdul Kader 48 CrI. L.J. (SB) 329
30. Sambaji vs State 1 SCC (1974) 196
31. Ramdeo Chauhan vs State of Asam AIR 2001 SC 2231
32. Services Trust vs Bangladesh 67 DLR (AD) 185
33. Santa Singh vs State AIR 1976 (SC) 2386
34. Nalu vs The State 32 BLD (AD) 247
35. Hazer Mandal and others vs The State 37 DLR (AD) 87
36. Abed Ali vs The State 10 BLD (AD) 89
37. Nowsher Ali and other vs The State 39 DLR 57
38. Halima Khatun vs Bangladesh 30 DLR (SC) 207
39. Mohammad Afzal vs Commissioner, Lahore Division PLD 1963 SC 401
40. State vs Hazi Joynal Abedin 32 DLR (AD) 110
41. Asma Jilani vs Government of Punjab PLD 1972 SC 139
42. State vs Dosso PLD 1958 SC 533
43. BLAST v Bangladesh (2010) 30 BLD (HCD) 194



44. State v. Sukur Ali (2004) 9 BLC (HCD) 238

### **Legislations:**

1. The Constitution of the People's Republic of Bangladesh.
2. The Penal Code, 1860
3. The Code of Criminal Procedure, 1898
4. The Jail Code, 1920
5. The Prisoners Act, 1900
6. The Criminal Justice Act 2003
7. The Canadian Criminal Code, 1985
8. The Indian Penal Code, 1973
9. The General Clauses Act, 1897
10. The Special Powers Act, 1974
11. The Whipping Act, 1909

### **International Human Rights Conventions-**

1. The United Nations Convention against Torture (CAT)
2. The International Covenant on Civil and Political Rights (ICCPR)
3. European Convention on Human Rights
4. International Convention on the Elimination of All Forms of Radical Discrimination (CERD)
5. Convention on the Rights of Persons with Disabilities (CRPD)
6. Convention on the Elimination of All forms of Discrimination Against Women (CEDAW)
7. Optional Protocol to the Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT)

### **Journal Article:**

1. C. K. Allen, „The Nature of a Crime“, Journal of Society of Comparative Legislation, (1931, reprinted 2007), p. 233.
2. E. Lauterpach doownerG J C dna, International Law Reports, (Grotius Publications), Volume-105, Page 618.

3. Jeffrey S. Johnson, The Entertainment Value of a Trial: How Media Access to the Courtroom Is Changing the American Judicial Process, Article 7, Vol.10, Issue 1, 2003
4. Surabhi Chopra, The International Crimes Tribunal in Bangladesh: silencing fair comment, Journal of Genocide Research 2015, Vol. 17, No. 2, 211–220.

**Other Materials:**

1. Tureen Afroz, Sentencing Practices, BILIA, November 2007.
2. Ridwanul Hoque, Criminal Law and the Constitution: The Relationship Revisited, BILIA, November, 2007.
3. Ridwanul Hoque, Speech paper, Constitutionalism and the Concept of Whole-Life Sentence in Bangladesh; Work- in-progress; BILIA, Symposium on Imprisonment for Life as Imprisonment Till Death; 20 May 2017.

**Online Articles:**

1. Larson, Aaron. "How to Apply for a Pardon or Commutation of Sentence". <<https://www.expertlaw.com/library/criminal-law/how-apply-pardon-or-commutation-of-sentence>> accessed on March 10,2019.
2. Dhananjay Mahapatra (2012), “Will life term now mean 30 years in Jail?”, The Times of India, 16 May, 2012.<<http://timesofindia.indiatimes.com/india/Will-life-term-now-mean-30-years-in-jail/articleshow/13156614.cms>>.
3. “Life imprisonment can’t simply end after 20 years: Supreme Court”. Available at: <<http://www.deccanchronicle.com/nation/current-affairs/300616/life-imprisonment-cant-simply-end-after-20-years-supreme-court.html>>.
4. Dawn, “Life term means 25 years in prison?: Supreme Court seeks legal opinion” <<https://www.dawn.com/news/377527>> accessed in 5<sup>th</sup> March, 2019
5. John Boone “Pakistan makes 'honour killings' punishable by mandatory prison time”, 6 October 2016. <<https://www.theguardian.com/world/2016/oct/06/pakistan-honor-killing-law-prison-sentence>>.
6. Nikit Bala, Retrospective Operations of Criminal Law <<http://www.legalserviceindia.com/article/1191-Retrospective-Operations-Of-Criminal-Law.html>>
7. <<https://www.quora.com/According-to-the-Indian-constitution-in-case-of-conflict-between-central-law-and-state-law-on-a-subject-listed-in-the-Concurrent-List-the>>

central-law-prevails-over-the-state-But-it-also-says-executive-power-rests-with-states-unless-specified-What-does-it-mean-here> accessed on 30th March.

8. Human Rights Watch Prison Project, International Human Rights Standards Governing The Treatment of Prisoners, <<https://www.hrw.org/legacy/advocacy/prisons/stndrds>> accessed on 3rd March, 2019.
9. Taqbir Huda, “Life Imprisonment as Imprisonment till Death: Jurisprudential Issues”, (The Daily Observer 2017, <<http://www.observerbd.com/details.php?id=75378>> accessed 7<sup>th</sup> March, 2019.

#### **Newspaper Article:**

1. M Jashim Ali Chowdhuri, “Life Imprisonment Verdict: A Contextual Reading” The Daily Star (May 16, 2017)

#### **Online Sources:**

1. “Life imprisonment means jail for rest of life: Full SC verdict published”, available at: <<http://bdnews24.com/bangladesh/2017/04/25/life-imprisonment-means-jail-for-rest-of-life-full-sc-verdict-published>>.
2. <[https://en.wikipedia.org/wiki/United\\_Nations\\_Convention\\_against\\_Torture](https://en.wikipedia.org/wiki/United_Nations_Convention_against_Torture)> accessed on 3rd March, 2019.
3. <<https://bdnews24.com/economy/2017/10/18/poverty-rate-has-dropped-to-24.3-percent-bbs-survey>> accessed in 31st March, 2019.
4. Statement by Momena Begum to the investigation officer, „Bangladesh War Crimes
5. Tribunal“, Published on October 7 2013, Available at
6. <<http://bangladeshwarcrimes.blogspot.com/2013/10/statement-by-momena-begumto.html>>, Accessed on 1, February 2019.
7. Prosecution seeks death sentence for Azhar, „Bangladesh Shangbad Shangstha (BSS)“, <<http://www.bssnews.net/newsDetails.php?cat=0&id=432450&date=2014-08-26>>, Accessed in 3 March, 2019.