

The background of the cover features a close-up, high-angle view of several books and stacks of papers. The books have various colored spines, including blue and black. The pages are mostly off-white or light beige, showing some signs of age. The lighting is dramatic, with strong highlights and deep shadows, creating a sense of depth and texture. The overall composition is centered and balanced, with the text overlaid on a dark, semi-transparent rectangular area.

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IMPRISONMENT FOR LIFE DEBATE: INDIAN LEGACY IN BANGLADESH

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Depreciatory reaches at peak while encountering decisions regarding the length of imprisonment for life has been interpreted by the Bangladesh Supreme Court on different occasions. This debate has not found its end till date. Another aspect of such interpretation relates with the Government's authority to remit the period of imprisonment of the convicts. Contradictory decisions created not only debate but also made obstacles in prison management and sentencing theories. In demarcating the period of imprisonment for life, theories relating to sentencing, long standing practice in the sub-continent regarding counting of duration of imprisonment, Executive's legitimate authority to remit sentence should be emphasized. This paper focuses on decisions regarding imprisonment of life in Bangladesh, embargo made by Supreme Court of Bangladesh, reasons behind the decision, curtailing Executive's authority to exercise the power of remission, the debate arose behind such chaos.

INTRODUCTION

Legal arena of Bangladesh in relation to the period of imprisonment for life has always been circled in 30 years for a long period which has been ruled out by the decision passed in the case of *Ataur Mridha Vs State*.¹ However, such interpretation has also been challenged by another decision passed by the Appellate Division² in the case of *Rokia Begum Vs. State*.³ These two decisions are contradictory in nature as well as created a legal vacuum in this field. To appreciate these two decisions, a third decision relating to imprisonment for life should be discussed, i.e. the decision in the case of *Mohibur Rahman*

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¹ *Ataur Mridha Vs. State*, 69 DLR [2017] [AD] 214, 238 <http://www.supremecourt.gov.bd/resources/documents/1047802_CA15of2010.pdf> accessed 22 September 2019

² Constitution of People's Republic of Bangladesh Art 94(1) denotes: "There shall be a Supreme Court for Bangladesh (to be Known as the Supreme Court of Bangladesh) comprising the Appellate Division and the High Court Division."

³ *Rokia Begum Vs. State*, 4 SCOB [2015] 20, 25

*Vs. State.*⁴The third of its kind has not taken its role yet; even it has not made such conviction in this regard.

The problem or debate created by these decisions made the scenario of the convicts miserable. Most of the cases, they are now in dark about their incarceration period.⁵ Prison authority yet to convince them about the period; however, abstained from leading the path like in the past. Whether it is 30 years or not, is not only an answer but also the pathway of being out of detention in the part of the lifetime convicts. Furthermore, such release should make an impact in the overcrowding in the prisons of Bangladesh.

To interpret the term ‘imprisonment for life’ has to be done with the very objective of punishment providing for offences. It should not be discussed or interpreted alone. In this foregoing writing, I will try to discuss these decisions along with the theories of sentencing, decisions made by the Courts of this sub-continent, President’s and Government’s authority to remit the sentence and will make myself convinced with the decision of the Supreme Court.

PUNISHMENTS IN BANGLADESH

The Penal Code 1860 (hereinafter referred to as PC) provides different types of punishments which are as follows:

- a) ‘Death;
- b) Imprisonment for life which shall be rigorous;
- c) Rigorous imprisonment;
- d) Simple imprisonment;
- e) Forfeiture of property;
- f) Fine.⁶

⁴ *Mohibur Rahman Vs. State*, 69 DLR [2017] [AD] 330, 332

⁵ ‘5,209 life-term convicts don’t know duration of their sentence: Mahbub’, *The Daily Star* (Dhaka, 10 May 2019) <<https://www.thedailystar.net/city/news/5209-life-term-convicts-dont-know-duration-their-sentence-mahbub-1741312>> accessed 22 September 2019

⁶ Penal Code 1860, s 53

Apart from this, the Whipping Act 1909 and Code of Criminal Procedure 1898 (hereinafter referred to as CrPC) also prescribe the punishment through whipping in certain offences under certain circumstances.⁷ However, such whipping cannot be inflicted on a child.⁸ A criminal Court can also order a defendant to take part in community service instead of inflicting punishment.⁹

Sentence to death can be carried by hanging till death¹⁰ or by shooting in the prescribed manner.¹¹ Imprisonment of any of the manner can be done by incarcerating the offender in jail or any 'correctional institution.'¹² Section 63-70 of PC deals with the amount of fine, limit of fine, limit of imprisonment for non-payment of fine, termination of imprisonment etc. Section 125, 126 of PC prescribes forfeiture along with other punishments for waging war against Asiatic power and depredation on the territories of any power in alliance or at peace with Bangladesh.

IMPRISONMENT FOR LIFE

It can avowedly be said that nowhere in PC either defines or describes the period of imprisonment for life. In calculating fractions of terms of punishment, imprisonment for life shall be reckoned as equivalent to rigorous imprisonment for thirty years.¹³

The above provision never contours the period of imprisonment for life; however, gives a sketch of counting the period in terms of fractions. It is also lucid that imprisonment for life should not be a period of 30(thirty) years of imprisonment. In India, it was settled in 1961 in the case of *Gopal Vinayak Godse vs The State of Maharashtra*. Exact deliberation of the Court is reproduced below:

"... Unless the said sentence is commuted or remitted by appropriate authority under the relevant provisions of the Indian Penal Code or the Code of Criminal Procedure, a prisoner sentenced to life imprisonment is bound in law to serve the life, term in prison.... For the purpose of working out the remissions the sentence of transportation for life is ordinarily equated with a definite period, but it is

⁷ Whipping Act 1909, ss 2-4 and Code of Criminal Procedure 1898, s 32

⁸ Shishu Ain (Children Act 2013), s 33

⁹ Paribarik Sohingsota (Protirodh o Surokkha) Ain 2010 [Domestic Violence (Prevention and Protection) Act 2010], s 31

¹⁰ Code of Criminal Procedure 1898, s 368

¹¹ Special Powers Act 1974, s 34A

¹² Shishu Ain (Children Act 2013), s 33

¹³ Penal Code 1860, s 57

only for that particular purpose and not for any other purpose. As the sentence of transportation for life or its prison equivalent, the life imprisonment, is one of indefinite duration, the remissions so earned do not in practice help such a convict as it is not possible to predicate the time of his death.”¹⁴

However, the Court made itself out and made a lucid comment on remission granted by the Government in *Mobibur Rahman case*.¹⁵ *Mobibur Rahman case* prescribes imprisonment for life means a ‘convicted person’s natural life subject to such remissions for good conduct by the authority.’¹⁶ After the pronouncement of *Ataur Mridha*¹⁷ It ought to settle the period of imprisonment for life. It has not determined the period but also created a new dimension of penalty which has not been prescribed by PC or the intention of the Legislature has not been incorporated. *Ataur Mridha* is the coherence of the decision made in *Gopal Vinayak Godse vs The State of Maharashtra*, majority view taken in *Union of India vs V. Sriharan alias Murugan & Ors*. ‘Life imprisonments are meant for the whole duration of the convict’s life.’¹⁸

But debate has started from the publication of pronouncements made in the *Rokia Begum Case*. In a way, this decision did not vividly lay out the reasons behind such a decision. However, interpretation based on ‘normal linguistic meaning’ can be thought provoking. While *Ataur Mridha* talks about the imprisonment till death, *Rokia Begum* demarcates the period as long as 22(twenty-two) and half years.

“It can be stated that the sentence of ‘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.... relevant provision of the Jail Code effectively means that a person sentenced to imprisonment for life will be released after spending a maximum of 22 years in prison. Under section 35A of the Code of Criminal Procedure the period of time spent by the accused in custody during pendency of the trial would be deducted from his total sentence. Thus, we find that in many serious murder cases, where the trial lasts for many years, the

¹⁴ *Gopal Vinayak Godse vs The State of Maharashtra*, 1961 AIR 600, 1961 SCR (3) 440 <<https://indiankanoon.org/doc/245622/>> accessed 24 September 2019

¹⁵ *Mobibur Rahman Vs. State*, 69 DLR [2017] [AD] 330, 332

¹⁶ *Ibid*, [9]

¹⁷ *Ataur Mridha Vs. State*, 69 DLR [2017] [AD] 214, 238

¹⁸ M Jashim Ali Chowdhury, ‘Life imprisonment verdict: A contextual reading’ *The Daily Star*, (Dhaka, 16 May 2017) <<https://www.thedailystar.net/law-our-rights/life-imprisonment-verdict-contextual-reading-1405858>> accessed 22 September 2019

accused who is found guilty and sentenced to imprisonment for life gets released after serving a total of 22½ years including the period spent in custody during trial.... (sic)¹⁹

In *Ataur Mridha*, Justice Mr. Surendra Kumar Sinha (the then Chief Justice) commented the above view as ‘not in conformity with law.’²⁰ Justice Mr. Imman Ali at the time sketching the ‘meaning of life sentence’ expressed the anxiety about the sentence to “be a lenient sentence and may in the minds of some appear to be not a proper sentence, especially when some horrific facts are disclosed in evidence.”²¹ The decision in *Ataur Mridha* has settled the period of imprisonment for life till natural death, although blazed the debate in case of remission.

ATAUR MRIDHA CASE AND IMPRISONMENT FOR LIFE

The opinion consists of as many as 7(seven) separate, but enjoined opinion made by the Court in *Ataur Mridha* is stated below:

“2) *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.*

3) *If the High Court Division of this Court commute a sentence of death to imprisonment for life and direct that the prisoner shall have to suffer rest of his natural life, such type of cases would be beyond the application of remission.”*²²

The decision passed on *Ataur Mirdha* on February 14th, 2017. But, in *Mobibur Rahman*, it had happened to be “subject to such remissions for good conduct by the authority.”²³ Judgment of *Mobibur Rahman* case was published on May 22nd, 2014. Both the decisions reported in 69 DLR. While declaring the views made in *Rokia Begum* as not the correct view, placed the decision made in the case of *Mobibur Rahman* aside. Therefore, debate should be between the decision made in *Ataur Mridha* and *Mobibur Rahman* not between *Ataur Mridha* and *Rokia Begum*. Unless and until the decision of *Mobibur Rahim* fails, it can be used as precedent as like the decision made in *Ataur Mridha*.

¹⁹ *Rokia Begum Vs. State*, 4 SCOB [2015] [AD] 20, 25(24)

²⁰ *Ataur Mridha Vs. State*, 69 DLR [2017] [AD]214, 220 (13)

²¹ *Rokia Begum Vs. State*, 4 SCOB [2015] [AD] 20, 25(24)

²² *Ataur Mridha Vs. State*, 69 DLR [2017] [AD]214, 238, 239 (89)

²³ *Mobibur Rahman Vs. State*, 69 DLR [2017] [AD] 330, 332 (9)

In *Ataur Mridha*, the Court considered *Sambhaji vs State*²⁴, *Gopal Vinayak Godse vs The State of Maharashtra*²⁵, *Union of India vs V. Sribaran alias Murugan & Ors*²⁶, *KM Nanavati vs State of Maharashtra*²⁷, *Ramdeo Chauhan vs State of Asam*²⁸ and other decisions of Indian Jurisdiction.

“From the aforesaid decisions rendered by this Court, it is clear that 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 the provisions of the Criminal Procedure Code.”²⁹

Above provision endorses the discretion of the Government to remit sentence after consulting with the decision made in *Gopal Vinayak Godse vs The State of Maharashtra*³⁰, *State of Madhya Pradesh vs. Ratan Singh & Ors*³¹, *Naib Singh vs. State of Punjab & Ors*,³² *Ashok Kumar vs. Union of India & Ors*³³, *Subash Chander vs. Krishnan Lal & Ors*³⁴, *Swammy Shraddanade vs. State of Karnataka*³⁵.

Similar decisions have also been taken in the case of *Vikas Yadav vs. State of U.P. & Ors*,³⁶ *Ramraj alias Nanboo alias Bihnun vs State of Chhattisgarh*.³⁷ Finally, such debate in India came to an end by the decision in *Union of India vs V. Sribaran alias Murugan & Ors*³⁸, however, blazed a new debate on creation and endorsement of new types of sentences.

²⁴ *Sambhaji vs State* (1974) 1 SCC 196

²⁵ *Gopal Vinayak Godse vs The State of Maharashtra* AIR 1961 SC 600

²⁶ *Union of India vs V. Sribaran alias Murugan & Ors* (2016) 7 SCC 1

²⁷ *KM Nanavati vs State of Maharashtra*, AIR 1961 SC 112

²⁸ *Ramdeo Chauhan vs State of Asam* AIR 2001 SC 2231

²⁹ *Duryodhan Rout vs State of Orissa*, Criminal Appeal Nos. 2277-78, <<https://indiankanoon.org/doc/72190090/>> accessed 24 September 2019

³⁰ *Gopal Vinayak Godse vs The State of Maharashtra* AIR 1961 SC 600

³¹ *State of Madhya Pradesh vs. Ratan Singh & Ors* (1976) 3 SCC 470

³² *Naib Singh vs. State of Punjab & Ors* (1983) 2 SCC 454

³³ *Ashok Kumar vs. Union of India & Ors* (1991) 3 SCC 498

³⁴ *Subash Chander vs. Krishnan Lal & Ors* (2001) 4 SCC 458

³⁵ *Swammy Shraddanade vs. State of Karnataka* (2008) 13 SCC 767

³⁶ *Vikas Yadav vs. State of U.P. & Ors*, Criminal Appeal Nos. 1531-1533 of 2015 <<https://indiankanoon.org/doc/129750439/>> accessed 24 September 2019

³⁷ *Ramraj alias Nanboo alias Bihnun vs State of Chhattisgarh*, Special Leave Petition (CrL.) No. 4614 of 2006 <<https://indiankanoon.org/doc/193135057/>> accessed on 24 September 2019

³⁸ *Union of India vs V. Sribaran alias Murugan & Ors* (2016) 7 SCC 1

“We hold that the ratio laid down in Swammy Shradananda (supra) that a special category of sentence; instead of death can be substituted by the punishment of imprisonment for life or for a term exceeding 14 years and put that category beyond application of remission is well-founded and we answer the said question in the affirmative.”³⁹

In Pakistani Jurisdiction, Pakistan Supreme Court has already taken initiative to settle down the span of imprisonment for life.⁴⁰ It can be presumed that life imprisonment may have the same meaning as in Bangladesh.⁴¹

LIFE IMPRISONMENT IN ASIAN COUNTRIES

Bangladesh, India, Pakistan had shared the same colonial legacy of the Penal Code 1860. Like Bangladesh, India had already settled down the length of imprisonment for life to rest of the natural life. However, Pakistan is yet to settle down.

Following table shows the length of imprisonment for life in some countries of Asia.

Serial No.	Name of the country	Period of incarceration
1.	India	Rest of natural life
2.	Pakistan	Yet to decide ⁴²
3.	Nepal	Rest of natural life
4.	Sri Lanka	Not prescribed in Penal Code
5.	Afghanistan	Not prescribed in Penal Code
6.	Maldives	No imprisonment for life; maximum imprisonment is 25 years
7.	Thailand	Rest of natural life
8.	Malaysia	Until the death of the person
9.	Indonesia	For life
10.	Japan	Remainder of the person's life
11.	China	Remainder of convict's life

³⁹*Union of India vs V. Sriharan alias Murugan & Ors*, [2016] 7 SCC 1 <<https://indiankanoon.org/doc/50602236/>> accessed 24 September 2019

⁴⁰ Varun Nambiar, 'Pakistan Supreme Court forms bench to review life imprisonment duration', *Jurist* (29 July 2019) <<https://www.jurist.org/news/2019/07/pakistan-supreme-court-forms-bench-to-review-life-imprisonment-duration/>> accessed 24 September 2019

⁴¹Haseeb Bhatti, 'CJP Khosa seeks to review life imprisonment law' *Dawn*, (Karachi, 17 June 2019) <<https://www.dawn.com/news/1488731>> accessed 25 September 2019

⁴²Ibid

THEORIES OF SENTENCING

“The ends of criminal justice are four in number, and in respect of the purposes so served by it, punishment may be distinguished as (1) Deterrent, (2) Preventive, (3) Reformative, and (4) Retributive. Of these aspects the first is the essential and all important one, the others being merely accessory. Punishment is before all things deterrent, and the chief end of the law of crime is to make the evildoer an example and a warning to all that are like-minded with him.”⁴³

Deterrent punishment or deterrence theories prescribe the ‘deterrence of further offences by the particular offender as the measure of punishment.’⁴⁴ Similarly it prevents the offender or wrongdoer from repeating the offence and ‘demonstrate to other potential offenders about the consequences.’⁴⁵ This theory suggests the prevention of future offence. However, the seriousness of the offence became less important.⁴⁶ Reformatory punishment basically suggests rehabilitation of an offender through various activities, such as counselling, behavioral programs,⁴⁷ involvement in community service, social and cultural programs, sports, literary works etc. Preventive measure includes hanging the wrongdoer or incarcerating the offender although it’s primary and ‘general purpose being to deter by fear.’⁴⁸

For this writing, I myself must conceal with retributive theory which denotes nothing but revenge. It had also been termed as Desert theories.⁴⁹ This theory suggests punishment for offence apart from the reformation or rehabilitation. “It is to the fact that the punishment of the wrongdoer is at the same time the vengeance of the wronged, that the administration of justice owes a great part of its strength and effectiveness.”⁵⁰ According to this theory, victims can only be given justice through inflicting

⁴³ John W. Salmond, *Jurisprudence or the theory of the law* (London, Stevens & Haynes, Bell Yard, Temple Bar, 1907) 71

⁴⁴ Andrew Ashworth and Julian Roberts, ‘The Oxford Handbook of Criminology’ in Mike Maguire, Rod Morgan and Robert Reiner(eds), *Sentencing: Theory, Principle, And Practice*, (OUP 2012) 868

⁴⁵ Joel Meyer, ‘Reflections on Some Theories of Punishment’, *Journal of Criminal Law and Criminology*, Volume 59, issue 4, 1969, 596

⁴⁶ Andrew Ashworth and Julian Roberts (n 44) 868

⁴⁷ Ibid.

⁴⁸ John W. Salmond (n 43) 71

⁴⁹ Andrew Ashworth and Julian Roberts (n 44) 867

⁵⁰ John W. Salmond (n 43) 78

punishment to the offender. Crime committed by the offender should only to be addressed but also the punishment should be imposed to disclose the spirit of justice.

More or less, the criminal justice system of Bangladesh adopted the retributive theory as the mode of punishment.

SENTENCING, REMISSION AND LEGISLATION

Whether the introduction of a special kind of sentence by the Court can be termed as interpretation of statute or the exercise of law-making power?

For proper review of the comment made by the Bangladesh Supreme Court in *Ataur Mridha*, the debatable comment is reproduced below-

“If the High Court Division of 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.”⁵¹

The Court had been asked itself to answer the time span of imprisonment for life. However, it answered the question as to the rest of the life of the convict. On a plain reading, it looks like an interpretation of imprisonment for life. It seems not like that when a concurrent reading can make with opinion no 2 of the decision. At first, the Court made its verdict on time span and next the Court made the above comment.

“The learned Attorney-General has argued that the judiciary cannot direct the Parliament to adopt legislative measures or direct the President to frame rules under the proviso to Articles 133 of the Constitution and he has rightly relied upon certain decisions of this Court in support of his contention. Although we shall depart in some ways from the direction given by the High Court Division, we think that in the present case there is a constitutional deviation and constitutional arrangements have been interfered with and altered both by the Parliament by enacting the Act and by the Government by issuing various Orders in respect of the judicial service.... When Parliament and the executive, instead of implementing the provisions of Chapter II of Part VI follow a different course not sanctioned by

⁵¹ *Ataur Mridha Vs. State*, 69 DLR [2017] [AD] 214, 238, 239 (89)

the Constitution, the higher judiciary is within its jurisdiction to bring back the Parliament and the executive from constitutional derailment and give necessary directions to follow the constitutional course. This exercise was made by this Court in the case of *Kudrat-e-ElahiPanir vs. Bangladesh*, 44 DLR (AD) 319. We do not see why the High Court Division or this Court cannot repeat that exercise when a constitutional deviation is detected and when there is a constitutional mandate to implement certain provisions of the Constitution.”⁵²

To preserve the constitutional mandate of preserving and securing the citizens’ rights, freedom, liberty, in the absence of specific and adequate law, vacuum in law, derail from the constitutional arrangements, in the case of ambiguity in law, to eradicate disproportionality, Supreme Court has authority to direct, guide the Government to overcome such situation and to make a solution to eradicate such vacuum.

“We are not unmindful that the duty of the Court is not to enlarge the scope of the legislation. A court of law cannot rewrite, recast, or reframe the legislation for the very good reason that it has no power to legislate. The power to legislate has not been conferred on a Tribunal or a Court. It cannot add words to a statute or read words into it which are not there. A Court shall decide what the law is and what it should be. A Court of course adopts a construction which will carry out the presumed intention of the legislature but cannot legislate itself.”⁵³

It is already settled that the Supreme Court can direct the Government in case of deviation from constitutional arrangements, constitutional mandate etc. The Supreme Court can even direct the Government to take necessary steps to make measurement for legislation in terms of the Constitution. But Supreme Court can never make any law except the rules⁵⁴ provided in the Constitution.

After *Ataur Mridha*, imprisonment for life stands as 2(two) categories:

- a) Imprisonment for life;

⁵² *Secretary, Ministry of Finance, Government of Bangladesh Vs. Md. Masdar Hossain*, 52 DLR [2000] [AD] 82 (73), 20 BLD [2000] [AD] 104 (73)

⁵³ *Abdul Qader Mollab versus The Chief Prosecutor, International Crimes Tribunal, Dhaka*, Criminal Review Petition Nos. 17-18 of 2013(12)<http://www.supremecourt.gov.bd/resources/documents/683352_CRIMINAL_Rev_Nos_17-18_of_2013_2.doc.pdf> accessed 10 September 2019

⁵⁴ Constitution of the People’s Republic of Bangladesh, Arts 107, 113

b) Imprisonment for life beyond application of remission.

If the Court interpreted imprisonment for life, it will have one meaning. But, a special category of sentencing has been introduced through ‘beyond application of remission.’

“In our view, it would not be open to the Court to make any special category of sentence in substitution of death penalty and put that category beyond application of remission, nor would it be permissible to stipulate any mandatory period of actual imprisonment inconsistent with the one prescribed under Section 433A of Cr. P.C”.⁵⁵

The decision is somehow contradictory. Life imprisonment within the meaning of section 53 read with section 45 of the Penal Code means imprisonment for the rest of the life of the convict.⁵⁶ Above explanation settled the debate. Commuting a sentence of death to imprisonment for life never reflects any special privilege or importance. If it happens to be the rest of the life, it will be beyond any remission. Because, the lifespan of an offender is not known to the Government or the jail authority.

“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 excerpts, suspend the execution of his sentence or remit the whole or any part of the punishment to which he has been sentenced.”⁵⁷

Simple logic is that no one usually knows the lifespan of a person. Without knowing the lifespan of an offender how can the Government remit any part of the punishment? But to remit the whole of the sentence, the Government needs not to know the lifespan of an offender.

By introducing ‘beyond application of remission’ the Court introduced a new sentencing which is not provided in section 53 of the Penal Code 1860 which crossed the constitutional authority of the Supreme Court and also countered the wisdom of the law-making power of the Parliament.

⁵⁵ *Union of India vs V. Sriharan alias Murugan & Ors*, (Uday Umesh Lalit, J) (minority view) <<https://indiankanoon.org/doc/50602236/>> accessed 24 September 2019

⁵⁶ *Ataur Mridha Vs. State*, 69 DLR [2017] [AD] 214, 238, 239 (89)

⁵⁷ Code of Criminal Procedure 1898, s 401

“Even if a convict’s sentence of imprisonment for life is conditionally remitted in exercise of the powers under this section, and the convict is released, such convict must be deemed to be under sentence of imprisonment for life in spite of the fact that he is not actually undergoing the sentence. If he commits any offence of murder and the court finds him guilty during the period of his remission, he will be liable to face sentence under section 303 of the Penal Code.”⁵⁸

We must not forget the application of section 303 of PC is officially unconstitutional.⁵⁹ Any law irrespective of its bad nature or harsh nature has to be obeyed till the amendment or repeal of such law.⁶⁰ Without declaring the power granted to the Government by CrPC unconstitutional, such power cannot be termed as ‘beyond application’. When the law permits, circumstance or future story cannot deter it. If the application of remission seems to be impractical, it will be termed as ‘beyond application.’ One more thing, remission means the remission granted under section 401 of CrPC, not earned by the offender under Jail Code.

Some may argue on the basis of reformatory theory or rehabilitation. Penology of this country in respect of criminal offences never suggests such a program. Nothing but revenge is narrated in the Penal Code 1860.

To eradicate this confusing legal arena, imprisonment for life should be interpreted as imprisonment for the rest of the life of the offender. Commuting a sentence of death to life imprisonment avowedly does not make any special meaning in respect of imprisonment for life.

If the Court imposes special meaning of the term ‘commute a sentence of death to imprisonment for life’, it will be a sheer law making which is not in the authority of the Court. Absence of rules regarding remission cannot be the basis of curtailing the power of remission. Avowedly, there is no need to frame any rules regarding remission under section 401 CrPC.

⁵⁸ *Atau Mridha Vs. State*, 69 DLR [2017] [AD] 214, 223 (24) quoting *Sambhaji vs State*, [1974] 1 SCC 196

⁵⁹ *BLAST & others Vs. Bangladesh & others*, 1 SCOB [2015] [AD] 1, 16 (63) operates as: sub-ss (2) and (4) of s 6 of the *Nari-O-Shishu Nirjatan (Bishesh Bidhan) Ain, 1995*, sub-ss (2) and (3) of s 34 of the *Nari-O-Shishu Nirjatan Daman Ain, 2000* and s 303 are declared ultra-vires the Constitution.

⁶⁰ Md. Hridoy Vs. State, Criminal Appeal No. 7533/2019, <http://www.supremecourt.gov.bd/resources/documents/1562432_CrIApl_7533of2019.pdf> accessed 13 September 2019

'Beyond application of remission' is an expression which should be eradicated. Even, after the decision and interpretation of imprisonment for life in *Ataur Mridha*, the Government can remit the sentence of imprisonment for life.

My view regarding to remission in case of imprisonment for life is stated below:

- a) The Government cannot remit part of the sentence- because the lifespan of an offender is unknown.
- b) The Government can remit whole sentences of imprisonment for life- because life span is immaterial in such remission.

CONCLUSION

Apart from the Interpretation given in the decision of *Ataur Mridha*, Government power enshrined in the section 55 of PC⁶¹ is intact and in action. Not only in Bangladesh but also in India, such classification of imprisonment for life has created debate in the legal arena. Pakistan is yet to make the decision regarding imprisonment for life. To settle down the present crisis in counting the imprisonment for life and remission process of the Government, the Supreme Court should come forward and dispose of the matter within a short span of time. At the very end of this writing, I am convinced with the interpretation made in the *Ataur Mridha case* which is imprisonment for the rest of the life. But I disagree with the theory that commuting the death sentence to imprisonment for life is beyond application of remission. But converting such a comment, I conclude as the Government can remit the whole sentence of imprisonment for life because determination of life span is immaterial in such remission.

⁶¹ Penal Code 1860, s 55 denotes as: 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.