

A COMPREHENSIVE ANALYSIS OF LIFE- IMPRISONMENT IN THE UK- AN ANALYSIS

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Abstract

Life imprisonment is a significant and complex aspect of the criminal justice system in the United Kingdom (UK), deserving comprehensive analysis. This study delves into the multifaceted dimensions of life imprisonment in the UK, exploring its legal framework, historical evolution, socio-cultural implications, sentencing practices, and potential reforms. By examining the nature of life imprisonment, its purposes, and the factors influencing its application, this analysis sheds light on its role within the broader criminal justice context.

This abstract introduces a study focused on the intricate topic of life imprisonment in the UK. The analysis encompasses various aspects, ranging from the legal underpinnings and historical development of life imprisonment to its societal impact and potential avenues for reform. By exploring the key facets of this subject, the study aims to contribute to a deeper understanding of the complexities surrounding life imprisonment and its role within the broader criminal justice landscape of the United Kingdom.

Keywords: Life imprisonment, Criminal justice system, Sentencing practices, Socio-cultural implications, Legal framework.

Introduction:

The United Kingdom or UK encompasses the island of Great Britain- containing England, Wales, Scotland and also the northern portion of Ireland. Britain refers to the entire United Kingdom. Life imprisonment applies to crimes which cannot be restored. If someone is murdered, it cannot be undone. During the process of giving sentence, it is very decisive to see if the court verdicts a life sentence for the entire duration of the person's life or one which will be reviewed subsequent to a particular set of years. Life sentence varies from country to country like in the US there is 'life without parole' and in the UK there is, 'whole life order'. Life sentences vary around the world. In the legislation of some countries there are no whole life sentences. Among the most European countries Life incarceration is the eventual punishment. The standouts are Croatia, Norway Bosnia and Herzegovina, Andorra Montenegro, Portugal and the Vatican, where this sentence is a fixed term penalty and Belarus, where the death penalty is still in practise¹. The UK has the highest rate of life incarceration, inside Europe, per 100,000 of total population, while within the UK this rate is slightly higher in Scotland than Wales and England and in Northern Ireland².

¹ D. van Zyl Smit and C. Appleton, *op. cit.*

² *SPACE I — Council of Europe Annual Penal Statistics: Prison Populations, Surveys 2016.* (Strasbourg: Council of Europe, 2018).

In Portugal, it is forbidden by the constitution³. Belgium reviews a sentence after 10 years.⁴ Countries with a review period after 15 years are Switzerland, Germany, Austria and Luxemburg⁵. Poland, Russia and Slovakia review after 25 years while Turkey reviews after 20⁶. Lithuania is on 26 years whereas Estonia considers release after 30 years⁷. The underlying principle of lack of support for whole life incarceration, is that nobody ought to be viewed as outside the limits of progress. The leniency in release should hence be always present. Germany's constitution holds that prisoners must be given a chance to resocialize. ECtHR (The European Court of Human Rights) also stressed in 1977, June 21, on this, and pointed that it is the state's responsibility to guarantee the improvement of prisoners and to have a future that is crime-free. They must have a right to social life that is constitutionally protected, based on Human Rights Laws.

Life sentences will only become constitutional, if there is a hope of release of the inmates. This needs a solid, non arbitrary release system without uncertainty. Human dignity in sentencing will prevail, if thus followed. This resultantly steered provision which was inserted that provided a review after 15 years⁸. Contrary to the European Union, US courts use Life incarceration. Death penalty was abolished from 1970 due to Furman case⁹ and life imprisonment replaced death sentence. After 2 years, the Supreme Court held in Shick¹⁰ that life without parole is an acceptable sentence¹¹.

In the UK, life incarceration is seen as the proper surrogate for the capital punishment. When this sentence is given to someone in UK, they will need to serve the punishment for the entirety of their life. When the verdict of a life sentence is given, the minimum period to be served before initiating a review process must be indicted. When a judge passes a whole life order, it is an exception. This means that he/she must spend in prison the rest of their lives. A life sentence is always for life, irrespective of the length of minimum term. Parliamentary decision was to give life sentence to all offenders proven guilty of murder. The judge will set a minimum tenure the offender must serve before being eligible to be recommended for release by the Parole Board. Schedule 21 of Sentencing Code sets out the minimum term to be served for the crime of murder.¹² It gives instances of various case types. The offender will be released only once they have served the minimum term and if the Parole Board is satisfied that detaining is no longer necessary for the safety of the public. If released, a Life convict will remain on license for the rest of their life. If they are ever even thought to be a risk to the public they could be called back to prison without a need to have committed another offence.

In Western Europe, Life Imprisonment is most used by England and Wales. Whether life imprisonment is better than the death penalty is often debated. The potential victims and the public must be safeguarded at any cost, while there is no guarantee that by taking care of life prisoners as wild animals and keeping them as captives forever, without any hope for prospective release would not make more victims. It is almost like the prisoner dying a slow death rather than an immediate in jail. This would be a grievous violation of the prisoners' human rights. Murder was

³Constituicao de Portugal art. 30.1.

⁴ S. Snacken et al., Belgium as cited in N. Padfield et al, Release for Prison: European Policy and Practice (7th edn. Cullompton 2010): for recidivists it is sixteen years.

⁵ D. van ZylSmit, "Outlawing Irreducible Life Sentences: Europe on the Brink?" (2010).

⁶Ibid.

⁷ Ibid

⁸ German Criminal Code Strafgesetzbuch, sec. 57a(1).

⁹ Furman v. Georgia 408 U.S. 238 (1972).

¹⁰Shick v. Reed 419 U.S. 256, 267 (1974): this sanction is similar to sanctions like mandatory minimum sentences or legislation precluding parole.

¹¹ J. Wright, "Life Without Parole: An Alternative to Death or Not Much of a Life at All?" 529-68 (1990).

¹² Sentencing Act 2020.

punishable by death in UK, till 1965, but by enacting the Murder Act 1965 this was abolished. Life sentences have been put into practice since then. Life does not always mean life. Many types of life sentences are there. For the compulsory life sentence, a minimum time span is set out by the magistrate. After the completion of this period, the convict's release will be considered. This relates to elements of gravity as well as the risks connected to the aims of the sentence of murder originally given. Lifelong imprisonment will be the result if a whole life order is received, without any hope of release. One of the topmost sentences one can ever get is this.

These punishments have a drastic effect on a person's life. For granting life imprisonment, there must be systematic inspection and be necessarily on a case-by-case basis watched upon. Section 269 of the Criminal Justice Act 2003 (CJA 2003) is crucial for this type of sentences. This further points out to Schedule 21 of the CJA 2003, laying out 3 starting points for crime murder crime. To be precise, if the gravity of the crime is incredibly high, the early release provisions do not apply to it giving way to a whole life order.¹³

In UK, Life literally stands for life. The ECtHR in its recent decision decided that the whole life imprisonment is attuned with Article 3 of the European Convention on Human Rights (ECHR), even if it requires the convict to stay captured in prison for a life time.¹⁴ There must be a possibility of release and review in place when the sentence is given as verdict.¹⁵ This is to make rehabilitation possible for the prisoner. It is completed by considering the progress the detainee makes throughout the period of sentence and determining if the whole life verdict is reasonable. In UK, previously Secretary of State evaluated the progress after 25 years, but due to CJA 2003, this has been obliterated for whole life detainees.

In UK, life convicts can be released on compassionate grounds, only if the prisoner is seriously incapacitated or terminally ill. Section 30(1) of the Crime Sentences Act 1997 (CSA 1997) prescribes this. Available data shows that in the past 14 years this power has not been applied to any life prisoner.¹⁶ It results in ambiguity and a lot of uncertainty regarding their release and if it is granted, when will it happen. Prisoners must be made known what to expect even at the early stages. To attain the perspective of dignity, it is the basic right even for those who have indulged in the most heinous crimes.

Capital punishment was abolished in 1965.¹⁷ Life Imprisonments were retained, as it gave the message that taking someone's life was, still taken grievously.¹⁸ Criminal justice system would lose the trust of public if it is abolished.¹⁹ The life sentence has been divided into 3 parts. Initially a gravity reflecting minimum period to be served in the prison, need to be set out, relating to the particular offence.²⁰ In the interests of public protection and safety, followed by this, the detention can be continued if needed.²¹ The prisoner can be released if there is no threat to public safety.²² In 1973 a novel technique was created where the Home Secretary will be advised by the newly constituted Parole Board, who was accountable for the release as well as recall of convicts in

¹³ Section 269 (4) CJA 2003.

¹⁴ *Vinter and others v UK* App. Nos. 66069/09, 130/10 and 3896/10 (ECtHR, 9 July 2013).

¹⁵ *Ibid.*

¹⁶ *Vinter and others v UK* App. Nos. 66069/09, 130/10 and 3896/10 (ECtHR, 9 July 2013) para 44.

¹⁷ Murder Act 1965.

¹⁸ *Ibid.* s. 1(1).

¹⁹ J. Roberts, "Public Opinion and Mandatory Sentencing: A Review of International Findings", 483-508 (2003).

²⁰ A. Ashworth, *Sentencing and Criminal Justice* (5th edn. Cambridge University Press. Cambridge 2010) 117.

²¹ *Ibid.*

²² *Ibid.*

and out of prison. ²³From 1983, before life prisoners could be reviewed for release, they needed to serve a minimum term. ²⁴In all cases, after 25 years the justification of it will be examined by the Secretary of State. ²⁵Setting the minimum tariff to being eligible for release and while mostly not considering it as a part of sentence was mostly done in political intervention rather than by judges and it was highly condemned by public. ²⁶If politicians are allowed to make such crucial decisions, the uncertainty which is already burdening the system, will worsen.

In UK, there have been several cases on life imprisonment in the last few years. Punishment has become more castigatory since the passing of the CJA 2003, as a result of the strict sentencing pattern. As per CJA 2003, the 25 year review by UK government has been stopped. The judiciary can at the same time state that the law on early release conditions will not apply or order a life sentence with a minimum term from 18 December 2003²⁷. This then causes a lifelong imprisonment violating the basic human rights of the inmates. The judges have an obligation to have regard to the starting points laid in Schedule 21 imposed by Section 269 CJA 2003²⁸. 30 years is the starting point for serious cases ²⁹. It is 15 years for other categories of murder³⁰. A whole life sentence without a scope for parole should be imposed if the criminal is over 21 years or if the grievousness of the offence is high³¹.

The Secretary of State is the only way for the prisoner to be set free after being given a whole life order. This has been seen as the state's means to reduce judicial discretion in such sentences. If such is the case, it runs the risk of involvement of personal interests of the politicians and worsening the already pathetic condition of the life convicts. Only the Secretary of State has discretion to release a prisoner at any time as per Section 30(1) CSA 1997. Chapter 12 Prison Service Order 4700 (PSO 4700) sets out the conditions for release.

No other periodical review will happen unless the prisoner is having any terminal illness and his life expectancy is very low, additionally there should be adequate arrangements for his care outside the prison. The uncertain case of life prisoners not knowing if they will or will not be released is indicated by this. If they are to be released under any circumstances, this too remains uncertain as when it will happen. Genuineness of release possibility and meeting the ECHR standards is still ambiguous.

In ECHR 1950, a prohibition on life imprisonment is not there but there is a prohibition on torture, inhuman or degrading punishment³². The positive obligation of preventing such practices is vested on the state mechanism. In several cases the importance of Article 3 ECHR for life sentences have been debated, and Kafkaris³³ and Vinter³⁴ being among the important ones.

A man found guilty of committing 3 murders in 1989 in Kafkaris case was given a triple life incarceration. Review of the life sentence was after 20 years as per the law of that time of

²³ Criminal Justice Act 1967.

²⁴ CSA 1997, Section 29.

²⁵ M. Evans, "Whole Life Sentences", 1 (2011).

²⁶ Ibid.

²⁷ Section 269(4) CJA 2003.

²⁸ P. Coe, "Compatibility of Whole Life Order with the European Convention on Human Rights", 478 (2013).

²⁹ Schedule 21(5) CJA 2003.

³⁰ Schedule 21(6) CJA 2003.

³¹ Schedule 21(4) CJA 2003.

³² Article 3 ECHR.

³³ Kafkaris v Cyprus 2008 App. No. 21906/04 (ECtHR, 12 February 2008).

³⁴ Vinter and others v UK App. Nos. 66069/09, 130/10 and 3896/10 (ECtHR, 9 July 2013).

sentencing³⁵. Due to the uncertainty in English Law, Kafkaris was held to remain in prison, with no chance of early release, in spite of setting this 20 year window. So he questioned this practise citing that due to this action Article 3 was violated, as a lot of uncertainty was created amounting to degrading and inhuman treatment. But ECtHR held that Kafkaris's sentence was irreducible as Article 3 was not violated by imposing a life sentence³⁶.

Vinter was the next most recent breakthrough case on life imprisonment, decided in 2013. It had 3, murder convicted people, all of whom were given whole life orders³⁷. None of the whole life orders were reversed as all 3 persons involved were already convicted for murder³⁸. An appeal was made to the ECtHR by them, followed by the decision, stating that their sentences were degrading and inhuman as no hope of release was there³⁹. The Fourth Section of the ECtHR ruled on this matter in 2012 that there was no violation of Article 3⁴⁰. The case was then brought up in the Grand Chamber. Violation of Article 3 was identified by the Chamber, stating that every life convict has the right to possibility of review and hope of release⁴¹. Having the above case as a benchmark, the Chamber suggested the lack of clarity in English law.

OVERCROWDING

Political environment that began in the 1980s tackling crimes with tough hands has accelerated the rising cases of life sentences in a last few decades. Amidst the growing uncertainty about the importance of rehabilitation the idea of whole-life prison sentences quickly won approval. In an opposite way, incapacitation and punishment became the primary goals of incarceration and numerous people deserted the idea of reforming culprits. Policymakers and the public grew comfortable during this time with the idea of putting people away for either the rest of their lives or for long, discrete terms of years, without deciding upon a period of consideration for release. The corrections system came to be accepted principally as a retributive tool as fear of crime was crystallized by sensationalized media accounts among policymakers and the public, of formerly incarcerated persons reoffending. An important symbol of this transformation in corrections policy is the broadened use of life sentences. Lifers continue to be mostly excluded from the discussion of sentencing reform, as myriad coalitions of stakeholders and lawmakers are engaged in meaningful discussions about the role of corrections.

Another gripping menace lurking in the prison system, both for the inmates as well as the authorities is overcrowding. Overcrowding creates significant impact on the prisoners' physical health. When population increase above the CNA, this also impacts the proportion of inmates that may be admitted in medical/dental as well as mental healthcare centers, due to the pre-allocated bed space that the facility was designed for, even if staffing is increased in these areas. In addition, due to air quality and the close proximity of prisoners, due to overcrowding, there is a higher rate of infection when there are communicable diseases present⁴². If such scenario arises, it becomes the responsibility of the state to bring in a control mechanism, which calls for added expenses. If the cases of lifelong imprisonments and the prospects of release of inmates are handled more responsibly, these extra costs can be checked, thus saving extra spending from state treasury.

³⁵Kafkaris v Cyprus 2008 App. No. 21906/04 (ECtHR, 12 February 2008) para 27.

³⁶Kafkaris v Cyprus 2008 App. No. 21906/04 (ECtHR, 12 February 2008) para 98.

³⁷Vinter and others v UK App. Nos. 66069/09, 130/10 and 3896/10 (ECtHR, 9 July 2013) para 14.

³⁸Vinter and others v UK App. Nos. 66069/09, 130/10 and 3896/10 (ECtHR, 9 July 2013).

³⁹Ibid para 97.

⁴⁰Vinter and others v UK App. Nos. 66069/09, 130/10 and 3896/10 (ECtHR, 17 January 2012) para 96.

⁴¹Vinter and others v UK App. Nos. 66069/09, 130/10 and 3896/10 (ECtHR, 9 July 2013) para 130.

⁴²Walmsley, R. (2005). Prison health care and the extent of prison overcrowding. *International Journal of Prisoner Health*, 1(1), 3-12.

From a humanitarian prospective, it is very crucial to tackle the lacuna of places of detention overcrowding. It is an undertaking that is challenging, as overfilling has manifold and accumulative reasons, mainly which is not internal to the prison system. It should be addressed at the policy level and in society in large scale and not only at the prisons level. While the magnitudes are particularly grave for the men, women and children alike who are deprived of their liberty, they also affect the frontline prison staff whose job it is to safeguard and meet the wants of the inmates. Overwhelmed by the piling numbers and directly exposed to the frustration of the detainees without the adequate resources needed to promise security or access to the most elementary services, detention staff work in challenging conditions and are exposed to continual pressure and risk.

Life Imprisonment detainees are required to be in the prison for long periods without any clear legislations of release. As evidenced before, the lack of clarity of the English law in this scenario aggravates the issue of overcrowding. If the number of inmates keeps on going higher, without an outlet of the inmates, naturally there will be overcrowding. The more the number of people, who feed on the limited provisions allocated to the prisons, will result in grievous problems like malnourishment, unhygienic conditions, lack of security as well as discipline. It will trigger a negative impact on the entire criminal justice system as a result of increasing cramming, demotivation of the staff due to over working, and the development of parallel coping mechanisms like corruption. Throughout the world, size of the prison population is breeding, resulting in financial burden and threatening the social cohesion. Prison populations grew in 78 per cent of countries between 2008 and 2011, and in 71 per cent of countries in the previous two years.⁴³

The degrees of overcrowding in the prisons of one country will vary area wise also. It is often observed that prisons located in central or urban areas, or close to the courts, have high levels of overcrowding, while the country imprisonment rate may be comparatively low, concealing the actual situation. Every so often pre-trial detention facilities have the uppermost levels of overcrowding. In countries where different prison systems are there, like federal and state prisons, there are varying occupancy rates and overcrowding in these systems. Overcrowding is defined with reference to the occupancy rate and the capacity of prisons. Using this formula, overcrowding in prisons refers to the condition where the number of inmates exceeds the official capacity of the prison. The rate of overcrowding of prison is defined as that share of the occupancy rate above 100 per cent.

Based on the data collected from 194 jurisprudences by the World Prison Brief of the International Centre for Prison Studies, the rate of prison occupancy of 118 was above 100 per cent (overcrowding). 15 jurisdictions, out of these, had rates of overcrowding above 200 per cent, 33 had rates between 150 and 200 per cent.⁴⁴ Even though the numbers vary from country to country, it is a disturbing fact that there is no international body which governs or tracks or lays down rules for alleviating the repercussions of overcrowding in prisons worldwide. The Standard Minimum Rules for the Treatment of Prisoners (SMR) holds that “accommodation provided for the use of prisoners and in particular all sleeping accommodation shall meet all requirements of health, due regard being paid to climatic conditions and particularly to cubic content of air, minimum floor space, lighting, heating and ventilation”.⁴⁵

In the regional standards, commentary to Rule 18 of the European Prison Rules directs that the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or

⁴³Ibid., and World Prison Population List, Eighth Edition (2008). The countries referred to are those covered by the World Prison Population List of the International Centre for Prison Studies, which includes all but 6 countries of the world. The information provided for each country does not relate to the same date. They were the most recent figures available at the time the World Prison Population Lists were compiled in December 2008 and May 2011.

⁴⁴<http://www.prisonstudies.org/info/worldbrief/> (accessed on 13 June 2011).

⁴⁵SMR, Rule 10.

Punishment (CPT) reflects four square meters per person as a minimum requirement in shared accommodation and six square meters for a single occupancy prison cell. It notes that, although CPT has never laid down such a norm directly, indications are that it would consider 9 to 10 square meters as a desirable size for a cell for one prisoner.⁴⁶ With the growing prison population, the number of inmates with special needs is also increasing worldwide. They include women prisoners, drug-addict prisoners, foreign national prisoners, prisoners with mental health care needs, prisoners with disabilities, racial and ethnic minorities, and older prisoners. Children imprisoned are often held with adults, opposed to the provisions of international standards.

It is a grave fact that in many prison systems, prisoners do not have even the minimum space requirements and spend up to 23 (sometimes 24) hours in overcrowded, cramped accommodation. Sometimes it gets so acute that prisoners are forced to sleep in shifts, sleep on top of each other, share beds or tie themselves to window bars so that they can sleep while standing. Paradoxically, the level of overcrowding is often much worse in pre-trial detention facilities in most countries worldwide, and the prison conditions are correspondingly much poorer, despite the fact that pre-trial prisoners should be presumed innocent until proven guilty by a court of law and special privileges should be provided to them, reflecting their non-convicted status, according to international law.⁴⁷

Overcrowding also impacts the quality of sanitation, nutrition, the care for vulnerable groups and health services in addition to the physical and mental well-being of all prisoners getting disturbed, breeding violence and prisoner tension, intensifying the existing physical and mental health problems, raising the risk of transmission of communicable diseases while posing enormous challenges in the management of these issues. The New Prisons Programme was recommended, in the year 2021, by the Ministry of Justice to open a new prison in Chorley, England and is still under peripheral levels of execution. Rather than increasing the number of prisons, if the crime rates are checked and the release of inmates are increased, overcrowding can be tackled much effectively.

The Committee for the Prevention of Torture of the Council of Europe (CPT) annotated that: “in many European countries the number of life-sentenced and other long-term prisoners is on the increase.”⁴⁸ The CPT has also criticized the unjustified special restrictions applied to such prisoners, which was likely to exacerbate the harmful effects inherent in long-term imprisonment.⁴⁹ In England and Wales, for example, the prison population serving life sentences increased from 3,192 in 1994 to 6,741 in 2008.⁵⁰

International and regional bodies encourage the controlling or limiting of life imprisonment. A Criminal Justice Branch (UNOV) report on Life Imprisonment⁵¹ recommended that states establish a penal policy which, inter alia:

- Ensures that life sentences are only imposed on offenders who have committed the most serious crimes and only when strictly necessary for the protection of society;
- Undertakes not to impose life sentences on juveniles under the age of 18; and
- Guarantees that any individual sentenced to life shall have the right to an appeal to a court of a higher jurisdiction, and to seek commutation of sentence.

⁴⁶Commentary to Rule 18 of the European Prison Rules (2006).

⁴⁷ICCPR, Article 14 (2) and SMR, Rules 84 to 93.

⁴⁸CPT Standards 2006, Extract from the 11th General Report [CPT/Inf (2001) 16], para. 33.

⁴⁹CPT Standards 2006 *ibid*.

⁵⁰Penal Reform International, *Alternative Sanctions to the Death Penalty Information Pack*, April 2011, p. 12.

⁵¹United Nations (1996), *The Life Sentence*, Report of the Criminal Justice Branch of UNOV, United Nations Publication Geneva.

Rome Statute of the International Criminal Court ensures that life imprisonment without parole is not available as a punishment even for the gravest crimes, and provides that sentences of life imprisonment should be reviewed after 25 years.⁵² The Convention on the Rights of the Child specifically prohibits the use of LWOP on children below the age of 18.⁵³ The European Court of Human Rights has recognized that a life sentence without any hope of release could in principle constitute inhuman or degrading treatment in violation of article 3 of the European Convention.⁵⁴

In Europe Scotland had the apex percentage of life prisoners per 100,000 of total population. A ratio of 19.2 prisoners was evidenced when studied on the 1038 life prisoners in Scotland which was per 100 000 of entire population. The England and Wales had a ratio of 12.7, while Northern Ireland had 8.3. Ratio within Germany was 2.3 and 0.7 for France per 100 000 of country population.⁵⁵ Even in the national prison population in Europe, Scotland had the highest percentage. In Europe mandatory life incarceration is unusual, where only Ireland, Scotland, Germany and the other jurisdictions of the UK, had provisions for the same. Ireland and UK in Europe are among the countries that have the highest rates of life incarceration, compared to their country populations.

CASE OF SCOTLAND

The period, an individual must stay imprisoned before they are eligible for consideration for release that should be provided in years and months is given in Section 1 of the Convention Rights (Compliance) (Scotland) Act 2001 thus eliminating the possibility of an order of whole life. In certain serious cases where a minimum period for eligibility to be released, seems to be an insufficient punishment, routine consideration of release is excluded in such whole life orders. In the Scottish legislation there is no specific legislative guidance unlike in England and Wales on how judges' discretion should be exercised in setting a punishment term.⁵⁶ The 2001 Act was an attempt to bring the Scot law in tandem with the European Convention on Human Rights, because they to interpreted life sentences as inherently inhuman and degrading if there is was prospect of release.⁵⁷

In Scotland unrestricted life sentences can be given, not only for murder but also for a wide range of crimes. They were generally termed life imprisonment sentences, not much contrasting to mandatory life sentences, the only exception except being courts having caution on to impose them or not. Orders for Lifelong Restriction or OLRs, have been replaced them since 2003⁵⁸ for conviction apart from murder, like serious sexual or violent offences. OLRs follows a similar pattern as other Scottish life sentences in their application and decision-making connected to release.

Decision of release of life convicts by Parole Board is done as per the examination that for the protection of the public, custody is no more necessary⁵⁹. Primarily the Board relies on the decisions and actions of significant others within the system, including materials available in the reports

⁵²Article 110(3) of the Rome Statute of the International Criminal Court.

⁵³CRC, Article 37(a).

⁵⁴Nigel Rodley, et al., *Treatment of Prisoners under International Law*, op. cit., p. 382, footnote 10.

⁵⁵D. van ZylSmit and C. Appleton, op. cit.p.91.

⁵⁶J. Bild, *The mandatory life sentence for murder: lessons from two neighbours*. (Unpublished PhD, University of Cambridge, 2014).

⁵⁷*Sawoniuk v. UK*, ECtHR (app. no. 63716/00,) 29 May 2001; *Einhorn v. France* ECtHR (app. no. 71555/01), 12 July 2001, §§ 27-28; *Nivette v. France* ECtHR (app. no. 44190/98) 3 July 2001; *Weeks v. UK*, EComHR (app. no. 9787/82) 7 December 1984, § 72; *Kotälla v. the Netherlands*, (app. no. 7994/77), 6 May 1978, p. 238.

⁵⁸Y. Gailey, L. Martin, and R. Webb, "An Exceptional Sentence" Exploring the Implementation of the Order for Lifelong Restriction', in K. McCartan and H. Kemshall, eds., *Contemporary Sex Offender Risk Management, Volume I* (Palgrave Macmillan, Cham, 2017) pp. 115–143.

⁵⁹Parole Board for Scotland *Role of the Board*. Available online: http://www.scottishparoleboard.gov.uk/page/role_of_the_board, accessed December, 2022.

prepared for its deliberation, including factors that can delay or prevent a prisoner's progress in the path of release.⁶⁰ Many factors or agents like psychologists, probation officers and prison officers make important decisions throughout the inmates' sentences and their reports which are included in the evaluation report of progress. Decisions of Parole Board are hence under influence of earlier decision quality and the opportunities like custodial opportunity that the prisoner has had, to exhibit the low risk after release process.

The opportunity for progression is a crucial feature concerning the decisions of the Parole Board is of life prisoners during the tenure of long prison sentences, like accessibility in prison of appropriate programmes of rehabilitation. The capability of the Scottish Prison Service to manage this progression affects the release decisions. Progression has been underlined as an area of apprehension by the recent inspectorate reports, which a significant number of inmates are unable to complete due to long waiting lists for rehabilitative programmes, in order to become eligible for release⁶¹.

Current data on these reports highlight the extent to which release of prisoners is dependent on the ability of the system to offer scenarios to rehabilitate them and for the data to be revealed. An allied concern for those inmates on olrs with punishment that are short is that they may not be able to exhibit a sufficiently well low risk level during evaluating for release, because of the incapability of Prison Service in responding to the convolutions of risk and needs within their tenure under imprisonment⁶².

The Parole Board also has responsibility for instituting the licence conditions for release into the society. Conditions for all life convicts include the 'standard' conditions, such as the dire need as not to commit another criminal offence, and to testimony any contact with the police to their supervising officer. More tenuously defined conditions, like being 'of good behaviour and ... the peace', are also standard conditions⁶³. Prisoners are subjected to supervision from social workers, and must instantly notify their social worker if they are arrested or even questioned by the police⁶⁴. There may also be a number of specific customized conditions. All these licence conditions affect the number of all life prisoners called back to custody.

In Scotland, being recalled to custody is a final and crucial cause for the elevated numbers of life prisoners followed by a violation of their licence conditions. For the rest of their lives individuals with life sentences stay subjected to license conditions in the society. The practise is not like previous life prisoners across other jurisdictions, whose conditions of release are time- limited, and hence subject to recall for a restricted number of years⁶⁵. Inmates released from life imprisonment, are never enjoy full liberty.

Tackling Scotland's overall high rate of incarceration has always been on the agenda of Scottish administrations in successions⁶⁶. The present focus of reforms in the punishment system of Scottish

⁶⁰ J. Lackenby, 'To Parole or Not to Parole? How do Parole Board Members make decisions about Parole?', 237 *Prison Service Journal* (2018) 32–35.

⁶¹ Her Majesty's Chief Inspectorate of Prisons for Scotland, *Annual Report 2017–2018*. Available online: <https://www.prisoninspectorescotland.gov.uk/publications/hm-chief-inspector-prisons-scotland-annual-report-2017-2018>, accessed December, 2022..

⁶² Y. Gailey, L. Martin, and R. Webb, "'An Exceptional Sentence" Exploring the Implementation of the Order for Lifelong Restriction', in K. McCartan and H. Kemshall, eds., *Contemporary Sex Offender Risk Management, Volume I* (Palgrave Macmillan, Cham, 2017) p. 136.

⁶³ Parole Board for Scotland, *Role of the Board, loc cit.*

⁶⁴ Parole Board for Scotland, *Role of the Board, loc cit.*

⁶⁵ D. van Zyl Smit and C. Appleton, *op. cit.*, ch. 10.

⁶⁶ J. Tombs and L. Piacentini, 'Prisons and Imprisonment in Scotland', in H. Croall, G. Mooney, and M. Munro, eds., *Criminal Justice in Scotland* (Cullompton: Willan, 2010) pp. 238-259.

Government is to use imprisonment only when extremely necessary⁶⁷. However, it has reduced the confusion but not the overall prison population. A constantly mounting proportion of the population are serving life incarceration now. It has only been successful in civilising aspects of prison practice but not the menace of increasing prison population.⁶⁸

CASE OF IRELAND

The data of people in Ireland serving a life sentence is, 1 in every 9 person of the total population.⁶⁹ Besides the increasing life sentence prisoner population in custody, there are many long-lasting apprehensions related to life imprisonment and parole in the country which includes a compulsory life sentence for murder; the political interference in the decision making process; the increased time period served by life sentence prisoners; and the lacking procedural fairness. The Parole Act 2019 explains the parole process by creating a statutory Parole Board which makes verdicts on release, independent of the political influence. This points out a transition towards a more human rights-based frame which is more consistent with the other European jurisdictions. Investigations revealed that the political influence in the process of Parole, has made decision-making risky to castigatory inclinations, as seen in recent decades, the manifold raise in time spend by life sentence prisoners, in captivity.⁷⁰

Life sentence prisoner population in Ireland is high in comparison to other European countries.⁷¹ When analysing life sentence prisoners per 100,000 of national populations across the US and Europe, it is in 5th position (after the US, UK, Greece and Turkey).⁷² Between 2001 and 2017, in the life sentence prisoner population in Ireland there was an increase of 158%,⁷³ while simultaneously the overall prison population increased by 18.25%.⁷⁴ Among the few European countries with a mandatory life sentence for murder Ireland is one, due to which there is a significant increase its population. The mandatory life sentence was upheld by the Supreme Court, because it saw murder as an offence which in nature was unique.⁷⁵ The 95% of the life sentence prisoner population are serving for murder, while the rest are for sexual offences, manslaughter and attempted murder.⁷⁶

One of the reasons for the increase in the custodial life sentence prisoner population in Ireland has been its parole process. Life Imprisonment need not mean life in prison forever and there must be an alternative way by how the Life prisoners can be released back into the community after serving a certain period in detention.⁷⁷ Since 2001 the available data signifies that the ratio of number of life sentence prisoners in prison is much more disproportioned than the number of releases from

⁶⁷ Scottish Government Justice Vision and Priorities Delivery Plan 2018-19 (2018). Available online: <https://www.gov.scot/publications/justice-vision-priorities-delivery-plan-overview-progress-2017-18-new/pages/9/>, accessed December 2022.

⁶⁸ L. Brangan, 'Civilizing Imprisonment: The Limits of Scottish Penal Exceptionalism' *British Journal of Criminology* (2019).

⁶⁹ Irish Prison Service. 'Annual report' (Irish Prison Service 2016), 24

⁷⁰ Diarmuid Griffin *Killing Time: Life Imprisonment and Parole in Ireland* (Springer International Publishing 2018).

⁷¹ Council of Europe., 'Annual penal statistics: SPACE 1-Prison populations, survey 2015' (Council of Europe 2017), 92–93

⁷² van Zyl Smit and Appleton (n 1) 87.

⁷³ Griffin (n 4) 5.

⁷⁴ Annual Reports 2001-2017 of Irish Prison Service at Irish Prison Service, 'Annual report' (Irish Prison Service).

⁷⁵ *Lynch and Whelan v Minister for Justice* [2012] 1 IR 1, 10; Law Reform Commission, Report on Mandatory Sentences (LRC 108 – 2013) 17.

⁷⁶ Griffin (n 4) 48.

⁷⁷ van Zyl Smit, D., Weatherby, P. and Crieighton, S, 'Whole Life Sentences and the Tide of European Human Rights Jurisprudence: What Is to Be Done?' (2014) *Human Rights Law Review* 1.

prison. This serious imbalance in numbers has had a mounting effect on the life sentence prisoner population resulting in an increase in the population, year after year. In recent times, there has been a rise in the number of releases with 14 prisoners liberated in 2017 and 7 in 2018.⁷⁸ The average period a prisoner serves in prison before being released into the community has increased from 7.5 years betwixt 1975-1984 to 19 years from 2008-2017.⁷⁹ This number is only the average time served of those who were released. But in reality many number of prisoners serve time even after this average time period. As per the data, 5% of those in custody serving life sentences in 2019 for homicide had spent 30 years or more inside.⁸⁰

There have been only a few legal changes in parole process from 1960 until the Parole Act 2019, even though the time that a life sentence prisoner expected to serve in detention, prior to release has changed significantly over the last few decades. The decision as to whether a life sentence prisoner should be released rests with the Minister or the political authority. Criminal Justice Act 1960 includes this Minister's power of temporary release.⁸¹ The power of temporary release, which is executive, is a privilege, rather than a right⁸² and the Minister has wide discretion in exercising this power.⁸³ Temporary release is a statutory power and examples are like allowing a prisoner to attend a family occasion, releasing a prisoner to for medical treatment; or release over the winter holiday period. A practice developed for releasing life sentence prisoners back into the community on full temporary release is no different to temporary release.⁸⁴ The process that leads to a decision made by the Minister to release a prisoner on full temporary release is mainly a policy question and not a legal procedure. This can change at any time if the Minister decides so. Until the Act, parole was not a legal concept in spite of the word being used to describe the practice of releasing life prisoners. In 2001 a non-statutory, advisory Parole Board was established to make proposals to the Minister regarding the release of long-term and life sentence detainees.⁸⁵ Under the current system, it is mandatory for a life sentence prisoner to serve seven years in prison before qualifying for release. This is not introspective of the time served over the last few decades and it is precise to state that a life sentence prisoner becomes qualified only for review at seven years but not release, which happens very much later in the process.

The life sentence prisoner will be reviewed not more than 3 years after the last review if release is not recommended. Since its commencement, the Parole Board consisted of approximately 12 to 14 members and all members meet once a month to discuss about the offenders under review and also to make suggestions to the Minister regarding release or further detention in individual cases. The recommendations of the Parole Board are principally supported by the reports provided by various criminal justice agencies like risk-based assessments from the Probation Service and Prison Psychology Service in addition to an interview conducted by the two members of Parole Board with the life sentence prisoner at their place of confinement. The interview will not be formal and legal representation or taking an attorney is not allowed.⁸⁶ It also receives requests from victims and victims' families.⁸⁷ In most cases, recommendations by the Parole Board to the Minister are always

⁷⁸ Parole Board, 'Annual Report' (Parole Board 2002) 2.

⁷⁹ Griffin (n 4) 5.

⁸⁰ People (DPP) v Mahon [2019] IESC 24

⁸¹ s. 2 (as amended by the Criminal Justice (Temporary Release of Prisoners) Act 2003). Temporary release is a statutory power and does not constitute an exercise of remission or commutation of sentence (as provided for by Article 13.6 of the Constitution and conferred on the government under s. 23 of the Criminal Justice Act 1951).

⁸² Ryan v Governor of Limerick Prison [1988] IR 198, 200.

⁸³ Murray v. Ireland [1991] IRLM 465, 472.

⁸⁴ Dáil Question No. 513: Alan Shatter, 26 November 2013.

⁸⁵ Prior to this, the Sentence Review Group, which replaced the 'prison review' system in 1989, advised the Minister on the release of life sentence prisoners.

⁸⁶ Parole Board, 'Annual Report' (Parole Board 2002) 9.

⁸⁷ Parole Board, 'Annual Report' (Parole Board 2013) 6.

accepted fully. The Minister, when pondering on release, must consider a few factors in the statute including, the seriousness of the crime committed, previous detentions; the length of time served and also the threat to the safety of the public.⁸⁸ The Parole Board took up these legislative criteria as the ‘main factors taken into account in each individual case’,⁸⁹ even though public protection is constantly cited as the key factor in their decision-making.⁹⁰ A life sentence prisoner is supervised on release, by the Probation Service in the community for the remaining part of his\her life but ‘full temporary release’ can be cancelled following a violation of any laid out condition.

The minimum term is increased by the new legislation when a life sentence prisoner will become eligible for parole from 7 to 12 years.⁹¹ This was implemented because a lower term would give a life sentence prisoner ‘false hope’ resulting in the inmates ‘belief that they can be released at an earlier period.’⁹² Temporal limits vary greatly in Europe in relation to minimum terms for life sentences, with Finland and Denmark also imposing a minimum term of 12 years while Russia, Poland, and the ICC opting for 25 years.⁹³

In the framework of configuring the release process, the Council of Europe underlines that, ‘the most important decision to be made is which criteria will be used to determine whether a prisoner can or cannot be granted release’.⁹⁴ There is a wide range of ways across various jurisdictions. Public protection is often cited as the decisive factor although many countries include risk considerations as part of a range of diverse related criteria. For example, Sweden determines release based on rehabilitative efforts; risk of reoffending; overall behaviour and development; time in custody and offence type.⁹⁵ There has been a spotlight on rehabilitation as a focal factor of prison policy at the broader European level and this has been emphasised in the context of life imprisonment both in the European Prison Rules and the jurisprudence of the ECtHR.⁹⁶ The Council of Europe irrespective of the type of criteria applied, underlines the need for the offenders being made aware of the date at which they become qualified for release and that the review criteria are ‘clear and explicit’.⁹⁷ Despite the criteria being in place across many jurisdictions, their expression and applicability can raise concerns, particularly in the dependability of assessments based on which the chances of reoffending is determined.⁹⁸

The 3 core inconveniences in life imprisonment in Ireland are the increase in the life sentence prisoner population; the increase in time served by life sentence prisoners and the informal and political nature of the parole process. The Parole Act 2019 addresses the issue of informal and political nature of the parole process by placing parole in a formal legal structure in addition to accentuating the rights of victims and life sentence prisoners. This puts a check on the decision making process by no longer being dependent on Ministerial discretion. The Parole Board has the

⁸⁸ Criminal Justice Act 1960, s.2 (as amended by the Criminal Justice (Temporary Release of Prisoners) Act 2003)

⁸⁹ Parole Board, ‘Annual Report’ (Parole Board 2012) 7–8

⁹⁰ Parole Board, ‘Annual Report’ (Parole Board.2004); Parole Board, ‘Annual Report’ (Parole Board 2015) 5

⁹¹ s. 24(1)(a).

⁹² Jim O’Callaghan, Select Committee on Justice and Equality, 24 May 2017. The Act does not refer to children sentenced to life imprisonment and the application of the minimum term to children.

⁹³ Frieder Dünkel, Dirk van Zyl Smit and Nicola Padfield ‘Concluding Thoughts’ in Nicola Padfield, Dirk van Zyl Smit and Frieder Dünkel (eds), *Release from Prison: European Policy and Practice* (Willan 2010) 408-20

⁹⁴ Council Recommendation (2003) 22 on conditional release (parole), Explanatory Memorandum para. 18

⁹⁵ Doris Schartmueller ‘Too dangerous to get out? The use of individualized release mechanisms for lifetime incarcerated offenders in Sweden’ (2014) 25(4) *Criminal Justice Policy Review* 407-431 418

⁹⁶ *Vinter and Others v United Kingdom* App no 66069/09, 3896/10, 130/10 (ECHR, 9 July 2013), para 115; Council Recommendation (2006) 2 of the committee of ministers to member states on the European prison rules, rules 103.8 and 107.

⁹⁷ Council Recommendation (2003) 22 on conditional release (parole), Explanatory Memorandum para 18

⁹⁸ *Léger v France* App no 19324/02 (ECHR, 11 April 2006).

authority to change or cancel a parole order by its own discretion or on the suggestion of the Minister, or the Gardaí (Irish police).⁹⁹ If a person poses risk to public safety or has violated their rules of release, their parole stands cancelled¹⁰⁰ and the seriousness of the risk or the rule breached will also be considered.¹⁰¹ While doing so, the circumstances for the consideration of revocation, the report submitted to the Parole Board and representations of the victim or parolee will also be weighed upon.¹⁰² The revocation must be given in writing along with the reasons for it.¹⁰³ The parolee will become eligible for parole again when the Parole Board gives a new date within 2 years of the previous revocation.¹⁰⁴ The procedure governing the Parole Board must be followed in the process for revocation while making a parole order.¹⁰⁵ A person is considered to be unlawfully out according to the prevailing rules, if they fail to return to the place where the person's parole was revoked or violated a condition of their release.¹⁰⁶

The process of parole reform possibly will not have an alternative effect on the number of custodial Life prisoners or the time period served before their release. Professors Appleton and van Zyl Smit observes the weakness of human rights in the judicial system of Wales and England that lies in ever rising frequency by which this type of long sentences are granted thus increasing the tenure the life prisoners have to undergo before their release¹⁰⁷, whereas not in the prevailing procedure. Procedural justice must be improved, offering clarity to those undergoing the process and also regulating or reducing the population of life sentence prisoner or imbuing stability in the tenure served in prison. These reforms must be free of any media or political influence. The system must oppose such social influence during decision making. O'Malley puts forward that for murder, obligatory life incarceration is not required at constitution level and strong policy reasons are there for the regime revision.¹⁰⁸ When pace of reform and scrutiny levels on the verdict of life imprisonment, internationally and nationally is increasing, it is high time to reevaluate substitutes to the compulsory life imprisonment for killing someone.

As seen from the above discussions and observations, the main lacuna in the system of Life Imprisonment is Over Crowding; due to various delays in the system all over the world, especially the UK. It is defined as "a prison holding more prisoners than the certified normal accommodation (CNA). The CNA represents the good, decent standard of accommodation that the service aspires to provide all prisoners"¹⁰⁹. The majority of the prisons in the United Kingdom were built before the population of the inmates increased and are not prepared to handle the rising number of inmates they are housing now.

Poverty has a great impact on the criminal justice system. People that are on a higher socioeconomic ladder are more likely to top rated lawyers increasing their chances of being acquitted and not be subject to the use of a public prosecutor/defender. 80% of all people that are subject to a trial opt for a public defender, and due to the ever increasing number of cases that

⁹⁹ s.31(1) and (2).

¹⁰⁰ s.33(1)(a)(i) and (ii).

¹⁰¹ s.33(1)(b).

¹⁰² s.33(3).

¹⁰³ s.33(5)(a) and (c).

¹⁰⁴ s.33(5)(b)(iii).

¹⁰⁵ s.33(3)(c) and (d).

¹⁰⁶ s.34(1)(a) and (b).

¹⁰⁷ Catherine Appleton and Dirk van Zyl Smit 'The paradox of reform: Life imprisonment in England and Wales' in Dirk van Zyl Smit and C. Appleton (eds), *Life imprisonment and human rights* (Hart. 2016) 235–236.

¹⁰⁸ Thomas O'Malley, *Sentencing law and practice* (Thomson Round Hall 2016) 307

¹⁰⁹ Sharkey, L. (2010). Does overcrowding in prisons exacerbate the risk of suicide among women prisoners?.

The Howard Journal of Criminal Justice, 49(2), 111-124.

public defenders must represent, they are unable to adequately fight for their clients¹¹⁰. This also results in an unbalanced percentage of people with serious convictions being poor. They spend lot of money on their lawyers, who are already engaged with huge number of clients to whom they may not be able to sincerely dedicate themselves with. This will result in the convicts ending up poor by losing their time and resources and eventually in prisons for the longest periods.

The criminal justice system is run by the legislature. The policies and laws in place that have resulted in prison overcrowding were enacted by the governments. Even though there has been much research since the turn of the century in this topic and the effects of prison overcrowding, not many changes have been made. This is largely because poor and minorities do not have a strong political voice. Many businesses and even local government benefit from prison labor. Local governments rely on prisoners to fight wildfires, clean facilities or other community service type jobs. They can be made to work for lesser wages than a regular civilian. These types of power politics also prevail in many levels. The inmates are always at the bottom of the power structure. They have committed crimes that the system has determined the punishment is not only imprisonment, but in most cases, total control of their daily functions and basic human rights. Mostly the inmates do not have the power to change their circumstances, but only a choice to control their response to their circumstances.

There are solutions to the social problem of increasing inmates that could be implemented without further strain on the economy, and in fact reduce the current costs. Prison overcrowding has a negative impact not only on the Life prisoner, but also on the communities that they are released to. Social workers must advocate for change in this system, one that continues to oppress minorities at disproportionate rates. They must focus on examining how to rehabilitate offenders and give them the best chance to be successful citizens after their release. As a society that prides itself on being the leaders of the free world, it is ironic that UK has one of the highest rates of Life Imprisonment, and that needs to change.

A sentencing reform challenging long sentences on welfare grounds among the judiciary, which is cost effective, can be brought in practice to begin with. A prudent imposition of incarceration can be considered rather than being mandatory. This would enable those in power from giving such sentences also to identify that, while taking someone's life is indeed a grave act, everyone whose indulges in the act, doesn't always come under the definitions of murder, and deserve an entire life incarceration resulting them to be in custody till death. In case of murder, pre fixed tenure of time can be announced after which there will be a guaranteed release, based on the improvement seen in the progress report.

Law across countries or internationally, holds that death sentences that are mandatory cannot be accepted.¹¹¹ A similar consensus is there with life imprisonment that is mandatory. The appellant argued before the Privy Council in *De Boucherville vs The State of Mauritius* (2008) that, a mandatory life sentence, had all the negative factors contained in a death sentence that was mandatory. There must be no distinction between the crime of murder and another, in spite of the infamous disproportion between the blameworthiness of various murderers, even when mens rea is an inevitable element of that crime. Factors such as circumstances, age, vulnerability or youth of the criminal was not considered. Because of this the defendant could not plead for a less serious punishment before being incarcerated in all terms. The hearing is not fair, where the court could

¹¹⁰ Rapping, J., Vallas, R., Corriher, B., Potter-Stevenson, K., Stegman, E., & Zonta, M. (2018, March 06). Public Defenders Key to Reducing Mass Incarceration. Retrieved January 23, 2023, from <https://talkpoverty.org/2015/10/28/public-defenders-key-reducing-mass-incarceration/>.

¹¹¹ R. Hood. and C. Hoyle, *The Death Penalty: A Worldwide Perspective*. 5th edition. (Oxford: Oxford University Press, 2015) pp. 151-154.

not consider to lessen such a serious sentence, and a punishment like that, is very much degrading and inhuman.¹¹²

This appeal was accepted by the Privy Council resultantly declaring the unconstitutionality of the Mauritian law. Mandatory life sentences were cancelled by many other countries worldwide, resultant of the above argument and verdict, as it may lead to unreasonably grievous outcomes of sentencing.¹¹³ This change in legislation of mandatory life imprisonment for murder can have similar consequences in UK. Guidelines can be put forth in recording the maximum and minimum periods to be served in life sentences which will curb the recent trend in imposing longer punishments. Starting points must not be set by the legislation for the minimum tenure for murders of kinds that vary. There was a considerable raise in the minimum periods to serve resultantly in England, by those convicted of murder, prior to the consideration of their release.¹¹⁴ Prohibition of whole life sentences must be put forth ensuring, that no prisoner must die as lifelong inmates due to deliberately imposed longer punishment parts of incarceration, before the time of consideration of release.

As per the suggestion of ECtHR the sentences must give a realistic prospect to the inmates, of being considered for release. One of the fundamental forms of human dignity is right of hope to all persons and the aforementioned realistic prospect originates from here.¹¹⁵ Every convict ought to be given the opportunity to reform. Now the question is combating the risk factor after release. It is difficult to determine, if inmates are released, whether they can harm someone in the society or they will pose a risk. Ronald Dworkin called for evidence of the 'vivid danger', that is very imminent that their future demeanour may be posing to the public before curbing liberty of someone prior to being considered for release on the basis of only risk, without much surety.¹¹⁶

If inmates are kept in prison, well beyond the period of stipulated punishment part or if the punishment part itself is being extended, the Parole Board must be encouraged in the process of granting release frequently. The people, who prepare and support the inmates prior to consideration for release, are inevitable in the process of reducing the prison population or proper rehabilitation. Only when there is an imminent danger to the public safety is evident they must be recalled back in detention, even if only a few conditions of release are infringed. Infringements with less seriousness can be dealt with milder reprimanding. This is far better than loss of liberty forever. Increasing the frequency of Life imprisonment verdicts, containing prisoners in captivity for extended periods, than the stipulated tenure, shattering the hopes of redemption by returning to a society that is not bound by shackles, is sheer human rights violation on the part of the authorities who yield power. They never should be treated in an inhuman and humiliating way.

The Probation Service supervises life sentence prisoners on release, for the remainder of their lives and will always be under the radar of being monitored. The Probation Service also provides progress reports on rehabilitation reintegration, resettlement, and risk management issues, at regular intervals to the Prison Service while supervising Life prisoners, after the release. It provides risk management and welfare, instead of indulging in practices that may seem like a continuation of punishment¹¹⁷. This component is legally punitive as the prisoner continues serving a sentence is released at Ministerial discretion and at any point of time, is subject to recall. On the other hand,

¹¹² De Boucherville v. The State of Mauritius [2008] UKPC 37, para. 17.

¹¹³ Caribbean court of justice in August and Gabb v. The Queen, 2018 CCJ 7 AJ, 29 March 2018.

¹¹⁴ C Appleton, and D. van Zyl Smit, 'The Paradox of Reform: Life Imprisonment in England and Wales', in D. van Zyl Smit and C. Appleton (eds.) loc. cit. pp. 217-240.

¹¹⁵ Vinter v. UK, loc. cit. Concurring opinion of Judge Power-Forde.

¹¹⁶ R. Dworkin, *Taking Rights Seriously* (London: Duckworth, 1978) p.11.

¹¹⁷ Probation Service (2005) Annual Report (Dublin, Probation Service).

such an analysis is contradictory to the ‘full temporary’ release that is permanent in nature and the actuality of ‘time served’ till release into the society.

Both the ECtHR and the Supreme Court have agreed that when determining the issue of temporary release, the Minister, or the executive, has ever been engaged in executing a sentencing power. However, the Minister is the one who determines the release date for life sentence prisoners after listening to the advice of the Parole Board. All those associated in the process are mindful that the release of Life prisoners is totally a political decision. The impact of the political regime has been identified by the Parole Board members on their collective decision-making as well as individual. The various approaches implemented by different Ministers affect the release procedure in myriad ways. The way a Minister look into the question of crime also affects this prospectus.

Public statements collected through the years by Ministers points out that between 10 to 20 years are the minimum a life sentence prisoner is expected to serve before they will be deemed for release¹¹⁸¹¹⁹. Even though life sentence prisoners can challenge the legality of their sentence and the exercise of the executive power of temporary release, the probability of being successful is low because of the narrow interpretation by the courts of the life sentence and temporary release.

The applicant challenged the discretionary life sentence in *People (DPP) v Daniels (2014)*¹²⁰, imposed upon him for attempted murder, arguing that preventive in nature were the grounds for its imposition and hence was not constitutional. The problem cropped up due to the remarks by Carney J while giving away the verdict, which focused on the need to impose a life sentence for the management of risk, the offender would pose, if given a sentence that was determinate and released earlier than the reduction of that risk, as he believed. He put forth his ‘primary function’ as community protection, noting the evidence presented at the trial, he could rule out such types of crime from happening again. Evidencing the insensitive nature of the sentence, he stated that the Parole Board could supervise the offender ‘to see when it is safe for society’ to advocate release, adding that, ‘I can’t look into the future but the Parole Board can’¹²¹. The Supreme Court identified that preventive detention is unconstitutional, while also observed that the imposition of the discretionary life sentence did not exceed the penal purpose of the sentence. The court recognized that the imposition of the life sentence was preventive in nature; bur was incidental and did ‘not exceed what is required for purely penal purposes in so aggravated a case’¹²². The Supreme Court argued that, although the imposition of the life sentence is punitive in nature ‘...it also involves elements such as rehabilitation of the offender, deterrence and the protection of society’¹²³.

The judgment of the Supreme Court certainly maintains the appearance of the punitive life sentence even if it appears in conflict with the logic for the imposition of the sentence at the hearing in the first order. The awarding of temporary release comes from the Criminal Justice Act 1960 and it permits the granting of release for a defined period of time. If temporary release is seen as a privilege, it limits the legal protection and enforceable rights available to those subject to the process, including access to judicial supervision and review of decision-making¹²⁴. The process must abide by the principles of natural justice, whereas the courts have been hesitant to interfere with the executive exercise of this discretionary power¹²⁵.

¹¹⁸ Parole Board (2002-2013) Annual Reports (Dublin, Parole Board).

¹¹⁹ Lally, C (2006) ‘McDowell defends length of murder sentences’ Irish Times, March 8.

¹²⁰ *People (DPP) v Daniels* [2014] IESC 64

¹²¹ Nationalist (2003) ‘Life for man who tried to murder girl’ The Nationalist, September 25.

¹²² *People (DPP) v Daniels* 2014: para 21

¹²³ *People (DPP) v Daniels* 2014: para 20

¹²⁴ *Ryan v Governor of Limerick Prison* [1988] IR 198.

¹²⁵ *Doherty v Governor of Portlaoise Prison* [2002] 2 IR 252.

Practically, it is illogical to release a life sentence prisoner, apparently for the remainder of their life, subject to their observance of the conditions of release, using a prerequisite that is designed for short-term release. It is wholly fitting to treat a decision to release an offender for a number of days during holidays like Christmas to spend time with his or her family as an advantage at the caution from the executive. However, it is not fitting to release a life sentence prisoner who is appealing for ‘full temporary release’ under the same provision for a period that may lengthen to quite a few decades. The inference of this practice for life sentence prisoners is that they are given only a little by way of actionable rights when challenging issues of release. The courts’ reluctance to acknowledge this duality or ambiguity has inundated issues of procedural equality and legitimate anticipation that apply to life sentence prisoners. There is no sign that the courts’ insights of these legal provisions are going to change. The reforms adopted in Cyprus after the Kafkaris (2009) Grand Chamber decision, was cited in the judgments of the Supreme Court and the ECtHR in dismissing the applicants’ arguments. Cypriot law was reformed after the Grand Chamber’s judgment, to provide for the organization of an independent five-member Release Board with the reforming law including comprehensive requirements concerning the Release Board and the course of actions to be followed ¹²⁶.

This is significant, as the ECtHR found no violation of Article 3 (prohibition of torture) and that Article 5.4 (right to liberty and security) fell outside the range of its jurisdiction. The reforms in Cyprus were espoused following the ECtHR’s observance that there had been a infringement of Article 7 (no punishment without law), although the Committee of Ministers of the Council of Europe pointed that the reforming bill was not a core feature of the general measures in executing the verdict of the Grand Chamber¹²⁷. The Release Board in Cyprus is mandated to examine and consider a number of factors when making a resolve on the release of an applicant on licence. A life sentence inmate who has served twelve years is permitted to make a written compliance to the Board requesting conditional release. The prisoner is at liberty for legal representation and to speak to witnesses, experts and lawyers. He has the right to inspect any written information, material or evidence and is allowed access to all the information acquired by the Board in relation to the application for release. The Board’s decisions must be given in writing by providing reasons. If the application is rejected by the Board, the applicant has the chance to file another application after one year. The pronouncement of the Release Board can be petitioned to the Supreme Court through administrative review. In a consequent application by Kafkaris¹²⁸, the ECtHR recalled these reforms, stating that the system currently in place authorized a life sentence prisoner to apply for a review of the process making the life sentence reducible.

Conclusion

Olivia Rope, policy & programme manager of PRI (United Nations-supported network of investors), requested the UN and its member states in May 2018, at the UN Commission on Crime Prevention and Criminal Justice, to take on the issue of increase in the number of life sentences globally. University of Nottingham and PRI co-published the book, *Life Imprisonment: A policy briefing*, which ponders about the research at the University of Nottingham, from the Life Imprisonment Worldwide project.¹²⁹ It gives 12 proposals based on international law for reorganizing life imprisonment, to set standards for countries round the world. There is a dire urgency for it, at international levels, as Life-prisoners’ population has risen significantly over the years.

¹²⁶ Kafkaris v Cyprus (no.2) App no 9644/09 (21 June 2011).

¹²⁷ *ibid*

¹²⁸ Kafkaris v Cyprus (no.2) App no 9644/09 (21 June 2011) para 62.

¹²⁹ *Life Imprisonment: A policy briefing*, p. 1, citing research carried out by Professor Dirk van Zyl Smit and Dr Catherine Appleton of the Life Imprisonment Worldwide project at the University of Nottingham.

The review of arbitrary problematic processes of review for release must be taken care of with consideration. Scrutiny must be there in the system when certain people have the power to consider the release of Life convicts, based on political authority or due to corruption. It must be made impartial founding the decision in a procedure law and fairness. Proportionality must be there on the decisions. The mechanisms of courts, the executive and the parole board are used to release Life sentenced prisoners and studies indicate that the courts only uphold, procedural standards and fair rights. So in the whole of UK also, it is best recommended to vest the power in Judiciary, than the Executive to make crucial decisions on Life Imprisonment as well as Release or Parole. If the system becomes unbiased, there will be a smooth functioning of the prisons system as well as the well being of the inmates.

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- [4] While not exclusively focused on life imprisonment, this book offers valuable insights into the broader criminal justice system in the UK, including discussions on sentencing practices and policies.
- [5] "Life Imprisonment and Human Rights" by Dirk van Zyl Smit and Catherine Appleton.
- [6] This work explores the intersection of life imprisonment with human rights considerations, offering an in-depth analysis of the legal and ethical aspects in the context of the UK.
- [7] "Life Imprisonment: A Global Human Rights Analysis" by Dirk van Zyl Smit and Catherine Appleton.
- [8] While broader in scope, this book provides a global perspective on life imprisonment, including discussions on the UK's practices and their alignment with international human rights standards.
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- [10] This book delves into the cultural and societal factors that influence penal practices, including life imprisonment, shedding light on the historical and contemporary context in the UK.
- [11] "Sentencing and Punishment: The Quest for Justice" by Susan Easton and Christine Piper.
- [12] While not exclusive to life imprisonment, this book offers insights into the principles and practices of sentencing in the UK, which could be relevant to your analysis.
- [13] "Life Imprisonment: A Policy Review" by Arie Freiberg and Geraldine Mackenzie.
- [14] This work offers a policy-oriented review of life imprisonment, addressing issues related to its use, purposes, and potential reforms.