



2026 INSC 764

REPORTABLE

**IN THE SUPREME COURT OF INDIA
CRIMINAL ORIGINAL JURISDICTION**

WRIT PETITION (CRIMINAL) No (s). 553 OF 2023

RAMASREY @ FAKKAD ... PETITIONER(S)

VERSUS

STATE OF UTTAR PRADESH ... RESPONDENT(S)

WITH

WRIT PETITION (CRIMINAL) No (s). 42 OF 2024

WITH

WRIT PETITION (CRIMINAL) No (s). 69 OF 2025

AND

WRIT PETITION (CRIMINAL) No (s). 198 OF 2025

J U D G M E N T

SANJAY KAROL J.,

1. These four writ petitions present same or similar questions of law but they arise in different facts and circumstances.

1.1 *Writ Petition (Crl.) No. 553 of 2023* has been filed by Ramasrey @ Fakkad challenging the sentence imposed on him by the High Court of Judicature at Allahabad in connection with Sections 364A, 302 and 201 Indian Penal Code, 1860¹, modifying the judgment of the learned Special Judge (Dacoity Affected Area), Agra in Sessions Trial No. 647 of 2006 in which he was sentenced to death to imprisonment for the remainder of natural life. His Special Leave Petition to this Court was dismissed as withdrawn 03rd August 2015.² His bone of contention is that the IPC envisages only two punishments under Section 302 IPC i.e., death or imprisonment for life and it does not provide for imprisonment for remainder of natural life and as such the imposition of such a sentence is unconstitutional.

¹ IPC

² SLP(Crl.)__2015 @ Crl.M.P. No.2705-06/2015

1.2 ***Writ Petition (Crl.) No. 42 of 2024*** has been filed by one Chander Kant Jha, agitating similar grounds as Writ Petition (Crl.) 69 of 2025. He had been convicted under Sections 302 and 201 of IPC and sentenced to death by the concerned Trial Court which sentence was modified by the High Court of Delhi, to remainder of natural life without remission. The State's appeal thereagainst³ was dismissed *vide* order dated 11th February 2019.

1.3 ***Writ Petition (Crl.) No. 69 of 2025*** has been preferred by one Atbir Singh, who had been convicted by the Additional Session Judge, Delhi and sentenced to death in connection with FIR No.24 of 1996 under Section 302/34 IPC. The High Court of Delhi confirmed the sentence. After the dismissal of the Criminal Appeal by this Court⁴ and subsequent review and curative petitions, his mercy petition under Article 72 of the Constitution of India⁵ before Hon'ble the President of India was accepted in terms of order dated 15th November 2012. Accordingly, his sentence was modified to imprisonment for remainder of natural life without parole. His contention in this writ petition is similar to Ramasrey@Fakkad. He submits that the remainder of natural life clause has been specifically

³ SLP(Crl.) No. 6351/2016

⁴ Criminal Appeal 870 of 2006 by judgment dated 9th August 2010

⁵ Constitution

added by the Legislature *via* subsequent amendments limited only to sexual offences. He further submits that such a sentence defeats the statutory rights of an individual under Section 432 of Code of Criminal Procedure 1973⁶.

1.4 ***Writ Petition (Crl.) No. 198 of 2025*** is at the instance of three convicts namely Sarabjit Singh, Gurdev Singh @ Baldev Singh, and Satnam Singh, all of whom have been convicted under Sections 302/307/148/149 of IPC and Section 25 of the Arms Act, 1959. among others, in connection with FIR No.226 of 1991 and sentenced to death under Section 302 read with 149 IPC which was confirmed by the High Court of Punjab and Haryana at Chandigarh and appeals thereagainst were dismissed by this Court⁷. Mercy petitions before Hon'ble the President were accepted in as much as their sentences were modified to imprisonment for remainder of natural life with no remission. Their challenge to the same is on similar grounds as raised by the other writ petitioners.

2. We have heard Mr. Rishi Malhotra, learned Senior Counsel for the petitioners and Mr. S.V. Raju, Mr. Raja S. Thakare, learned Additional Solicitors General for the respondents. We

⁶ CrPC

⁷ Criminal Appeal 392 of 2002 and Criminal Appeal 394 of 2002 by judgment dated 1st August 2003

have also heard Mr. R. Venkataramani, the learned Attorney General for India, whose assistance we requested *vide* order dated 16th October 2025.

3. The following questions arise for consideration before this Court:

- (a) The constitutionality of the sentence as awarded to the writ petitioners;
- (b) Whether judicial review of exercise of clemency powers by the Hon'ble President of India is permissible, it be under Article 32 or Article 136 of the Constitution of India;
- (c) Connected with the latter, would be the question whether it is open for this Court to modify the sentence as modified by the powers under Article 72 of the Constitution.

4. The learned Attorney General, raises an objection to the maintainability to these petitions. We may as such address the same. Article 32 reads as follows:

“32. Remedies for enforcement of rights conferred by this Part

- (1) The right to move the Supreme Court by appropriate proceedings for the enforcement of the rights conferred by this Part is guaranteed.

- (2) The Supreme Court shall have power to issue directions or orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warrant and certiorari, whichever may be appropriate, for the enforcement of any of the rights conferred by this Part.
- (3) Without prejudice to the powers conferred on the Supreme Court by clauses (1) and (2), Parliament may by law empower any other court to exercise within the local limits of its jurisdiction all or any of the powers exercisable by the Supreme Court under clause (2).
- (4) The right guaranteed by this article shall not be suspended except as otherwise provided for by this Constitution.”

It is trite law that a petition to this Court is maintainable in a case where there is a violation of fundamental rights or there is grave injustice. The sanctity of this power is evidenced by the fact that an opportunity to approach the highest Court of the country is itself being made a fundamental right in the Constitution and that is perhaps the reason why Dr. Ambedkar had termed this as the “*most important Article*” in the Constitution. Accordingly, it has been recognised in ***L. Chandra Kumar v. Union of India***⁸ as part of the basic structure of the Constitution. It is well established though that this Court does not entertain such petitions in all circumstances, and only does so, generally, when

⁸ (1997) 3 SCC 261

it is shown that why coming directly to this Court was essential and the writ petition before the jurisdictional High Court for instance, may not be more appropriate. Expressing the scope of this important jurisdiction and recognising the limitations, provided for in the Constitution, as also those placed by the judicial restraint, this Court has said in many cases, as follows:

4.1 ***P.B. Gajendragadkar J. (as he then was)*** writing for a Constitution Bench in ***Daryao v. State of U.P.***⁹ discussed Article 32 in the following terms:

“8. There can be no doubt that the fundamental right guaranteed by Article 32(1) is a very important safeguard for the protection of the fundamental rights of the citizens, and as a result of the said guarantee this Court has been entrusted with the solemn task of upholding the fundamental rights of the citizens of this country. The fundamental rights are intended not only to protect individual's rights but they are based on high public policy. Liberty of the individual and the protection of his fundamental rights are the very essence of the democratic way of life adopted by the Constitution, and it is the privilege and the duty of this Court to uphold those rights. This Court would naturally refuse to circumscribe them or to curtail them except as provided by the Constitution itself. It is because of this aspect of the matter that in *Romesh Thappar v. State of Madras* [(1950) SCR 594] in the very first year after the Constitution came into force, this Court rejected a preliminary objection raised against the competence of a petition filed under Article 32 on the ground that as a matter of orderly procedure the petitioner should first have resorted to the High

⁹ 1961 SCC OnLine SC 21

Court under Article 226, and observed that “this Court is thus constituted the protector and guarantor of the fundamental rights, and it cannot, consistently with the responsibility so laid upon it, refuse to entertain applications seeking protection against infringements of such rights”. Thus the right given to the citizen to move this Court by a petition under Article 32 and claim an appropriate writ against the unconstitutional infringement of his fundamental rights itself is a matter of fundamental right, and in dealing with the objection based on the application of the rule of res judicata this aspect of the matter has no doubt to be borne in mind.”

4.2 In *Vasanta Sampat Dupare v. Union of India*¹⁰ it was held that a petition preferred under Article 32 petition by a convict seeking the benefit of a judgment which cause a shift in jurisprudence subsequent to the conviction and sentence awarded to him, would be maintainable. In doing so, Article 32 was spoken of in the following terms by Vikram Nath J., and one of us Sanjay Karol J., respectively:

“11. Article 32 of the Constitution of India is the constitutional conduit through which this Court may issue “appropriate” writs to secure the enforcement of Fundamental Rights. Described in the Constituent Assembly as the “heart and soul” of the Constitution, it furnishes a direct route for citizen to this Court whenever a protected Fundamental Right is said to be under threat.

...
52. Article 32 of the Constitution of India provides that this Court has the power to issue prerogative

¹⁰ 2025 SCC OnLine SC 1823

writs in favour of the applicant before it, should they succeed in establishing a violation of a right under Part III of the Constitution. The natural corollary that the petitioner would have to show that some or the other right available to him, which is enshrined under Part III stands violated...”

4.3 ***Bilkis Yakub Rasool v. Union of India***¹¹, ***B.V. Nagarathna J.***, reiterated in para 142 what was held in Para 34 of ***K.D. Sharma v. SAIL***¹² which reads as under:

“34. The jurisdiction of the Supreme Court under Article 32 and of the High Court under Article 226 of the Constitution is extraordinary, equitable and discretionary. Prerogative writs mentioned therein are issued for doing substantial justice. It is, therefore, of utmost necessity that the petitioner approaching the writ court must come with clean hands, put forward all the facts before the court without concealing or suppressing anything and seek an appropriate relief. If there is no candid disclosure of relevant and material facts or the petitioner is guilty of misleading the court, his petition may be dismissed at the threshold without considering the merits of the claim.”

5. As is demonstrated from the above judgments, the scope of Article 32 although wide in some sense, is restricted in another sense. The right of a prisoner to approach this Court obviously cannot be outrightly restricted but this right cannot be used to circumvent other procedures, using it as a shortcut to ventilate their grievances before a Court of law. An additional aspect that determines the maintainability of these petitions

¹¹ (2024) 5 SCC 481

¹² (2008) 12 SCC 481

(particularly the ones filed by *Sarabjit* and *Atbir*) is the question whether this Court can sit over the decision of the Governor or President, as the case may be, for what has been pleaded before us, is not the incorrect exercise of power by these constitutional authorities but instead, for this Court to exercise this power independently and reduce their sentences after the exercise of power of remission already stood exercised by the constitutional authority under Article 72/161. The powers given to the President or the Governor are unaffected and unencumbered by any other provision of the Constitution. If the argument advanced by the learned senior counsel for the petitioner is accepted, we would be sitting in appeal, (not judicial review) over the exercise of an executive power, which is not permissible.

6. On a perusal of various judgments, where the scope of the President's or the Governor's power has arisen, the following principles, *inter alia*, can be noticed:

6.1 The powers under these two articles are construed in the widest possible terms since there are no words limiting the scope thereof used in the Articles; (*Epuru Sudhakar v. Govt. of A.P.*¹³).

¹³ (2006) 8 SCC 161 – Two Judge Bench

6.2 Both the President and the Governor, in exercise of these powers must act with the aid and advice of Council of Ministers; (*Maru Ram v. Union of India*¹⁴)

6.3 Governor's power cannot be exercised to suspend a sentence while a particular case is *subjudice* before this Court; (*K.M. Nanavati v. State of Bombay*¹⁵)

6.4 The President under Article 72 can examine the merits of the matter. The exercise of this power is executive in character. (*Kehar Singh v. Union of India*¹⁶)

6.5 The powers under Articles 72/161 are separate and distinct from statutory power of remission under CrPC. (*Union of India v. V. Sriharan*¹⁷)

6.6 The scope of judicial review is limited to following grounds:

- (a) that the order has been passed without application of mind;
- (b) that the order is mala fide;
- (c) that the order has been passed on extraneous or wholly irrelevant considerations;

¹⁴ (1981) 1 SCC 107 – Five Judge Bench

¹⁵ 1960 SCC OnLine SC 31 – Five Judge Bench

¹⁶ (1989) 1 SCC 204 – Five Judge Bench

¹⁷ (2016) 7 SCC 1 – Five Judge Bench

(d) that relevant materials have been kept out of consideration;

(e) that the order suffers from arbitrariness. (*Epuru Sudhakar (supra)*; *Pyare Lal v. State of Haryana*¹⁸)

7. It is fairly obvious from the perusal of the above judgments that none of the grounds on which judicial review of the President's/Governor's action is permissible are met in this case.

8. Let us next appreciate the argument that the sentence of imprisonment for remainder of natural life is unconstitutional.

9. The two provisions relevant for the present discussion are:

IPC:

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

53. Punishments.—The punishments to which offenders are liable under the provisions of this Code are—

First,—Death;

Secondly.—Imprisonment for life;

Fourthly.—Imprisonment, which is of two descriptions, namely:—

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

(2) Simple;

Fifthly.—Forfeiture of property;

¹⁸ (2020) 8 SCC 680 Three Judge Bench

Sixthly.—Fine.

BNS:

2. Definitions. — In this Sanhita, unless the context otherwise requires,—

(17) “life” means the life of a human being, unless the contrary appears from the context

4. Punishments. —The punishments to which offenders are liable under the provisions of this Sanhita are—

(a) Death;

(b) Imprisonment for life;

(c) Imprisonment, which is of two descriptions, namely:—

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

(2) Simple;

(d) Forfeiture of property;

(e) Fine;

(f) Community Service”

10. In *Swamy Shraddananda (2) v. State of Karnataka*¹⁹, a Bench of three judges while dealing with the question of sentence made elaborate discussions and concluded that there is a subset of cases where life imprisonment which actually amounts to only 14 years of imprisonment may be disproportionately light and also that it may not meet the standard of rarest of rare cases as enunciated in *Bachan Singh v. State of Punjab*²⁰, for these cases it was observed as follows:

“**91.** The legal position as enunciated in *Pandit Kishori Lal* [(1944-45) 72 IA 1 : AIR 1945 PC 64], *Gopal Vinayak Godse* [AIR 1961 SC 600 : (1961) 3 SCR 440], *Maru Ram* [(1981) 1 SCC 107 : 1981 SCC (Cri) 112], *Ratan Singh* [(1976) 3 SCC 470 : 1976 SCC (Cri) 428] and *Shri Bhagwan* [(2001) 6 SCC 296

¹⁹ (2008) 13 SCC 767 – Three Judge Bench

²⁰ (1980) 2 SCC 684 -- Five Judge Bench

: 2001 SCC (Cri) 1095] and the unsound way in which remission is actually allowed in cases of life imprisonment make out a very strong case to make a special category for the very few cases where the death penalty might be substituted by the punishment of imprisonment for life or imprisonment for a term in excess of fourteen years and to put that category beyond the application of remission.

92. The matter may be looked at from a slightly different angle. The issue of sentencing has two aspects. A sentence may be excessive and unduly harsh *or it may be highly disproportionately inadequate*. When an appellant comes to this Court carrying a death sentence awarded by the trial court and confirmed by the High Court, this Court may find, as in the present appeal, that the case just falls short of the rarest of the rare category and may feel somewhat reluctant in endorsing the death sentence. But at the same time, having regard to the nature of the crime, the Court may strongly feel that a sentence of life imprisonment subject to remission normally works out to a term of 14 years would be grossly disproportionate and inadequate. What then should the Court do? If the Court's option is limited only to two punishments, one a sentence of imprisonment, for all intents and purposes, of not more than 14 years and the other death, the Court may feel tempted and find itself nudged into endorsing the death penalty. Such a course would indeed be disastrous. A far more just, reasonable and proper course would be to expand the options and to take over what, as a matter of fact, lawfully belongs to the Court i.e. the vast hiatus between 14 years' imprisonment and death. It needs to be emphasised that the Court would take recourse to the expanded option primarily because in the facts of the case, the sentence of 14 years' imprisonment would amount to no punishment at all.

93. Further, the formalisation of a special category of sentence, though for an extremely few number of cases, shall have the great advantage of having the

death penalty on the statute book but to actually use it as little as possible, really in the rarest of rare cases. This would only be a reassertion of the Constitution Bench decision in *Bachan Singh* [(1980) 2 SCC 684 : 1980 SCC (Cri) 580 : AIR 1980 SC 898] besides being in accord with the modern trends in penology.”
(emphasis supplied)

(See: *Shahjad Ali v. State of Uttarakhand*,²¹; *Ramesh A. Naika v. Registrar General*²²)

11. Subsequently, in *Union of India v. V. Sriharan*²³, a Constitution Bench was dealing *inter-alia* with this special category of sentence i.e., imprisonment for remainder of natural life without remission. A majority of three judges found the special category of sentence to be justified and well founded. The minority held that placing sentences that are for the remainder of natural life, beyond the scope of remission to be unconstitutional. On the question of meaning of the term ‘life imprisonment’ however, all five judges were *ad idem*. The relevant discussion on this aspect is as follows:

On the meaning of life imprisonment, it was held:

F.M. Ibrahim Kalifulla J. speaking for Dattu, C.J., himself and Ghose, J
“177. Imprisonment for life in terms of Section 53 read with Section 45 of the Penal Code only means imprisonment for the rest of the life of the convict. The right to claim remission, commutation, reprieve, etc. as provided under Article 72 or Article 161 of the

²¹ 2026 SCC OnLine SC 1024 Three Judge Bench

²² 2025 SCC OnLine SC 575 Three Judge Bench

²³ (2016) 7 SCC 1 – Five Judge Bench

Constitution will always be available being constitutional remedies untouchable by the Court.”

...

Uday U.Lalit J. (as he then was) speaking for himself and Sapre J.

“**257.** Section 53 IPC envisages different kinds of punishments while Section 45 IPC defines the word “life” as the life of a human being unless the contrary appears from the context. The life of a human being is till he is alive that is to say till his last breath, which by very nature is one of indefinite duration. In the light of the law laid down in *Godse* [*Gopal Vinayak Godse v. State of Maharashtra*, AIR 1961 SC 600 : (1961) 1 Cri LJ 736 : (1961) 3 SCR 440] and *Maru Ram* [*Maru Ram v. Union of India*, (1981) 1 SCC 107 : 1981 SCC (Cri) 112 : (1981) 1 SCR 1196], which law has consistently been followed the sentence of life imprisonment as contemplated under Section 53 read with Section 45 IPC means imprisonment for rest of the life or the remainder of life of the convict. The terminal point of the sentence is the last breath of the convict and unless the appropriate Government commutes the punishment or remits the sentence such terminal point would not change at all. The life imprisonment thus means imprisonment for rest of the life of the prisoner.

...

260. The sentence of life imprisonment means imprisonment for the rest of the life or the remainder of the life of the convict. Such convict can always apply for obtaining remission either under Articles 72 or 161 of the Constitution or under Section 432 CrPC and the authority would be obliged to consider the same reasonably.”

On the special category of sentence, it was observed by **F.M. Ibrahim Kalifulla J.** for the majority in para 178 as under:

“Question 52.1 : Whether imprisonment for life in terms of Section 53 read with Section 45 of the Penal Code meant imprisonment for rest of the life of the prisoner or a convict undergoing life imprisonment has a right to claim remission and whether as per the principles enunciated in paras 91 to 93 ofSwamy Shraddananda (2) [Swamy Shraddananda (2) v. State of Karnataka, (2008) 13 SCC 767 : (2009) 3 SCC (Cri) 113] , a special category of sentence may be made for the very few cases where the death penalty might be substituted by the punishment of imprisonment for life or imprisonment for a term in excess of fourteen years and to put that category beyond application of remission?”

Answer

...

178. We hold that the ratio laid down in *Swamy Shraddananda (2)* [*Swamy Shraddananda (2) v. State of Karnataka*, (2008) 13 SCC 767 : (2009) 3 SCC (Cri) 113] 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.”

Uday U.Lalit J. (as he then was) for the minority, answers the reference in para 287:

...

“Sub-question (b). Whether as per the principles enunciated in paras 91 to 93 ofSwamy Shraddananda (2) [Swamy Shraddananda (2) v. State of Karnataka, (2008) 13 SCC 767 : (2009) 3 SCC (Cri) 113] , a special category of sentence may be made for the very few cases where the death penalty might be substituted by the punishment for imprisonment for life or imprisonment for a term in excess of fourteen years and to put that category beyond application of remission?”

Answer

287. 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 433-A CrPC.”

12. Given the conclusion of the majority as extracted above, we only wonder how the petitioners have raised this contention. A five-judge Bench has said that sentences for the remainder of natural life are valid. Where does the scope arise for it to be contended that such sentences are invalid/unconstitutional or trample upon statutorily granted rights in the form of Section 432 CrPC, that too before a Bench of two judges? We can only say that such an endeavour is a misuse, if not the abuse of process of law. This is even more so in view of the fact that the ground under CrPC that is raised has also been answered by the Constitution Bench. The paragraphs reproduced by us above clearly stipulate that when a sentence awarded is for imprisonment for life without the categorical addition of ‘*without remission*’, the power of the State under Section 432 Cr.PC is unaffected and such an application would be maintainable. In those select few cases where the ‘*without remission*’ condition is utilised, which is obviously done so, in the attending facts of that case keeping in view the gravity of crime, nature of offence and the fact that reduction of the sentence therein to an ‘*ordinary sentence*’ would

be unjust, the statutory right being denuded, cannot be termed to be offensive to the Constitution.

13. Petitioners have placed reliance upon *Joseph v. State of Kerala*²⁴ and in particular para 28 and 33 thereof. There can be no qualms with the observations made by the co-ordinate Bench therein speaking through Ravindra Bhat, J. What is said is that courts may impose sentences that go beyond 14 or 20 years in view of *Sriharan supra*, but it is not open for the State Government by executive instruction to take such role. In that context, it was observed that taking away premature release altogether would have the effect of defeating the prisoner internally. This is the exact reason because of which in our view the court in *Swamy Shraddhananda (2) supra*, acknowledged the special category which has to be used with due regards to the facts of the case and not ordinarily. In conclusion, this case does not support the petitioners.

CONCLUSION

14. Having considered the arguments raised by the petitioners as above, following are the conclusions in the respective writ petitions by the convicts:

²⁴ Writ Petition (Crl.)520 of 2022/ Manu/SC/1049/2023

Writ Petition (Crl.) 553 of 2023

15. Ramasrey@ Fakkad, the record reveals, has not taken recourse to statutory or constitutional remedies that are available to him. He has not preferred petitions for remission either to the State Government or to the constitutional authorities as may be applicable. In view of the principles enumerated, as discussed earlier, we see no reason to entertain this petition under Article 32.

Writ Petition (Crl.) 42 of 2024

16. Chandrakant Jha has not preferred petitions for remission either to the State Government or to the constitutional authorities as may be applicable . In that view of the matter, we see no reason to entertain this petition under Article 32. It may be specifically noted that *V. Sriharan supra* answers the question as raised in the writ petition that life sentence ordinarily means remainder of natural life (ref: Sections 45 & 53 IPC). That apart, the judgment of conviction by the Delhi High Court, SLP against which is dismissed by this Court, categorically directs that he would not be released on remission for the remainder of his life then such a question does not even arise. It has also been stated that the powers under Articles 72/161 shall remain unaffected. Nothing further needs to be said.

Writ Petition (Crl.) 69 of 2025 & Writ Petition (Crl.) 198 of 2025

17. In both these writ petitions which have been tagged with the lead matter, orders have already been passed by Hon'ble the President of India. We have, in Para 6 of this judgment culled out the principles regarding exercise of power by such constitutional authority as also the grounds of judicial review thereof. Neither contraventions of any of the principles could be pointed out, nor could it be stated that any of the grounds of judicial review were met in the present facts.

18. These petitions under Article 32 are misdirected and are accordingly dismissed. Pending application(s), if any, shall stand disposed of.

.....J.
(SANJAY KAROL)

.....J.
(AUGUSTINE GEORGE MASIH)

New Delhi;
July 29, 2026