Before S. S. Sandhawalia, C.J. and A. S. Bains, J.

KAIL SINGH,—*Petitioner.*

versus

STATE OF PUNJAB and another,—*Respondents.*

Criminal Writ Petition No. 11 *of* 1981.

August 6, 1981

Indian Penal Code (XLV of 1860)—Sections 53 and 53-A—Imprisonment for life—Nature of—Such imprisonment—Whether to be rigorous or simple—Convict sentenced to imprisonment for life but undergoing 14 years' rigorous imprisonment—Such convict—Whether entitled to be released.

Held, that section 53 of the Indian Penal Code 1860, defines various kinds of punishments that can be inflicted on an accused person. Sub-section (2) of section 53-A lays down in categoric terms that a sentence of transportation for a term is to be equated to a sentence for rigorous imprisonment for the same term. On a parity of reasoning, therefore, if transportation for a term is equivalent to rigorous imprisonment for the same term then transportation for life would be the logical equivalent of rigorous imprisonment for life. Reference may again be made to sub-section (4) of section 53-A which again reiterates that any reference to transporation in any other law should be construed as a reference to imprisonment for life. This again manifests the legislature's intention to simply transpose imprisonment for life in place of the expression 'transportation for life'. Consequently, if prior to the amendment in section 53-A, transportation for life meant, in essence rigorous imprisonment for life in all cases where convicts were not sent to Andaman Islands the same equivalent would remain for the term 'imprisonment for life' after the said amendment as well. The broad sentencing policy underlying section 53 would indicate that in all serious offences punishable with more than 3 years the sentence of imprisonment is usually if not inflexibly prescribed as rigorous. It would be tautologous to emphasize that imprisonment for life simpliciter or as the only alternative sentence for the death penalty is invariably imposed for offences which in the eye of law border as the most heinous. It would be curious if not illogical to imagine that for such heinous crimes the punishments permitted could be simple in nature whereas even for lesser crimes the statute

sometimes leaves no alternative but to impose rigorous imprisonment. As such, the sentence of imprisonment for life in the Indian Penal Code in essence means rigorous imprisonment for life.

(Paras 22, 26 and 28).

Held, that sentence of imprisonment for life as defined in section 53 of the Code is one of indefinite duration and the remissions earned by the convict do not in practice help such a convict as it is not possible to predict the time of his death. The question of remission is exclusively within the province of an appropriate Government and the convict does not acquire any right to release. As such, the sentence of life imprisonment is one of indefinite duration until remitted by the appropriate Government and the convict does not acquire any inflexible right to release. (Paras 32 and 33).

Case referred by Hon'ble Mr. Justice Ajit Singh Bains, dated 8th April, 1981 *to a Division Bench for the opinion of following question of law involved in the case. The Division Bench consisting of the Hon'ble the Chief Justice Mr. S. S. Sandhawalia, and Hon'ble Mr. Justice Ajit Singh Bains has finally decided the case on 6th August,* 1981 :—

"(1) *Whether there is any provision of law in force, which enables the executive authorities to deal with a person sentenced to imprisonment for life as if sentenced to rigorous imprisonment* ?

(2) *Whether a convict sentenced to imprisonment for life, when made to undergo rigorous imprisonment in the jails of the State, is entitled to be set at liberty forthwith, after undergoing a period of fourteen years together with remissions* ?"

Petition under Articles 226/227 of the Constitution of India praying that :—

(*i*) *The petitioner be ordered to be set at liberty forthwith from the illegal custody by means of a writ in the nature of habeas corpus.*

(*ii*) *In alternative it is prayed that the State Government be directed to consider the petitioner's release case without enforcing section 433-A Cr.P.C.*

(*iii*) *Any other appropriate writ, order or direction be ordered to be issued ;*

(*iv*) *The petitioner be ordered to be released on bail till the decision of this petition or till the State Government decides his case ; whichever is later.*

(*v*) *The filing of an affidavit be ordered to be dispensed with as the petitioner is in the jail and the facts of the petition are a matter of record and of law.*

(*vi*) *The petitioner be allowed hit costs.*

Crl. Misc. No. 1 *of* 1981.

Application under Section 482 *Cr.P.C. praying that the statement of the case points of law be ordered to be placed on the file of the case, in the interest of justice.*

Balwant Singh Malik (S. V. Rathaur & Ram Kumar Pawria, Advocates with him), *for the Petitioner.*

T. N. Bhalla, Advocate, *for the State.*

JUDGMENT

S. S. Sandhawalia, C.J.

(1) The true nature of the sentence of 'Imprisonment for Life' prescribed for heinous offences either independently or as an alternative to the death penalty by the Indian Penal Code—and in particular, whether the imprisonment thereunder is to be rigorous or simple—is the pristinely legal question which has necessitated this reference to the Division Bench.

2. The factual matrix is both brief and undisputed. The petitioner was arrested on the charge of murder on May 25, 1972 and later convicted thereunder by the Court of Sessions at Jullundur and sentenced to Imprisonment for life on January 31, 1973. This conviction and the sentence were up-held by the High Court on appeal. It is averred that the petitioner was obliged to undergo rigorous imprisonment throughout his detention in various jails in the State of Punjab including the open-air jail at Nabha. It is claimed that on account of his good work and conduct the petitioner has earned remissions both under the statutory rules or by the orders of the State Government under Article 161 of the Constitution of India or Section 432 of the Code of Criminal Procedure with the result that the total sentence including the actual imprisonment and remissions now undergone by him is nearly sixteen years.

3. On the aforesaid factual premises, the stand taken on behalf of the petitioner *inter alia* is that the sentence of 'Imprisonment for

Life' cannot be converted into "Rigorous Imprisonment for Life" under any provision of the law in force. Further that the said sentence is capable of conversion into rigorous imprisonment for a shorter term not exceeding 14 years under section 55 of the Indian Penal Code. Therefore, the petitioner having undergone more than 14 years of rigorous imprisonment (including remissions for nearly 8 years) seeks a writ in the nature of the *habeas corpus* for setting him at liberty forthwith.

4. When the matter first came up before my learned brother Bains, J. sitting singly, he noticed in his referring order that the following two significant questions fell for determination :—

(1) Whether there is any provision of law in force, which enables the executive authorities to deal with a person sentenced to imprisonment for life as if sentenced to rigorous imprisonment ?

(2) Whether a convict sentenced to imprisonment for life, when made to undergo rigorous imprisonment in the jails of the State, is entitled to be set at liberty forthwith, after undergoing a period of fourteen years together with remissions ?

5. Now, there is no gain saying the fact that the issue formulated at the out set is not free from difficulty and this is manifest from the 39th Report of the Law Commission of India which has suggested an amendment in the statute to declare and clarify the true legal position. However, on an in-depth examination of the matter, I am inclined to take the view that so far as the High Courts are concerned, the question before us is broadly (if not on all fours) covered by the binding precedents of the final Court. Therefore, though some logical analysis of the issue is inevitable, it would be wasteful to launch on an exhaustive dissentation on first principle.

6. As would be patent from what follows hereafter it is both apt and indeed necessary to examine the matter in the wake of its legislative history. Lord Macauley the illustrious author of the draft Penal Code had over the years completed the same in 1836 though it was not till the year 1860 that the Indian Penal Code came to be on the statute book. The peculiar terror that the

punishment of transportation of life inspired and its penological justification was expounded by its author in the following terms :—

> "The pain which is caused by punishment is unmixed evil. It is by the terror which it inspires that it produces good; and perhaps no punishment inspires so much terror in proportion to the actual pain which it causes as the punishment of transportion in this country. Prolonged imprisonment may be more painful in the actual endurance; but it is not so much dreaded beforehand; nor does a sentence of imprisonment strike either the offender or the bystanders with so much horror as a sentence of exile beyond what they call the Black Water. This feeling, we believe, arises chiefly from the mystery which overhands the fate of the transported convict. The separation resembles that which takes place at the moment of death. The criminal is taken for ever from the society of all who are acquainted with him, and conveyed by means of which the natives have but an indistinct notion, over an element which they regard with extreme awe, to a distant country of which they know nothing, and from which he is never to return. It is natural that his fate should impress them with a deep feeling of terror. It is on this feeling that the efficacy of the punishment depends and this feeling would be greatly weakened if transported convicts should frequently return, after an exile of seven or fourteen years, to the scene of their offences, and to the society of their former friends."

Section 53 of the Indian Penal Code which incorporated within it the punishment of transportation as originally enacted was in the following terms:—

> "The punishments to which offenders are liable under the provisions of this Code are:—
>
> First,— Death;
>
> Secondly, — Transportation;
>
> Thirdly, — Penal servitude ;
>
> Fourthly,—Imprisonment, which is of two descriptions, namely :—
>
> (1) Rigorous, that is, with hard labour;

(2) Simple ;

Fifthly,—Forfeiture of property.

Sixthly,—Fine."

Now, an analysis of the relevant sections of the Indian Penal Code would indicate that the punishment of transportation under the Code meant for all intents and purposes transportation for life barring two exceptions. Only Section 121-A of the Indian Penal Code dealing with conspiracy to commit an offence punishable under Section 121 and section 124-A dealing with sedition provided for a sentence of transportation for a shorter term than that of life. To keep the record straight it may be mentioned that both these sections were subsequently inserted in the Code by the Amending Act of 1870.

7. Curiously enough, however, though the punishment of transportation for life was expressly incorporated in the Indian Penal Code as originally enacted, there was no indication therein or in the existing Code of Criminal Procedure as to how a sentence of transporation was to be carried out and what precisely it involved. Looking back however, to the dates when the draft Penal Code was completed and its enactment of the Code in 1860, there is little doubt that the word "transportation" used therein meant transportation beyond the seas to this well-known penal settlement in the Andaman Islands. Though its duration was not defined or exactly spelt out equally "transportation for life" meant transportation for the remaining period of the convicted person's natural life. However, though the letter of the law remained substantially the same till 1956 with changing notions of penology and the treatment of prisoners and management of prison establishments, the sentence of transportation ceased necessarily to involve convicts being sent over-seas or even outside the prisons of the respective States wherein they were convicted. This result was achieved by amendments in the Code of Criminal Procedure and the provisions of the Prisoners' Act, 1900. First it was enacted in Section 368(2) of the Code of Criminal Procedure, 1898 that no sentence of transportation should specify the place to which the person sentenced was to be transported. Then Section 29 of the Prisoners Act, 1900 provided for the removal of any person confined in a prison under or in lieu of sentence of transportation or imprisonment, to any other prison in British India and the local government could similarly provide for

such removal from one prison to another within the province. Similarly Sections 31 and 32 of the same Act provided for the removal of a person sentenced to transportation from the prison in which he was confined to any other prison and empower the local government to appoint places within the province to which persons sentenced for transportation should be sent.

8. It would be thus patent from the aforesaid provisions that there was no statutory obligation imposed on the State to provide any place over-seas for the reception of a person sentenced to transportation for life. However, it is best to recall that the only place to which they were in fact so sent sometimes was the penal settlement on the Andaman Islands. During the Second World War these Islands came to be occupied by the Japanese and thus rendering such transportation beyond the seas virtually impossible so long as the occupation continued. Furthermore, there were administrative orders of the Government to regulate which prisoners should not be regarded as fit persons for being sent there. Indeed at later stages only such persons were transported over-seas who themselves volunteered to be so sent.

9. The aforesaid position existed when the Code of Criminal Procedure (Amendment) Act, 1955, was passed formally abolishing the punishment of transportation noticed earlier in Section 53 of the Indian Penal Code. This was expressly substituted and replaced by the punishment of "Imprisonment for Life". The section, as amended, reads as follows :—

> "S. 53. *Punishments.*—The punishments to which offenders are liable under the provisions of this Code are:
>
> Firstly—Death ;
>
> Secondly — Imprisonment for life;
>
> Thirdly — * * *;
>
> Fourthly — Imprisonment, which is of two descriptions, namely:—
>
> (1) Rigorous, that is, with hard labour ;
>
> (2) Simple;
>
> Fifthly — Fine."

It would be seen from the above that clause secondly which originally referred to 'transportation' now stands substituted by 'imprisonment for life'. The amending Act further made consequential textual amendments in all sections of both the Codes which referred to transportation and also inserted in the Indian Penal Code a new section 53-A in the following terms:—

> "S. 53-A (1) Subject to the provisions of sub-section (2) and sub-section (3), any reference to 'transportation for life' in any other law for the time being in force or in any instrument or order having effect by virtue of any such law or of any enactment repealed shall be construed as a reference to 'imprisonment for life'.
>
> (2) In every case in which a sentence of transportation for a term has been passed before the commencement of the Code of Criminal Procedure (Amendment) Act, 1955, the offender shall be dealt with in the same manner as if sentenced to rigorous imprisonment for the same term.
>
> (3) Any reference to transportation for a term or to transportation for any shorter term (by whatever name called) in any other law for the time being in force shall be deemed to have been omitted.
>
> (4) Any reference to 'transportation' in any other law for the time being in force shall—
>
> (a) if the expression means transportation for life be construed as a reference to imprisonment for life;
>
> (b) if the expression means transportation for any shorter term, be deemed to have been omitted.

Further Section 58 of the Code was repealed altogether, but because of a reference to its provisions in the earlier judgments and the arguments sought to be raised on its basis on behalf of the petitioner, it is expedient to read the said section also at this stage:—

> "In every case in which a sentence of transportation is passed, the offender, until he is transported, shall be dealt with in the same manner as if sentenced to rigorous imprisonment and shall be held to have been undergoing his sentence of transportation during the term of his imprisonment."

10. It is with the aforesaid back-drop of the history as also of the existing statutory provisions that the twin contentions of Mr. Malik on behalf of the petitioner may now be examined. Basing himself primarily on Section 55 of the Indian Penal Code and Section 432 of the Code of Criminal Procedure, he submitted that the respondent-State, by causing him to be dealt with in the same manner as if he had been sentenced to rigorous imprisonment must be deemed to have commuted his sentence under Section 55 of the Penal Code. Consequently it was argued that the petitioner who all along had been subjected to rigorous imprisonment cannot now be made to serve longer than a term of fourteen years (including the periods of remissions earned)—that being the maximum term of rigorous imprisonment permitted by that section. Counsel further submitted that the repeal of Section 58 has altered the legal situation so radically as to make the earlier precedents on the point no longer applicable.

11. As has been indicated at the out-set, it appears to me that a conclusive answer to the aforesaid submission is provided by the authoritative judgment of *Kishori Lal* v. *Emperor* (1), which in turn has received the stamp of approval by the final Court in *Gopal Vinayak Godse* v. *The State of Maharashtra and Orissa* (2). Therefore to my mind it is unnecessary to test the basic contention of the learned counsel for the petitioner on first principles.

12. In view of the above, it becomes necessary to examine the facts and the ratio of *Kishori Lal's case* (supra) in some detail. The appellant therein had been sentenced to transportation for life on having been convicted under Section 121 and 302 of the Indian Penal Code on October 7, 10. Admittedly he was never sent overseas to the Andaman Island, but was detained in different jails within the country itself and dealt with in the same manner therein as if sentenced to rigorous imprisonment. It was claimed on behalf of the appellant that on July 1, 1943, he had actually served an aggregate of more than 14 years of rigorous imprisonment including the remissions earned by him and this being the maximum term for a sentence of rigorous imprisonment, he was entitled to be released forthwith. His petition for a writ of *habeas corpus* having been declined by the Lahore High Court, an appeal was carried to the Privy Council.

(1) A.I.R. (32) 1945 P.C. 64.

(2) A.I.R. 1961 S.C. 6.

13. The identical submissions which are now sought to be raised before us were forcefully agitated on behalf of the Appellant in *Kishori Lal's case* (supra). Repelling the same after an illuminating analysis of the relevant provisions of Section 53 and 58 of the Penal Code read with the corresponding provisions of the Code of Criminal Procedure as also Sections 39, 21 and 32 of the Prisoners' Act, their Lordships concluded as follows with regard to the nature of the sentence of transportation for life:—

> " .. .. .. No doubt, therefore the sentence has been preserved for its deterrent effect and because in certain cases it may be both useful and desirable to send convicts to the Islands. But at the present day transportation is in truth but a name given in India to a sentence for life and in a few special cases, for a lesser period, just as in England the term imprisonment is applied to all sentences which do not exceed two years and penal servitude to those of three years and upwards. A convict sent to penal servitude may now a days serve his sentence either in a prison known as a convict establishment or in an ordinary local prison and in the latter he will be subject to exactly the same discipline, conditions of labour and treatment generally as those sentenced to imprisonment. *So, in India, a prisoner sentenced to transportation may be sent to the Andamans or may be kept in one of the jails in India appointed for transportation prisoners where he will be dealt with in the same manner as a prisoner sentenced to rigorous imprisonment.* The appellant was lawfully sentenced to transportation for life at the time when he made his application to Monroe, J. he was confined in a prison which had been appointed as a place to which prisoners so sentenced might be sent. .. .. .. ".

14. In a vain though vigorous attempt to distinguish the aforesaid observations Mr. Malik had attempted to argue that the rationale of *Kishori Lal's case* (supra), rested entirely on Section 58 of the Code which now stands repealed. It was sought to be argued that this provision had provided only for the transitory period betwixt the sentencing of the accused person and his actual physical tranportation to the penal settlement over-seas. According to the counsel, it was only in this interregnum that the law authorised his detention as a person suffering rigorous imprisonment. Consequently

it was submitted that the whole reasoning of *Kishori Lal's case* (supra) based on Section 58 does not now survive because of the repeal of the said provision.

15. I am entirely unable to agree. It is significant to recall that in *Kishori Lal's case* (supra) the appellant who was sentenced to transportation for life in 1930, at no stage, was ever transported to Andaman Islands. Consequently he had undergone rigorous imprisonment in jails within the country itself right from 1930 till December 6, 1944, when judgment was rendered in his case. It was no transitory period of detention merely pending transportation over-seas which their Lordships were evaluating and they were fairly and squarely adjudicating on his detention for more than 14 years in the jails in India as a person undergoing rigorous imprisonment for life. They had upheld it as the sole equivalent of transportation for life. Therefore, it is futile to argue that the ratio of *Kishori Lal's case* (supra) rested on the basis of any transitory or temporary detention between sentencing and transportation to a penal settlement over-seas. It is true that Section 58 was at that time on the statute book, but the whole premise underlying the judgment was not on the basis of that provision though inevitably a reference to the same had to be made. The stand on behalf of the petitioner is expressly negatived by the following observations in the judgment itself:—

> "* * * In England transportation beyond the seas ceased as a punishment in 1854. In India it is still part of the penal system, but Acts passed since the Penal Code have effected so radical a change in the law relating thereto that whatever may have been the case in 1860, section 58 *can no longer be construed as providing only for the transitory detention of prisoners awaiting conveyance to a penal settlement outside India.* A sentence of transportation no longer necessarily involved prisoners being sent overseas or even beyond the provinces wherein they were convicted."

In view of the above one must reject the contention that *Kishori Lal's case* (supra) no longer holds the field merely because of the repeal of section 58 later in 1955. The repeal of the said section was indeed inevitable and consequential upon the formal abolition

of the sentence of transportation and was not intended to make any radical change in the law as it stood earlier.

16. Once the aforesaid conclusion has been arrived at the rest would appear to be easy sailing. The true ratio of *Kishori Lal's case* which emerges is that prior to the 1955 amendment it was laid down authoritatively beyond any manner of doubt that the legal equivalent of transportation for life in the context of an accused person not sent overseas to Andaman Islands was rigorous imprisonment for life within the jails in the country. In essence what follows therefrom is that the mathematical equivalent of 'transportation for life' was 'rigorous imprisonment for life' alone.

17. Proceeding further from the aforesaid firm premises one has only to substitute the sentence of 'imprisonment for life' in place of 'transportation for life' to arrive at the geometrical conclusion that it is equivalent to 'rigorous imprisonment for life'. The syllogism may be spelled out in the following three logical steps :—

(i) *Kishori Lal's case* laid down that 'rigorous imprisonment for life' was the legal equivalent of 'transportation for life.'

(ii) The amending Act No. 26 of 1955 merely substituted 'imprisonment for life' in place of 'transportation for life' in the statutes.

(iii) As a necessary consequences it would follow that now 'imprisonment for life' is the true equivalent of 'rigorous imprisonment for life'.

18. Apart from the canons of logic it would appear that the aforesaid conclusion finds equal, if not conclusive support, from the observations later in *Gopal Godse's case*. The facts of the celebrated case are well-known and, therefore, call for only a brief reference. Therein also the petitioner who had been sentenced to transportation for life sought relief on the ground that including remissions he had served an aggregate of more than twenty years and was, therefore, entitled to his release. It has to be pointedly borne in mind that in *Gopal Godse's case*, the henious crime had been committed in 1948 long before the amending Act 26 of 1958 came on the statute book but the matter came to be considered by their

Lordships after the enforcement of the same and was decided on the 12th of January, 1961. Therein they expressly quoted from *Kishori Lal's case* (supra) and unreservedly affirmed its ratio. Further in construing section 53-A they held as follows in the concluding part of paragraph 4 of the report:—

> "Whatever justification there might have been for the contention that a person sentenced to transportation could not be legally made to undergo rigorous imprisonment in a jail in India except temporarily till he was so transported, subsequent to the said amendment there is none. Under that section, a person transported for life or any other term before the enactment of the said section would be treated as a person sentenced to rigorous imprisonment for life or for the said term."

Faced with the above, learned counsel for the petitioner made a faint attempt to distinguish the aforesaid observations on the ground that these would be applicable only to cases before the enactment of section 53-A in 1955 and not later. However, it appears to me that this finical distinction is one without any difference. Though undoubtedly a passing gloss does appear in the particular line but the larger ratio and the true import of the judgment does not hinge on the fact whether the crime was committed prior to 1955 or thereafter. In fact I am unable to see that if prior to 1955 in essence the sentence of transportation for life was that of rigorous imprisonment for life why after the enactment of Act No. 26 of 1955 which clearly was intended to do nothing more than substitute 'imprisonment for life' for 'transportation for life', the situation would in any way materially change. It would, therefore, appear that the legal position both prior to the 1955 amendment and after its enforcement would be identical and the legal equivalent of the sentence of transportation for life as also of imprisonment for life is one of rigorous imprisonment for life. As said earlier it would appear that the authoritative precedent in *Gopal Godse's case* now conclusively covers the issue despite the marginal factor of the offence in the said case having been committed before the amendment though admittedly the consideration of the case was long after the same.

19. So far as the precedent is concerned, the matter does not merely rest on *Gopal Godse's case*. In *State of Madhya Pradesh* v.

Ahmadulla (3) their Lordships whilst reversing the judgment of acquittal on a charge of murder imposed the following sentence:—

> "But taking into account the fact that the accused has been acquitted by the Sessions Judge—an order which has been affirmed by the High Court—"we consider that the ends of justice would be met if we sentence the accused to rigorous imprisonment for life."

Again in the celebrated case of *K. M. Nanavati* v. *State of Maharashtra* (4), the Bombay High Court had sentenced the accused expressly to rigorous imprisonment for life and their Lordships whilst dismissing the appeal upheld the said sentence, it would thus appear that in at least two cases the final Court has itself imposed or upheld the imposition of a sentence of rigorous imprisonment for life on the charge of murder.

20. Adverting now to the judgments of the High Courts it would appear that a slightly discordant note seems to have been struck by the Division Bench in *Matharumal Saraswati* v. *The State of Kerala* (5). Therein after adverting to the merits of the case before them the learned Judges in passing observed that the Court below ought to have kept in view the provisions of section 50 of the Penal Code and should have specified whether the imprisonment for life was to be rigorous or simple and then clarified the position by stating that the imprisonment for life in the case shall be simple imprisonment and not rigorous. It is plain from the reading of the judgment that the issue was not even remotely canvassed and in passing the question of sentence was decided as if on first impression. Significantly the learned counsel for the petitioner himself did not support the view of the Kerala Division Bench because his basic stand is that imprisonment for life is distinctly a class apart both from simple imprisonment or from rigorous imprisonment. For the reasons already recorded above and in view of what follows I must respectfully record my dissent from the Kerala view.

21. It would appear that the High Court's decision which directly covers the issue on all fours is that of *Urlikia Medina* v.

(3) A.I.R. 1961 S.C. 998.
(4) A.I.R. 1962 S.C. 605.
(5) A.I.R. 1957 Kerala 102.

The State, (5-A). Therein the learned Judges have considered and dissented from the afore-mentioned Kerala view in *Mathammal Saraswathi's case.* After detailed discussion on the point at issue it has been concluded as follows —

> "We should therefore conclude by saying that 'imprisonment for life' in the Indian Penal Code means 'rigorous imprisonment for life' and it can never mean 'simple imprisonment for life', and Section 60, I.P.C. cannot be used to specify the nature of imprisonment."

To avoid repetition it would suffice to say that I am entirely in agreement with the reasoning in *Urlikia Madna's case* and the aforementioned conclusion.

22. It would be manifest from the above that the binding precedent of the Privy Council in *Kishori Lal's case* and of the Supreme Court in *Gopal Godse's* as also the persuasive judgments of the High Courts conclude the issue against the petitioner. It must, therefore, be held on precedent itself that the sentence of imprisonment for life in the Indian Penal Code, in essence, means rigorous imprisonment for life.

23. In view of the above it would have been perhaps unnecessary to examine the matter any further. However, it appears to me that even *de hors* the precedent the answer to the issu e is identical even on first principles and logical analysis. It is, therefore, meaningful to examine this aspect briefly as well.

24. Now I am not oblivious of the fact that on some doubts having been raised by some State Governments the precise issue before us was also the subject-matter of examination by the Law Commission in its Thirty-ninth Report. To resolve those doubts and clarify the law, the Law Commission had proposed a clear-cut amendment by inserting Section 56 in the Indian Penal Code in the following terms:—

> "56. Imprisonment for life shall be rigorous".

However, actually no change in the law was effectuated and later in the exhaustive Forty-Second Report of the Law Commission pertaining to very comprehensive amendments in the Indian Penal

5-A. A.I.R. 1964 Orissa 149.

Code this issue was again considered in paras 3.38 to 3.48 and a new Section 55 was suggested for insertion to the same effect that imprisonment for life shall be rigorous. This was reflected in para 26 of the Law Commission Draft of the Indian Penal Code (Amendment) Bill, 1971. However, as is well-known the bill introduced to effectuate the amendments in the Indian Penal Code later lapsed and the requisite amendments have not so far been brought on the statute book. Much store was set on these factors by Mr. Malik, the learned counsel for the petitioner for contending that the existing provisions do not warrant the sentence of rigorous imprisonment for life as being the equivalent for imprisonment for life specified in Section 53-A and various other sections of the Indian Penal Code.

25. I am wholly unable to subscribe to the aforesaid submission. As has been said earlier and indeed it is plain that the matter is not entirely free from difficulty and when clarification were sought by the State Governments the Law Commission did propose amendments obviously to set these doubts at rest. It deserves highlighting that the categoric recommendations made in both the Thirty-ninth Report and the relevant part of the Forty-Second Report were to the effect that imprisonment for life shall be rigorous. The fact that despite the Thirty-ninth Report having been rendered in July, 1968, the legislature till today has not deemed it necessary to peremptorily make the amendments would be a pointer to the fact that in its wisdom it has not thought them necessary. Even otherwise, one is well aware of statutory provisions which are either clarificatory in nature or declaratory of the existing law where doubts are raised with regard thereto. For the detailed reasons earlier recorded I view the two Law Commission reports and the proposal to make the necessary amendment as more in the nature of being declaratory of the existing law as laid down by the highest Court and for the puurpose of setting at rest any creaping doubts with regard thereto rather than with any intent to make a radical change in the existing provisions.

26. Again a close look at Section 53-A of the Indian Penal Code inserted by Act 26 of 1955 appears to lead one to the same conclusion. In particular sub-section (2) lays down in categoric terms that a sentence of transportation for a term is to be equated to a sentence for rigorous imprisonment for

the same term.

On a parity of reasoning, therefore, if transportation for a term is equivalent to rigorous imprisonment for the same term then transportation for life would be the logical equivalent of rigorous imprisonment for life. Reference may again be made to sub-section (4) of Section 53-A which again reiterates that any reference to transportation in any other law should be construed as a reference to imprisonment for life. This again manifests the legislature's intention to simply transpose imprisonment for life in place of the expression 'transportation for life'. Consequently if prior to the amendment in Section 53-A transportation for life meant, in essence, rigorous imprisonment for life in all cases where convicts were not sent to Andaman Islands the same equivalent would remain for the term 'imprisonment for life' after the said amendment as well.

27. Learned counsel for the petitioner had raised much *ado* with regard to the repeal of Section 58 by the amending Act 26 of 1955. As already noticed, it was sought to be argued that this repeal had affected the clear-cut ratio of the decisions in *Kishori Lal's* case and in *Gopal Godse's case.* I regret my inability to agree. The clear object of the statute was that because of the fact that the imprisonment of transportation for life had been obliterated from the Statute Book then obviously all modes of effecting the same necessarily had to follow suit. The repeal of Section 58, therefore, was nothing more than a necessary consequence of the abolition of the sentence of transportation either for life or for a smaller term. This repeal was not and in my view could never have been intended to make any change in the substantive law on an issue so material, as the one which is before us for consideration.

28. Even a larger conspectus of the numerous sections of the Indian Penal Code seems to belie the argument sought to be raised on behalf of the petitioner. The broad sentencing policy underlying the same would indicate that in all serious offences punishable with more than three years the sentence of imprisonment is usually if not inflexibly prescribed as rigorous. It may broadly be stated that rigorous imprisonment is the invariable norm for punishing serious crimes. It would be tautologous to emphasise that imprisonment for life simplicitor or as the only alternative sentence for the death penalty is invariably imposed for offences which in the eye of law

border as the most heinous. It would be curious if not illogical to imagine that for such heinous crimes the punishments permitted could be simple in nature whereas even for lessor crimes the statute sometimes leaves no alternative but to impose rigorous imprisonment. This is an added argument to the view that imprisonment for life because of the gravity of the offence for which it is imposed must inevitably be equated with rigorous imprisonment for life.

29. In fairness to Mr. Malik I must notice what appeared to me as an overly reliance on the provisions of the Indian Prisoners Act and the Prisons Act as also on the prescribed forms for warrants to be issued for the confining of prisoners and the guidelines spelled out in the Jail Manual. I, however, regret my inability to see how the provisions and matters wholly procedural and consequential can govern the substantive and the spinal issue whether imprisonment for life means rigorous imprisonment for life or otherwise. The attempt to resolve this issue on the basis of purely procedural provisions or administrative instructions and various forms prescribed for the confining etc. of prisoners would, to my mind, be the proverbial 'putting the cart before the horse'. So far as this aspect of the submissions of the learned counsel for the petitioner are concerned he appeared to be more a prisoner of the provisions of the Indian Prisoners' Act and the Prisons Act rather than viewing the matter from a larger perspective of the provisions of the two Codes themselves and the binding precedents of the Privy Council and the Supreme Court, from which angle the issue deserves to be examined. I, therefore, deem it unnecessary to advert in any detail to the finical and minuscule procedural provisions with regard to the form of warrants and the guidelines in Jail Manuals which appear to me as rather irrelevant to the issue.

30. Lastly, the core of Mr. Malik's submission appeared to be that by amending section 53 and by inserting section 53-A and repealing section 58 from the Indian Penal Code, the amending Act No. 26 of 1955 had intended to make such changes in the existing law so as to render the earlier precedent of *Kishori Lal's case* and *Gopal Godse's* as no longer applicable or binding. As is evident from the foregoing discussion I am wholly unable to subscribe to this view. The relevant changes made in the Indian Penal Code by the amending Act No. 26 of 1955 were not directed to make any radical change

in the law as it stood but were primarily designed to substitute imprisonment for life in place of transportation for life which was effected from the statute book. As a necessary consequence textual changes in the various sections of the Indian Penal Code as also in other laws became inevitable and were, therefore, effectuated by the statute. Section 53-A was inserted more in the nature of being clarificatory and declaratory of the law. Some misapprehension in this context arises from the fact that Act No. 26 of 1955 was designed primarily to amend the procedural code as its very name—the Code of Criminal Procedure (Amendment) Act, 1955 clearly indicates. Undoubtedly so far as the Code of Criminal Procedure was concerned this amending Act made radical changes in the said statute. However, as the schedule to this Act makes manifest the changes in the Indian Penal Code, Indian Oaths Act and the Indian Limitation Act, the same were largely consequential and amending in nature and in no way intended to make any material change in the existing provisions thereof. This situation is amply manifest if reference is made to the objects and reasons of the amending bill as also the notes of individual clauses thereof. The issue directly before us is particularly covered by the incisive observations of the Joint Select Committee with regard to the changes made in section 53 and the insertion of section 53-A in the Indian Penal Code. The relevant part of the report deserves notice *in extenso*.

> "Clause 2: The question of substitution of the words 'imprisonment for life' for the words 'transportation for life' arose in connection with the consideration of original clauses 113, 114 and the Schedule. The Committee note that the expression 'transportation for life' has not been defined nor explained in the Criminal Procedure Code. In the Indian Penal Code in section 53, 'transportation' has been prescribed as one form of punishment. But even in the Indian Penal Code the term has not been defined and there is nothing to show what is the duration of transportation for life. As a matter of fact, this expression has not been defined in any Act. Transportation may be either for life or for a shorter term. *Therefore, the mere substitution of the expression 'imprisonment for life' for 'transportation for life' should not change the nature of punishment.* As a form of punishment, imprisonment for life must remain distinct from rigorous or simple

imprisonment. Where, however, a sentence for transportation for a term only has been passed before the commencement of this Act, the offender should be dealt with in the same manner as if he was sentenced to rigorous imprisonment for the same term and all references to transportation for a term should be omitted. In the Code of Criminal Procedure the word 'transportation' as would appear from the context means in some cases transportation for life and in others, transportation for a term only. *The Committee, therefore, recommend that where transportation means 'transportion for life' it it should be substituted by the words 'imprisonment for life', and where it means transportation for a term only it should be omitted. The intentions of the Committee have been clarified by the insertion of a new section 53-A in the Indian Penal Code."*

From the above the intent of the framers of the bill is more than manifest. It has been repeatedly emphasised that the mere substitution of the expression 'imprisonment for life' for 'transportation for life' should not change the nature of punishment. The purpose was merely to substitute 'imprisonment for life' for 'transportation for life' without in any way affecting the import it carried prior to the amendment by virtue of the decision of the Privy Council in *Kishori Lal's case* which had authoritatively laid down that it only meant rigorous imprisonment for life. Therefore, when the framers of the bill said that there was no change in the nature of punishment intended it would follow that imprisonment for life was to have the same meaning, namely, rigorous imprisonment for life, it would appear that the legislature did not think it necessary to further clarify the position by introducing any amendment as there was no doubt about the meaning as it stood prior to the amendment. It is a settled canon of construction that the legislature must be imputed with the knowledge of the pre-existing law and if no change is made therein then inevitably the same would continue to hold the field.

31. To conclude I would hold on principle, on the language of the relevant statutory provisions, and the binding precedents in *Kishori Lal's case* and *Gopal Godse's* case that imprisonment for life under the Indian Penal Code connotes rigorous imprisonment for life. The answer to the question posed at the very outset is, therefore, rendered in the above terms.

32. Now adverting formally to the two questions framed in the reference order (referred in paragraph 4) it is plain that in view of the aforesaid findings the answer to question No. 1 would be that the Indian Penal Code itself authorises the detention of a person sentenced to imprisonment for life as one sentenced to rigorous imprisonment for life.

33. Coming now to question No. 2 it is again plain that the same is concluded against the petitioner by the binding precedent in *Gopal Godse's* case. Opining authoritatively upon the nature and duration of the sentence of imprisonment for life their Lordships held as follows:—

> "* * *. Section 57 of the Indian Penal Code has no real bearing on the question raised before us. For calculating fractions of terms of punishment the section provides that transportation for life shall be regarded as equivalent to imprisonment for twenty years. It does not say that transportation for life shall be deemed to be transportation for twenty years for all purposes, nor does the amended section which substitutes the words "imprisonment for life' for 'transportation for life' enable the drawing of any such all-embracing fiction. A sentence of transportation for life or imprisonment for life must *prima facie* be treated as transportation or imprisonment for the whole of the remaining period of the convicted person's natural life."

and again—

> "* * *. As the sentence of transportation for life or its prison equivalent, the life imprisonment is one of indefinite duration, the remissions so earned do not in practice help such a convict as it is not possible to predicate the time of his death. That is why the rules provide for a procedure to enable the appropriate Government to remit the sentence under section 401 of the Code of Criminal Procedure on a consideration of the relevant factors, including the period or remissions earned. The question of remission is exclusively within the Province of the appropriate Government and in this case it is admitted that, though the appropriate Government made certain remissions under section 401 of the Code of Criminal Procedure, it did not remit the entire sentence. We, therefore, hold

that the petitioner has not yet acquired any right to release."

In view of the aforesaid authoritative enunciation and answer to question No. 2 must be rendered in the negative and it must be held that the sentence of life imprisonment is one of indefinite duration until remitted by the appropriate Government and the convict does not acquire any inflexible right to release.

33. In the aforesaid context we must notice that Mr. Malik, had very fairly conceded that if the answer to question No. 1 was returned against him (as has been now categorically done) then he had no case whatsoever on question No. 2.

34. Now the aforesaid two issues completely cover the entire field and these having been decided against the petitioner the writ petition is obviously without merit and is hereby dismissed. In view of somewhat intricate question involved we make no orders as to costs.

Ajit Singh Bains, J.—I agree.

N. K. S.

FULL BENCH

Before S. S. Sandhawalia C.J., S. S. Kang and G. C. Mital, JJ.

UNION OF INDIA,—*Appellant.*

versus

GIRDHARI and another,—*Respondents.*

Cross Objection No. 36-C-II of 1981
in F. A. O. No. 466 of 1980.

January 8, 1982.

Punjab Requisitioning and Acquisition of Immovable Property Act (Punjab Act II of 1953)—Section 11—Court Fees Act 7 of 1870—Section 8 and Schedule I, Article 1—Memorandum of Appeal under section 11—Court fee payable thereon—Whether to be ad valorem.