Maru Ram And Ors. vs Union Of India (Uoi) And Ors. on 11 November, 1980

Equivalent citations: AIR1980SC2147, 1980CRILJ1440, (1981)1SCC107, [1981]1SCR1196

Author: A.D. Koshal

Bench: Y.V. Chandrachud, P.N. Bhagwati, V.R. Krishna Iyer, A.D. Koshal

JUDGMENT

V.R. Krishna Iyer, J. (On behalf of himself and Y.V. Chandrachud, C.J. and P.N. Bhagwati

1. A procession of 'life convicts', well over two thousand strong, with more joining the

I know not whether Laws be right,

Or whether Laws be wrong,

All that we know who lie in gaol

Is that the wall is strong;

And that each day is like a year.

A year whose days are long.

(Emphasis added)

But broken hearts cannot break prison walls. Since prisons are built with stones of law,
 The law will never make men free; it is men who have got to make the law free. They are

2. Now, the concrete question and the back-up facts. All the petitioners belong to one o

3. Before the enactment of Section 433-A in 1978 these lifers' were treated, in the matt

...the fundamental principle in our courts that where there is any conflict between the

Of course, most of the petitioners belong to 'the poorest, the lowliest and the lost. Fo

The imprisoned poet, Oscar Wilde wrote that courts must know when adjudicating the arbit

Something was dead in each of us,

And what was dead was Hope.
XX XX

The vilest deeds like poison weeds Bloom well in prison-air:

It is only what is good in man That wastes and withers there:
Pale Anguish keeps the heavy gate, And the Warder is Despair.

These generalities only serve as a backdrop to the consideration of the multi-pronged a

433A. Notwithstanding anything contained in Section 432, where a sentence of imprisonmen

Piecemeal understanding, like a little learning may prove to be a dangerous thing. To ge

432. (1) When any person has been sentenced to punishment for an offence, the appropriat

433. The appropriate Government may, without the consent of the person sentenced, commut

(a) a sentence of death, for any other punishment provided by the Indian Penal Code;

(b) a sentence of imprisonment for life, for imprisonment for a term not exceeding fourt

(c) a sentence of rigorous imprisonment, for simple imprisonment for any term to which t

(d) a sentence of simple imprisonment, for fine.

4 The Sections above quoted relate to remission and commutation of sentences. There were

5. The Objects and Reasons throw light on the 'why' of this new provision:
The CrPC, 1973 came into force on the 1st day of April, 1974. The working of the new Co

The notes on clauses give the further explanation:
Clause 33: Section 432 contains provision relating to powers of the appropriate Govern

This takes us to the Joint Committee's recommendation on Section 57 of the Penal Code th
Section 57 of the Code as proposed to be amended had provided that in calculating tract

6. Shortly put, the parliamentary committee concerned with the amendments to the Penal C

7. We have to examine the legislative history of Sections 432 and 433 and study the heri

8. Dr. Singhvi, who brought up the rear, belatedly but eruditely strengthened the argume

9. The Union of India, represented by the learned Solicitor General, has repudiated the

10. There has been much over-lapping inevitable in plural orality but the impressive arr

11. A preliminary observation may be merited since much argument has been made on the du

12. Issues of liberty are healthy politics and those sincerely committed to human rights

13. Nevertheless, we will cover fee entire spectrum of submissions including those based

14. We may safely assume that, but for the bar of Section 433-A, the rules of remission

15. We dismiss the contention of competency as of little substance. It is trite law that

16. Let us assume for a moment that the laws of remission and short-sentencing are enact

17. This indubitable constitutional position drove counsel to seek refuge in the limited

18. In the province of interpretation, industry and dexterity of counsel can support any

(1) Read the statute; (2) read the statute; (8) read the statute!

19. If we read Section 433-A and emphasise the obvious, it easily discloses the dividing
and Rabha's case

20. We cannot agree with counsel that the non obstante provision impliedly sustains. It
that a non obstante clause cannot whittle down the wide import of the principal part. T

21. The learned Solicitor General reinforced the conclusion by pointing out that the who

22. The learned Solicitor General explained why the draftsman was content with mentionin
(supra), furnishes the clue We will briefly indicate the argument and later expatiate o

23. Sentencing is a judicial function but the execution of the sentence, after the court

24. We are loathe to loading this judgment with citations but limit it to two leading au
, a Constitution Bench of this Court illumined this branch of law. What is the jural con

In the first place, an order of remission does not wipe out the offence; it also does no
A reprieve is a temporary suspension of the punishment fixed by law. A pardon is the re

Though, therefore, the effect of an order of remission is to wipe out that part of the s

The relevance of this juristic distinction is that remission cannot detract from the qua

25. Ordinarily, where a sentence is for a definite term, the calculus of remissions may
. Where the sentence is indeterminate and of uncertain duration, the result of subtracti
:
Unless the said sentence is commuted or remitted by appropriate authority under the rel

26. In Godse's case, Subba Rao, J., also drew the conceptual lines of 'remission', 'sent
(supra). Here, again, if the sentence is to run until life lasts, remissions, quantifie

27. The next submission urged to show that Section 433A is bad is based on Article 20(1)

28. Neither argument has force. The first one fails because Section 302 I. P. C. (or oth
(supra) is too emphatic and unmincing to admit of a different conclusion', The haunting

29. Let us assume for the sake of argument that remissions have been earned by the priso

30. A possible confusion creeps into this discussion by equating life imprisonment with

31. May be, difference may exist in cases of fixed term sentences. Cooley lends support:

Privilege existing at time of commission of offence (e. g. privilege of earning a shorte

32. The next submission, pressed by Shri Kakkar with great plausibility, is that Section
5. Nothing contained in this Code shall, in the absence of a specific provision to the

33. The anatomy of this saving section is simple, yet subtle. Broadly speaking, there ar

34. Three rulings were cited by the learned Solicitor General to make out that Section 4

35. Section 1(2) of the Criminal Procedure Code, 1898, is the previous incarnation of Se

The word 'specific' is defined to Murray's New English Dictionary as 'precise or exact i

36. In a similar situation, the same words fell for decision to the Allahabad case where

I have, I confess, entertained some doubt as to what exactly the words 'specific provisi

37. In an English case, Re Net Book Agreement, 1957 (1962) 3 All ER 751 (QBD), Buckley,

38. The contrary view in the Bombay case, AIR 1941 Bom 148 is more assertive than explan

39. The stage is now set for considering the contention that Section 433A violates Artic

40. The larger issues of sentencing legitimacy and constitutionality have been examined
has observed:

The winds of change must blow into our careers and self-expression and self-respect and
xx xx xx

Prison laws, now in bud shape, need rehabilitation; prison staff, soaked in the Raj past

Again, (Ibid 579-80).

We snare the concern and anxiety of our learned brother Krishna lyer, J. for reorientati

The Model Jail Manual, prepared by the Indian Prison echelons plus a leading criminologi

Social reconstruction and rehabilitation as objectives of punishment attain paramount im

Imprisonment and other measures which result in cutting off an offender from the outside

The institution should be a center of correctional treatment, where major emphasis shall

41. Surely, arbitrary penal legislation will suffer a lethal blow under Article 14. But

42. A judicial journey to the peno-logical beginning reveals that social defence is the

43. Judicial pronouncements are authentic guidance and so a few citations may serve our
, this Court observed:
It is now well-settled, as a stream of rulings of courts proves, that deterrence both s

The overall attitude was incorporated as a standard by the American National Advisory Co

In a series of decisions this Court has held that, even though the governmental purpose
, stated:

The dignity and divinity, the self-worth and creative potential of every individual is a
, a bench belighted in the penological basics:
It is thus plain that crime is a pathological aberration, that the criminal ran ordinar

44. We emphasise here that Remission Schemes offer healthy motivation for better behavio

45. It makes us blush to jettison Gandhiji and genuflect before Hammurabi, abandon refor

The mood and temper of our Constitution certify that arbitrary cruelty to the prisoner a
, on the vires of death penalty upholds this high stance.

46. Basic to the submissions of counsel for the petitioners is the humane assumption tha

47. The sequitur is irresistible. Any provision that wholly or substantially discards th

48. The argument pressed before us is that Section 433A does injustice to the imperative

49. While the light of this logic is not lost on us and the non-institutional alternativ

50. We have no doubt that reform of the prisoner, as a social defence strategy, is high

51. Two broad grounds to negative this extreme position strike us. Deterrence, as one va
, by a five-judge bench (see Desai, J. supra). So, a measure of minimum incarceration of

52. We agree that many studies by criminologists, high-powered commissions and court pro

53. For instance, deep relaxation recipes and meditational techniques, researched with s
. The main mass of cases where life imprisonment is actually inflicted by the courts bel

The essence of the Liberal outlook lies not in what opinions are held, but in how they a

54. The major submissions which deserve high consideration may now be taken up. They are

55. Now to the first point. It is trial law that civilised criminal jurisprudence interd

56. We are mindful of one anomaly and must provide for its elimination. If the trial cou

57. We now move on to the second contention which deals with the power of remission unde

58. The present provisions (Sections 432 and 433) have verbal verisimilitude and close k
, to the effect that the effect of granting pardon is not to interfere with the judicial

59. It is apparent that superficially viewed, the two powers, one constitutional and the

60. Even so, we must remember the constitutional status of Articles 72 and 161 and it is

61. Are we back to Square one? Has Parliament indulged in legislative futility with a fo
. So, we agree, even without reference to Article 307(1) and Section 3(8)(b) and 3(60)(b

62. An issue of deeper import demands our consideration at this stage of the discussion.

63. The jurisprudence of constitutionally canalised power as spelt out in the second pro
, this Court stated:
 The rule inhibiting arbitrary action by Government which we have discussed above must a

This rule also flows directly from the doctrine of equality embodied in Article 14. It i
 The Government, is not and should not be as free as an individual in selecting the reci

If we excerpt again from the Airport Authority case
.

Whatever be the concept of the rule of law, whether it be the meaning gives by Dicey in

It is the pride of oar constitutional order that all power, whatever its source, must, i

64. Speaking generally. Lord Acton's dictum deserves attention: Letter to Mandell (later

I cannot accept your canon that we are to judge Pope and King unlike other men, with a f

Likewise, Edmund Burke, the great British statesman gave correct counsel when he said: R

All persons possessing a portion of power ought to be strongly and awfully impressed wit

65. Pardon, using this expression in the amplest connotation, ordains fair exercise, as

In exercise of the powers conferred under Article 161, the Constitution of India, the Go

A. Banerjee,

Secretary to Govt. of Haryana

Jails Department

Dated Chandigarh, the

18th July, 1978.

Push this logic a little further and the absurdity will be obvious. No Constitutional po

66. Once we accept the basic thesis that the public power vested on a high pedestal has

This too I know and wise it were

If each could know the same.

That every prison that men build

If built with bricks of shame,

And bound with bars lest Chris should see

How men their brothers maim.

President Carter when he was Governor of Georgia, addressing a Bar Association, said:
In our prisons, which in the past have been a disgrace to Georgia, we've tried to make

67. All these go to prove that tht length of imprisonment is not regenerative of the goo

68. The failure of imprisonment as a crime control tool and the search for non-instituti
The failure of imprisonment has been one of the most noticeable features of the current

Likewise, in many current research publications the thesis is the same. Unless a tidal w

There are many questions regarding our prison systems and their rehabilitative quality.

Contrary to popular opinion, all convicts are not rock-hard individuals lacking sufficie

69. The rule of law, under our constitutional order, transforms all public power into re

70. The learned Solicitor General is right that these rules are plainly made under the P

71. One point remains to be clarifted. The U.P. Prisoners' Release on Probation Act, 193

72. We conclude by formulating our findings. (1) We repulse all the thrusts on the vires

(2) We affirm the current supremacy of Section 433A over the" Remission Rules and short-

(3) We uphold all remissions and short-sentencing passed under Articles 72 and 161 of th

(4) We hold that Section 432 and Section 433 are not a manifestation of Articles 72 and

(5) We negate the plea that Section 433A contravenes Article 20(1) of the Constitution.

(6) We follow Godse's case ' (supra) to hold that imprisonment for life lasts until the

(7) We declare that Section 433A, in both its limbs (i. e. both types of life imprisonme

(8) The power under Articles 72 and 161 of the Constitution can be exercised by the Cent

(9) Considerations for exercise of power under Articles 72/161 may be myriad and their o

(10) Although the remission rules or short-sentencing provisions proprio vigore may net

(11) The U. P. Prisoners' Release on Probation Act, 1938, enabling limited enlargement u

(12) In our view, penal humanitarianism and rehabilitative desideratum warrant liberal p

(13) We have declared the law all right, but law-in-action fulfils itself not by declara

(14) Section 433A does not (sic) parole or other release within the 14-years upon. So to

73. The length of this fragment (like the length of Section 433A Cr. P. C.) could have b

Our judges are not monks or scientists, but participants in the living stream of our nat

A Final Thought

74. Fidelity to the debate at the bar persuades us to remove a misapprehension. Some arg

75. We dismiss the Writ Petitions via a vis the challenge to Section 433A but allow them

A.D. Koshal, J.

76. On a perusal of the judgment prepared by my learned brother, Krishna Iyer, J. I agree respectfully with findings (2) to (11), (13) and (14) enumerated by him in its concluding part as also with the first sentence occurring in finding (1). but regret that I am unable to endorse all the views expressed by him on the reformative aspect of penology, especially those forming the basis of finding (1) minus the first sentence and of finding (12). In relation to those views, while concurring generally with the note prepared bv my learned brother, Fazal All, J., I am appending a very short note of my own.

77. That the four main objects which punishment of an offender by the State is intended to achieve are. deterrence, prevention, retribution and reformation is well recognised and does not appear to be open to dissent. In its deterrent phase, punishment is calculated to act as a warning to others against indulgence in the anti-social act for which it is visited. It acts as a preventive because the incarceration of the offender, while it lasts, makes it impossible for him to repeat the offending act. His transformation into a law-abiding citizen is of course another object of penal legislation but so is retribution which is also -described as a symbol of social condemnation and a vindication of the law. The question on which a divergence of opinion has been expressed at the bar is the emphasis which the .legislature is expected to place on each of the said four objects. It has been contended on behalf of the petitioners that the main object of every punishment must be re-formation of the offender and that the other objects abovementioned must be relegated to the background and be brought into play only incidentally, if at all. I have serious disagreement with this proposition and that for three rea-sons.

78. In the first placce, there is no evidence that all or moist of the criminals who are punished are amenable to reformation. It is true that in recent years an opinion has been strongly expressed in favour of reformation being the dominant object of punishment but then an opposite opinion has not been lacking in expression. Champions of the former view cry from house-tops that punishment must have as its target the crime and not the criminal. Others, however, have been equally vocal in bringing into focus the mischief flowing from what the criminal has done to his victim and those near and dear to him and have insisted on greater attention being paid to victimology and therefore to the retributive aspect of punishment. They assert:

> Neither reformers nor psychologists have, by and large, succeeded in reducing recidivism by the convicted criminals, Neither harshness nor laxity has succeeded in discouraging repeaters.... Criminality is not a disease admitting of cure through quick social therapy....
>
> Essay on Crime. Containment and Jails by Shri Tek Chand, retired Judge of the Punjab High Court and Chairman of the Haryana Jail Reforms Commission. The matter has been the subject of social debate and, so far as one can judge, will continue to remain at that level in the foreseeable future.

79. Secondly, the question as to which of the various objects of punishment should be the basis of a

penal provision has, in the very nature of things, to be left to the legislature and it is not for the courts to say which of them shall be given priority, preponderance or predominance. It may well in fact be that a punitive law may be intended to achieve only one of the four objects but that is something which must be decided by the legislature in its own wisdom. An offence calculated to thwart the security of the State may be considered so serious as to demand the death penalty and nothing else, both as a preventive and a deterrent, and without regard to retribution and reformation. On the other hand, offences involving moral turpitude may call for reformation as the chief objective to be achieved bv the legislature. In a third case all the four objects may have to be borne in mind in choosing the punishment. As it is, the choice must be that of the legislature and not that of the courts and it is not for the latter to advise the legislature which particular object shall be kept in focus in a particular situation. Nor is it open to the courts to be persuaded by their own ideas about the propriety of a particular purpose being achieved by a piece of penal legislation, while judging its constitutionality. A contrary proposition would mean the stepping of the judiciary into the field of the legislature which, I need hardly cay, is not permissible. It is thus outside the scope of the inquiry undertaken by this Court into the vires of the provisions contained in Section 433A to find out the extent to which the object of reformation is sought to be achieved thereby, the opinions of great thinkers, jurists, politicians and saints (as to what the basis of a penal provision should be) notwithstanding.

80. The third reason flows from a careful study of the penal law prevalent in the country, especially that contained in the Indian Penal Code which brings out clearly that the severity of each punishment sanctioned by the law is directly proportional to the seriousness of the offence for which it is awarded. This, to my mind, is strongly indicative of reformation not being the foremost object sought to be achieved by the penal provisions adopted by the legislature. A person who has committed murder in the heat of passion may not repeat his act at all later in life and the reformation process in his case need not be time-consuming. On the other hand, a thief may take long to shed the propensity to deprive others of their good money. If the reformative aspect of punishment were to be given priority and predominance in every case the murderer may deserve, in a given set of circumstances, no more than a six months' period of incarceration while a thief may have to be trained into better ways of life from the social point of view over a long period and the death penalty, the vires of, which has been recently upheld by a majority of four in a five Judge Bench of this Court in Bachan Singh v. State of Punjab , would have to be exterminated from Indian criminal law. The argument based on the object of reformation having to be in the forefront of the legislative purposes behind punishment must, therefore, held to be fallacious.

81. I conclude that the contents of Section 433A of the CrPC (or, for that matter any other penal provision) cannot be attacked on on the ground that they are hit by Article 14 of the Constitution inasmuch as they are arbitrary or irrational because they ignore the reformative aspect of punishment.

S. Murtaza Fazal Ali, J.

82. While I concour with the judgment proposed by Brother Krishna Iyer, J. I would like to express my own views on certain important features of the case and on the nature and character of the

reformative aspect of penology as adumbrated by Brother Krishna Iyer, J.

83. The dominant purpose and the avowed object of the legislature in introducing Section 433A in the CrPC unmistakably seems to be to secure a deterrent punishment for heinous offences committed in a dastardly, brutal or cruel fashion or offences committed against the defence or security of the country. It is true that there appears to be a modern trend of giving punishment a colour of reformation so that stress may be laid on the reformation of the criminal rather than his confinement in jail which is an ideal objective. At the same time, it cannot be gainsaid that such an objective cannot be achieved without mustering the necessary facilities, the requisite education and the appropriate climate which must be created to foster a sense of repentance and penitence in a criminal so, that he may undergo such a mental or psychological revolution that he realises the consequences of playing with human lives. In the world of today and particularly in our country, this ideal is yet to be achieved and. in fact, with all our efforts it will take us a long time to reach this sacred goal.

84. The process of reasoning that even in spite of death sentence murders have not stopped is devoid of force because, in the first place, we cannot gauge, measure or collect figures or statistics as to what would have happened if capital punishment was abolished or sentence of long imprisonment was reduced. Seconlly. various criminals react to various circumstances in different ways and it is difficult to foresee the impact of a particular circumstance on their criminal behavour. The process of reformation of criminals with an unascertained record would entail a great risk as a sizable number of criminals instead of being reformed may be encouraged to commit offences after offences and become a serious and horrendous hazard to the society.

85. The question, therefore, is--should the country take the risk of innocent lives being lost at the hands of criminals committing heinous crimes in the holy hope or wishful thinking that one day or the other, a criminal, however dangerous or callous he may be, will reform himself, Valmikis are not born everyday and to expect that our present generation, with the prevailing social and economic environment, would produce Valmikis day after day is to hope for the impossible.

86. Section 433A has advisedly been enacted to apply to a very small sphere and includes within its ambit only offences under Sections 121, 132, 302, 303, 396, etc., of the Indian Penal Code, that is to say, only those offences where death or life imprisonment are the penalties but instead of death life imprisonment is given or where a sentence of death is commuted to that of life imprisonment.

87. The problem of penology is not one which admits of an easy solution. The argument as to what benefit can be achieved bv detaining a prisoner for fourteen years is really begging the question because a detention for such a long term in confinement however comfortable it is. is by itself sufficient to deter every criminal or offender from committing offences so as to incur the punishment of confinement for a good part of his life. The effect of such a punishment is to be judged not from a purely ethical point of view but from an angle of vision which is practical and pragmatic.

88. Crime has rightly been described as an act of warfare against the community touching new depths of lawlessness. The object of imposing deterrent sentences is threefold:

> (1) to protect the community against callous criminals for a long time.
>
> (2) to administer as clearly as possible to others tempted to follow them into lawlessness on a war scale if they are brought to and convicted, deterrent punishment will follow, and (3) to deter criminals who are forced to undergo long-term imprisonment from repeating their criminal acts in future. Even from the point of view of reformative form of punishment "prolonged and indefinite detention is justified not only in the name of prevention but cure. The offender has been regarded in one sense as a patient to be discharged only when he responds to the treatment and can be regarded as safe" ('The Growth of Crime' By Sir Leon Radzinowicz) for the society.

89. Explaining the material and practical advantages of long-term imprisonment. Sir Leon Radzinowicz in his book "The Growth of Crime' aptly observes as follows;

Long imprisonment could be regarded as the neat response to all three requirements: it would put the miscreants behind bars for a long time: it would demonstrate that the game was not worth the candle for others.

90. The author gives examples in support of his views thus;

Two English police officers were sentenced to seven years' imprisonment for accepting bribes and conspiring to pervert the courts of justice, two others for hounding a vagrant. In Turkey a similar sentence was passed upon a writer for translating and publishing the works of Marx and Engels. In Russia the manager of a mechanical repair shop was sentenced to death for theft of state property. In the Philippines a Chinese businessman was condemned to public execution by firing squad for trafficking in drugs. In Nigeria something like eighty people suffered the same fate within a year or two for armed robbery.

Ail these sentences had, of course, their elements of deterrence and retribution. But they have in common another element, what has been called denunciation, a powerful reassertion or assertion of the values attacked.

91. But, at the same time, it cannot be gain said that a sentence out of proportion of the crime is extremely repugnant to the social sentiments of a civilized society. This aspect of the matter is fully taken care of by Section 433A when it confines its application only to those categories of offences which are heinous and amount to a callous outrage on humanity. Sir Leon Radzinowicz referring to this aspect of the matter observes thus.

Maximum penalties, upper limits to the punishment a judge may impose for various lands of crime, are essential to any system which upholds the rule of law Objections arise only when these penalties

are illogical, inconsistent, at odds with people's sense of justice....

Thus the problem with maximum penalties is not whether they should be laid down but whether they can be made reasonably proportionate to people's assessment of the comparative gravity of crimes, and a consistent guide to sentencers rather than an additional factor in discrepancies.

92. Similarly, the same author in Vol II of his book 'Crime and Justice' observes as follows:

> the solution to which most recent efforts have come is that the legislative function is best discharged by the creation of a small number of distinct sentencing categories.... And it can also serve to emphasize the futility of close line-draw ing in an area where precisian--to the extent that it can be achieved at all--must come from the efforts of those in a position to know and to judge the particular offender The existence of a distinct number of sentencing categories and a list of the offences within each should be of great aid. in other words, in assuring consistency of treatment for present offences and in determining the appropriate sentence levels for new offenses.

93. This is exactly what Section 433A of the CrPC seeks to achieve by carving out a small and special field within which alone the statutory provisions operate.

94. While I agree that the deterrent form of punishment may not be a most suitable or ideal form of punishment vet the fact remains that the deterrent punishment prevents occurrence of offences by--

> (i) making it impossible or difficult for an offender to break the law again.
>
> (ii) by deterring not only the offenders but also others from committing offences, and
>
> (iii) punishment or for that matter a punishment in the form of a long-term imprisonment may be a means to changing a person's character or personality so that out of some motivation or reasons of a personal or general nature, the offender might obey the law.

Ted Honderich in his book 'Punishment' while dealing with the deterrent form of punishment observes as follows:

> It is also to be noticed that the conditions have other consequences as well Penalties must be sufficiently severe to deter effectively.
>
> Bentham has also pointed out that a penalty may be justified when the distress it causes to the offender and others is not greater than the distress that will result if he and others undeterred, offended in the future.
>
> Ted Honderich after highlighting various aspects of the deterrent form of punishment concludes as follows:

> There are classes of offenders who are not deterred by the prospect of punishment, it cannot be acceptable that a society should attempt to prevent all offences by punishment alone.... In anticipation of the discussion to come of compromise theories of punishment, we can say that punishment may be justified by being both economically deterrent and also deserved.

95. I am not at all against the reformative form of punishment on principle, which in fact is the prime need of the hour, but this matter has been thoroughly considered by Graeme New-man in his book The Punishment Response and where he has rightly pointed oat that before the reformative form of punishment can succeed people must be properly educated and realise the futility of committing crimes. The author observes as below:

> In sum. I have suggested that order was created by a criminal act. that order cannot exist without a structured inequality. Order and authority must be maintained by punishment, otherwise there would be even more revolutions and wars than we have had throughout history.
>
> xxx xxx xxx xxx People in criminal justice know only too well that the best intentioned reforms often turn out to have unfortunate results.
>
> xxx xxx xxx xxx Thus, for example, in the area of criminal sentencing, a popular area at present, practical moves to reform should be based soundly on the historical precedents of criminal law and not on grand schemes that will sweep all of what we have qut the door. There have been many examples of grand schemes that looked great on paper, but by the time they had been transformed into legislation were utterly unrecognizable. It seems to follow from this that sentencing reform should not be achieved by new legislation, but by a close analysis and extrapolation from the already existing practice and theory of Criminal law.

96. Having regard to these circumstances I am clearly of the opinion that Section 433A is actually a social piece of legislation which by one stroke seeks to prevent dangerous criminals from repeating offences and on the other protects the society from harm and distress caused to innocent persona.

97. Taking into account the modern trends in penology there are very rare cases where the courts impose a sentence of death and even if in some cases where such sentences are given, by the time the case reaches this Court, a bare minimum of the cases are left where death sentences are upheld. Such cases are only those in which imposition of a death sentence becomes an imperative necessity having regard to the nature and character of the offences, the antecedents of the offender and other factors referred to in the Constitution Bench judgment of this Court in Bachan Singh v. State of Punjab . In these circumstances, I am of the opinion that the Parliament in its wisdom chose to act in order to prevent criminals committing heinous crimes from being released through easy remissions or substituted form of punishments without undergoing at least a minimum period of imprisonment of fourteen years which may in fact act as a sufficient deterrent which may prevent criminals from committing offences. In most parts of our country, particularly in the north, cases

are not uncommon where even a person sentenced to imprisonment for life and having come back after earning a number of remissions has committed repeated offences. The mere fact that a lone term sentence or for that matter a sentence of death has not produced useful results cannot support the argument either for abolition of death sentence or for reducing the sentence of life imprisonment from 14 years to something less, The question is not what has happened, because of the provisions of the Penal; Code but what would have happened if; deterrent punishments were not given. In the present distressed and disturbed, atmosphere we feel that if deterrent punishment is not resorted to, there will be complete chaos in the entire country and criminals will be let loose endangering the lives of thousands of innocent people of our country. In spite of all the! resources at its hands, it will be difficult for the State to protect or guarantee the life and liberty of all the citizens, if criminals are let loose and deterrent punishment is either abolished or miti-gated. Secondly, while reformation of the criminal is only one side of the pic-ture, rehabilitation of the victims and granting relief from the tortures and sufferings which are caused to them as a result of the offences committed by the criminals is a factor which seems to have been completely overlooked while defending the cause of the criminals for abolishing deterrent sentences. Where one person commits three murders it is illogical to plead for the criminal and to argue that his life should be spared, without at all considering what has happened to the victims and their family. A person who has deprived another person completely of his liberty for ever and has endangered the liberty of his family has no right to ask the court to uphold his liberty. Liberty is not a one-sided concept, nor does Article 21 of the Constitution contemplate such a concept. If a person commits a criminal offence and punishment has been given to him by a procedure established by law which is free and fair and where the accused has been fully heard, no question of violation of Article 21 arises when the question of punishment is being considered. Even so, the provisions of the CrPC of 1973 do provide an opportunity to the offender, after his guilt is proved, to show circumstances under which an appropriate sentence could be imposed on him. These guarantees sufficiently comply with the provisions of Article 21. Thus, it seems to me that while considering the problem of penology we should not overlook the plight of victimology and the sufferings of the people who die, suffer or are maimed at the hands of criminals.

98. For these reasons, I am clearly of the opinion that in cases where Section 433A applies, no question of reduction of sentence arises at all unless the President of India or the Governor choose to exercise their wide powers under Article 72 or Article 161 of the Constitution which also have to be exercised according to sound legal principles as adumbrated by Brother Krishna Iyer, J. I, therefore, think that any reduction or modification in the deterrent punishment would far from reforming the criminal be counterproductive.

99. Thus, on a consideration of the curcumstances, mentioned above, the conclusion is inescapable that Parliament by enacting Section 433A has rejected the reformative character of punishment, in respect of offences contemplated by it, for the time being in view of the prevailing conditions in our country. It is well settled that the legislature understands the needs and requirements of its people much better than the courts because the Parliament consists of the elected representatives of the people and if the Parliament decides to enact a legislation for the benefit of the people, such a legislation must be meaningfully construed and given effect to so as to subserve the purpose for which it is meant.

100. Doubtless, the President of India under Article 72 and the State Government under Article 161 have absolute and unfettered powers to grant pardon, reprieves, remissions, etc. This power can neither be altered, modified or interfered with by any statutory provision. But, the fact remains that higher the power, the more cautious would be its exercise. This is particularly so because the present enactment has been passed by the Parliament on being sponsored by the Central Government itself. It is, therefore, manifest that while exercising the powers under the aforesaid Articles of the Constitution neither the President, who acts on the advice of the Council of Ministers, nor the State Government is likely to overlook the object, spirit and philosophy of Section 433A so as to create a conflict between the legislative intent and the executive power. It cannot be doubted as a proposition of law that where a power is vested in a very high authority, it must be presumed that the said authority would act properly and carefully after an objective consideration of all the aspects of the matter.

101. So viewed, I am unable to find any real inconsistency between Section 433A and Articles 72 and 161 of the Constitution of India as contended by the petitioners. I also hold that all the grounds on which the constitutional validity of Section 433A has been challenged must fail. I dismiss the petitions with the modification that Section 433A would apply only prospectively as pointed out by Brother Krishna Iyer, J.