



## Legal Triumphs and Challenges in Remission

This editorial is based on [“Justice for Bilkis Bano, questions on remission”](#) which was published in The Hindu on 10/01/2024. It discusses the remission rules of states and related constitutional provisions in light of the suspension of remission for convicts in the Bilkis Bano Case.

**For Prelims:** [Pardoning Power of the President](#), [Article 72](#), [President](#), [Supreme Court](#), [Article 161](#), [Governor](#), [Prison Act, 1894](#), [Kehar Singh vs. Union of India \(1989\)](#), [Code of Criminal Procedure \(CrPC\)](#).

**For Mains:** Remission Rules in India and Related Constitutional Provisions

The [Supreme Court](#) recently overturned the [remission](#) granted to the 11 life convicts in the Bilkis Bano rape case in **Bilkis Yakub Rasool v. Union of India & Ors., 2022**. The State of Gujarat granted the remission on 10th August 2023, based on its **1992 remission policy**. Prior to this remission order, a division bench of the Supreme Court had ruled that the State of Gujarat was the appropriate government, according to the [Code of Criminal Procedure, 1973 \(CrPC\)](#), authorized to grant the remission.

### What is the Current Issue in the Bilkis Bano Case?

- **Introduction to Injustice and Collusion:**
  - The **Bilkis Bano case involves an 'injustice of exceptionalism' where 11 gang-rape and murder convicts** were granted remission without application of mind.
  - The Supreme Court's judgment reveals collusion between a petitioner, an earlier Bench, and the Government of Gujarat, **illegally granting remission**.
- **Remission Application Jurisdiction:**
  - Despite a clear legal precedent, the Gujarat government, in violation of the law, assumed authority over remission applications, usurping power from the Government of Maharashtra.
  - The Supreme Court declared the earlier decision holding Gujarat as the appropriate government illegal, cancelling the remission orders for the 11 convicts.
- **Praise for Upholding the Rule of Law:**
  - The Supreme Court is lauded for upholding the [rule of law](#) in the face of exceptional injustice, emphasizing the importance of judicial scrutiny in maintaining equality before the law.
  - The **decision's firm tone calls out illegalities and collusion**, providing solace to Bilkis Bano in her fight for justice.
- **Resilience of Bilkis Bano:**
  - **Bilkis Bano's resilience in the pursuit of justice is acknowledged and celebrated**, especially considering the disturbing celebrations that followed the release of the 11 convicts.
  - **The decision is seen as a positive step**, offering solace and support to Bilkis Bano and recognising the efforts of women's rights lawyers.

# What is Remission?

## ▪ About:

- **Remission, unlike furlough and parole, involves a reduction in sentence duration** while maintaining the original nature of the sentence.
- The granted remission results in a specified release date, but any violation of conditions leads to the reinstatement of the full original sentence.
- **Balancing Freedom and Accountability:**
  - Exploring the concept of remission, it grants a specific release date. Yet, the offender must adhere to conditions, as any breach leads to the revocation of remission.
  - Breach of conditions results in the cancellation of remission, compelling the offender to serve the entire initially sentenced term.
  - This delicate balance between freedom and accountability shapes the legal dynamics of remission.

## ▪ Background:

- **Prison Act, 1894:**
  - The Remission system, governed by the [Prison Act, 1894](#), outlines rules for awarding marks and shortening sentences for prisoners.
  - Courts, as seen in the [Kehar Singh vs. Union of India \(1989\) case](#), emphasize the importance of considering remission for prisoners, highlighting the principles of reformation.
- **Principle of Reformation:**
  - Without hope for freedom, it contradicts the constitutional safeguards under [Articles 20 and 21](#).
  - While no convict has a [fundamental right](#) to remission, the right to be considered for remission is deemed legal, in line with constitutional safeguards.
- **Executive Power and Constitutional Safeguards in Remission:**
  - The State's executive power in remission, as emphasized in the **State of Haryana vs. Mahender Singh (2007)**, must consider individual cases and relevant factors.
    - The Mahender Singh case underscores the balance between remission and constitutional rights.
  - Courts stress the need for individual case consideration, acknowledging the absence of a fundamental right to remission but recognizing the legal right to be considered.

## ▪ Constitutional Provisions:

- Both the [President](#) and the [Governor](#) have been vested with sovereign power of [pardon](#) by the Constitution.
  - Under [Article 72](#), the President **can grant pardons, reprieves, respites or remissions of punishment or suspend**, remit or commute the sentence of any person.
  - This can be done for any person convicted of any offence **in all cases where:**
    - The punishment or sentence is by a court-martial, in all cases where the punishment or
    - The sentence is for an offence under any law relating to the Union government's executive power, and in all cases of death sentences.
  - Under [Article 161](#), a Governor can grant pardons, reprieves, respites or remissions of punishment, or suspend, remit or commute the sentence.
    - This can be done for anyone convicted **under any law on a matter which comes under the State's executive power.**
    - The Supreme Court has held that the **Governor of a State can pardon prisoners, including death row ones, even before they have served a minimum 14 years of prison sentence.**
- The scope of the pardoning power of the **President under Article 72 is wider than the pardoning power of the Governor under Article 161.**

## ▪ Statutory Power of Remission:

- The [Code of Criminal Procedure \(CrPC\)](#) provides for remission of prison sentences, which means the whole or a part of the sentence may be canceled.
- **Under Section 432**, the 'appropriate government' may suspend or remit a sentence, in

- whole or in part, with or without conditions.
- **Under Section 433**, any sentence may be commuted to a lesser one by the appropriate government.
- **This power is available to State governments** so that they may order the release of prisoners before they complete their prison terms.

## What are the Landmark Cases of Remission Cited by the Supreme Court?

- **Maru Ram v. Union of India (1980):**
  - In this case, SC said that 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.
- **Laxman Naskar v. State of West Bengal (2000):**
  - In this case, SC stipulated the **factors that govern the grant of remission namely:**
    - Whether the offence is an individual act of crime without affecting the society at large?
    - Whether there is any chance of future recurrence of committing crime?
    - Whether the convict has lost his potentiality in committing crime?
    - Whether there is any fruitful purpose of confining this convict any more?
    - Socio-economic condition of the convict's family.
- **Epuru Sudhakar v. State of Andhra Pradesh (2006):**
  - SC held that judicial review of the order of remission is **available on the following grounds:**
    - non-application of mind;
    - order is mala fide;
    - order has been passed on extraneous or wholly irrelevant considerations;
    - relevant materials kept out of consideration;
    - order suffers from arbitrariness.
- **Union of India vs V. Sriharan (2015):**
  - **Following observations were made:**
    - Appropriate government to decide a remission application is the State where the convicts are sentenced.
    - The Court notes that the **Gujarat government "usurped" power from the Government of Maharashtra while granting remission to the convicts.**

## What are the Issues in Granting Remission?

- **Eligibility for Remission and Application Process:**
  - Life convicts must serve a minimum of 14 years before being eligible to apply for remission. **This one-size-fits-all approach creates hurdles in reformatory processes.**
  - Each application is individually considered by a committee based on factors such as the nature of the crime, chances of recurrence, and socio-economic conditions.
    - The composition of the **committee with wide representation is lacking mention anywhere.**
- **Lack of Transparency in Remission Process:**
  - The **lack of transparency in how remission committees are formed and the absence of reasons guiding decisions raise concerns about the exercise of arbitrary power.**
  - The case of the 11 convicts in Bilkis Bano's case **highlights unchecked discretion**, with identical orders from the Gujarat government.
- **Judicial Review of Remission Orders:**
  - The Supreme Court's stance in **Epuru Sudhakar vs State of Andhra Pradesh (2006)** is cited, indicating that judicial review of remission orders is limited to cases of non-application of mind.
    - The concern of **non-application of mind is evident in the Bilkis Bano case due to identical orders for each convict.**
- **Challenges in Remission Policies:**
  - Certain states in India have remission policies **that either deny opportunities to specific offender categories or have extended periods of incarceration** before

remission consideration.

- Questions arise about whether certain offenders **should be ineligible for remission**, leading to a debate on punishment frameworks – retributive versus conditions-based.

▪ **Future Challenges for the Court:**

- The Supreme Court may **face challenges in addressing normative questions regarding remission policies**, especially considering variations among states.
- The need to **confront issues such as the eligibility of certain offenders for remission and ensuring fair compliance with conditions is highlighted**, indicating future dilemmas for the Court.

## Conclusion

The Supreme Court's decision in the Bilkis Bano case stands as a commendable assertion of the rule of law and a repudiation of collusion and illegalities by the administration. **However, the case also brings to light unresolved issues regarding remission, exposing the unchecked discretion in the decision-making process.**

The lack of transparency and reasons guiding remission decisions highlights the potential for arbitrary power. As society confronts these challenges, the Court may be compelled to address normative questions regarding remission policies and their alignment with principles of justice, rehabilitation, and fairness.

### **Drishti Mains Question:**

How does the lack of transparency and unchecked discretion in India's remission policy pose challenges to justice, and what reforms could ensure fair and meaningful compliance?

## **UPSC Civil Services Examination, Previous Year Question (PYQ)**

**Q.** Instances of the President's delay in commuting death sentences has come under public debate as denial of justice. Should there be a time specified for the President to accept/reject such petitions? Analyse. **(2014)**

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