



## REMISSION - GS II MAINS

**Q.** The remission policy must encompass humanitarian considerations and the convicts scope for reform, without violating the rule of law or societal interests. Discuss the rights of remission for convicts in the backdrop of recent controversies. (15 marks, 250 words)

**News:** *Bilkis Bano Case: Why Supreme Court Quashed Gujarat's Remission of Convicts*

### What's in the news?

- The Supreme Court overturned the Gujarat government's decision to grant early release to 11 convicts in the 2002 gang-rape of Bilkis Bano and the murder of seven of her family members during the communal riots in the state.

### Why SC quashed Gujarat's remission?

- The court determined that the state of Gujarat lacked the authority to rule on the remission matter, as the trial took place in Maharashtra.
- Consequently, the Gujarat government's decision was deemed invalid.
- The supreme court explained that the state responsible for the trial and sentencing of an offender holds the authority to consider the convicts' pleas for remission. In this case, the convicts were tried in Maharashtra.
- The court thus ordered the convicts, who had been prematurely released in August 2022, to return to prison.

### SC Order:

- The Supreme Court has directed the 11 convicts to surrender before jail authorities within two weeks.
- It has also asked the Maharashtra government to consider the remission plea of the convicts in accordance with the law and the guidelines laid down by the court.
- The court has also issued notices to the Centre and the Gujarat government on a plea seeking contempt action against them for violating the court's order of 2019.

### Remission:

- Remission refers to the reduction or cancellation of a penalty or punishment imposed by a court.
- It provides the government or relevant authorities with the discretion to either completely release a person from their sentence or reduce the severity of the sentence.



## Difference from Furlough and Parole:

- Remission is distinct from both furlough and parole.
- **Furlough and parole refer to a break from prison life.**
- However, in **remission there is a reduction** in sentence, while the nature of the sentence remains untouched.

## Remission not an automatic process:

- Remission is not an automatic process. It is subject to the discretion of the relevant authorities.
- The specific procedures and criteria for remission can differ based on the legal framework governing a particular offense.

## Constitutional Provisions:

- **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.
  - In all cases of death sentences.
- **Article 161** - The 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.

## Statutory Provisions:

- **Prison Act, 1894** - The Remission system has been defined under the Prison Act, 1894.
- **Section 432 CrPC** - Section 432 of the Code of Criminal Procedure (CrPC) provides the state governments the powers to remit sentence, since prisons is a state subject.
- **Section 433A CrPC** - Puts restriction of minimum 14 years jail term for convicts, who have been awarded life imprisonment for crimes attracting the maximum punishment of death sentence.

## Grounds for Remission:

In 'Laxman Naskar v. Union of India' (2000), the SC laid down five grounds on which remission is considered

- Nature of Crime affecting the society.
- Chance of the crime being repeated in future.



- Convict losing the potentiality to commit crime.
- Purpose being served by keeping the convict in prison.
- Socio-economic conditions of the convict's family.

Convicts serving life sentences are entitled to seek remission only after serving a minimum of 14 years. Data from Prison Statistics, 2020 show that 61% of convicts in jail are serving life sentences.

## **Need for Remission in India:**

### **1. Rehabilitation and Reintegration:**

- Granting of remission is an acknowledgment of positive change in an individual convicted of crime. This fosters the idea of rehabilitation and reintegration into society.

### **2. Humanitarian approach of reformation:**

- The concept of Remission is grounded in humanitarian considerations such as old age, health conditions and other compassionate reasons.

### **3. Prevents overcrowding in Prisons:**

- Remission helps in alleviating the issue of overcrowding in prisons by reducing the number of individuals serving sentences.
- This contributes to better living conditions for prisoners and improve the overall management of correctional facilities.

### **4. Development of Good Behaviour of the prisoners:**

- The possibility of remission serves as an incentive for prisoners to exhibit good behaviour, follow prison rules, and actively engage in rehabilitation programs. This creates a positive environment within correctional facilities.

### **5. Improvement of Efficiency of Judicial and Correctional System:**

- Remission enables authorities to focus resources on cases where incarceration is deemed necessary while providing an avenue for the release of individuals who may no longer pose a significant threat.

### **6. Cost Savings:**

- Remission results in cost savings associated with the maintenance and management of prisons.

## **Concerns:**

### **1. Concerns About Public Safety:**

- Critics argue that in certain cases, the focus on rehabilitation and good behaviour might not adequately address the risk to public safety associated with certain offenders involved in crimes of heinous nature.



## 2. Controversial Cases and Public Outcry:

- Decisions regarding remission, especially in high-profile or controversial cases, can lead to public outcry. For example, Remission to convicts of Rajiv Gandhi Murder case by Karunanidhi.

## 3. Inconsistency in Application:

- The discretionary nature of remission may lead to inconsistency in its application.
- Similar cases with similar circumstances might be treated differently, raising questions about fairness and equality before the law.

## 4. Potential for Political Influence:

- There is a risk of political interference or influence in the decision-making process for remission.
- Politically motivated decisions could compromise the principles of justice and the integrity of the legal system. For example, Alleged political influence in Bilkis Bano Case.

## 5. Undermines Deterrence:

- Critics argue that the availability of remission may undermine the deterrent effect of criminal penalties.
- If individuals believe they can be released early for good behaviour, it might reduce the perceived severity of consequences for criminal actions.

## 6. Victim and Survivor Concerns:

- In cases where remission is granted, the concerns and rights of victims or their survivors may be overlooked.
- Victims might feel that the legal system is not adequately addressing their needs, particularly if the release of an offender causes distress or fear.

## 7. Lack of Transparency:

- The decision-making process for remission is not always transparent, leading to skepticism about the criteria considered by authorities.
- Lack of transparency can erode public trust in the criminal justice system.

## WAY FORWARD:

### 1. Careful consideration of individual cases:

- The cases must be carefully considered for remission. All the principles laid by SC in the 'Laxman Naskar v. Union of India' (2000) must be justified by the authorities in their remission judgement.



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## 2. Transparency in decision-making:

- The remission process must be transparent and politically unbiased.

## 3. Fairness and reasonability:

- The remission process should be fair and reasonable, and based on a set of relevant parameters such as whether the crime involved affected society at large, whether the convict retained the potential for committing similar offences or is capable of reform.

## 4. Rational and comprehensive remission Policy:

- The remission policy must encompass humanitarian considerations and the convicts' scope for reform, without violating the rule of law or societal interests.

