

## Bilkis Bano Case and Remission

### Why in News?

Recently, the Supreme Court has nullified the Gujarat government's decision to grant Remission to 11 convicts involved in the gangrape of Bilkis Bano and the murder of seven of her family members during the 2002 Riots in the state.

### Key Highlights

- The exceptional nature of injustice that pervades Bilkis Bano's struggle, the Supreme Court is rightfully being lauded for upholding the rule of law.
- As the decision reads, "rule of law and equality before the law would be empty words if their violation is not a matter of judicial scrutiny."
- Significantly, the firm tone of the decision in calling out the illegalities and the collusion of the Gujarat government with the petitioners is likely to be a soothing balm in Bilkis Bano's fight for justice. Justice Nagarathna's words come as solace in light of the disturbing memory of the celebrations that followed the release of the 11 convicts in August 2022.
- Prison is a State subject. As a result, prison rules of each State identify certain reformatory and rehabilitative activities that the prisoners can undertake in order to earn remission in the form of days.
- The total number of days earned in remission is deducted from the actual sentence imposed by the court. Remission is rooted in the logic that, ultimately, prisons are meant to be rehabilitative spaces rather than simply being an instrument to carry out retributive punishment.
- In the context of life convicts, they necessarily have to serve a minimum of 14 years in prison before they can become eligible to apply for remission.
- An application does not guarantee remission and the setting off the earned remission against the punishment imposed by the courts.
- Each application has to be individually considered by a committee based on factors laid down by the Supreme Court in *Laxman Naskar vs State of West Bengal* (2000).
- These include examining whether the offence is an individual act of crime without affecting the society at large; chance of recurrence of crime; whether the convict has lost their potentiality in committing crime; whether there is any fruitful purpose of confining the convict any more; and socio-economic condition of the convict's family. Naturally, given the individualised nature of the inquiry, these factors are subjective. This makes the reasons guiding these decisions extremely crucial.



### Summary of Bilkis Bano Case

#### **Injustice and Collusion**

The Bilkis Bano case highlights an "injustice of exceptionalism," wherein 11 individuals convicted of gang-rape and murder were granted remission without proper consideration. The Supreme Court's ruling exposes collusion involving a petitioner, a previous bench, and the Government of Gujarat, leading to the unlawful granting of remission.

#### **Remission Application Jurisdiction**

Contrary to established legal precedent, the Gujarat government, in violation of the law, assumed control over remission applications, bypassing the Government of Maharashtra. The Supreme Court deemed the earlier decision, designating Gujarat as the appropriate authority, illegal and revoked the remission orders for the 11 convicts.

#### **Praise for Upholding the Rule of Law**

The Supreme Court is commended for maintaining the rule of law in the face of extraordinary injustice, underscoring the crucial role of judicial scrutiny in upholding equality before the law. The decision's assertive tone exposes illegalities and collusion, providing comfort to Bilkis Bano in her quest for justice.

#### **Resilience of Bilkis Bano**

Bilkis Bano's unwavering determination in seeking justice is recognized and celebrated, particularly in light of the troubling celebrations that ensued following the release of the 11 convicts. The decision is viewed as a positive stride, offering solace and support to Bilkis Bano while acknowledging the contributions of women's rights advocates.





- However, the reality is that there is both a lack of transparency on how these committees are formed to decide individual applications and reasons guiding the decisions. Such a state of affairs makes remission a potent site for exercise of arbitrary power.
- The current case is one such example of unchecked discretion. Besides, the Supreme Court in *Epuru Sudhakar vs State of Andhra Pradesh* (2006) has held that judicial review of an order of remission is only available when there is a non-application of mind; relevant materials have not been considered, the order is mala fide, or based on irrelevant considerations or suffers from arbitrariness.
- In the absence of reasons guiding the decisions, there is little scope to challenge them on these grounds. This concern of non-application of mind is writ large in the case of the 11 convicts in Bilkis Bano's case because the orders of the Gujarat government for each of them are exact copies.
- In the Bilkis Bano case on remission, the Supreme Court found illegalities and injustices that spoke to 'fraud' and 'usurpation of power' by the government, and, therefore, did not need to go into difficult normative questions.
- Certain remission policies of States present the question more starkly. States in India today have remission policies that completely deny remission opportunities to certain categories of offenders or have significantly longer periods of incarceration for certain offences before consideration of remission.

## Background of Bilkis Bano Case

- Bilkis Bano, pregnant during the 2002 Gujarat riots, suffered gangrape, and seven family members, including her three-year-old daughter, were killed.
- Central Bureau of Investigation (CBI) conducted extensive legal proceedings into the case.
- In 2004, the Supreme Court (SC) moved the trial from Gujarat to Mumbai due to death threats against Bilkis and directed the central government to appoint a special public prosecutor.
- In 2008, a Mumbai court convicted 11 individuals for gangrape and murder, a crucial step towards justice for Bilkis Bano.
- In August 2022, the Gujarat government granted remission to the 11 convicts, leading to their release.
- Controversy and legal challenges arose due to concerns about the authority and jurisdiction responsible for granting such remissions.

## What is Remission?

Remission refers to the complete termination of a sentence at a reduced point. It differs from both furlough and parole as it involves a reduction in the sentence rather than a temporary break from prison life. In remission, the nature of the sentence remains unchanged, but the duration is shortened, allowing the individual to be released on a specified date.

<b>Effect of Remission</b>	Upon remission, the individual is granted a specific release date, marking their legal status as a free person. However, any breach of the remission conditions results in its cancellation, compelling the offender to serve the entire original sentence.
<b>Constitutional Provisions</b>	<ul style="list-style-type: none"><li>• Both the President and the Governor hold sovereign powers of pardon as per the Constitution.</li><li>• Article 72 empowers the President to grant pardons, reprieves, respites, or remissions of punishment, especially in cases involving court-martial or offenses under laws related to the Union government's executive power, including death sentences.</li><li>• Similarly, Article 161 grants the Governor similar powers for offenses under laws within the State's executive authority.</li></ul>



<b>Statutory Power of Remission</b>	<ul style="list-style-type: none"> <li>The Code of Criminal Procedure (CrPC) outlines the provision for remission of prison sentences. Section 432 allows the "appropriate government" to suspend or remit a sentence, wholly or partly, with or without conditions.</li> <li>Section 433 permits the commutation of any sentence to a lesser one by the appropriate government. State governments use this power to release prisoners before completing their full terms.</li> </ul>
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## Arguments in favor of the provision of remission

The concept of remission in India comes with several advantages, benefiting both individuals serving sentences and the overall criminal justice system. Here are some potential advantages:



### Rehabilitation and Reintegration

- Granting remission acknowledges positive changes in convicted individuals, promoting the ideals of rehabilitation and successful reintegration into society.

### Humanitarian Approach to Reformation

- Remission is grounded in humanitarian considerations, taking into account factors such as old age, health conditions, and other compassionate reasons.

### Preventing Prison Overcrowding

- Remission helps alleviate prison overcrowding by reducing the number of individuals serving sentences. This contributes to improved living conditions for prisoners and enhances the overall management of correctional facilities.



## ISSUES IN GRANTING REMISSION

### ELIGIBILITY FOR REMISSION AND APPLICATION PROCESS

- Life convicts require a minimum of 14 years before remission eligibility.
- One-size-fits-all approach hinders individualized reformatory processes.
- Committee assesses applications based on crime nature, recurrence chances, and socio-economic factors.
- Lack of explicit mention regarding committee composition and representation.

### LACK OF TRANSPARENCY IN REMISSION PROCESS

- Concerns about arbitrary power due to opaque formation of remission committees.
- Absence of transparent reasons guiding decision-making.
- Bilkis Bano's case illustrates unchecked discretion with identical orders from Gujarat government.

### JUDICIAL REVIEW OF REMISSION ORDERS

- Epuru Sudhakar vs State of Andhra Pradesh (2006) establishes limited judicial review, focusing on non-application of mind.
- Bilkis Bano case reveals concerns about non-application of mind, evidenced by identical orders for each convict.

### CHALLENGES IN REMISSION POLICIES

- Varying state remission policies create disparities in opportunities for certain offender categories.
- Debates on whether specific offenders should be ineligible for remission, prompting discussions on retributive versus conditions-based punishment frameworks.

## Development of Prisoners' Good Behavior

- The possibility of remission acts as an incentive for prisoners to exhibit good behavior, adhere to prison rules, and actively participate in rehabilitation programs. This fosters a positive environment within correctional facilities.

## Improving Judicial and Correctional System Efficiency

- Remission allows authorities to allocate resources more efficiently, concentrating on cases where incarceration is deemed necessary. Simultaneously, it provides a mechanism for releasing individuals who may no longer pose a significant threat.

## Cost Savings

- Remission leads to cost savings related to the maintenance and management of prisons, offering an economic benefit to the criminal justice system.

## Arguments Against the Provision of Remission

While remission in India presents certain advantages, it also brings forth potential drawbacks and challenges. Critics, therefore, present arguments against the provision of remission.

### Concerns About Public Safety

- Critics express concerns that, in certain instances, the emphasis on rehabilitation and good behavior may not adequately address the risk to public safety associated with offenders involved in heinous crimes.

### Controversial Cases and Public Outcry

- Decisions related to remission, particularly in high-profile or controversial cases, can lead to public outcry. For example, the remission granted to convicts in the Rajiv Gandhi Murder case by Karunanidhi stirred public controversy.

### Inconsistency in Application

- The discretionary nature of remission may result in inconsistencies in its application. Similar cases with comparable circumstances might be treated differently, raising concerns about fairness and equality before the law.

### Potential for Political Influence

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

### Undermines Deterrence

- Critics argue that the availability of remission may undermine the deterrent effect of criminal penalties. The belief that individuals can be released early for good behavior might reduce the perceived severity of consequences for criminal actions.

### 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 inadequately addresses their needs, especially if the release of an offender causes distress or fear.

### Lack of Transparency

- The decision-making process for remission lacks transparency, fostering skepticism about the criteria considered by authorities. This lack of transparency can erode public trust in the criminal justice system.



## Landmark Cases of Remission

Case	Key Points
<b>Maru Ram v. Union of India (1980)</b>	Modern trend emphasizes punishment with a focus on reformation rather than mere confinement in jail.
<b>Laxman Naskar v. State of West Bengal (2000)</b>	Stipulated factors for remission grant: <ul style="list-style-type: none"> <li>• Individual nature of the crime</li> <li>• Likelihood of future recurrence</li> <li>• Convict's potentiality</li> <li>• Purpose of further confinement</li> <li>• Socio-economic condition of the convict's family.</li> </ul>
<b>Epuru Sudhakar v. State of AP (2006)</b>	Judicial review of remission order available on grounds of: <ul style="list-style-type: none"> <li>• Non-application of mind</li> <li>• Mala fide intent</li> <li>• Extraneous or irrelevant considerations</li> <li>• Exclusion of relevant materials</li> <li>• Arbitrariness.</li> </ul>
<b>Union of India vs V. Sriharan (2015)</b>	<ul style="list-style-type: none"> <li>• Appropriate government for remission is the State where the convicts are sentenced.</li> <li>• Gujarat government "usurped" power from Maharashtra in granting remission.</li> </ul>
<b>Rajiv Gandhi Assassination Case</b>	<ul style="list-style-type: none"> <li>• In 2018, the Tamil Nadu government recommended the release of A.G. Perarivalan, a convict in the Rajiv Gandhi assassination case, based on good behavior.</li> <li>• The recommendation was forwarded to the governor for consideration.</li> </ul>
<b>Assassination of Beant Singh</b>	<ul style="list-style-type: none"> <li>• In 2014, the Punjab government, under Chief Minister Parkash Singh Badal, decided to release certain convicts involved in the assassination of Chief Minister Beant Singh.</li> <li>• The rationale was their good behavior and conduct during imprisonment, sparking debates on justice and victims' rights.</li> </ul>
<b>Jessica Lal Murder Case</b>	<ul style="list-style-type: none"> <li>• Manu Sharma, convicted in the high-profile Jessica Lal murder case, received a life sentence.</li> <li>• In 2011, the Delhi government recommended premature release for Sharma, citing good conduct.</li> <li>• However, this decision was later overturned, leading to the rejection of Sharma's release.</li> </ul>