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Remission Policy of the State Government

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Why is in news? SC overturns remission given to Bilkis Bano's rapists: What happened, and what has the court ruled?

The Supreme Court has **struck down the remission granted to 11 men convicted in the Bilkis Bano gangrape case** of 2002.

The court has ruled that the Gujarat government's decision to remit their sentences and set them free **was illegal**.

"Gujarat government had **no jurisdiction to entertain the application for remission or pass the orders** as it was not the appropriate government," the court said on January 8.

Bilkis was gangraped and seven members of her family were murdered during the Gujarat riots of 2002. The 11 convicts were released by the Gujarat government under its remission and premature release policy on August 15, 2022.

Issue before the court:

It was essentially **whether Gujarat had the authority to issue the order for the remission** of the sentences.

The crime had been committed on March 3, 2002 in Chapparwad village in Gujarat's Dahod district, but the trial took place in Mumbai, where a special court convicted and sentenced the accused in 2008.

On January 8, the Supreme Court noted that the appropriate government to decide remission is the **state within whose jurisdiction the accused were sentenced** — and **not the state within whose territorial limits the offence was committed or the accused were imprisoned**.

Therefore, the court ruled that the competent government in this matter **would be the Maharashtra government**.

Law on remission of sentences:

Under **Articles 72 and 161** of the Constitution, the President and Governors of states can pardon a convict, and can also suspend, remit, or commute a sentence passed by the courts.

State governments too have the power to remit sentences **under Section 432 of the Code of Criminal Procedure (CrPC)**.

This is because **Prison is a State Subject**. (The CrPC is proposed to be replaced by the Bharatiya Nagarik Suraksha (Second) Sanhita.

The law has been passed by Parliament and has obtained the assent of the President, **but is yet to come into force**.)

However, **Section 433A of the CrPC puts certain restrictions** on these powers of remission. It says:

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“Where a sentence of imprisonment for life is imposed on conviction of a person for an offence for which death is one of the punishments provided by law, or where a sentence of death imposed on a person has been commuted under Section 433 into one of imprisonment for life, such person shall not be released from prison unless he had served at least fourteen years of imprisonment.”

Grounds for remission:

States set up a **Sentence Review Board** to exercise the powers under **Section 432 of the CrPC**.

The Supreme Court has held that **states cannot exercise the power of remission arbitrarily, and must follow due process**.

While the policy varies from state to state, broadly the grounds for remission considered by the Board are the same.

These **factors to be considered while making a decision** on granting remission are: seriousness of the crime, the status of the co-accused, and conduct in jail.

In **‘Laxman Naskar v. Union of India’ (2000)** the SC laid down five grounds on which remission is considered:

Whether the offence is an individual act of crime that does not affect the society;

Whether there is a chance of the crime being repeated in future;

Whether the convict has lost the potentiality to commit crime;

Whether any purpose is being served in keeping the convict in prison; and

Socio-economic conditions of the convict’s family.

Jail manuals contain rules that allow certain days of remission in every month for good behaviour of convicts.

For those serving fixed sentences, the remission days are accounted for while releasing the convict. However, convicts serving life sentences are **entitled to seek remission only after serving a minimum of 14 years**.

Bilkis Bano case:

One of the convicts, Radheshyam Shah, moved the Supreme Court in 2022 after he had completed 15 years and four months of the life term awarded to him by a CBI court in Mumbai.

Radheshyam Shah sought directions to the Gujarat government to consider his application for premature release under its 1992 remission policy.

Shah argued that the Gujarat HC had rejected his prayer on July 17, 2019 on the premise that since the trial had been concluded in Maharashtra, the application for premature release must also be filed in Maharashtra, and not in Gujarat.

In an order dated May 13, 2022, an SC Bench of Justices Ajay Rastogi and Vikram Nath asked the Gujarat government to consider Shah’s application for premature release “within a period of two months”, as per the state’s 1992 remission policy.

Gujarat was the “appropriate government” to decide on questions like remission or premature release because it was there that “the crime was committed and not the State where the trial stands transferred and concluded for exceptional reasons under the orders of this Court”, the SC said.

Gujarat’s remission policy:

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The remission policy that was **notified in 1992** — and **which was in force at the time of the crime (2002) and conviction (2008)** — permitted prisoners to apply for remission “on the basis that life imprisonment is an **arbitrary or notional figure of twenty years of imprisonment**”.

But this policy was **invalidated by the SC** in November 2012.

The court had said: “Before actually exercising the power of remission under Section 432 of the CrPC the appropriate Government **must obtain the opinion (with reasons) of the presiding judge** of the convicting or confirming Court. Remission can, therefore, be given only on a case-by-case basis and not in a wholesale manner.”

Following the SC order and instructions issued subsequently by the Union Home Ministry to all states and Union Territories, the **Gujarat government formulated a fresh policy in 2014**.

This contained an annexure listing cases where remission could not be granted — among them were those in which the prisoners were convicted for a crime that was investigated by an agency under the **Delhi Special Police Establishment Act** (CBI, which was in the investigating agency in the Bilkis case), and prisoners convicted for murder with rape or gangrape.

Gujarat’s argument:

Then Additional Chief Secretary (Home) had told that the 1992 policy, under which the convict (Shah) had sought remission, **did not have the restrictions that were prescribed in the 2014 policy**.

He also said that the **order of the CBI court passed in 2008** did not bar the convicts from applying for remission.

“One of the convicts had moved the SC to **seek remission as per the 1992 policy** of the state government, which did not have the annexure excluding certain categories of convicts from applying for remission — rather than the 2014 resolution that is currently in place — as the order was delivered in 2008,” Raj Kumar said.

He also said: “The process of remission is **not the domain of the judiciary but of the executive**, that is the government. Based on the eligibility, prisoners are granted remission after recommendation of the **Jail Advisory Committee**. The power has been given to the government **under the CrPC Section 432** just like convicts on death row can apply for clemency before state Governors or President of India. Among the parameters considered in this case are age, nature of crime, behaviour in prison, and so on. The convicts in this particular case were also considered keeping in mind all the factors, since they had completed 14 years of the life term.”

What happened after the remission was granted?

There was outrage because the remission granted to convicted rapists was seen to represent a grave miscarriage of justice. This feeling was exacerbated after the convicts were feted and garlanded by local people.

Bilkis Bano challenged the remission order. She pleaded before the SC that “the en masse premature release of the convicts has shaken the conscience of the society”.

She said the crime was “one of the most gruesome crimes this country has ever seen” and that she was “shell shocked, completely numb” after the convicts were released.