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Issue of Grant of Remission to Convicts by States

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Why in News

Recently, the **Supreme Court of India** referred to a seven-judge bench the issue **whether states can grant benefit of remission to convicts under the Constitution** by laying down a common policy.

Key Points

- The legal issue has arisen before the Supreme Court (SC) while hearing the bail plea of a **murder case convict Pyare Lal**.
- The SC was told that Pyare Lal has been released from the jail after being granted the benefit of remission by the Haryana Governor **under Article 161 of the Constitution**, as per a 2019 policy of the state government.
 - According to the policy, those entitled to get relief included:
 - Male convicts who have been sentenced for life in a murder case and are 75 years of age and completed eight years of sentence.
 - Female convicts who have been sentenced for life in a murder case and are 65 years of age and completed six years of sentence.
 - The policy also included that the conduct of such prisoners has to remain satisfactory during confinement and they must not have committed any major jail offence in the last two years.
 - **Article 161 of the Constitution** deals with the judicial **power of the Governor to pardon a convict**. Such power is also exercised by the **President under Article 72** of the Constitution.

- The larger bench will also look into **whether states can exercise such powers without placing "facts and materials" of each case before the Governor.**
 - The SC noted that in the case of Pyare Lal, the Haryana government had **placed no facts or material before the Governor** and that the benefit was conferred by the Executive itself in terms of the Policy.
 - The Governor did not have the occasion to look into the issues such as severity of the crime or the manner in which the crime was committed or the impact of the crime on the Society.
- In the *Maru Ram vs Union of India* 1980 case, the SC had ruled that **no separate order for each individual case would be necessary** for granting the benefit of remission **but a general order must be clear enough to identify the group of cases.**
- However, decisions of SC rendered since the *Maru Ram case*, shows that the relevant material (without any political vendetta or party favouritism) must be placed before the Governor in order to enable him to exercise the power under Article 161, failure on that count could result in quashing of the concerned orders of remission.
- The larger bench will also look into whether the exercise of granting remission by states can override the requirements under **Section 433-A of the Code of Criminal Procedure (CrPC).**

Under Section 433-A of CrPC, a person, serving life term, cannot be granted remission benefit without serving 14 years in prison.

Pardoning Power of President and Governor

- **Article 72 and Article 161** empowers the **President and the Governors respectively**, the power to **grant pardons, reprieves, respites or remissions** of punishment or to **suspend, remit or commute** the sentence of any person convicted of any offence.
- The **pardoning power of the President** extends to the:
 - Punishment or sentence for an offence against a Union Law,
 - Punishment or sentence is by a court-martial (military court), and
 - Punishment is a Death sentence.
- The **pardoning power of the Governor** extends to the sentence of any person convicted of any offence against any State law.

The Governor **cannot pardon against the death sentence and sentence of a Court Martial.**
- The scope of the pardoning power of the President under Article 72 is **wider** than the pardoning power of the Governor under Article 161.

- The meaning of the terms:
 - **Pardon:** It removes **both the sentence and the conviction** and **completely absolves** the convict from all sentences, punishments, and disqualifications.
 - **Commutation:** It denotes the **substitution of one form of punishment with a lighter form of punishment**. For example, a death sentence may be commuted to rigorous imprisonment.
 - **Remission:** It implies **reducing the period of the sentence without changing its character**. For example, a sentence of rigorous imprisonment for five years may be remitted to rigorous imprisonment for one year.
 - **Respite:** It denotes **awarding a lesser sentence in place of one originally awarded due to some special fact**, such as the physical disability of a convict or the pregnancy of a woman offender.
 - **Reprieve:** It implies a **stay of the execution of a sentence (especially that of death) for a temporary period**. Its purpose is to enable the convict to have time to seek pardon or commutation from the President.

Source: IE