



Governor's Power to Pardon Overrides Section 433A: SC

Why in News

Recently, the [Supreme Court \(SC\)](#) held that the [Governor's power to pardon overrides Section 433A of Code of Criminal Procedure \(CrPC\)](#).

- Earlier in January 2021, in a case of [mercy petition](#), the SC noted that the [Governor cannot reject the state's recommendation](#) but **there is no time prescribed** to take a decision.

Key Points

▪ Pardoning Power Overrides 433A:

- SC held that the **Governor of a State can pardon prisoners, even before they have served a minimum 14 years of prison sentence.**
- The Governor's power to pardon overrides a provision in the **CrPC Section 433A** which **mandates that a prisoner's sentence can be remitted only after 14 years** of jail.
 - **Section 433A** states that **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.**
- Section 433-A **cannot and does not in any way affect the constitutional power conferred on the President/Governor** to grant pardon under [Articles 72](#) or 161 of the Constitution.

▪ Power Exercised by State Government:

- The court noted that the sovereign power of a Governor to pardon a prisoner under [Article 161](#) is actually **exercised by the State government and not the Governor on his own.**
- The **advice of the appropriate government binds the Head of the State.**

▪ Order of Commutation:

- The action of commutation and release can thus be **pursuant to a governmental decision and the order may be issued even without the Governor's approval.** However, under the **Rules of Business and as a matter of constitutional courtesy**, it may seek approval of the Governor, if such release is under Article 161 of the Constitution.
 - The **state government can frame a policy of grant of remissions either under Section 432 of the CrPC or under Article 161** of the Constitution.
 - **If a prisoner has undergone more than 14 years of actual imprisonment**, the **state government**, as an appropriate Government, is **competent to pass an order of premature release.**
 - **Section 432** of the Code of Criminal Procedure empowers the Government to remit sentence.

Pardoning Power

▪ Pardoning Power of the President in India:

◦ About:

- Under Article 72 of the Constitution, the **President shall have 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 where the sentence is a sentence of death.

◦ Limitation:

- The President **cannot exercise his power of pardon independent of the government.**
- In several cases, the SC has ruled that the **President has to act on the advice of the [Council of Ministers](#)** while deciding mercy pleas. These include ***Maru Ram vs Union of India in 1980***, and ***Dhananjay Chatterjee vs State of West Bengal in 1994***.

◦ Reconsideration:

- Although the **President is bound by the Cabinet's advice**, Article 74(1) empowers him to **return it for reconsideration once**. If the Council of Ministers decides against any change, the President has no option but to accept it.

▪ Governor's Pardoning Power:

◦ Article 161:

- The Governor of a State shall have 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 against any law relating to a matter to which the executive power of the State extends.

▪ Difference Between Pardoning Powers of President and Governor:

- The **scope of the pardoning power of the President** under Article 72 is **wider than the pardoning power of the Governor** under Article 161 which differs in the following two ways:
 - **Court Martial:** The **power of the President** to grant pardon **extends in cases where the punishment or sentence is by a Court Martial** but Article 161 **does not provide any such power to the Governor.**
 - **Death sentence:** The **President can grant pardon in all cases** where the sentence given is the **sentence of death** but the pardoning power of the **Governor does not extend to death sentence** cases.

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 for a lighter form.** For example, a death sentence may be commuted to rigorous imprisonment, which in turn may be commuted to a simple imprisonment.
- **Remission:** It implies **reducing the period of sentence without changing its character.** For example, a sentence of rigorous imprisonment for two 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.

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