



New Norms for Sentence Remission

For Prelims: Pardoning Power of the President, Article 72, President, Supreme Court, Article 161, Governor

For Mains: Remission and Related Constitutional Provisions

Why in News?

The **Ministry of Home Affairs** has issued a set of guidelines to the States and the Union Territories **on the grant of special remission to prisoners** to commemorate the **75th year of Independence**.

What are the Guidelines for Special Remission?

- **Special Remission:**
 - As part of the **Azadi Ka Amrit Mahotsav** celebrations, **special remission would be granted to a certain category of prisoners**. These prisoners would be released in three phases.
- **Prisoners Eligible for Special Remission:**
 - **Women and transgender convicts of ages 50 and above** and **male convicts of 60 and above**.
 - These convicts **must have completed 50% of their total sentence period** without counting the period of general remission earned.
 - Physically challenged or **disabled convicts with 70% disability** and more who have completed 50% of their total sentence period,
 - Terminally **ill convicted prisoners who have completed two-thirds (66%)** of their total sentence and
 - Poor or indigent prisoners who have completed their sentence but are still in jail due to **non-payment of fine imposed on them by waiving off the fine**.
 - **Persons who committed an offence at a young age (18-21)** and with no other criminal involvement or case against them and who have completed 50% of their sentence period would also be eligible.
- **Prisoners Excluded from the Scheme:**
 - Persons convicted with **death sentence or where death sentence has been commuted to life imprisonment or persons convicted for an offence for which punishment of death has been specified** as one of the punishments.
 - Persons convicted with **sentence of life imprisonment**.
 - Convicts involved in terrorist activities or **persons convicted under - Terrorist and Disruptive (Prevention) Act, 1985**, Prevention of Terrorist Act, 2002, **Unlawful Activities (Prevention) Act, 1967**, Explosives Act, 1908, **National Security Act, 1982**, **Official Secrets Act, 1923**, and Anti-Hijacking Act, 2016.
 - Persons **convicted for dowry death, counterfeiting currency notes, offence of rape & human trafficking**, offences under Protection of Children from Sexual Offences (POCSO) Act, 2012, Immoral Trafficking Act, 1956, Prevention of Money Laundering Act, 2002, etc., offences against the State (Chapter-VI of IPC) and any other law which the State

governments or the Union Territory administrations consider appropriate to exclude would not qualify for the special remission.

What is Remission?

▪ About:

- Remission is **the complete ending of a sentence at a reduced point**. Remission is distinct from both furlough and parole in that it is a reduction in sentence as opposed to a break from prison life.
- In remission, the **nature of the sentence remains untouched, while the duration is reduced i.e.**, the rest of the sentence need not be undergone.
- The effect of the remission is that the prisoner is given a certain date on which he shall be released and in the eyes of the law he would be a free man.
- However, in case of breach of any of the conditions of remission, it will be cancelled, and the offender has to serve the entire term for which he was originally sentenced.

▪ Background:

- The Remission system **has been defined under the Prison Act, 1894** to be a set of rules formulated for the time being in force regulating the award of marks to, and the consequent shortening of sentence of, prisoners in Jail.
- It was observed in the ***Kehar Singh vs. Union of India (1989)*** case that Courts **cannot deny to a prisoner the benefit to be considered for remission** of sentence.
 - By denying, the **prisoner would have to live in the prison till his/her last breath without there being a ray of hope to be free again.**
 - This would **not just be against the principles of reformation but will also push the convict into a dark hole** without there being a semblance of light at the end of the tunnel.
- The **Supreme Court** also in the case of ***State of Haryana vs. Mahender Singh (2007)*** observed that, **even though no convict has a fundamental right of remission, but the State in exercise of its executive power of remission must consider each individual case** keeping in view the relevant factors.
 - Further, the Court was also of the **view that a right to be considered for remission** must be held to be legal one.
 - This is by keeping in view the constitutional safeguards for a convict covered under **[Articles 20 and 21](#) of the Constitution.**

▪ Constitutional Provisions:

- Both the President and the Governor **have been vested with sovereign power of pardon by the Constitution.**
- Under **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**, and in all cases of death sentences.
- Under **Article 161**, a 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.
- The **scope of the pardoning power of the President under Article 72 is wider than the pardoning power of the Governor under Article 161.**

▪ Statutory Power of Remission:

- The **Code of Criminal Procedure (CrPC)** provides for remission of prison sentences, which means the whole or a part of the sentence may be cancelled.
- Under **Section 432**, the **'appropriate government' may suspend or remit a sentence**, in whole or in part, with or without conditions.
- Under **Section 433**, **any sentence may be commuted to a lesser one** by the appropriate government.
- This power is available to **State governments so that they may order the release of prisoners** before they complete their prison terms.

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.

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