



Bilkis Bano Case and Remission

For Prelims: Bilkis Bano Case and Remission, Grant of Remission, 2002 Riots, [Supreme Court](#), [Central Bureau of Investigation](#), [Article 72](#).

For Mains: Bilkis Bano Case and Remission, Government policies and interventions for development in various sectors and issues arising out of their design and implementation.

[Source: IE](#)

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](#).

What is the Background of Bilkis Bano Case?

- During 2002 Gujarat riots, Bilkis Bano, a pregnant woman at the time, was **subjected to a brutal gangrape**, while seven members of her family, including her three-year-old daughter, were killed by a mob during the riots.
- Following extensive legal proceedings, the [Central Bureau of Investigation \(CBI\)](#) investigated the case.
- In 2004, SC **moved the trial from Gujarat to Mumbai after Bilkis faced death threats**; directed the central government to appoint a special public prosecutor.
- In 2008, a Mumbai court convicted 11 individuals for their involvement in the gangrape and murder, marking a significant step towards justice for Bilkis Bano.
- However, **in August 2022, the Gujarat government granted remission to these 11 convicts**, leading to their release. This decision sparked controversy and legal challenges due to concerns regarding the authority and jurisdiction responsible for granting such remissions.

What is the SC's Ruling Nullifying Gujarat Government's Remission Grant?

- **Lack of Authority and Concealed Facts:**
 - The Court emphasized that the **Gujarat government lacked the authority** or jurisdiction to issue the remission orders.
 - Under **Section 432 of the CrPC**, state governments do have the power to suspend or remit a sentence. But the court noted that Section 7(b) of the law clearly states that the **appropriate government is the one in whose jurisdiction the offender is sentenced**.
 - It pointed out that the **decision to grant remission should be within the domain of the state** where the convicts were sentenced, not where the crime occurred or where they were imprisoned.
- **Criticism of the Remission Process:**
 - The Court highlighted **serious flaws in the remission process**, mentioning that the

orders lacked proper consideration and were obtained through the concealment of facts, constituting fraud upon the court.

▪ **Overreach and Unlawful Exercise of Power:**

- The Court **criticized the Gujarat government's overreach**, asserting that it unlawfully exercised power that rightfully belonged to the Maharashtra government in issuing remission orders.

▪ **Directives and Rejection of Liberty Plea:**

- Rejecting the convicts' plea to **protect their liberty**, the Court directed them to surrender to jail authorities within two weeks.

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.

▪ **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.

▪ **Landmark Cases of Remission:**

- **Laxman Naskar v. State of West Bengal (2000):**
 - In this case, SC stipulated the factors that govern the grant of remission namely:
 - Whether the offence is an individual act of crime without affecting the society at large?
 - Whether there is any chance of future recurrence of committing crime?
 - Whether the convict has lost his potentiality in committing crime?
 - Whether there is any fruitful purpose of confining this convict any more?
 - Socio-economic condition of the convict's family.
- **Epuru Sudhakar v. State of AP (2006):**
 - SC held that **judicial review** of the order of remission is available on the following grounds:

- non-application of mind;
- order is mala fide;
- order has been passed on extraneous or wholly irrelevant considerations;
- relevant materials kept out of consideration;
- order suffers from arbitrariness.

Note

- **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.
- **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.

Legal Insights: [Analysis of Bilkis Bano Judgement](#)

<https://youtu.be/ESn797bGwP0>

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