



## 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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