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No. 08, Arul Nagar, Seera Thoppu,

Maudhanda Kurichi, Srirangam,

Tiruchirappalli – 620102

Phone : +91 94896 71437 – info@iledu.in / Chairman@iledu.in



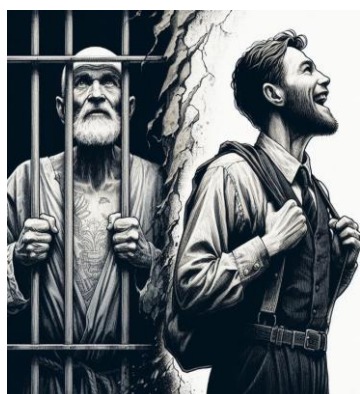
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PROVISION OF REMISSION IN CRPC IS A RAY OF HOPE FOR PRISONERS

AUTHOR – SIMRAN SINGH, STUDENT AT XAVIER LAW SCHOOL, XIM UNIVERSITY, BHUBANESWAR.

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Abstract:

There is a provision for Remission of Sentences of convicted prisoners at Chapter XXXII of The Code of Criminal Procedure 1973 under Section 432 which states that 'When any person has been sentenced to punishment for an offence, the appropriate Government may, at any time, without conditions or upon any conditions which the person sentenced accepts, suspend the execution of his sentence or remit the whole or any part of the punishment to which he has been sentenced'. The provision of Remission gives a ray of hope to prisoners and offers an opportunity to rebuild their lives afresh within the society.

I. Preamble

On January 8, 2024, the Supreme Court two-judge bench quashed the remission granted to 11 convicts in the Bilkis Bano case. It found that the remission application was decided illegally by the Gujarat government. The Court restated the recognized law on remission that the government of the state where a convict is tried is the appropriate authority to decide the remission application i.e., in this case the Maharashtra government is the appropriate authority. Along with reaffirming the rule of the law and the role of the Supreme Court as a guardian for upholding that rule of law, this case must act as a trigger to reflect on deeper questions about remission policies in India. Transparent remission procedures with proper substantive considerations will help avert the kind of misapplication we saw in Bilkis Bano's case.

II. Background of Bilkis Bano's case

A. The crime occurred in 2002 in the aftermath of the Godhra train burning when Bilkis was raped and 14 of her family members were killed by a mob. The FIR was lodged in

Limkheda police station of Gujarat. In Feb 2003, Bilkis approached Supreme Court asking that Magistrate's order accepting the summary closure of the case by Limkheda police station be set aside. In Dec 2003, Supreme Court transferred the investigation of the case to the CBI. In Apr 2004, CBI filed chargesheet before CJM Ahmedabad against 20 accused, including 6 police officers and 2 doctors who performed autopsies in Mar 2002.

B. In Aug 2004, the trial was moved from Gujarat to Mumbai by the Supreme Court in view of the death threats faced by Bilkis with direction that the central government to appoint a special Public Prosecutor. In Jan 2008, Special Judge in Mumbai convicted 11 and sentenced them to life imprisonment for murder and rape. Between 2009-11, the CBI sought enhancement of the sentence for three convicts to death and appealed against the acquittal of the other accused. In 2017, Bombay High Court upheld conviction of the 11 by trial court nonetheless refused to enhance the punishment from life imprisonment. Further, the High Court set aside trial court's acquittal of 5

police officers and 2 doctors. In Jul 2017, the SC dismissed appeals by 2 doctors and 4 policemen. In Apr 2019, SC ordered payment of Rs 50 lakh as compensation and directed the state government to provide Bilkis with employment and accommodation.

C. In May 2022, convict Radheshyam Shah appealed in the Supreme Court against a July 17, 2019 order of the Gujarat High Court, which has ruled that Maharashtra is the 'appropriate government' to decide on his plea for remission after he had completed 15 years and four months of his life term awarded in 2008. On 13 May 2022, a Supreme Court Bench of Justices Ajay Rastogi and Vikram Nath asked the Gujarat government to consider Radheshyam Shah's application for premature release 'within a period of two months' as per the policy that was applicable in the state on the date on which he was convicted. On 15 Aug 2022, 11 convicts, including Radheshyam Shah, was released from Godhra sub-jail on remission by Gujarat government. Thereafter, in Sept 2022, Bilkis Bano approached Supreme Court and challenged the premature release of the 11 convicts. On 8 Jan 2024, the Supreme Court quashed the Gujarat government's decision to grant remission to 11 convicts reaffirming the rule of the law.

III. What is Remission?

A. **Remission** is reward earned by prisoners in 'days' for their good conduct, activities and work done inside prison. Without changing the nature of punishment, remission offers an opportunity for prisoners to engage in reformative activities in the hope of getting out before the completion of their sentence. Essentially, it emanates from the reformative goal of imprisonment. The total number of days earned in remission is deducted from the sentence, making prisoners eligible for early release – a person with a ten-year sentence and one-year remission earned can potentially be released after serving nine years.

B. The consideration of Application of remission of convicts of petty offences like theft,

punishable with a determinate period of imprisonment (up to three years) could be fairly simple and straightforward. However, considering the cases of remission of convicts of serious crimes, like rape and those sentenced to life imprisonment is challenging.

C. Although a life sentence essentially means imprisonment for the whole of a convict's life, the law allows for such life convicts to be considered for remission once they have served a minimum sentence of fourteen years. However, this is inconsistent across offences and states as according to the constitution of India; prisons and persons detained therein are state subjects. However, there are offence-based exceptions for life convicts of heinous offences like rape and murder as they undergo longer minimum periods of imprisonment to be eligible for consideration for remission compared to other life convicts. In fact, in some states, life convicts are barred from remission due to the crime category. Like in Maharashtra, life convicts of gang rape have to serve for at least 28 years before being eligible to apply for remission, whereas in Gujarat, remission policies don't apply to such persons at all.

IV. Power to suspend or remit sentences (Section 432, CrPC)

A. **The** Code of Criminal Procedure (CrPC) in India encompasses provisions for remission, a legal process that allows the reduction or mitigation of a sentence. Section 432 and Section 433 of the CrPC are vital in understanding the grant of remission. The existing provision of Remission under Section 432, given in Chapter XXXII of The Code of Criminal Procedure (CrPC), mandates for Execution, Suspension, Remission and Commutation of sentences for providing relief to prisoners as per policies in vogue in various states. The various provisions mentioned as under could be utilized for providing relief to such prisoners.

1. **Section 432 (1)** states that when any person has been sentenced to punishment for an offence, the appropriate Government may,

at any time, without conditions or upon any conditions which the person sentenced accepts, suspend the execution of his sentence or remit the whole or any part of the punishment to which he has been sentenced.

2. **Section 432 (2)** states that Whenever an application is made to the appropriate Government for the suspension or remission of a sentence, the appropriate Government may require the presiding Judge of the Court before or by which the conviction was had or confirmed, to state his opinion as to whether the application should be granted or refused, together with his reasons for such opinion and also to forward with the statement of such opinion a certified copy of the record of the trial or of such record thereof as exists.

3. **Section 432 (3)** states that If any condition on which a sentence has been suspended or remitted is, in the opinion of the appropriate Government, not fulfilled, the appropriate Government may cancel the suspension or remission, and thereupon the person in whose favour the sentence has been suspended or remitted may, if at large, be arrested by any police officer, without warrant and remanded to undergo the unexpired portion of the sentence.

4. **Section 432 (4)** provides The condition on which a sentence is suspended or remitted under this section may be one to be fulfilled by the person in whose favour the sentence is suspended or remitted, or one independent of his will.

5. **Section 432(5)** The appropriate Government may, by general rules or special orders, give directions as to the suspension of sentences and the conditions on which petitions should be presented and dealt with: Provided that in the case of any sentence (other than a sentence of fine) passed on a male person above the age of eighteen years, no such petition by the person sentenced or by any other person on his behalf shall be entertained, unless the person sentenced is in jail, and—

(a) where such petition is made by the person sentenced, it is presented through the officer in charge of the jail; or

(b) where such petition is made by any other person, it contains a declaration that the person sentenced is in jail.

6. **Section 432 (6)** provides for the provisions of the above sub-sections shall also apply to any order passed by a Criminal Court under any section of this Code or of any other law, which restricts the liberty of any person or imposes any liability upon him or his property.

7. **Section 432 (7)** In this section and in section 433, the expression “appropriate Government” means—

(a) in cases where the sentence is for an offence against, or the order referred to in sub-section (6) is passed under, any law relating to a matter to which the executive power of the Union extends, the Central Government;

(b) in other cases, the Government of the State within which the offender is sentenced or the said order is passed.

8. Thus, it is evident that Section 432 essentially empowers the state government to suspend or remit a sentence at any time after conviction. It ensures that the power is exercised judiciously, taking into consideration factors such as the nature of the crime and the conduct of the convict. A landmark case supporting this provision is **State of Punjab Vs. S. Dalbir Singh**, where the court emphasized the need for the government to provide reasons for remission.

V. Restriction on powers of remission

A. **Section 433 of CrPC (Power to commute sentence)** further extends the scope of remission by conferring the power to commute a sentence. Under Section 433, the appropriate Government may, without the consent of the person sentenced, commute—

(a) a sentence of death, for any other punishment provided by the Indian Penal Code;

(b) a sentence of imprisonment for life, for imprisonment for a term not exceeding 14 years or for fine;

(c) a sentence of rigorous imprisonment, for simple imprisonment for any term to which that person might have been sentenced, or for fine;

(d) a sentence of simple imprisonment, for fine.

However, the power to commute is not absolute as in the case of *Maru Ram v. Union of India* the significance of this provision has been amply illustrated, stressing that the power to commute is not absolute but subject to certain guidelines and principles of justice.

B. Under Section 433A of CrPC, the Restriction on powers of remission or commutation in certain cases are given which states that – “Notwithstanding anything contained in section 432, 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”.

C. Further, Section 434 of CrPC gives Concurrent power to Central Government in case of death sentences which states that— “The powers conferred by sections 432 and 433 upon the State Government may, in the case of sentences of death, also be exercised by the Central Government”.

D. Section 435 of CrPC further stipulates that the State Government to act after consultation with Central Government in certain cases, such as –

(1) The powers conferred by sections 432 and 433 upon the State Government to remit or commute a sentence, in any case where the sentence is for an offence—

(a) which was investigated by the Delhi Special Police Establishment constituted under the Delhi Special Police Establishment Act, 1946 (25 of

1946), or by any other agency empowered to make investigation into an offence under any Central Act other than this Code, or

(b) which involved the misappropriation or destruction of, or damage to, any property belonging to the Central Government, or

(c) which was committed by a person in the service of the Central Government while acting or purporting to act in the discharge of his official duty, shall not be exercised by the State Government except after consultation with the Central Government.

(2) No order of suspension, remission or commutation of sentences passed by the State Government in relation to a person, who has been convicted of offences, some of which relate to matters to which the executive power of the Union extends, and who has been sentenced to separate terms of imprisonment which are to run concurrently, shall have effect unless an order for the suspension, remission or commutation, as the case may be, of such sentences has also been made by the Central Government in relation to the offences committed by such person with regard to matters to which the executive power of the Union extends.

VI. Recommendations

A. In every State, a remission application is assessed by a **Sentence Review Board** and decided after considering the various factors like the impact of the crime, chances of reoffending, the purpose of continued imprisonment of convict and socio-economic conditions of their family. Thus, as these factors indicate, the consideration of remission for each prisoner is individualized. However, it's crucial to note that the remission power is not absolute, and the government must adhere to the principles of natural justice. In *Swaran Singh v. State of Punjab*, the Supreme Court highlighted that arbitrary exercise of power could lead to judicial intervention. And that's the reason why the Supreme Court, on 8 Jan 2024, quashed the Gujarat government's decision to grant

remission to 11 convicts reaffirming the rule of the law.

B. States generally grant ordinary remission of two days per month for good behaviour or prison duties and special remission of longer durations for any special service such as acts of bravery. Therefore, the impact of the brutality of the offence is also reflected in how remission is earned. For example, *in Goa, Mizoram and Odhisa, murder convicts are excluded from earning ordinary remission*. Similarly, offence-based exclusions are also applicable to parole and furlough. However, it doesn't take into account the accelerated good behaviour of a life convict which needs to be incorporated into the prison manual for grant of special remission on the recommendation of Prison authorities for extraordinary reformation of convicted prisoners.

C. Nevertheless. The remission policies across the states raise procedural and normative questions. The Procedural questions are about the constitution of Review Boards and their decision-making process according to the Supreme Court's guidelines and rehabilitative and reformatory goal of prisons. Furthermore, longer terms of imprisonment for eligibility and offence-based restrictions to apply for remission for certain kinds of offenders raise a normative question about prisons as rehabilitative spaces. It is a crucial question to ask whether our prisons in their current form have the capacity to act as rehabilitative spaces. With massive overcrowding of prisoners, overburdened prison staff, etc., our prison system needs urgent transformation. The National Crime Records Bureau (NCRB) has recently released its Prison Statistics India (2022) Report (PSI). Based on the data furnished by Prison Statistics India 2022, 75% Prisoners are Under Trials, **Prisons Occupancy is at 131%** in Indian Prisons.

VII. Conclusion

Leave provisions like Remission, Parole and Furlough serve as a ray of hope for

prisoners. They play a crucial role in their process of reformation by offering the opportunity to rebuild their lives and reintegration into society. In recent years, the application of remission has been a subject of debate, especially in cases involving heinous crimes. The Nirbhaya gang-rape case prompted legislative amendments, leading to the *insertion of Section 376E*, which restricts the power of remission for convicts of certain sexual offenses. Nevertheless, Life convicts equally deserve the chance to reform through policies that help impose definite durations on otherwise indeterminate life imprisonment sentences. In conclusion, the provision of remission in the CrPC aims to strike a balance between rehabilitation and public safety. The interplay of these sections, coupled with evolving case laws, reflects the dynamic nature of the legal framework surrounding remission. In a penal system where remission is an indispensable opportunity that facilitates reform, exclusionary policies need to be interrogated and reformed as prisons act as correctional homes for the convicts.

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