

Revisiting Remission as a Right of Prisoners in India in the Light of New Criminal Laws

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Abstract

The introduction of new criminal laws, effective July 1, 2024, has captivated various stakeholders, including state legislatures, legal scholars, law enforcement agencies, judges, attorneys, and citizens directly or indirectly influenced by the legislation. There is considerable interest in understanding the implications of these laws on domestic application and their extraterritorial effects, including both within and beyond India. The impact of these laws will be comprehended over time, particularly regarding how this legislation represents an enhancement over the Colonial laws that have been in practice since independence. However, the interpretation of the statutory provisions reveals the legislative intent, here in this article, concerning the executive discretion granted to the accused in matters of premature release in the form of remission.

In January, the Supreme Court condemned the Gujarat government for collaborating with convicts in the Bilkis Bano case, as it set aside the remission of 11 convicts. The release of Anand Mohan by the Bihar Government was premature on remission after amending the Prison Manual Rule Number 481 of the State. The Apex Court asked him to submit his passport and report fortnightly to the local police station. These are a few of the many instances questioning and highlighting the lacunae in the remission policy exercised by the executives.

This article aims to understand the remission policy currently working in India, the flaws existing during such exercises, any change, if any, that has been brought up in the new Criminal Law, and how to further bring positive changes to balance the accused's rights to remission and victims' unending sufferings, considering international legislation and other recognized frameworks of the

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law. This will encompass doctrinal and non-doctrinal research in the form of comparative research across various criminal justice jurisdictions.

Key Words: *Remission, Prisoner's Rights, Victims, Criminal Justice System, Jail Advisory Board.*

I. Introduction

One form of mercy that is authorized under the Indian Constitution is called remission, and it is granted in accordance with Articles 72³ and 161⁴ by the President and the Governor, respectively, where the length of the sentence is lessened, but the severity of the penalty remains unchanged. The announcement of special remission⁵ guidelines issued on the eve of Azadi Ka Amrit Mahotsav led to the release of various criminals accused of many crimes and caught the attention of many worldwide regarding how the remission policy is being exercised.

Lately, the release of the convicts in the Bilkis Bano Case⁶ again questioned the remission criteria if the victim's voice was given no heed while deciding the

³ Article 72: Power of president to grant pardons, etc., and to suspend, remit or commute sentences in certain cases, Constitution of India (2023) <https://www.constitutionofindia.net/articles/article-72-power-of-president-to-grant-pardons-etc-and-to-suspend-remit-or-commute-sentences-in-certain-cases/> (last visited Jan 03, 2024).

⁴ Article 161: Power of Governor to grant pardons, etc., and to suspend, remit or commute sentences in certain cases, Constitution of India, <https://www.constitutionofindia.net/articles/article-161-power-of-governor-to-grant-pardons-etc-and-to-suspend-remit-or-commute-sentences-in-certain-cases/#:~:text=The%20Governor%20of%20a%20State,power%20of%20the%20State%20extends> (last visited Jan 3, 2024).

⁵ Most immediate no. 17013/37/2021-PR government of India, [https://mha.gov.in/sites/default/files/2025-04/2SpecialRemissionModuleePrisons_15112022\[1\]_18.pdf](https://mha.gov.in/sites/default/files/2025-04/2SpecialRemissionModuleePrisons_15112022[1]_18.pdf) (last visited Feb 24, 2025)

⁶ Padmakshi Sharma, Remission granted to convicts in Bilkis Bano Case: Is it legal? Live Law (2022), <https://www.livelaw.in/columns/remission-granted-to-convicts-in-bilkis-bano-case-is-it-legal-207063> (last visited Aug 21, 2025).

remission of the accused, especially in heinous offenses. However, this decision has been set aside by the Supreme Court in the writ petition filed by the victim.⁷

Articles 72⁸ and 161⁹ of the Indian Constitution, which deal with the pardoning power of the President and Governor, respectively, embody the following pardoning principles within its ambit:

- The term "pardon" refers to a total absolution of the punishment.
- Commutation: In this scenario, the more severe type of punishment is turned into a less severe form of punishment. For example, the death penalty could be commuted to life in prison.
- Remission refers to lessening the number of sentences handed down without altering the nature of those punishments.
- The term "respite" refers to reducing a person's sentence in light of exceptional circumstances, such as the fact that the offender is expecting a child.
- A reprieve is a brief suspension of executing a death sentence, such as while an appeal for clemency or commutation is being processed.

Another definition of remission can be found in Section 3(5) of the Prisons Act of 1894.¹⁰ In this section, it is stated that the term "remission system" refers to the laws currently in effect that regulate the awarding of marks to convicts in jails and the subsequent shortening of their sentences due to those marks.

⁷ Amisha Shrivastava, Supreme Court dismisses Gujarat Govt's review petition challenging adverse remarks against it in Bilkis Bano Case judgment Live Law (2024), <https://www.livelaw.in/top-stories/supreme-court-dismisses-gujarat-govts-review-petition-challenging-adverse-remarks-against-it-in-bilkis-bano-case-judgment-270799#:~:text=more%20content%20at,The%20Supreme%20Court%20has%20dismissed%20the%20review%20petition%20filed%20by,petitions%20field%20by%20the%20convicts> (last visited Feb 4, 20265).

⁸ INDIA CONST. art. 72.

⁹ INDIA CONST. art. 161.

¹⁰ Prison Act, 1894, Sec 3(5), No. 09 Act of Parliament, 1894 (India).

II. Statutory Provisions dealing with Remission

The Criminal Procedure Code, 1973 (Cr. P.C.) includes provisions for sentence suspension, remission, and commutation in addition to the aforementioned Constitutional provisions. The government may suspend or reduce a sentence under Section 432¹¹, 433¹², 433A¹³, 434¹⁴, and 435¹⁵. The relevant government has the authority to commute a death sentence or a life sentence according to the Indian Penal Code's (IPC) Section 54¹⁶ and 55¹⁷. Following Section 54 of the Indian Penal Code of 1860, the competent government, i.e., the Central Government in the case of an offense committed in a Union Territory and the State Government in the case of a crime committed in a State, may commute or change the original punishment to one of a different kind.

Sec 432 of the CrPC, 1973, talks about the “*power to suspend or remit sentences*,” where it, through various provisions, explains the procedure in detail as listed below:

- 1) If a person has been sentenced to a punishment for an offense, the government that is responsible for the punishment has the authority to suspend the execution of that person's sentence at any time, without conditions or upon conditions that the person who was sentenced accepts. Additionally, the government has the ability to remit the entire or any portion of the punishment that the person has been sentenced to.
- 2) When an application is submitted to the government for the suspension or remission of a sentence, the government may request the presiding Judge of the Court that rendered or upheld the conviction to provide his opinion on whether the application should be approved or denied, along with the rationale for his opinion, and to include a certified copy of the trial record or any existing documentation thereof.

¹¹ Criminal Procedure Code, 1973, Sec. 432, No. 02 Act of Parliament, 1974 (India).

¹² Criminal Procedure Code, 1973, Sec. 433, No. 02 Act of Parliament, 1974 (India).

¹³ Criminal Procedure Code, 1973, Sec. 433A, No. 02 Act of Parliament, 1974 (India).

¹⁴ Criminal Procedure Code, 1973, Sec. 434, No. 02 Act of Parliament, 1974 (India).

¹⁵ Criminal Procedure Code, 1973, Sec. 435, No. 02 Act of Parliament, 1974 (India).

¹⁶ Indian Penal Code, 1860, Sec. 54, No. 45 Act of Parliament, 1860 (India).

¹⁷ Indian Penal Code, 1860, Sec. 55, No. 45 Act of Parliament, 1860 (India).

3) If any condition under which a sentence has been suspended or remitted is deemed unfulfilled, the appropriate Government may revoke the suspension or remission. Consequently, the individual benefiting from the suspension or remission may be apprehended by any police officer without a warrant and required to serve the remaining duration of the sentence.

4) The conditions required for the suspension or remission of a sentence under this section may be satisfied by the individual benefiting from the suspension, either remission, or by an entity independent of their will.

5) The relevant Government may, through general regulations or specific directives, issue instructions regarding the suspension of sentences and the conditions under which petitions should be submitted and addressed. However, in the case of any sentence (excluding a fine) imposed on a male individual over the age of eighteen, no petition from the sentenced individual or any representative shall be considered unless the individual is incarcerated, and- a) if the petition is submitted by the sentenced individual, it must be presented via the jail's supervising officer, or b) if the petition is submitted by another party, it must include a declaration confirming the individual's incarceration.

6) The stipulations of the aforementioned sub-sections shall equally pertain to any directive issued by a Criminal Court according to any section of this Code or any other legislation that curtails the liberty of an individual or imposes any obligation upon him or his assets.

7) In this section and section 433, the term "appropriate Government" refers to a) in instances where the sentence pertains to an offense against or the order mentioned in subsection (6) is issued under any legislation concerning a matter within the executive jurisdiction of the Union, the Central Government. b) in other instances, the Government of the State where the criminal is punished, or the aforementioned order is issued."

Sec 433 A CrPC, 1973 discusses "*Restriction on powers of remission or Commutation in certain cases*," which was inserted through Act 45 of 1978 came with a caveat on remission powers stating that "Notwithstanding the provisions of section 432, if a life sentence is imposed on an individual convicted of an offense punishable by death, or if a death sentence has been commuted to life imprisonment under section 433, that individual shall not be

released from prison until they have served a minimum of fourteen years of imprisonment.”

Sec 434 discusses “*Concurrent power of Central Government in case of death sentences,*” where it says that “The authorities granted to the State Government by sections 432 and 433 may, in instances of death sentences, also be exercised by the Central Government.”

Sec 435 of the CrPC states, “*State Government to act after consultation with Central Government in certain cases,*” which discusses:

1) The authority granted to the State Government by sections 432 and 433 to remit or commute a sentence in cases involving offenses: (a) investigated by the Delhi Special Police Establishment, established under the Delhi Special Police Establishment Act of 1946 (25 of 1946), or by any other agency authorized to investigate offenses under any Central Act, excluding this Code. (b) that entailed the misappropriation, destruction, or damage of any property belonging to the Central Government or

(c) which was committed by an individual in the services of the Central Government while performing or ostensibly performing his official duties, shall not be exercised by the State Government without prior consultation with the Central Government.

2) No order for suspension, remission, or commutation of sentences issued by the State Government concerning an individual convicted of offenses, some of which pertain to matters under the Union's executive power, and who has received concurrent terms of imprisonment, shall be effective unless a corresponding order for suspension, remission, or commutation has also been issued by the Central Government regarding the offenses related to matters under the Union's executive power.

III. Changes introduced under the New Criminal Law

Bhartiya Nagrik Suraksha Sanhita, henceforth BNSS, 2023, replacing the Criminal Procedure Code (CrPC) 1973, effective from July 1st, 2024,¹⁸ also deals with the provisions relating to the remission of convicted prisoners. BNSS has all the provisions corresponding to Sections 432, 433, 433A, 434, and 435 of CrPC 1973 in the form of Sections 473¹⁹, 474²⁰, 475²¹, 476²², and 477²³, where a few changes have been made under the new law. Section 473 of BNSS, 2023, which corresponds to Section 432 of CrPC, 1973, addresses the remission provision similarly, except that the proviso under Subsection 5 of Section 473 has been rendered gender-neutral, replacing the previous 'male' designation in the old criminal procedure code.

A significant alteration has been noted in Section 477 of BNSS, 2023, which aligns with Section 435 of CrPC, 1973. The new Act stipulates that the State Government may remit or commute a sentence for an offense investigated by an agency authorized under any Central Act, apart from this Sanhita, or involving the misappropriation, destruction, or damage of Central Government property or committed by an individual in the service of the Central Government, only with the agreement or consistency with the Central Government, a departure from the previous requirement of mere consultation under the old Criminal law.

¹⁸ Soibam Rocky Singh, As new criminal laws in India take effect from July 1, legal community braces for change THE HINDU (2024), <https://www.thehindu.com/news/national/as-new-criminal-laws-take-effect-from-july-1-legal-community-braces-for-change/article68352331.ece> (last visited May 28, 2025).

¹⁹ Bharatiya Nagrik Suraksha Sanhita, 2023, Section 473, No. 46 Act of Parliament, 2023 (India).

²⁰ Bharatiya Nagrik Suraksha Sanhita, 2023, Section 474, No. 46 Act of Parliament, 2023 (India).

²¹ Bharatiya Nagrik Suraksha Sanhita, 2023, Section 475, No. 46 Act of Parliament, 2023 (India).

²² Bharatiya Nagrik Suraksha Sanhita, 2023, Section 476, No. 46 Act of Parliament, 2023 (India).

²³ Bharatiya Nagrik Suraksha Sanhita, 2023, Section 477, No. 46 Act of Parliament, 2023 (India)

The authority to commute sentences under Section 474 of the BNSS, 2023, which corresponds to Section 433 of the CrPC, 1973, has significantly modified the commutation process and included a new provision allowing for the commutation of imprisonment for terms under seven years in exchange for a fine.

The remission process has been carried out under Section 475 of BNSS, 2023, as “concurrence” with the Central Government in specific instances, implemented to regulate the arbitrary exercise of discretion by State Governments. However, State Governments may contend that the new legislation aims to subordinate them to the Central Government's authority, even within their exclusive jurisdiction.

Similarly, the provisions of Section 5²⁴ of the Bharatiya Nyaya Sanhita (BNS), 2023, are comparable to those of Sections 54 and 55 of the Indian Penal Code (IPC), 1860.

IV. Judicial Pronouncements in the Context of Remission as the State's Prerogative

The judiciary, in its capacity as the guardian of fundamental rights, has consistently established guidelines for granting remission, aiming to facilitate the reformation of convicts while also addressing the persistent sufferings of victims.

In the case of “*Union of India v. Shriharan*,”²⁵ the highest court in the country ruled as follows: "For instance, when we refer to the punishment provided for the offense under section 376A²⁶ or 376D²⁷ while prescribing life imprisonment as the maximum punishment that can be imposed, it is specifically stipulated that such life imprisonment would mean for the remainder of that period."

In the case of “*Gopal Vinayak Godse v. The State of Maharashtra*,”²⁸ the Honourable Supreme Court of India ruled that "A sentence of transportation for

²⁴ Bharatiya Nyaya Sanhita, 2023 Section 5, No. 45 Act of Parliament, 2023 (India)

²⁵ *Union of India v. Sriharan*, (2016) 7 SCC 1 (India).

²⁶ Indian Penal Code, 1860, Section 376A, No. 45 Act of Parliament, 1860 (India)

²⁷ Indian Penal Code, 1860, Section 376D, No. 45 Act of Parliament, 1860 (India).

²⁸ *Gopal Vinayak Godse vs The State of Maharashtra and Others* 1961 SCR (3) 440 (India).

life or imprisonment for life must prima facie be treated as transportation or imprisonment for the whole of the remaining period of the convicted person's natural life."

The Constitution bench of the Apex Court of India stated in the case of "*Maru Ram v. Union of India*."²⁹ that "we follow Godse's case to hold that imprisonment for life lasts until the last breath, and whatever the length of remissions earned, the prisoner can claim to release only if the Government remits the remaining sentence." This statement was made about the fact that the prisoner could only be released if the government remitted the remaining portion of their sentence.

Established legal positions make it abundantly clear that "life imprisonment" only refers to the entirety of the sentence unless reduced by remissions that are validly granted by the Appropriate Government under the Code of Criminal Procedure or by the Executive Head, who is either the President or the Governor of the State under Articles 72 and 161 of the Constitution. The reason is that the phrase "life imprisonment" only applies to the duration of the sentence.

In "*Laxman Naskar vs. Union Of India*,"³⁰ Apex Court held that to take into consideration the prayer for the early release of life convicts, a police report was requested on the following points: i) Whether the offense was an individual act of crime that did not affect society as a whole; ii) Whether there exist any chance of future recurrence or restraint from committing the crime; iii) Whether the convict has forfeited his ability in committing the crime; iv) Whether there is any fruitful purpose of confining the convict and lastly v) the socio-economic condition of the convicted family. The Court further held that the offender must be imprisoned while applying for remission.

Furthermore, among other criteria that may be used to evaluate the application for remission, the court in *Bilkis Bano*³¹ established the following: i) that the order was issued without due process; ii) that the order is mala fide; iii) that irrelevant or unnecessary factors were taken into account when making the

²⁹ *Maru Ram v. Union of India* (1981) 1 SCC 107 (India).

³⁰ *Laxman Naskar v. Union of India*, (2000) 2 SCC 595 (India).

³¹ *Bilkis Yakub Rasool v. Union of India & Ors.* Writ petition (Criminal) No. 491 of 2022 (India).

decision; iv) that pertinent information was not taken into account; v) and that the decision is arbitrary.

In “*State of Haryana vs. Mohinder Singh*”³² it was held that the power of remission cannot and should not be utilized arbitrarily, as the Supreme Court made clear in its ruling on the matter. The court went on to note that the decision to grant the remission must be well-informed, reasonable, and equitable to all parties involved with the case of the convicted individual.

The Apex Court further asserted in another case dealing with the premature release of convicted prisoners that the criteria for granting remission must be clearly defined and not ambiguous, ensuring compliance is feasible. It depended on *Mafabhai Motibhai Sagar v. State of Gujarat*,³³ which determined that the criteria stipulated under Section 432 of the CrPC and Section 473(1) of the BNS must not be arbitrary; such restrictions will be rendered invalid for infringing upon Article 14 and Article 21. The Court additionally ruled that the authority to withdraw or annul remission cannot be exercised without adhering to the norms of natural justice. The Court further clarified that the registration of a cognizable offense against the convict, in itself, does not provide a basis for revoking the remission decision. The claims of breach of condition cannot be accepted at face value, and the determination of whether a cause for cancellation of remission is established must be assessed based on the specific facts of each case.

In the cases “*State of Haryana vs. Mahendra Singh*”³⁴ and “*State of Haryana vs. Jagdish*,”³⁵ the Supreme Court of India ruled that a convict serving a sentence does not have an inherent right to remission. However, the court also ruled that the convict does have the right to have his case considered for remission by making a representation in the case.

In “*Sangeet & Anr. Vs. State of Haryana*”³⁶, the SC considered the issue of not awarding the death sentence as well as the inadequacy of the life sentence, as the remission power lies with the Government under sec. 432 CrPC, 1973.

³² *State of Haryana vs. Mohinder Singh*, (2000) 3 SCC 394 (India).

³³ *Mafabhai Motibhai Sagar v. State of Gujarat & Ors* 2024 LiveLaw (SC) 819 (India).

³⁴ *State of Haryana vs. Mahendra Singh* (2007) 13 SCC 606 (India).

³⁵ *State of Haryana vs. Jagdish* (2010) 4 SCC 216 (India).

³⁶ *Sangeet & Anr. Vs. State of Haryana*, Criminal Appeal No. 490-491 of 2011 (India).

Following this, the Court made the observations that a convicted person who is currently serving a predetermined amount of time in jail is eligible to receive a period of remission by a rule that was drafted by the "appropriate government" or under The Jail Manual. If the criminal is to be granted a further period of remission, Section 432 of the Criminal Procedure Code must be consulted. Thus, Sec. 432 finds an application when it is a matter of 'additional' remission and if a convict is undergoing indefinite life imprisonment, in accordance with procedural and substantive checks, can be awarded remission. The Court clarified that the power under Sec 432 has nothing to do with the notion that life imprisonment is an arbitrary or notional figure of 20 years of imprisonment.

In *Epuru Sudhakar v. State of AP, 2006*³⁷ the following grounds were laid down by the Apex Court for demanding the judicial review of the order of remission: non-application of mind, order to be mala fide, relevant materials kept out of consideration, order suffers from arbitrariness, and the order was passed on extraneous or wholly irrelevant considerations.

In the *Bilkis Bano case*, the convicts argued that the government is obligated to consult the presiding judge regarding the remission application. However, the court rejected this argument, stating that the term "may" should be interpreted as "shall," indicating a mandatory requirement under sub-section (2) of Section 432 of the CrPC. The Presiding Judge must provide an opinion to the appropriate Government on a convict's remission application. Thus, it cannot be concluded that the term "may" in this provision is non-mandatory, nor can it be left to the discretion of the appropriate Government to decide whether to consult the Presiding Judge or the Court that issued the conviction.

Additionally, the Supreme Court, in *Ram Chander v. State of Chhattisgarh*,³⁸ referencing the Constitutional Bench ruling in *Union of India v. V. Sriharan*, noted that the Presiding Judge's opinion elucidates the nature of the crime committed, the convict's record, their background, and other pertinent factors.

³⁷ *Epuru Sudhakar And Anr. Vs. Govt. Of A.P. And Ors.* [2006] Supp. (7) S.C.R. 81 (India).

³⁸ *Ram Chander v. State of Chhattisgarh* 2022 LiveLaw (SC) 401 WP (Ctrl) 49 of 2022 (India).

The Court noted that the Presiding Judge's opinion would assist the Government in determining the appropriateness of remitting the sentence.

Should the view of the presiding judge serve as the exclusive basis for adjudicating the remission application? In a recent ruling by Justice Ravindra Bhatt in *Rajo @Rajwa@Rajendra Mandal v. State of Bihar*,³⁹ the court stated that the presiding judge's opinion should not be the exclusive factor for the government in determining the premature release of convicts, and that the government should not uncritically adhere to the presiding judge's opinion. If the opinion from the presiding judge lacks justification or fails to address the pertinent factors for remission established in *Laxman Naskar v. Union of India*,⁴⁰ the appropriate government may petition the presiding judge to reevaluate the matter, as noted by the court in *Ram Chander*.

The Judiciary has repeatedly issued rules or cautions when awarding remission to convicted prisoners, but the State has been found to exercise its power arbitrarily.

V. International Legislation on Remission

From the beginning of recorded history, the Executive has exercised its clemency powers. It goes back to a time before written laws, when prehistoric humans congregated around fires, and the authority to punish or pardon members of the tribe based on their behavior in violation of the group's code of conduct rested with the tribal leader. A brief summary: mercy has always been an option for those in positions of power to decide the destiny of others. Regarding codified regulations, the power to grant amnesty is explicitly specified in the Code of Hammurabi, one of the earliest recorded legal laws ever authored and issued by the ruler of Babylon in the eighteenth century B.C.⁴¹ and preserved in a stone edifice exhibited to the public.

³⁹ *Rajo @Rajwa@Rajendra Mandal v. State of Bihar* 2023 LiveLaw (SC) 717 (India).

⁴⁰ *Laxman Naskar v. Union of India*, (2000) 2 SCC 595 (India).

⁴¹ Uchicago, <https://www.journals.uchicago.edu/doi/pdf/10.1086/478952> (last visited May 20, 2025).

In the modern times, since its initial codification in the Charter of the International Military Tribunal at Nuremberg in 1945⁴², the term "crimes against humanity" has undergone several changes. The crime is now considered a crime whether it is committed during war or peace. Decades later, 'crimes against humanity' were defined, and 'rape' was specifically listed as a crime against humanity in the Statute of the International Criminal Tribunal for the Former Yugoslavia (ICTY)⁴³ and the Statute of the International Criminal Tribunal for Rwanda (ICTR)⁴⁴.

The term "crimes against humanity" was included in the Rome Statute that founded the International Criminal Court (ICC) in 1998.⁴⁵ Along with genocide, war crimes, and aggression are the four most serious crimes that can be punished by a permanent court for violations of international law. In Article 7 of the Statute, "widespread or systematic attack, against a civilian population with knowledge of the attack."⁴⁶ It is characterized as a crime against humanity. Murder, rape, and other forms of sexual and sex-based violence are all on the list.

Remission is not a matter of executive discretion in international criminal law. A provision exists for review (including for reduction of sentence) once the ICC has convicted and sentenced the defendant. Three Appeals Chamber judges can consider whether or not the sentence should be lowered in accordance with

⁴² Document:- A/CN.4/5, https://legal.un.org/ilc/documentation/english/a_cn4_5.pdf (last visited Dec 24, 2025).

⁴³ The legacy of the ICTY and ICTR on sexual and gender-based violence (chapter 8) - the legacy of ad hoc tribunals in international criminal law, Cambridge Core, <https://www.cambridge.org/core/books/abs/legacy-of-ad-hoc-tribunals-in-international-criminal-law/legacy-of-the-icty-and-icttr-on-sexual-and-genderbased-violence/900D019CAF5EFDA883DD27FE8342B4FA> (last visited Dec 24, 2025).

⁴⁴ *Ibid.*

⁴⁵ How the court works, <https://www.icc-cpi.int/about/how-the-court-works> (last visited Dec 26, 2025).

⁴⁶ Rome Statute of the International Criminal Court, Article 7(1)(h) [https://www.law.cornell.edu/women-and-justice/resource/rome_statute_of_the_international_criminal_court_article_7\(1\)\(h\)#:~:text=Article%207\(1\)\(h\),on%20the%20basis%20of%20gender.&text=This%20means%20that%20the%20ICC,on%20the%20basis%20of%20gender](https://www.law.cornell.edu/women-and-justice/resource/rome_statute_of_the_international_criminal_court_article_7(1)(h)#:~:text=Article%207(1)(h),on%20the%20basis%20of%20gender.&text=This%20means%20that%20the%20ICC,on%20the%20basis%20of%20gender) (last visited Jan 3, 2026).

Rule 223 of the Rules of Procedure and Evidence.⁴⁷ It should be based on the following criteria:

- a) The offender's behavior while incarcerated, which demonstrates a real separation from the crime;
- (b) The likelihood of the offender's reintegration into society and the likelihood of a successful resettlement; and
- (c) The likelihood that the offender's early release would cause substantial societal instability.
- (d) The sentencing individual's substantial efforts to assist the victims and their families, including any effects of early release on them;
- (e) The sentencing individual's personal circumstances, such as a decline in physical or mental health or advanced age.”

The defined standards avoid capricious reductions in sentence length. A sentence reduction is still a judicial mandate rather than an executive discretion under the ICC Statute.

In accordance with Article 77 of the ICC Statute, a person guilty of a crime within its jurisdiction may be sentenced to a maximum of thirty years in prison or "a term of life imprisonment when justified by the extreme gravity of the crime and the individual circumstances of the convicted person."⁴⁸ According to the Statute of the International Criminal Court (ICC), the judges of the International Criminal Court (ICC) are not authorized to impose the death penalty (regardless of how serious the crime is). During the talks for the ICC Statute, certain delegates insisted on including the death sentence due to the awful nature of the crimes, while other delegates pleaded for the humane treatment of the convicted and the prospect of their reformation and rehabilitation.

Article 77 was written to satisfy all sides of the debate. Therefore, even if a person is found guilty of the gravest crimes under international law, the ICC

⁴⁷ Rules of Procedure and Evidence <https://www.icc-cpi.int/sites/default/files/RulesProcedureEvidenceEng.pdf> (last visited Feb 5, 2026).

⁴⁸ Rome Statute of the International Criminal Court, 1998 https://legal.un.org/icc/statute/99_corr/cstatute.htm (last visited Feb 5, 2026).

Statute allows for the prospect of redemption. However, the judges of the Appeals Chamber will determine the reduction in the sentence based on the clear, understandable, and transparent standards outlined in Rule 223.

'Victims' are defined narrowly and enjoy broad protections under international law.⁴⁹ According to the ICC Statute, victims have three main rights: the right to protection (against threat, intimidation, coercion, and duress), the right to participation (in the proceedings for justice), and the right to compensation (to rectify the harm caused). The rights of victims in the ICC are addressed elsewhere.

The Statute of the International Criminal Court places a high value on the participation of victims in proceedings, as it recognizes victims as vital players in the administration of criminal justice. When the prosecutor asks the pre-trial chamber to authorize the start of an investigation, when the court handles challenges to the International Criminal Court's jurisdiction and the admissibility of a case, when the hearing is held to confirm the charges against a suspect, when the suspect is arrested and brought before the International Criminal Court for trial, when the suspect is sentenced, and at every stage in between.

As a result, it is crucial to respect the victims' right to participate by listening to their perspectives (or those of their representatives) before issuing the remission order. The Board may disregard the victims' opinions if they are found to be unfounded, exaggerated, false, vindictive, frivolous, or emotional. Victims have a right to be heard when decisions on remission are being made, and it would be unfair to prevent them from doing so.

It's commonly assumed that restitution and compensation are interchangeable, yet this is not the case. To truly 'repair' the injury done to the victim, reparations in international law require five components beyond monetary compensation. These include restitution (returning the victim to their previous state), compensation (for quantifiable losses), rehabilitation (medical and mental health treatment, legal representation, and social services), satisfaction

⁴⁹ Victims <https://www.icc-cpi.int/about/victims> (last visited Feb 8, 2026).

(typically involving the disclosure of the truth), and assurances that the offender will not repeat the offense.

The UN General Assembly adopted the Basic Principles and Guidelines on a Right to a Remedy and Reparations for Victims in 2006.⁵⁰ These elements are spelt out in the document. There can be no assurance for victims or the general public that the crimes will not be repeated if convicts show no regret for the atrocities they caused and are instead welcomed as heroes.

The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), which is one of the key human rights treaties that obligates member nations to execute legal commitments for human rights, was accepted by the government of India in July 1993.⁵¹ CEDAW is a convention of the United Nations on the elimination of all forms of discrimination against women. The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) lays out the legal responsibilities of nations regarding the protection of women's civil and political rights. These responsibilities include the duty to respect (to refrain from discrimination through its actions), the duty to protect (including prevention, prosecution, punishment, provision of reparations, and establishment of legal and other mechanisms for redress), and the duty to fulfil (by creating an environment that is conducive to human rights, including by providing for budgetary allocations and infrastructural facilities).

The UN Declaration on the Elimination of Violence Against Women and the CEDAW Committee's General Recommendation 35⁵² hold states responsible

⁵⁰ United Nations Audiovisual Library of International Law https://legal.un.org/avl/ha/ga_60-147/ga_60-147.html#:~:text=The%20United%20Nations%20General%20Assembly,to%20as%20%E2%80%9Cthe%20Principles%20and (last visited Feb 18, 2026).

⁵¹ Conventions, Courts, and Communities: Gender Equity, CEDAW and Religious Personal Law in India - Carolyn E Holmes, 2019 <https://journals.sagepub.com/doi/10.1177/0021909619846535> (last visited Feb 18, 2026).

⁵² Launch of CEDAW General Recommendation No. 35 on gender-based violence against women, updating General Recommendation No. 19 | OHCHR

for the actions of both state and non-state actors and require states to exercise "due diligence" in regulating and protecting women from systemic forms of violence. Punishing offenders is only part of the state's responsibility; it must also compensate victims and take "all appropriate measures to prevent acts of gender-based violence against women." The duty of due diligence would be breached by any action that implicitly condones or encourages violence against women based on their gender.

A. Remission Legislation in the UK

The Roman ambition to consolidate power through strategically using pardons also appeared in England. Blackstone⁵³ indirectly acknowledged the influence of ancient Rome on Britain's capacity to grant pardons when he criticized the inhabitants of the Isle of Gurnsey for their inhumane treatment of a pregnant woman, which he said was not in line with the principles of old Roman law.

In modern times, Article 5 of the European Convention on Human Rights⁵⁴ serves as the basis for the argument on the legitimacy of mandatory and discretionary life sentences in the United Kingdom. Article 5(4) states that "everyone who is deprived of his liberty by arrest or detention shall have the right to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release shall be ordered if the detention is not lawful." In other words, "everyone who is arrested or detained shall have the right to take proceedings by which the lawfulness of his detention shall be decided speedily by a court."

<https://www.ohchr.org/en/treaty-bodies/cedaw/launch-cedaw-general-recommendation-no-35-gender-based-violence-against-women-updating-general> (last visited Feb 20, 2026).

⁵³ Blackstone's Commentaries on the Laws of England Book the Fourth - Chapter the Thirty-First : Of Reprieve, And Pardon
https://avalon.law.yale.edu/18th_century/blackstone_bk4ch31.asp#:~:text=A%20PARDON%20may%20also%20be,by%20the%20common%20lawg (last visited Feb 20, 2026).

⁵⁴ European Convention on Human Rights
https://www.echr.coe.int/documents/d/echr/convention_ENG (last visited Feb 20, 2026).

It was decided in the case “*Gunnel v. UK.*”⁵⁵ A life sentence with the option of parole had two components: a punitive element and a security aspect. This action is required to fulfill the punitive purpose. The Secretary of State can determine whether or not the offender poses a threat to public safety thanks to the security feature.

Criminal Justice Act 1948 embodies the remission legislation, where Sec 56 & 57 of the said Act describe the procedure of the legislation as given below:

(a) 56 Remission for good conduct and release on the licence of young prisoners⁵⁶

(1) Regulations established under section fifty-two of this Act may stipulate conditions under which an individual serving a prison sentence or ordered to be confined in a detention center for a specified duration may receive remission of a designated portion of that sentence or term based on their diligence and exemplary behavior; and upon the release of an individual from a prison or detention center in accordance with the provisions of this subsection.

2) The Prison Commissioners may authorize the release of an inmate on licence under the Sixth Schedule to this Act if they ascertain that the inmate was under twenty-one at the commencement of his sentence, effective at any time on or after the date he would have been discharged had remission been granted.

(3) An individual whose release from incarceration is postponed pending the payment of a specified amount due to a conviction shall be regarded as serving a sentence for the duration of their commitment, and consecutive sentences shall be deemed a single term for this section.

(b) 57. Release on the licence of persons serving imprisonment for life.⁵⁷

(1) The Secretary of State may, at any time deemed appropriate, grant a license to an individual serving a life sentence, subject to specified conditions;

⁵⁵ Case Of Thynne, Wilson And Gunnell V. The United Kingdom
(Application no. 11787/85; 11978/86; 12009/86)

⁵⁶ Criminal Justice Act, 1948 zi & z2 GEo. 6. CH. 58. ARRANGEMENT OF SECTIONS.

https://www.legislation.gov.uk/ukpga/1948/58/pdfs/ukpga_19480058_en.pdf (last visited Jan 20, 2026).

⁵⁷ *Ibid.*

furthermore, the Secretary of State may modify or revoke any such restriction at any time. The Secretary of State may, at any time, provide a license for the release of an individual serving a life sentence, contingent upon specific limitations in the license. The Secretary of State may, at any time, issue an order to recall an individual released on the license under this section to prison; however, this does not affect the Secretary of State's authority to subsequently reissue a license. If an individual is recalled, their license shall become void, and if they are at large, they shall be considered unlawfully at large.”

In the well-known case of “*Vinter and others vs. the United Kingdom*”⁵⁸ applicants who had been convicted of murder and were serving life sentences for the rest of their lives challenged their convictions before the European Court of Human Rights Grand Chambers. The Court agreed, stating that while the States have the discretion to determine appropriate lengths of sentences, they are not to be “grossly disproportionate” to the offenses committed, which is a settled principle under several European and international laws and applies to all prisoners, including those serving life sentences. The Grand Chamber relied on these materials to conclude that indefinite detention is a violation of human rights.

B. Remission Legislation in the USA

In the United States, people have questioned whether a mandatory life sentence is a fair punishment. The Eighth Amendment to the Constitution of the United States of America prohibits the use of any cruel or unusual form of punishment.

A mandatory life sentence was imposed on the defendant in the case of “*Rummel v. Estelle*.”⁵⁹ Three of his offenses were non-violent in nature. The preceding case was used to support the claim that the 8th Amendment had been violated because the obligatory life sentence was deemed to be disproportionate to the offense committed. When it came to formulating the punishment, it was also asserted that the court was playing the role of the legislature rather than the legislature itself. However, the United States Supreme Court did not rule this to

⁵⁸ *Vinter and others v United Kingdom* (Application nos. 66069/09, 130/10 and 3896/10) [2016] III ECHR 317.

⁵⁹ *Rummel v. Estelle*, Corrections Director is 445 U.S. 263, 100 S. Ct. 1133, 63 L. Ed. 2d 382 (1980).

be an amendment violation. The court ruled that the defendant faces an extremely low probability of spending the rest of his life behind bars.

The issue of a mandatory life sentence without parole was subsequently brought up in American courts. “*Solem v. Helm*”⁶⁰ ruled that this practice violated the 8th Amendment, leading to the creation of a proportionality test that takes into account the seriousness of the offense at hand.

Finally, the court maintained the validity of an irrevocable life sentence without the possibility of parole or remission in “*Harmelin v. Michigan*.”⁶¹ The SC ruled that a sentence of life in prison without the prospect of parole does not violate the Eighth Amendment in the case of “*Harmelin v. Michigan*.”

The “*Gregg v. Georgia*”⁶² The case resulted in the development of a proportionality test for use in deciding whether or not to uphold the death penalty. In cases involving punishments other than death, the majority concluded that the Eighth Amendment did not require a proportionality review.

The **Scandinavian Countries** are considered to be a role model in terms of their incarceration rates and humane prison conditions.⁶³ Even while awarding remission to convicted prisoners, they are capable of managing lower crime rates.

In 2012, the Brazilian Ministry of Justice in **Brazil** passed a bill that would allow inmates to have their sentences reduced if they read books.⁶⁴ The 1984 Criminal Enforcement Act, which mandates that the state prepare inmates for reintegration into society, is the basis of the statute. A 2012 amendment to the

⁶⁰ *Solem v. Helm* 463 U.S. 277 (1983).

⁶¹ *Harmelin v. Michigan*, 501 U.S. 957 (1991).

⁶² *Gregg vs Georgia* 428 U.S. 153 (1976).

⁶³ Alexis Riep, The Effects of Culture and Punishment Philosophies on Recidivism: Comparing Prison Systems in the United States and Scandinavia https://encompass.eku.edu/cgi/viewcontent.cgi?article=1680&context=honors_theses (last visited Jan 22, 2026).

⁶⁴ Remission for Reading, Brazil.

<https://www.uil.unesco.org/en/articles/remission-reading-brazil#:~:text=The%20Ministry%20of%20Justice%20of,for%20their%20return%20to%20society> (last visited Jan 20, 2026).

statute expanded remission to include study and reading as well as the number of days worked, which was the original basis for remission.

VI. Lacunae in the Existing Remission Policy under the Indian Criminal Justice System

Upon a thorough examination of the remission policy in India, it becomes evident that a multitude of Constitutional, statutory, and administrative frameworks are in place for its implementation. However, the failure to adhere to these Constitutional, statutory, and judicial guidelines raises significant concerns regarding the integrity of the Criminal Justice System in the following ways:

- The victim is the foremost sufferer of any crime, but the victim is not given any say while deciding upon a remission petition.
- Section 2(wa) of the Criminal Procedure Code of 1973⁶⁵ has a more limited definition of victim, which does not encompass those who are victims of state-sanctioned abuse of power. In order to speed up the process of victims receiving compensation, the concept of "victim" has been expanded under the new Criminal Law Section 2(1)(y) of BNSS, 2023.⁶⁶ This expansion removes the requirement that the accused person be formally charged. Nevertheless, the state's abuse of power has not been adhered to the victim description as per international standards.
- The convicts committing horrific crimes are also granted remission, which contradicts the Apex Court judgment in *Laxman Naskar vs. Union of India* (in reference to the release of Bilkis Bano convicts release). Even the recent release of Anand Mohan on remission, who was convicted of killing a civil servant on duty in Bihar, raises a serious question mark on the criminal justice system.
- In June 2022, the Union Home Ministry issued a guideline on remission that instructed no special remission for life convicts and

⁶⁵ Criminal Procedure Code, 1973, Section 2(wa), No. 02 Act of Parliament, 1974 (India).

⁶⁶ Bharatiya Nagrik Surkasha Sanhita, 2023, Section 2(1)(y), No. 46 Act of Parliament, 2023 (India).

rapists. However, the release of Bilkis Bano convicts and now the don turned politician in Bihar raises serious apprehension about the misuse of power in the hands of the government.

- Procedural irregularities have been found in many cases. In *Union of India vs. V. Sriharan*, it was held that the government would grant the remission where the trial was concluded. However, this verdict has not been followed time and again.
- Political interference, which influences the Jail Advisory Board and the changes brought in the remission policy of the States to suit its political mileage. In the case of the Bilkis Bano case, e.g., the trial was shifted to Bombay as the investigation of the crime was found to be influenced by the local politician, then how would the remission policy have worked impartially?
- There is no accountability. Remission is granted without proper evaluation and reformation of the convict's behavior in the correctional homes.
- There is a lack of clear guidelines or criteria for the grant of remission, leading to inconsistency and possible favoritism.
- There is even discrimination based on the social status of the convicts, where those from privileged backgrounds are granted remission more often than those from marginalized communities.
- The consultation procedure laid down under sec 435 of the CrPC, 1973, with the Central Government not followed even when the central agencies carry out the investigation.
- Judge from the trial court must be consulted in accordance with the provisions of section 432(2) of the Criminal Procedure Code before remission can be granted. However, nothing of this kind followed up in many cases of remission.
- Article 2(1)(g) of the ILC drafting articles on Prevention and Punishment of Crimes Against Humanity and Article 7(1)(g) of the Rome Statute define rape as a crime against humanity when it is committed as part of a widespread or systematic attack against any

civilian population. In India, crimes against humanity are not treated as such. The lack of acknowledgment of crimes against humanity allows perpetrators to acquire political favor and escape prosecution, as recognized by the Delhi High Court in *State v. Sajjan Kumar*. It urged the state to make changes, but its advice was disregarded.

- To better coordinate efforts between national and international jurisdictions in prosecuting the most serious crimes, the International Criminal Court (ICC) was set up. In accordance with the concept of complementarity outlined in Article 1 of the Rome Statute, the primary responsibility for trying grave crimes like crimes against humanity, mass rapes, etc., rests with domestic courts. However, the ICC can step in to pursue international crimes when governments are reluctant or unable to do so. According to Article 5 of the Rome Statute, the International Criminal Court (ICC) has authority over the gravest offenses that deserve international attention. One difficulty is that India is not a signatory to the Rome Treaty, establishing the ICC's authority.
- Remission should be granted by upholding the “Rule of law” and preserving human rights not only for the convicts but also for the victims and society as a whole.

VII. Conclusion

The Criminal Justice System is progressing from a retributive to a reformative justice system, and the punishment, as well as different types of relief earned at pre-trial, trial, and sentencing stages, reflect the same. Remission is an incentive for good work, maintaining good behavior, and contributing to prison discipline, as awarded by the State Govt and the Head of the Prison. Ordinary remission, special remission, and remission from the State Government are the three types of remission that are awarded to the convicts. In some areas, convicts can achieve parole by continuing their education while incarcerated. It has been proposed that completion of an accredited educational program should also be a factor in qualifying for exemption.

The Mulla Commission's report⁶⁷ and recommendations are the most comprehensive work on prison reforms to date, and a watershed moment in the fight for such reforms. A few of the recommendations suggested in connection with remission must be followed to ensure a great balance between convicts' human rights and victims' right to get justice. The suggestions are as follows: There should be formulation and embodiment of the "Directive Principles of National Policy on Prisons" under Chapter IV of the Indian Constitution. The concurrent list of the 7th Schedule must be expanded to include the subjects of 'prisons' and 'Allied Institutions.' Parliament should create nationwide uniform and comprehensive legislation governing all aspects of jail administration. The Central Government of India should design a model Bill for all the States and UTs to adopt if the subjects of prisons and affiliated institutions are not included in the Concurrent List.

Continuing further, the Mulla Committee recommended that convicts who had better chances of reformation and rehabilitation be freed from jail after 8-10 years of sentence after bringing necessary amendments under Sec 433A of the CrPC, 1973. Chapter XVI of the same goes on to recommend that the offenders who are likely to get a life sentence should be subjected to a pre-sentence investigation, which might be made possible by revising the Code of Criminal Procedure. The sentencing Judge should consider this evidence while making their decision.

When a life convict is admitted to jail, they should undergo a thorough social and psychological evaluation so that a specialized, individualized course of education and rehabilitation can be developed for them. A convict in prison should be given tasks that play to his strengths and should be taught a wide range of new talents. The Convicts from the countryside should be provided with vocational training. Inmates serving life sentences need specialized educational opportunities.

⁶⁷ IMPLEMENTATION OF THE RECOMMENDATIONS OF ALL-INDIA COMMITTEE ON JAIL REFORM
<https://www.mha.gov.in/sites/default/files/Mulla%20Committee%20implementation%20of%20recommendations%20-Vol%20I.pdf> (last visited Jan 22, 2026).

Every three months, all convicts undergoing life imprisonment should have their cases reviewed by the prison's classification committee.

The Department of Prisons and Correctional Services' central planning and research unit should investigate the frequency with which both socially conditioned criminals and individual offenders commit murder.

Guidelines should be established for the Review Board, Advisory Board, or Review Committee.

The Committee under Chapter XX, dealing with "remission, leave & premature release," suggested reviewing and rationalizing the rules determining which convicts are eligible to receive ordinary and special remission.

The Central Government of India should establish standard procedures & guidelines for granting State remission by State Governments and Union Territory Administrations. It is imperative that we immediately put an end to the practice of awarding remission on rare and unjustifiable grounds.

A panel should be established to discuss the possibility of earlier release through remission. The Inspector General of Prisons should be urged to consider granting remission in this case.

Remission should be granted quarterly to inmates serving sentences of more than 5 years (including life inmates) and monthly to those serving sentences of 2 months or more up to 5 years. Full calendar months should be used for normal remission calculations. A fraction of a calendar month is not a valid period for this benefit.

For the purposes of special remission, a period of time that is less than a full year shall be considered a full year. The maximum reduction of a prisoner's sentence should be equal to one-half of the length of his substantive sentence.

Prisoners convicted in a court-martial should be eligible for pardon under the same conditions as other inmates. The Mulla Committee has taken various grounds for reforming the convicts to be awarded ordinary or special remission.

In spite of this, it is vital for a nation like India, which places high importance on democracy and the rule of law, to have a comprehensible set of criteria that details a convict's possibility for reformation in addition to other considerations, such as the repercussions on victims, the community to which they belong, and

the current state of law and order. These would help the Jail Advisory Board, which reviews remission petitions, and the general public better comprehend the factors that led to the granting of clemency for some convicted felons but not for others who had committed comparable crimes. Thus, the guidelines for granting remission should be standardized.

Even though India is not a state party to the International Criminal Court (ICC), it is nonetheless required to comply with the laws and standards that belong to the ICC because these are a part of the body of international law. The state's remission order has provided an implicit incentive to prisoners and potential perpetrators while at the same time having a chilling impact on victims and potential victims of sexual and gender-based violence, particularly in the context of mass crimes. This is especially true when considering the context of mass crimes. The State has not met its responsibility under international law to ensure that women's rights are respected, protected, and fulfilled in light of these consequences.

While the new law has integrated the concept of justice into its title and asserts that it considers the rights of victims, the omission of victims in the context of remission renders the law a superficial endeavor. It inadequately addresses the complexities of victims' experiences and the necessary measures for alleviating their suffering.

The best way to ensure justice is to take care of both the convicts' human rights as well as the victims' rights, along with implications on the society at large, while deciding any petition of remission or early release, which even includes the Judiciary acting as the guardian of the fundamental rights.