

# Governor's pardon powers

August 5, 2021

**In news:** Recently, the Supreme Court has ruled that the Governor's power to commute sentences or grant pardons under Article 161 of the Constitution will override the limitations set by Section 433-A of the CrPC.

## About the case

The Supreme Court was considering an appeal filed by the State against the Punjab and Haryana High Court order which directed it to consider fresh policies in respect of exercise of powers conferred under Article 161 of the Constitution.

## Key highlights of the Court's ruling

- The Supreme Court said that the **state governments have no power under the criminal procedure code to release a person sentenced to life imprisonment prior to undergoing a minimum 14 years jail term.**
- The court held that **the power conferred on the Governor, though exercised on the aid and advice of the State(CoM),** is without any restriction of the actual period of imprisonment undergone by the prisoner.
- Referring to various judgments, including that of the Constitution bench in **Union of India v. V. Sriharan** , the court said that the **remission under Article 161 of the Constitution will override Section 433-A of the Code.**
- The court noted that a **prisoner has to undergo a minimum period of imprisonment of 14 years without remission in the case of an offence,** the conviction of which carries death sentence, to take benefit of policy of remission framed by an appropriate government under Section 432 of the Code in view of the overriding provision of Section 433-A of the Code.

- However, the power of the Governor to commute a sentence or to pardon is independent of any such restriction or limitation.
- **The state government can frame a policy of grant of remissions** either under Section 432 of the CrPC or under Article 161 of the Constitution.
- The Governor continues to exercise the power of commutation and release under Article 161 of the Constitution, notwithstanding Section 433-A of the CrPC.
- **The action of commutation and release** can thus be pursuant to a governmental decision and the order **may be issued even without the Governor's approval.**
- The Court further stated that under the Rules of Business and as a matter of constitutional courtesy, **the state may seek approval of the Governor, if such release is under Article 161 of the Constitution.**

### **Section 433-A of the Code Of Criminal Procedure, 1973**

**This section is related to restriction on powers of remission or Commutation in certain cases.** It says 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.**

### **Pardoning powers of Governor**

- **As per article 161,** the Governor of a State has the power to grant pardons, reprieves, respites or remissions of punishment or to suspend, remit or commute the sentence of any person convicted of any offence against any law relating to a matter to which the executive power of the state extends.

Please note that the **President can grant pardon(Article-72)** to a person awarded a death sentence and the President grants pardon in cases where the sentence is by a Court Martial . But a governor of a state does not enjoy these powers.