

Special remission to prisoners

June 16, 2022

In news— As part of the 75th year of India's Independence, the special remission would be granted to a certain category of prisoners, and they would be released in three phases – August 15, 2022, January 26, 2023 and August 15, 2023.

About special remission scheme-

- **The prisoners who would qualify for premature release under the scheme are women and transgender convicts of 50 years of age and male convicts of 60 years and above who have completed 50% of their total sentence period without counting the period of general remission earned.**
- **Among others eligible for remission are physically challenged/disabled convicts with 70% disability and more who have completed 50% of their total sentence period, terminally ill convicts, convicted prisoners who have completed two-thirds (66%) of their total sentence period and poor or indigent prisoners who have completed their sentence but are still in jail due to non-payment of fine imposed on them by waiving off the fine.**
- **The persons who committed an offence at a young age (18-21 years of age) and with no other criminal involvement or case against them and who have completed 50% of their sentence period would also be eligible for the remission.**
- **The age of the convicts should be determined on the basis of the matriculation or birth certificate.** In the absence of both, the age given in the judgement of the trial court could be taken into consideration.
- **Persons convicted with death sentence or where death sentence has been commuted to life imprisonment or persons convicted for an offence for which punishment of**

death has been specified as one of the punishments **would not be eligible for the grant of special remission.**

- **Persons convicted with sentence of life imprisonment, convicts involved in terrorist activities** or persons convicted under Terrorist and Disruptive (Prevention) Act, 1985, Prevention of Terrorist Act, 2002, Unlawful Activities (Prevention) Act, 1967, Explosives Act, 1908, National Security Act, 1982, Official Secrets Act, 1923, and Anti-Hijacking Act, 2016, **would not be eligible.**
- The **persons convicted for dowry death, counterfeiting currency notes, offence of rape & human trafficking,** offences under Protection of Children from Sexual Offences (POCSO) Act, 2012, Immoral Trafficking Act, 1956, Prevention of Money Laundering Act, 2002, Foreign Exchange Management Act, 1999, Black Money (Foreign Income and Assets) and Imposition of Tax Act, 2015, Narcotic Drugs Psychotropic Substances (NDPS) Act, 1985, Weapons of Mass Destruction and their Delivery Systems (Prohibition and Unlawful Activities) Act, 2005, Prevention of Corruption Act, 1988, offences against the State (Chapter-VI of IPC) and any other law which the State governments or the Union Territory administrations consider appropriate to exclude **would not qualify for the special remission.**
- The States and the Union Territories were told to constitute a **State Level Screening Committee** comprising the Home Secretary, Law Secretary, Director/Inspector-General of Prisons to examine the cases of eligible persons.
- The remission scheme is intended to ensure prison discipline and good conduct on the part of prisoners with the prospect of early release from prison as an incentive.

What is remission?

- **Remission implies reducing the period of a sentence**

without changing its character.

- Indian laws provide pardoning power sourcing from statutory and constitutional authorities.
- **Under Article 72, the President can grant pardons, reprieves, respites or remissions of punishment or suspend, remit or commute the sentence of any person convicted of any 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** of anyone convicted under any law on a matter which comes under the State's executive power.

What is the difference between statutory power and constitutional power?

- **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. **This power is available to State governments** so that they may order the release of prisoners before they complete their prison terms.
- **Under Section 433, any sentence may be commuted to a lesser one by the appropriate government.**
- However, **Section 435 says that if the prisoner had been sentenced in a case investigated by the CBI, or any agency that probed the offence under a Central Act, the State government can order such release only in consultation with the Central government.**
- **In the case of death sentences, the Central government may also concurrently exercise the same power** as the State governments to remit or suspend the sentence.
- Even though they appear similar, the **power of remission**

under the CrPC is different from the constitutional power enjoyed by the President and the Governor.

- Under the CrPC, the government acts by itself.
- Under Article 72 and Article 161, the respective governments advise the President/Governor to suspend, remit or commute sentences.
- In *Maru Ram etc. vs Union of India (1980)*, the Supreme Court said: "Section 432 and Section 433 of the Code are not a manifestation of Articles 72 and 161 of the Constitution but a separate, though similar, power."
- The court also reiterated that **life sentence meant imprisonment for life until the last breath, unless remitted by the government.**
- This was also **a landmark decision in that it declared that the President and Governor do not independently exercise their power** when disposing of mercy petitions or pleas for remission or commutation, but only on the advice of the appropriate governments. **This principle was reiterated in Kehar Singh (1988).**