

BLOGS

Power of President Regarding Remission: What the Bilkis Bano Judgment Really Changed

Shruti chauhan · 11 Sep 2026

Can a state government simply decide to release convicts whose crime shocked an entire nation? This exact question sat at the heart of one of India's most talked about legal battles, and it ended with the Supreme Court delivering a powerful lesson on the power of remission.

The Bilkis Bano judgment did not just decide the fate of eleven convicts. It clarified, in sharp and unambiguous terms, how the power of remission under the Indian Constitution is actually meant to work, and who truly holds the authority to exercise it.

In this article, we explain the power of remission held by the President and the Governor, and use the Bilkis Bano case to show exactly where things went wrong the first time around.

What Is the Power of Remission?

Remission means **reducing the period of a sentence without changing its character**. A ten year sentence reduced to six years, served in the same form of imprisonment, is a straightforward example of remission.

This is different from a pardon, which completely wipes out both the conviction and the sentence, and different from commutation, which changes the very nature of the punishment, such as converting a death sentence into life imprisonment.

The power of remission in India flows from two constitutional sources and one statutory source. [Article 72](#) gives this power to the President, [Article 161](#) gives a similar power to the Governor, and [Section 432](#) of the Code of Criminal Procedure, 1973 gives the "appropriate government" the power to suspend or remit sentences in ordinary criminal cases. The definition of "appropriate government," which became central to the Bilkis Bano dispute, is found specifically in [Section 432\(7\)](#) of the CrPC.

Article 72: The President's Power of Remission

Article 72 empowers the President to grant pardons, reprieves, respites, or remissions of punishment, and to suspend, remit, or commute the sentence of any convicted person. This power specifically extends to three categories of cases.

These are cases involving punishment by a court martial, cases involving an offence against a law relating to a matter within the Union's executive power, and every case where the sentence is a sentence of death.

Illustration: If a person is sentenced to death by a trial court for an offence under a central law, and all appeals have been exhausted, the convict may approach the President under Article 72 seeking remission or commutation of that death sentence.

Article 161: The Governor's Power of Remission

Article 161 mirrors this power at the state level, allowing the Governor to grant pardons, reprieves, respites, or remissions of punishment for offences against any law relating to a matter within the state's executive power.

Unlike the President, the Governor's power under Article 161 does not extend to court martial cases, and this distinction is frequently tested in law exams.

Whose Advice Governs This Power?

Neither the President nor the Governor exercises this power on personal whim. Under [Article 74](#), the President acts on the aid and advice of the Council of Ministers. Similarly, the Governor generally acts on the advice of the state Council of Ministers.

In *Maru Ram v Union of India*, the Supreme Court held that this power cannot run riot and must be exercised sensibly, since public power should never be wielded arbitrarily.

Can Courts Review This Power?

For years, there was a lingering doubt over whether courts could examine how the President or Governor exercised this power, since it appeared to be a purely discretionary act of grace.

In ***Kehar Singh v Union of India***, involving the assassination of Prime Minister Indira Gandhi, the Supreme Court held that while the President may independently examine the merits of a case, the exercise of this power falls within the judicial domain and can indeed be examined through judicial review.

Epuru Sudhakar v Government of Andhra Pradesh went further, holding that clemency is not a mere privilege but a constitutional duty, and can be struck down on limited grounds such as mala fide intent, arbitrariness, or reliance on entirely irrelevant considerations.

Swaran Singh v State of U.P. applied this exact principle to a Governor's remission order, quashing it because the Governor had been kept unaware of crucial adverse facts before passing the order.

The Bilkis Bano Case: Setting the Stage

Now let us apply all of this to the Bilkis Bano case, formally titled [Bilkis Yakub Rasool v Union of India](#), decided on January 8, 2024, and reported as 2024 INSC 24.

During the 2002 Gujarat riots, Bilkis Bano, then twenty one years old and five months pregnant, was gang raped by a mob, and fourteen members of her family, including her three year old daughter, were murdered. Due to concerns over a fair trial, the Supreme Court had transferred the trial from Gujarat to Maharashtra, where a special CBI court in Mumbai convicted eleven men in 2008 and sentenced them to life imprisonment.

In 2022, these eleven convicts sought premature release after completing over fourteen years in prison. On May 13, 2022, a bench of the Supreme Court directed the Gujarat government to consider their remission applications, reasoning that the crime occurred in Gujarat. Acting on this direction, the Gujarat government granted remission and released all eleven convicts on August 15, 2022.

The Core Legal Question: Who Is the Appropriate Government?

Bilkis Bano challenged this release, arguing that Gujarat was never the appropriate government to decide remission in the first place. Under [Section 432\(7\)](#) of the CrPC, the appropriate government for remission purposes is the government of the state where the person was actually convicted and sentenced, not necessarily where the crime occurred.

Since the trial itself had been transferred to Maharashtra by the Supreme Court's own earlier order, and the conviction and sentencing happened there, the petitioners argued that only the Maharashtra government had the constitutional and statutory authority to consider remission.

What the Supreme Court Held

A bench of **Justices B.V. Nagarathna and Ujjal Bhuyan** delivered a scathing verdict, quashing the Gujarat government's remission order in its entirety.

The Court held that Gujarat was never the appropriate government for this purpose, since the trial, conviction, and sentencing had all taken place in Maharashtra. By granting remission anyway, Gujarat had effectively usurped a power that constitutionally and statutorily belonged to another state government.

The Court went further and held that the earlier May 13, 2022 order, which had directed Gujarat to consider these remission applications, was itself obtained by playing fraud on the court, since relevant facts about the transfer of trial had been suppressed. The bench declared that judgment a nullity, meaning it had no legal effect at all.

The Court directed all eleven convicts to surrender within two weeks, effectively sending them back to prison to serve out the remainder of their life sentences.

Why This Judgment Matters for the Power of Remission

The Bilkis Bano judgment did far more than resolve one case. It firmly settled the principle that the power of remission cannot be exercised by any government that merely feels connected to the crime. It must be exercised strictly by the appropriate government as defined under the law, based on where the trial and sentencing actually took place.

The judgment also reinforced that even an order of the Supreme Court itself can be revisited and declared a nullity if it is later shown to have been obtained through fraud or suppression of

material facts, a principle with implications well beyond this specific case.

Finally, it reaffirmed that the power of remission under Articles 72 and 161, and under Section 432 CrPC, is never immune from judicial review. Courts can and will intervene when this power is exercised without jurisdiction, in bad faith, or through the suppression of important facts.

Conclusion

The power of remission under Articles 72 and 161 exists to temper justice with mercy, but as the Bilkis Bano judgment powerfully demonstrates, this power can never be exercised outside the boundaries the Constitution and the law have drawn.

By restoring the convicts to prison and firmly identifying Maharashtra, not Gujarat, as the appropriate government, the Supreme Court sent a clear message that the power of remission remains a carefully limited constitutional tool, not an instrument that any government can invoke on its own terms.

REMISSION IN THE INDIAN CONSTITUTION

WHAT IS REMISSION?

Reduction of the sentence without wiping out the conviction.

The nature of the conviction remains unchanged.



CONSTITUTIONAL POWERS

Article 72 — President

Power to grant pardons, reprieves, respites or remissions, and to suspend, remit or commute sentences in specified constitutional cases.



Article 161 — Governor

Corresponding power for offences within the State executive sphere.

STATUTORY POWER

Section 473

Bharatiya Nagarik Suraksha Sanhita, 2023

Appropriate Government may suspend or remit sentences, subject to statutory restrictions.



KEY LIMIT

Section 475 — BNSS

In specified life-imprisonment cases where death is one of the punishments, release cannot be granted before **14 years** of imprisonment.



EXAM TAKEAWAY

Remission reduces the sentence; it does NOT erase the conviction.

All about remission in India