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Remission and Commutation of Sentences a Social Perspective

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ABSTRACT

Law always had substantive questions regarding morality and sociality and the correlation between the two. A logical legal system is one to crave for in every nation. But, our constitutional structure is one that keeps people and their representatives above everyone else. Opinions of the populace and media can sometimes affect our very legal system and even the laws which we are bound by. It isn't necessarily true that justice always prevails. In India there are 59,87,477 pending cases in the High Courts across the country. This number clearly indicates that the courts are overburdened and the executive is sharing that weight along with the judiciary. The courts endeavor to pass decisions in light of justice, equity and good conscience. However, even the hands of justice are tied sometimes especially when things are out of their power. One such function/issue/topic/conundrum or part of the legal system that are not within the inherent powers of the judiciary are the ability to grant pardons, remissions and commutation of sentences.

Such powers are vested in the hands of the State, essentially, the executive. They are more threatened to be misused because of corruption and malpractices by people of status. In this article we shall discuss the laws relating to pardons, remission and commutation of sentences in India along with various case studies and also discuss remissions with particular emphasis on sociality, morality and justice.

I. INTRODUCTION

Remission and commutation of sentences are two legal mechanisms used in the criminal justice system to reduce the length or severity of a criminal sentence. Both are designed to alleviate the burden of punishment on offenders who have shown good behavior, rehabilitation, or other mitigating circumstances. However, there are important differences between the two concepts.

Remission of sentences refers to the process by which a portion of a criminal sentence is reduced or forgiven by a court or other authorized entity, while commutation of sentences involves substituting a lesser penalty for the original sentence. In the case of remission, the offender serves a reduced sentence but remains in custody or under supervision. In contrast, commutation results in the offender being released from custody or having their sentence reduced to a non-

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custodial one. Remission can be granted for both custodial sentences (imprisonment) and non-custodial sentences (such as community service or probation).

The process of granting remission or commutation varies from country to country and can be influenced by factors such as the type of crime committed, the severity of the sentence, and the policies of the penal system. In some cases, the decision to grant remission or commutation may be at the discretion of a judge or parole board, while in other cases, there may be established rules or guidelines for granting remission based on a prisoner's conduct or progress.

Overall, remission and commutation of sentences are important tools in balancing the need for punishment and accountability with the opportunity for rehabilitation and reintegration into society. By granting remission or commutation, the justice system acknowledges the possibility of a positive change in the behavior of offenders that encourages them to take responsibility for their actions and to strive towards a better future.

Remissions have always been a social conundrum and a debatable subject in law. Whether a person convicted of an offence deserves to roam free in the society from where they were cast out. Whether this violates the right of justice for the victims of that person. Such questions are not important when a person convicted of a petty offence but they become pertinent when someone who has committed a heinous crime (like murder or rape) is allowed to roam free in the society.

This also raises a moral question which has greatly exercised the minds of both jurists and philosophers. *Why should people be punished for their crimes?* The answer for the same is simple. It is the theory of ethical retribution also called retributive justice which holds that wrongdoers are punished in accordance with the moral law that requires them to be punished, or at any rate permits it to serve the ends of justice, equity and good conscience.

II. THE INDIAN LEGAL SYSTEM ON REMISSION AND COMMUTATION

In India, laws regarding remission and commutation of sentences are provided in our Constitution, Code of Criminal Procedure and the Army Act as well.

(A) Constitutional Provisions

Under Article 72 of the Constitution of India, the President has been given power to grant pardons etc. and to suspend, remit and commute sentences in certain cases. The extent of this power is large and wide since it covers each and every criminal case within the executive power of the Union under Article 53 of our Constitution and also cases that have been Court martialed as well. This gives the President and the Central government significant prowess; however, such

a function can also be exercised by the Governor of a State under Article 161 of our Constitution although it only extends to cases within the Executive power of the State and does not cover cases instituted in Military Courts.

(B) Code of Criminal Procedure, 1973

Besides the substantive laws mentioned in the Constitutional provisions, the Code of Criminal Procedure, 1973 also has certain clauses through which an '*appropriate government*' can grant suspension, remission and commutation of sentences. These provisions also introduce certain procedural aspects that need to be fulfilled if a convicted person wants to remit their sentence. Section 432 of the Code provides for the Power to suspend or remit sentences. The major points as breakdown of the provision is as under-

- A person sentenced to punishment for an offence can get whole or part of their sentence suspended or remitted.
- The person may be remitted either without conditions or with conditions that they may accept.
- Only an appropriate government can remit a convicted person. Now, an appropriate government may be the central government or the state government conditional upon whether the power to remit that person lies within the extent of their executive powers. If the liberty of any person has been restricted or any liability has been imposed on him or his property by the order of any Criminal Court, then in these cases, only the Central government can remit such person of their punishment. In all other cases, the state government can also remit a person of his sentence.
- A convicted person who wants his sentence to be remitted can make an application of remission to the appropriate government. After receiving such application whether the person shall be remitted or not lies upon the discretion of the government. The government may also ask the presiding judge of the Court in which that person was convicted for opinion to get more clarity about the matter before making their final decision.

The proviso for Section 432(5) also mentions that in case of sentences (other than a sentence of fine), where a male person above eighteen years of age is convicted, such application for remission shall be presented by-

- The officer of the jail where that person is serving, when the application is made by the person himself.

- Where the application is made by any other person on behalf of the convicted person, a declaration that the convicted person is in jail needs to be given along with the application.

Regarding commutation, Section 433 of the Code provides for four clauses where an appropriate government can without the consent of the person sentenced commute-

- a sentence of death, for any other punishment provided by the Indian Penal Code (45 of 1860);
- a sentence of imprisonment for life, for imprisonment for a term not exceeding fourteen years or for fine;
- a sentence of rigorous imprisonment, for simple imprisonment for any term to which that person might have been sentenced, or for fine;
- a sentence of simple imprisonment, for fine.

(C) Limitations to Remissions and Commutations

By way of THE CODE OF CRIMINAL PROCEDURE (AMENDMENT). ACT, 1978, Section 433A was inserted which restricted the power of remission and commutation enshrined with the executive of the country. This is the only codified restriction that has been imposed on the government's power to grant remission and commutation of sentences. Section 433A provides that if the person is convicted for an offence where death is one of the punishments provided by law or where a punishment of death has been commuted to that of imprisonment for life under Section 433 of the Code, the person so convicted shall not be released from prison unless they had served at least fourteen years of imprisonment.

Another restriction has been given under Section 32A of The Narcotic Drugs and Psychotropic Substances Act, 1985, whereby no suspension, remission or commutation in any sentence awarded for sentences passed under the Act. The judgement of *Maklool Singh v. State of Punjab*² affirmed this restriction that the power of the government to grant remissions under the Code have been taken away by this provision.

(D) Army Act, 1950

In general, the army can be described as a branch of the military with specially trained personnel who serve their country in both war and peace. The laws under which offences committed by military personnel are adjudged are different from the laws of ordinary civilians. The Army Act,

² 1999 Cr. L.J. 1825 (S.C.)

1950 consolidates and amends the law related to the regular Army.

Under the Army Act, the entire Chapter XIV talks about pardons, remissions and suspensions of sentences. Section 179 exclusively talks about remissions and pardons. The Central Government, the Chief of Army Staff can grant remission or pardon to any convicted army officer.

In case of sentences which the convicted officer could have confirmed or which did not require confirmation exclusively, the officer commanding the army, army corps, division or independent brigade in which such person at the time of conviction was serving, or the prescribed officer may also grant pardon or remission.

III. REMISSION OF SENTENCES IS IT JUSTIFIED?

All laws have a purpose to serve the ends of justice. The purpose of granting remission or commutation of sentences is to lighten the burden of punishment on offenders either in recognition of their good behavior and rehabilitation or for other reasons. Another purpose for granting remissions is to reduce the strength of prisoners in jails. The idea is to release prisoners who have been showing decent behavior or people who are too old to remain in prison so that there is space to place the newly convicted persons to serve punishment for their crime. The real question is: Is this Justice for the victims of the crime?

Earlier we talked about *Retributive Justice*. Now, retributive justice can be explained *as a refinement of the primitive urge to take revenge for injury, which has a biological explanation*. All human beings have emotions of anger and aggression in them especially if something wrong is being committed. We also have a self-defense mechanism that utilizes these two emotions in retaliation towards our attackers which prevents them from repeating their act of aggression. Such innate aspects of human beings have always been in existence, the only difference being that we have sublimated our anger to moral disapproval and the legal system.

When an offender is allowed to roam free in the society the trust of human beings in the legal system may be hurt. The general idea is that wrongdoers should be punished for their crimes and no wrongdoer should escape. If a prisoner behind bars for a heinous offence is remitted, the victim of his crime might think that the punishment was not enough. Not just the victim, but the society might also think it as unfair and unjustifiable.

In the most recent case where the convicts of the Bilkis Bano case were remitted by the State Government of Gujarat there was a heated discussion about it as according to many the release was not justified. However, the government had given the explanation that the convicts were

released on the 1992 policy for remission rather than the recent 2014 policy. In the 2014 policy, detailed guidelines about categories of convicts who can or cannot be given relief are given. The Crime committed in the Bilkis Bano Case was of rape and murder. The offenders were convicted in 2008 and the new policy for remission came in 2014. Thus, the offenders were given remission under the 1992 policy as it was in effect when they were convicted. Now, this raises an important question: whether the gravity of a crime can increase or decrease with time? If it does, how are offences which are otherwise not serious enough in the laws before that under the current laws be adjudged now? And lastly, whether the remission of the Bilkis Bano convicts, justiciable or not?

Some philosophers, lawyers and jurists have argued that retributive way of justice is old and in the current legal system we follow the utilitarian way of justice. The utilitarians take the view that the whole of morality is concerned with maximizing human happiness, or welfare. They have naturally concluded that offenders are punished for social reasons, looking to the future, not for metaphysical reasons, looking to the past. Bentham, the father of utilitarianism, wrote:

*"All punishment is mischief. All punishment in itself is evil. It ought only to be admitted in as far as it promises to exclude some greater evil."*³

Punishment is given for something you did in the past however; the utilitarian approach believes that the justification of giving a punishment looks towards the future. A famous quote by George Savile, Marquis of Halifax says-

"Men are not hanged for stealing horses, but that horses may not be stolen."

Therefore, Justice is not something that should be retributive, but something that must be logical in nature. Punishments are given to prevent people from committing crime. Remitting their sentences is the opposite of a punishment, a reward given to them and such reward may not always be appealable to the general public. That is why, like punishments, remissions must be justifiable as well so that the trust of the people stands firm in the current system. The worst kind of system is when people take law into their own hands and do it in the heat of their emotions and feelings of revenge. To prevent the society from falling into chaos, justice must prevail to serve the ends of justice as well.

IV. REMISSIONS AND THEIR SOCIAL IMPACT

Earlier, we talked about how remissions can affect the victim's trust on the system and justice

³ Jeremy Bentham, *An Introduction to the Principles of Morals and Legislation*, Chap. 15 s.1 (Clarendon Press, The British Library, 1876)

itself. But, if we think about it, a convicted person released in society will have to face many problems of communal acceptance as well as some people might not see them as a human being but only as a criminal. So, the problem of remission runs both ways.

The Benefits of Remission are reasonable as we can reduce the prison population that means more space to place newly convicted people. The drawbacks however, are far too many as there is the issue of reintegrating the released personnel in the society and public safety concerns for the general public too. It can make people doubt the criminal justice system sometimes and doubt can further garnish the hatred that might already be present within them.

Overall, it is a multifaceted approach and every remission must be meticulously examined by the authorities based on the facts and circumstances of the case. The heinousness of the crime committed and the harm suffered by the victim are things to consider while granting remission.

V. REMISSIONS AND COMMUTATION, JUDICIAL INTERPRETATION OF LAWS

Coherently, remissions are a function of our justice system. However, the power to grant remissions is given to the executive or the government. Thus, there have been various judgements by the High Courts reversing executive orders of remission on one ground or the other.⁴

In *Epuru Sudhakar & Another v. Govt. of A.P. & Ors.*⁵ the Court held that reasons had to be indicated while exercising power under Articles 72/161. It further observed that the orders under Articles 72/161 could be challenged on the following grounds:

- a) that the order has been passed without application of mind;
- b) that the order is mala fide;
- c) that the order has been passed on extraneous or wholly irrelevant considerations;
- d) that relevant materials have been kept out of consideration;
- e) that the order suffers from arbitrariness.⁶

The placing of life convicts in a separate group distinct from those who have not been sentenced to imprisonment for life and fixing separate yardsticks for remission to the two grounds is not violative of Article 14 of the Constitution. The exclusion of prisoners who have been convicted

⁴ See, *Veeramchaneni Raghavendra Rao v. Govt. of A.P.*, 1985 Cri LJ 1009 (AP); *Kavuri Sudesthamma v. State of A.P.*, 1985 Cri LJ 1890 (AP); *Bir Singh v. State of H.P.*, 1985 Cri LJ 1458 (HP); *Rakesh Kaushik v. Delhi Admn.*, 1986 Cri LJ 566 (Del); *Baljit Singh v. State of Punjab*, 1986 Cri LJ 1037 (Punj); *Jayant Veerappa Shetty v. State of Maharashtra*, 1986 Cri LJ 1298 (Bom).

⁵ AIR 2006 SC 3385

⁶ *Ibid.*

and sentenced to imprisonment but, happen to be on bail on the relevant date, presumably because their appeal or revision may be pending is discriminatory and violative of Article 14 of the Constitution.⁷

VI. CONCLUSION

Punishments are a way to prevent crime in society. Remissions and commutation on the other hand, have the effect of abrogation on punishments. Both are something that are completely opposite in meaning and purpose. But, to say that the rational justification of punishment is the prevention of crime is not to say that punishment always has this effect, or that it is wisely and moderately used. It has been seen that comparatively mild punishments have the same effect as comparatively severe ones. So, a secondary purpose for punishment becomes that the convicted reflects on their crimes and realizes their guilt. That is also one of the reasons why remission or commutation would be granted.

In conclusion, remission and commutation of sentences are two legal concepts that can have a significant impact on society. Remissions can help reduce the burden on the criminal justice system, promote reintegration into society, and improve public perception of fairness. Commutations, on the other hand, can offer a second chance to those who have been convicted of crimes and have demonstrated rehabilitation. While there are potential drawbacks to these practices, such as concerns over public safety, the careful application of remissions and commutations can be a valuable tool in achieving the goals of the criminal justice system. Ultimately, it is important to balance the interests of justice, rehabilitation, and public safety in determining when and how to apply these legal concepts.

⁷ *Satish Kr. Gupta And Ors. vs The State Of Bihar And Ors.* 1991 Cri. L.J. 726