CHAPTER 8

Remission and Commutation
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The executive's act of grace in showing mercy to an accused or a convicted person takes several forms such as reprieve, pardon, respite, commutation, remission etc.\(^1\) Pardon and remission stand on different footings and give rise to different consequences.\(^2\) Remission and suspension are also not the same.\(^3\) The effect of an order of remission is to entitle the prisoner to his freedom on a certain date. Therefore, once that day arrives, he is

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2. The vital difference between a pardon and a remission of sentence lies in the fact that in the former case, it affects both the punishment prescribed for the offence and guilt of the offender. A full pardon may blot out the guilt itself. In the case of remission the guilt of the offender is not affected nor is the sentence of the court affected, except in the sense that the person concerned does not suffer incarceration for the entire period of the sentence but is relied from serving out a part of it. *Khagendranath v. Umesh Chandra Nath*, A.I.R. 1958 Assam 183 at 187.

entitled to be released, and in the eye of law he is a free man from that moment. As soon as there is a breach of the conditions of the remission, the remission can be cancelled and the prisoner committed to custody to undergo the unexpired portion of the sentence.4 As the sentencing is a judicial function whatever may be done in the matter of executing that sentence like remission, pardon etc., the executive cannot alter the sentence itself. Prisoners in Australia are generally eligible to earn remissions for good behaviour with the effect that the sentences imposed by the courts may be shortened.5 The details of remission systems vary widely between the different jurisdictions, with short sentence prisoners being ineligible for remission in some cases.6 Prison administrators frequently argue that remission systems are a necessary aid to control, as they encourage good behaviour, but it is common practice for maximum remission to be granted in all cases except where prisoners have been charged with offences while in prison.

6. Ibid.
Statutory Provisions of Remission

By virtue of Article 72 of the Constitution of India the President is having the power to grant pardon and to suspend, remit or commute sentences passed by courts. Similarly the Governor of a State is vested with 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.  

Apart from the powers conferred on the President of India and the Governors, Section 432 of the Criminal Procedure Code empowers the government to suspend or remit sentence. When a person has been sentenced to punishment for an offence, the government may at any time and with or without conditions, suspend the execution of a sentence or remit the whole or part of the punishment under this section.

The procedure to be followed by the government is also enumerated in this section. On receiving any application for the suspension or remission of a sentence,

7. See Constitution of India, Article 72.
the government has to require the concerned court to state its opinion with reasons as to whether the application should be granted or refused. A certified copy of the records has to be sent along with such opinion. The government may cancel the suspension or remission of a sentence, if in its opinion the condition for granting such suspension or remission is not fulfilled; the offender may thereupon, if at large, be arrested by any police officer without a warrant and remanded to undergo the unexpired portion of the sentence.

The condition on which the sentence is suspended or remitted may be one to be fulfilled by the offender or one independent of his will. It may be noted that on breach of any condition of suspension or remission, the sentence is not automatically revived. It is only when the government chooses to pass an order of cancellation of the suspension or remission that the convict is arrested and is required to serve the unexpired portion of the sentence.

The power under Article 72 and 161 of the Constitution is absolute and cannot be fettered by any statutory provisions such as Sections 432, 433 and 433A of the Criminal Procedure Code. This power cannot be altered,
modified or interfered within any manner whatsoever by any statutory provisions or Prison Rules.\footnote{8}

There are certain norms to be adopted while exercising these powers. The order of remission must be unconditional. A pardon may be absolute or conditional.

**Consequences of Remission**

The effect of sentence was a matter of confusion for a certain period. It has been set at rest by the Supreme Court in \textit{Sarathchandra Rabha v. Khagendranath}\footnote{9}. The appellant Sarathchandra was convicted for three years rigorous imprisonment. The sentence was later remitted to a period lesser than two years: He filed a nomination paper to an election to legislative council. It was rejected on the ground that he was disqualified under Section 7(b)\footnote{10} of

\footnote{8 State of Punjab v. Joginder Singh, A.I.R. 1990 S.C. 139. 9. (1961) 2 S.C.R. 133. 10. 7(b) "disqualified" means disqualified for being chosen as, and for being a member of either House of Parliament or of the legislative Assembly or Legislative Council of a State.}
the Representation of People Act 1951. The period of remission granted to him was not considered by the returning officer to take such a decision. The appellant contended that in view of the remission his sentence in effect was reduced to a period of less than two years and therefore he could not be said to have incurred disqualification contemplated in the Act. Dismissing the appeal Justice Wanchoo held:

"... the effect of an order of remission is to wipe out that part of the sentence of imprisonment which has not been served out and thus in practice to reduce the sentence to the period already undergone, in law the order of remission merely means that the rest of the sentence need not undergo, leaving the order of conviction by the court and the sentence passed by it untouched".

Eventhough the appellant was released from jail before he had served the full sentence of three years imprisonment he had actually served only about sixteen month's imprisonment, it did not in any way affect the
order of conviction and sentence passed by the court; the sentence remained as it was. The decision in Rabha's case is a clear deviation from Venkatesh Yaswant Despande v. Emperor\textsuperscript{12}. In this case Bose, J. has observed:\textsuperscript{13}

"The effect of an order of remission is to wipe out the remitted portion of the sentence altogether and not merely to suspend its operation; suspension is separately provided for. In fact, in the case of a pardon in England statutory and other disqualification following upon conviction are removed and the pardoned man is enabled to maintain an action against any person who afterwards defames him in respect of the offence for which he was convicted. That may not apply in full here but the effect of an order of remission is certainly to entitle the prisoner to his freedom on a certain date".

Remission - A Sample Study

In a significant decision the Kerala High Court has projected the ignorance of the prison authorities regarding the procedure that are to be followed in case of remission of sentences.

\textsuperscript{12} A.I.R. 1938 Nag. 513.
\textsuperscript{13} Id., p.530.
Under the provisions of Kerala Prisons Rules 1958 a prisoner can earn remission. Detailed procedure is laid down under the Rules for awarding remission.\textsuperscript{14} There are two types of remission that can be earned by a convict prisoner while in prison. They are ordinary remission and special remission. Ordinary remission at the scale of two days per month can be earned by a prisoner if his conduct inside the prison is good. For special service rendered by the prisoner special remission is allowed.\textsuperscript{15} This is intended to maintain prison discipline by the prisoners and for their co-operation in prison administration.

The following are the important services that can be rendered.

(1) Assisting in detecting or preventing breaches of prison discipline or regulations, (2) Success in teaching handicrafts, (3) Special excellence in or greatly increased outturn of work of good quality, (4) Protecting an officer of the prison from attack, (5) Assisting an officer of the prison in the case of outbreak of fire or similar emergency, (6) Economy in wearing clothes. Apart from that special remission for 15 days is to be granted to a prisoner donating blood on every such occasion.\textsuperscript{16}

\textsuperscript{14} See Kerala Prisons Rules 1958, Chapter XVIII.
\textsuperscript{15} Id., Rule 312.
\textsuperscript{16} Id., Rule 312-A.
Special remission not exceeding sixty days per year can be awarded by the Inspector General or Government and not exceeding thirty days per year can be awarded by the Superintendent for special services rendered by the prisoners.\textsuperscript{17} The total remission awarded to a prisoner cannot exceed one third of his sentence.\textsuperscript{18} But for special remission earned by donating blood this limitation is not applicable.\textsuperscript{19} This remission is allowed on every such occasion. In \textit{Robert Sebastian v. State of Kerala}\textsuperscript{20} the substantive question involved was whether the Inspector General of Prisons had the power to cancel the general remissions earned by a convict like the one earned by donating blood as disciplinary measure under the Kerala Prison Rules and thereby make the government order for

\textsuperscript{17} Id., Rule 313. Remission in lieu of wages is an example for this. Kerala Jail Manual, Rule 528 says, If a prisoner wishes to have remission of sentence in lieu of wages, he may purchase the remission at the rate of 25 ps. per day subject to the condition that not more than 30 days special remission by the Superintendent of the Prison and 60 days by the Inspector General of Prisons shall be so granted to any one convict in a year.

\textsuperscript{18} Id., Rule 315.

\textsuperscript{19} This was effected by an amendment to rule 315. Amended as per G.O.M.S.27/74/Home dated 15.2.1974.

\textsuperscript{20} 1981 K.L.T. 582.
remission not applicable to him. Holding that the Inspector General of Prisons did not have the power to cancel the remission earned outside the prison rules, the division bench of the court, consisting of Acting Chief Justice P. Subramonian Potti and Mr. George Vadakkel also directed the State government to examine other similar cases and release the convicts.

Sebastian, who was undergoing a seven year term of imprisonment had earned remissions totalling four years, five months and twenty-four days and this was cancelled by the Inspector General of Prisons for his involvement in an outbreak of violence in the Trivandrum Central Jail. His case, filed from the Cannanore Central Jail was that special remissions earned by him by donating blood could not be forfeited as he had purchased it by parting with his

21. Rule 301 deals with forfeiture of remission. It reads:— "If a prisoner is convicted of an offence committed after admission to jail under Sections 147, 148, 152, 224, 225B, 302, 303, 304, 304A, 306, 307, 308, 323, 324, 325, 326, 332, 333, 352, 353 or 377 of the Indian Penal Code or of an assault committed after admission to Jail on a warder or other officer or having been released under rule 542 breaks his bond given in Form No.61-B the remission of whatever kind earned by him under these rules up to the date of the said conviction or his temporary release may, with the permission of the Inspector-General of Prisons be cancelled. A prisoner temporarily released under rule 542 who breaks his bond and is again admitted to jail after re-capture shall earn no remission under these rules for such period as the Inspector General of Prisons may order."
The division bench said that the more important question was whether the order of forfeiture of all remissions up to July 7, 1978 would operate to forfeit remissions outside the scope of the Kerala Prison Rules.\(^{22}\) Pointing out that prison rules could not override the provisions of the Constitution, the bench said that in fact Rule 301 of the Kerala Prison Rules did not purport to infringe upon the remission power of the State Government or the Central Government.\(^{23}\) It dealt only with forfeiture and remissions earned under these rules. That did not in any way operate upon the general remissions made by the Governor or the President. Remission made under Section 432 of the Criminal Procedure Code would be outside the purview of the forfeiture made by the Inspector General of Prisons in regard to remissions earned under the Kerala Prison Rules. By applying the rule of remissions and the scope of Rule 301 of the Kerala Prison Rules in the manner it had been done in this case, others who were entitled to release might still be in the prisons of the State.

The decision of Kerala High Court in Krishnan Nair v. State of Kerala\(^ {24}\) highlights the inadequacies of

\(^{22}\) 1981 K.L.T. 582.  
\(^{23}\) Ibid.  
\(^{24}\) 1983 K.L.T. 945.
our prison administration. It is important for two reasons. Firstly the case highlights the ignorance of the prison authorities regarding the procedure to be followed in case of remission of sentences. It also signifies the enthusiasm shown by the judiciary to protect the rights of prisoners by pointing out the areas of injustice in the present remission system.

Krishnan Nair was granted special remission by the Governor under Article 161 of the Constitution on recommendation of the Council of Ministers. No condition was specified in the order. But the prison authorities released him only after getting from him a bond which obligated him to follow the conditions under Rule 547 and 548 of Kerala Prisons Rules. After a few days of his release, on a report of the welfare officer that Krishnan Nair was not observing the conditions of the bond, the

25. Rules 547 and 548: Rule 547 provides that the Superintendent of the Jail from which a prisoner is released conditionally shall see that a bond indicating the conditions of release and the unexpired portion of sentence on the date of such release is executed by the prisoner. Rule 548 provides that in the event of the failure of the prisoner to observe any of the conditions under which he was released, the Government can issue appropriate orders revoking their earlier orders of conditional remittance of the unexpired portion of sentence which enabled his premature release under Section 432 of the Criminal Procedure Code so that the said prisoner can be arrested.
Inspector General of Prisons reported the matter to the Government to take action. The Government in turn ordered the cancellation of his remission which resulted in his arrest and remand to the jail. After one year's stay in prison Krishnan Nair sent a letter to the Chief Justice of the High Court alleging that he was illegally detained. That letter was taken up as a writ petition and notice was issued to the Government.

Answering the question whether Rules 547 and 548 of the Kerala Prisons Rules could be imposed by the prison authorities to a prisoner released under Article 161 of the Constitution as has been done in Krishnan Nair case, the court observed:26

"This we are told is a ritualistic recital normally incorporated in all cases of release, perhaps on the assumption that such a release can only be subject to such condition. In fact it is inappropriate in a case of remission under Article 161 for Rules 547 and 548 will operate only in relation to a release pursuant to the Advisory Board's deliberation and premature release thereupon".

According to the court the condition imposed was inoperative. Remission of his sentence is not conditional upon compliance with the terms of any bond. Assuming that some bond has been taken from him nevertheless that bond will be inoperative and will not justify cancellation of the remission, rearrest and remand to jail once again.27

Krishnan Nair's case is important because of the enthusiasm shown by the judiciary to go into the operation of remission system which violates the fundamental rights of the prisoners who are released on conditional remission. The court is sceptic about the fairness of the procedure followed in the case of release under Rules 547 and 548 of the Kerala Prisons Rules and Section 432(3) of Criminal Procedure Code. According to the court there is no provision for deliberation of the Government to consider the aspects involved in his re-arrest. It does not also give opportunity to the prisoner to show cause against his re-arrest. Similarly the language used in the form of bond, absence of giving a copy of it to the prisoner, the lack of provision to make him understand the conditions to

27. Ibid.
be followed and the unnecessary conditions that are vaguely
imposed in all cases also seem to be unfair which violate
Articles 14 and 21 of the Constitution. The procedure
followed to grant conditional remission under the Prison
Rules and Criminal Procedure Code are entirely different
eventhough it is the Government who is the ultimate
authority to grant remission in both cases.

Under the Prisons Rules the Advisory Board has
the power to recommend the premature release of certain
types of prisoners: But it is the government to decide
whether release is to be granted or not.

In another significant decision in *Soman v. State
of Kerala,*^28 the Kerala High Court has pointed out that
remission earned by a prisoner cannot be carried forward to
the succeeding year. A prisoner who wishes to have
remission of sentence in lieu of wages should purchase

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28. 1989 (2) K.L.T. 315. Petitioner is convict detained in
Open Prison, Nettukaltheri, Trivandrum. He is
undergoing imprisonment for life. He went on parole in
1988. At that time he took with him all the money
earned by him by way of wages. Therefore he could not
purchase remission during 1988. After return he wanted
to purchase remission of the eligible days of 1988 with
the earnings of 1989. This prayer of the petitioner
was not conceded by the jail authorities. Against this
he approached the High Court. Dismissing the plea
court held that remission cannot be carried forward to
the succeeding year.
remission for the days mentioned therein in the year to which that remission relates. In a particular year prisoner can purchase remission for 30 days from the Superintendent of the jail and for 60 days from the Inspector General of Prisons. In case the prisoner fails to purchase the remission which he is legally entitled to, during the year that right will be lost once for all.

Violation of Condition of Remission - As a Specific Offence

Violation of condition of remission is a specific offence. Section 227 of the Indian Penal Code deals with violation of the conditions of remission of a punishment. In order to make out an offence under this section it must be proved not only that the accused was granted a conditional remission of punishment, that he accepted the conditions of the remission, and that he violated any of

30. IPC Section 227 reads: "Whoever, having accepted any conditional remission of punishment, knowingly violates any condition on which such remission was granted, shall be punished with the punishment to which he was originally sentenced, if he has already suffered no part of that punishment, then with so much of that punishment as he has not already suffered".
those conditions which he accepted, but also that he did so "knowingly". If the conditions are clear and unambiguous and if he violates any of them, he may be considered to have done so knowingly. But if the conditions are vague or ambiguous, the question whether the accused violated them "knowingly" would be a matter of inference from the nature of the conditions, the status of the accused and the circumstances of the violation. 31

The offence under this section is not cognizable and a summons shall ordinarily issue in the first instance. It is neither bailable nor compoundable, and is triable by the court by which the original offence was triable. It is for the court to decide whether a conditionally released prisoner has violated the conditions on which remission was granted to him. Until he has been found guilty under this section, it is not for the jail authorities to say that he has committed an offence. This was reiterated in an earlier decision Emperor v. Naga Po Min 32 in British India. A conditionally released prisoner was arrested and re-admitted into the jail in Burma. He was subsequently convicted and sentenced again. This sentence was ordered

32. A.I.R. 1933 Rang. 28 at p.29.
to run from the date he was re-admitted into the jail in pursuance of the letter of Rangoon High Court. The letter was issued at the instance of the jail authorities. When a conditionally released prisoner was returned to the jail, the authorities treated him as a convict from date of his re-admission into the jail. While altering the sentence, the court held that under section 227 of the Penal Code, it is for the court to decide whether a conditionally released prisoner had violated the conditions on which remission was granted to him and until he has been found guilty under Section 227 Indian Penal Code, it is not for the jail authorities to say that he had committed an offence.

Life Sentence Vis-a-Vis Power of Remission

The plight of prisoners sentenced to life imprisonment during the British period has been depicted by Jawaharlal Nehru in his Autobiography. He says: 33

"For years and years many of these 'lifers' do not see a child or woman, or even animals. They lose touch with the outside world completely, and

have no human contacts left. They brood and wrap themselves in angry thoughts of fear and revenge and hatred: forget the good of the world, the kindness and joy, and live only wrapped up in the evil, till gradually even hatred loses its edge and life becomes a soulless thing, a machine like routine”.

The condition of life convicts is not the same as Nehru has seen. It has changed a lot. Still there are various drawbacks in their treatment.

Life imprisonment as a punishment has been accepted in the Indian Penal Code by Section 53.34

If upon a convict, imprisonment for life is passed, the concerned government can commute the punishment for imprisonment for a term not exceeding a term of

34. Section 53 I.P.C. reads:- "The punishments to which offenders are liable under the provisions of this Code are:
First - Death,
Second - Imprisonment for life,

Fourthly - Imprisonment, which is of two descriptions, namely (1) rigorous, that is, with hard labour; (2) simple,
Fifthly - Forfeiture or property
Sixthly - Fine".
Whether a person sentenced to life imprisonment should undergo the whole of his remaining life inside the prison walls if not commuted? There are various judicial opinions in this respect.

In *G.V. Godse v. State of Maharashtra* the Supreme Court has explained the legal position thus:

"A prisoner sentenced to life imprisonment is bound in law to serve the life term in prison, unless the said sentence is commuted or remitted by appropriate authority under the relevant provisions of Indian Penal Code or the Code of Criminal Procedure. For the purpose of working out remission which a prisoner is enabled to earn

36. A.I.R. 1960 S.C. 600; Godse, the accused was sentenced to imprisonment for life. He had earned considerable remissions which would have rendered him eligible for release had life sentence been equated with 20 years of imprisonment under S.57, I.P.C. On the basis of a rule which make that equation, Godse, sought his release through a writ petition. The Supreme Court dismissed the petition.
37. Ibid.
under the rules framed under the Prisons Act, the sentence of imprisonment of life is ordinarily equated with a definite period; but it is only for that particular purpose and not for any other purpose”.

Godse is an authority for the proposition that a sentence of imprisonment for life is one of imprisonment for the whole of the remaining period of the convicted persons natural life. It is well settled as a result of the Privy Council decision in Kishori Lal case\(^\text{38}\) and the Supreme Court’s decision in Godse\(^\text{39}\), Maru Ram\(^\text{40}\) and Karthar Singh\(^\text{41}\) that a sentence of imprisonment for life is a sentence for the remainder of the natural life of the convict. Such convicts are not released earlier in the absence of a formal order of commutation passed by the State Government either under Section 55 of the Indian Penal Code or Section 433(b) of the Criminal Procedure Code 1973. In other words, unlike the cases of prisoners

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40. 1980 Cr.L.J. 1440. For a detailed discussion of the case see infra.
41. 1982 Cr.L.J. 1772.
sentenced to terms of imprisonment, in the case of lifers even the remission rules though statutory are of no avail in the absence of a formal order of commutation.

Classification Among the Lifers

Persons sentenced to imprisonment for life are classified again among themselves. One classification is between persons who have been sentenced to death but whose sentence on mercy petitions had been commuted to life imprisonment and persons who are ordinary lifers. Such a classification was subjected to lot of controversy. This was discussed in Sadhu Singh v. State of Punjab.42 The Punjab State Government took a policy decision in 1971 and issued instructions providing that a period of actual sentence of eight and half years in the case of adult prisoners undergoing life imprisonment and six years in the case of female prisoners. The government also decided that those below twenty years of age at the time of the commission of the offence should be regarded as the qualifying period for consideration of their case for premature release. In 1976 another policy decision was taken by the same government and by that decision the life

311

convicts whose death sentence had been commuted should be considered for premature release only after completion of fourteen years of actual imprisonment. In the petitions the life convicts contended that the State of Punjab had been erroneously making a distinction between cases of prisoners who had been sentenced to death but whose sentences, on mercy petitions, had been commuted to life imprisonment and prisoners who had been straightaway sentenced to life imprisonment in the matter of consideration of their cases for premature release. Rejecting the contention, the Supreme Court held: 43

"A sentence of imprisonment for life is a sentence for the remainder of the natural life of the convict and there is no question of releasing such a convict earlier in the absence of a formal order of commutation passed by the State Government".

Persons sentenced to life imprisonment was treated as a separate class under Section 303 of the Indian Penal Code for awarding capital punishment if they commit a

43. Id., p.311.
murder.\textsuperscript{44} In \textit{Mithu v. State of Punjab}\textsuperscript{45}, the constitutional validity of Section 303 was questioned. The Supreme Court held that Section 303 is void and unconstitutional as it violates both Articles 14 and 21 of the Constitution.

According to the Supreme Court, Section 303 regarded life-convicts as a dangerous class without any scientific basis. The section has completely cut out judicial discretion. The judge has to give death sentence if a life convict commits murder, whatever may be circumstances under which he has committed it. By completely cutting out judicial discretion it became a law which is not just, fair and reasonable within the meaning of Article 21. At present all murders are punishable under Section 302 I.P.C. only.

Maru Ram and the Post Conviction Orders

Originally the government was having the power to

\textsuperscript{44} I.P.C. Section 303 reads:— "Whoever, being, under sentence of imprisonment for life, commits murder, shall be punished with death".

\textsuperscript{45} 1983 Cr.L.J. 811 (S.C.), see also Bhagwan Base Singh, 1984 Cr.L.J. 928 (S.C.).
commute a sentence of imprisonment for life to imprisonment for a term not exceeding fourteen years or for fine.\textsuperscript{46} In 1978 a new Section 433A was added by the Criminal Law Amendment Act 1978.\textsuperscript{47} This section prescribed a minimum imprisonment for fourteen years for those who are convicted of an offence for which death is one of the punishments provided by law or where a sentence of death is imposed on a person has been commuted under section 433 into one of imprisonment for life. The new section made it clear that such minimum imprisonment is notwithstanding anything contained in Section 432 which means that the power to suspend or remit sentence under that section cannot be exercised so as to reduce the imprisonment of a person convicted of such an offence or whose death sentence has been commuted to life imprisonment for less than fourteen years.

\textsuperscript{46} Criminal Procedure Code 1973, S.433.
\textsuperscript{47} Inserted new Section 433A by Act No.45 of 1978. It reads:- "Notwithstanding anything contained in Section 432, where a sentence of imprisonment for an offence for which death is one of the punishments provided by law, or where a sentence of death is 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".
years. The constitutional validity of the new section was questioned in Maru Ram v. Union of India. The Supreme Court held that the section constitutionally valid. According to the court the provision was within the legislative competence of the Parliament by virtue of Entry 2 of List III of the Seventh Schedule read with Article 246 of the Constitution, it was not violative of Article 20(1) of the Constitution, it was not violative of Article 14 of the Constitution as it was based on reasonable classification.

In Maru Ram the Supreme Court repelled the challenge to Section 433A both on the question of competence of Parliament to enact the provision and its constitutional validity. While interpreting sections 432, 433 and 433A of the Criminal Procedure Code, the Supreme Court pointed out that wide powers of remission and commutation of sentence were conferred on the appropriate government but an exception was carved out for the extreme category of convicts who were sentenced to death but whose sentence had been commuted under section 433 into one of imprisonment for life. Such a prisoner is not to be

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49. Seventh Schedule, List III, Entry (2) reads:— "Criminal Procedure, including all matters included in the Code of Criminal Procedure at the commencement of this Constitution".
released unless he has served at least fourteen years of imprisonment. The court refused to read down section 433A to give overriding effect to the remission Rules of the State. It categorically ruled that Remission Rules and like provisions stand excluded so far as 'lifers' punished for capital offences are concerned.

In State of Maharashtra v. Manohar Ghodake the trial court had convicted the accused persons under Section 307 and 34 of the Indian Penal Code and sentenced them to imprisonment for life. They were also convicted and sentenced to death under sections 302 and 34 of the Penal Code. On appeal, the convictions were confirmed but the sentence of death was altered to one of life imprisonment. The High Court considering the serious nature of the case, however, felt that the mere life imprisonment which does not last for more than fourteen years in normal cases, would not meet the ends of justice in the present case as the case was in its opinion in the murky area between the sentence of death and of the usual life imprisonment. The court therefore, while altering the sentence of death to one of imprisonment for life, directed that the convicted

50. 1982 Cr.L.J. 600 (Bom.).
accused persons shall not be released from jail unless and until each of them serves a minimum period of twenty-five years imprisonment notwithstanding the remissions and concessions, if any granted to him under the relevant rules.

After the decision in this case, a similar question came before another division bench of the Bombay High Court in *Madhav Shankar Sonawane v. State of Maharashtra*.

In *Sonawane* the accused was convicted for murder and sentenced to imprisonment for life. On appeal before the division bench a direction similar to the one given in *Ghodake's case* was sought on behalf of the State, requiring the life convict to remain in jail during the mandatory minimum period as would be prescribed by the court. The division bench felt that such a direction would encroach upon the field reserved for the executive and would be contrary to the provisions of Section 433A of the Criminal Procedure Code and hence, it doubted the correctness of the direction given by the High Court in *Ghodake's case*.

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51. 1982 Cr.L.J. 1762 (Bom.).
52. Ibid.
According to the court the only power which a court can exercise while making order of sentence is to make an order awarding such punishment as is prescribed for the offence for which the accused has been convicted. So far as section 302 is concerned, the power of the court is to award a sentence of death or to award the punishment of imprisonment for life. There is no further power to regulate the duration of the imprisonment which the accused must undergo when he is sentenced to life imprisonment. Any direction which will require an accused sentenced to imprisonment for life to undergo such imprisonment as would be specified by court is bound to trench upon the powers of the executive specially given to it under sections 432 and 433. These sections do not provide that the exercise of the executive powers is subject to the control of the court. Any such direction might interfere with the exercise of the constitutional powers given to the President and the government under Articles 72 and 161 of the Constitution.

53. 1982 Cr.L.J. 1762 at p.1766.
54. For a detailed discussion regarding these articles, see supra, chapter 2. Thirty ninth Report of the Law Commission of India submitted in 1968 deals with the nature of the punishment called imprisonment for life in the Indian Penal Code, and in particular, with the question whether, when such sentence is passed on an offender the imprisonment he undergoes has to be rigorous or may be simple. The Commission recommended that the imprisonment for life shall be rigorous. See 39th Report of the Law Commission of India (1968), p.13.
By this decision it has been established that in a situation like the one in Ghodake's where the sentencing court strongly feels that the usual sentence of life imprisonment is not adequate, the court cannot have any effective say in this matter. It can only hope that probably the executive authority shall not release such a convict before he has undergone a sufficiently long period of imprisonment, longer than the usual period of life imprisonment, i.e., fourteen years imprisonment. The sentencing court can recommend, though not direct, the government to do so.

Life Imprisonment and Set Off

Section 428 of the Criminal Procedure Code provides that the period of detention undergone by an accused can be set off against the sentence of imprisonment. Whether a person sentenced to imprisonment

55. Section 428 reads as follows:- "Where an accused person has, on conviction, been sentenced to imprisonment for a term, not being imprisonment in default of payment of fine, the period of detention, if any, undergone by him during the investigation, inquiry or trial of the same case and before the date of such conviction, shall be set off against the term of imprisonment imposed on him on such conviction, and the liability of such person to undergo imprisonment on such conviction shall be restricted to the remainder, if any, of the term of imprisonment imposed on him".
for life can claim the benefit of this provision? The word used in section 428 is that this benefit is available only to persons who are sentenced to a term of imprisonment. In Bhagirath v. Delhi Administration the question for decision was whether imprisonment for life is imprisonment "for a term". Allowing the appeal the Supreme Court held:

"The expression 'imprisonment for life' and imprisonment for a term are not used either in Penal Code or in the Criminal Procedure Code in contradistinction with each other. Two or more expressions are often used in the same section in order to exhaust the alternatives which are available to the legislature".

56. (1985) 2 S.C.C. 580. The appellant, Bhagirath, filed a petition in Delhi High Court asking that his case be referred for order of Delhi Administration under paragraph 516B of Punjab Jail Manual since, though sentenced to life imprisonment, he had undergone a period of detention in jail amounting to 14 years together with the remissions earned by him. A learned single judge of the High Court rejected that petition on the ground that, in computing the period of 14 years, the period spent by the convict in the jail as an undertrial prisoner cannot be taken into account because, section 428 of the Code which allows such a set off applies only when an accused has been sentenced to "imprisonment for a term", and the sentence of life imprisonment is not an imprisonment for a term. Against this order appeal was filed before the Supreme Court. The Supreme Court allowed the petition.

57. Id., p.584 per Chandrachud, C.J.
The Supreme Court directed that the period of detention undergone by the two accused as undertrial prisoners has to be set off against the sentence of life imprisonment imposed upon them.

Earlier in *Kartar Singh v. State of Haryana*\(^5^8\) persons who were sentenced to life imprisonment challenged an order passed by the Government of Haryana, denying to them the benefit of the period of undertrial detention under Section 428 of the Criminal Procedure Code. It was held by the Supreme Court that the Penal Code and the Criminal Procedure Code make a clear distinction between 'imprisonment for life' and 'imprisonment for a term' and in fact, the two expressions are used in contradistinction with each other in one and the same section, the former meaning imprisonment for the remainder of the natural life of the convict and the latter meaning imprisonment for a definite or fixed period. The court proceeded to hold that an order of remission passed by the appropriate authority merely affects the execution of the sentence passed by the court, without interfering with the sentence passed or recorded by the court. Therefore, Section 428 which opens

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with the words "where an accused person has, on conviction, been sentenced to imprisonment for a term", would come into play only in cases where 'imprisonment for a term' is awarded on conviction by a court and not where the sentence imposed upon an accused becomes a sentence for a term by reason of the remission granted by the appropriate authority.

According to the court, the question is not whether the beneficient provision should be extended to life convicts on a priori reasoning or equitable consideration but whether on true construction, the section comprises life convicts within its purview.\textsuperscript{59}

Subsequently a conflicting view on the same point was taken by a full bench of the Supreme Court in \textit{Sukhlal Hansda v. State of West Bengal}\textsuperscript{60}. It related to the cases of twentyfour prisoners who were sentenced to life imprisonment. Most of those prisoners had undergone imprisonment for a period which, after taking into account

\textsuperscript{59} Ibid.
\textsuperscript{60} \textit{Writ Petitions (Criminal) 1128-1129 of 1982, decided on March 3, 1983 quoted in the judgment of Bhagirathi v. Delhi Administration (1985) 2 S.C.C. 580 at 588.}
the remissions earned by them, exceed fourteen years. It was held by the Supreme Court that, for the purpose of considering whether the cases of those prisoners should be examined for premature release under the relevant provisions of the Bengal Jail Manual, there was no reason why the period of imprisonment undergone by them as undertrial prisoners should not be taken into account. The court directed that the cases of the prisoners should be considered by the State Government, both for the purpose of setting off the period of detention undergone by them as undertrial prisoners and for taking into account the remissions earned by them.

In Charanjit Lal v. Delhi Administration61 Delhi High Court examined the legality of Delhi Administration's not releasing life convicts on parole or furlough as envisaged in a letter issued by it. In terms of the letter the period spent on parole was not to be counted as part of the sentence whereas the period spent on furlough was to be treated as part of the sentence. The Delhi Administration stopped releasing lifers on parole or furlough. The petitioner lifers challenged this sentence. After examining

61. 1985 Cr.L.J. 1541 (Delhi).
the case law, the court concluded that the Delhi Administration could and should release lifers on parole or furlough. The court added that in the case of prisoners mentioned in Section 433A Criminal Procedure Code, the benefit of period of furlough being counted as part of sentence would not be given in as much as in terms of this section they should undergo fourteen years substantive imprisonment.

Classification for Premature Release

In Amrithlal v. State of Madhya Pradesh62, the State's notification treating younger prisoners and prisoners who attained the age of 65 years as distinct categories for the purpose of releasing from the prison was challenged as violative of Article 14 of the Constitution. Rejecting this, the Madhya Pradesh High Court observed that the classification is valid mainly on the following

62. 1985 Cr.L.J. 1096 (M.P.). A notification was issued that all those prisoners who were convicted to life imprisonment prior to 18.12.1978 would be entitled to be released on completing 17 years of jail sentence, including remissions and those persons who had attained the age of 65 years would be released on completing 14 years of jail sentence including remissions. This was challenged on the ground that it violated Article 14.
The principal object of punishment is the prevention of offences. Remissions are granted under special circumstances by the State and also with the object of reforming the prisoners after ensuring that there is no possibility of repeating offences. Average life span in India can be taken to be 65 years. So normally a person attaining the age of 65 years may not commit further offence. So life convicts attaining 65 years are given remissions after completing 14 years of jail sentence, but younger people are given remissions after completing a longer period of jail sentence i.e., 17 years including remissions. So there is justification for treating all life convicts who have attained 65 years of age, differently as a class from other life convicts. It may be mentioned that special consideration is given on account of old age while granting bail in non-liable offence under the Code of Criminal Procedure. So the classification is reasonable and does not violate Article 14.

There is the difference of only three years imprisonment between the mandatory requirements for the two categories. It is not known what difference would be additional three years imprisonment make for the offenders

63. Id., p.1097.
who have not attained the age of 65. Actually rehabilitation would have been better served had the comparatively younger offenders are released early.

In Bir Singh v. State of Himachal Pradesh⁶⁴ the petitioner was a murder convict who had undergone 21 years and one month imprisonment including remissions. The review committee which usually made recommendations for premature release of prisoners did not recommend it for the petitioner on the reason that it was on a slight provocation that he committed murder; that there was no study on his conduct outside the prison; and that the district magistrate of his locality apprehended breach of peace if he were to be released. According to the rule, prisoners were prematurely released if they had not committed any offence in the jail, their conduct was good and they had returned from parole promptly.

In this case the prisoner could not be brought within the framework of these rules. He was never released from jail to watch his conduct outside the prison. Nor was he released on parole to show that he returned from parole promptly. In fact there was no record to show that his

⁶⁴. 1985 Cr.L.J. 1458 (H.P.).
conduct in the jail was bad. In these circumstances the court ordered his release and advised the authorities to watch his conduct. Since he was old and of weak health, no breach of peace could be apprehended.

With reference to the exercise of its powers the State was advised. The court observed:

"The Review Committee as well as the state government must bear in mind that the policy regarding premature release of convicts is evolved in the exercise of executive powers and that it is within the realm of discretionary jurisdiction such discretionary power is coupled with the legal duty to exercise the same once the conditions for its exercise are shown to exist. It is settled law that where a power is deposited with a public officer for the purpose of being used for the benefit of the persons who are specially pointed out, and with regard to whom a definition is supplied of the conditions upon which they are entitled to call for the exercise, that power ought to be exercised and the court will require it to be exercised".

65. Id., p.1459.
The power or pardoning and remission are the noblest prerogative of sovereignty. If the laws are too severe, the power of pardoning is a necessary corrective; but that corrective is itself an evil. Make good laws, and there will be no need of a power to annul them. If the punishment is necessary, it ought not to be remitted; if it is not necessary, the convict should not be sentenced to undergo it.

Eventhough there are statutory rules for remission, the authorities are not implementing these guidelines properly. Various cases that came before the various High Courts and Supreme Court have revealed this fact. Frequently the equality clause of the Indian Constitution is violated by the prison authorities. So strict rules have to be framed for granting remission.