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WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal provided dedicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

LEGAL PERSPECTIVES ON REMISSION: EXPLORING RIGHTS, RESPONSIBILITIES AND REHABILITATION

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ABSTRACT

This paper delves into the intricate intersection between remission and the legal framework, examining how remission impacts rights, responsibilities and rehabilitation within the context of law. Remission often associated with criminal justice systems, signifies the partial or complete cessation of symptoms or offence. Through a comprehensive analysis of legal literature and case studies elucidates the multifaceted implications of remission on individuals, society and the legal system.

Firstly, the paper explores the legal rights and entitlements afforded to individuals experiencing remission, including considerations such as reintegration into society, employment opportunities and access to education in spite, it investigates the corresponding responsibilities individuals bear including compliance with treatment plans, adherence to probation or parole conditions and restitution to victims or society.

Moreover, the paper examines the role of remission in the rehabilitation process, assessing its potential to facilitate positive behavioral changes, promote accountability and reduce recidivism rates. It also delves into the challenges and ethical dilemmas surrounding the evaluation and management of remission within legal frameworks, including issues of subjectivity, risk assessment and the balance between rehabilitation and public safety.

By critically analyzing these legal dimensions of remission, this paper aims to contribute to a deeper understanding of its implications for legal theory, policy development and practice. Ultimately, it advocates for a nuanced and evidence-based approach to integrating remission considerations into legal frameworks, with the overarching goal of fostering justice, equity and social cohesion.

INTRODUCTION

The of the term “remission” can be traced back to the Latin word “remission” which means “sending back” or “relaxation”.

‘Remission’ generally refers to the minimization or subtraction of a sentence that has been urged on a person who has been pronounced for a crime and allows for the devaluation of the period of detention or other penalties placed on several aspect and considerations in other words, without touching the nature.

The concept of remission has historical roots dating back to ancient civilizations, where rulers or authorities had the power to grant pardons or reduce sentences for various reasons. In ancient Mesopotamia kings had the authority to grant amnesty or reduce penalties for certain crimes. Similarly, in ancient Rome, emperors possessed the power of clemency, which allowed them to pardon or mitigate punishments.

Throughout history, remission has been intertwined with notions of justice, mercy and governance. In medieval Europe, monarchs and feudal lords wielded the power of pardon and remission as a tool of political authority and as a means to maintain social order. The practice continued through the Renaissance and into the modern era, with rulers exercising their prerogative to grant pardons and reduce sentences for both political and humanitarian reasons.

In the context of common law jurisdictions like England, the power of royal pardon evolved into the modern system of executive clemency, where the head of state or government has the authority to grant pardons, reprieves and commutations of sentences.

Similarly, in civil law jurisdictions, such as France and Germany, executive authorities have the power to grant remission or reduce sentences through mechanism like presidential or ministerial pardons.

In contemporary times, Remission remains a significant aspect of criminal justice systems worldwide, with varying legal frameworks and procedures. It is often governed by constitutional provisions, statutes or regulations that outline the process and criteria for granting remission. The principles underlying remission continue to reflect considerations of fairness, rehabilitation and the balance

between punishment and mercy.

In the modern era, the power of remission is enshrined under article 72 and 161 of the Indian constitution which talks about that the president and governors of state can granted the Remission. This power is derived from principles of justice, equity and compassion, allowing for the possibility of mercy and rehabilitation within the criminal justice system.

Remission in India is governed by various statutory provisions and guidelines including the code of criminal procedure and specified laws related to remission in different states. The exercise of remission is often guided by considerations such as nature of the offence, the behavior of the convict during incarceration and interest of justice.

The introduction of remission in the India legal framework reflects a commitment to principles of fairness, rehabilitation and the potential for redemption. It serves as a mechanism to balance the demands of punishment with the possibilities of reform and reintegration into society, thereby contributing to the broader objectives of a just and humane legal system.

Remission policies and practices can vary significantly between countries. While many countries have provisions for reducing sentences based on good behavior or rehabilitation, the specific criteria, procedures and authorities involved can differ. For example;

United states: In US, remission is commonly known as “parole” or “probation”. Prisoners may be released before completing their full sentence under supervision based on factors like good behavior, participation in rehabilitation programs and risk assessment.

United kingdom: The UK has a system of parole where prisoners may be released on license before the end of their sentence. The parole board assesses eligibility based on factors like including the nature of offence, risk to the public and the individual behavior and progress while incarcerated.

Canada: Canada also has a parole system where prisoners may be released before completing their full sentence under supervision. The Parole board of Canada assesses eligibility based on similar factors as in the UK and US.

European Union: Member of the states EU may have the different remission policies, but there are overarching principles regarding the treatment of prisoners and the possibility of early release based on rehabilitation and good behavior.

Other countries; Remission practices can vary widely in other countries influenced by cultural, legal and political factors. Some countries may have strict policies limiting early release, while others may prioritize rehabilitation and reintegration.

the concept of remission exists in many countries legal system the specific mechanism and criteria can differ significantly based on jurisdiction.

At the international level, there isn't a universal set of laws specifically governing remission for criminal offences. There are international conventions and principles influence the treatment of prisoners and may indirectly impact remission practices. Here are relevant ones:

1. ARTICLE 5: of the UDHR (universal declaration of human rights) Splendor that "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment". This principle is often cited in discussions about the treatment of prisoners, including considerations for remission.
2. ARTICLE 10: of the ICCPR (International covenant on civil and political rights) addresses about the treatment of prisoner, emphasizing the importance of humane treatment and rehabilitation. While it does not explicitly mention remission, its principles may influence remission practices.
3. Standard prison provided the rules for the treatment of prisoners (the Mandela rules) these rules, adopted by the U.S, provide guidance on various aspects of the treatment of prisoners, including provision related to discipline, healthcare and rehabilitation. While they emphasize principles that may be relevant to remission decisions, such as the importance of rehabilitation and reintegration.
4. European prison rules: The council of Europe has established the rules for the treatment of prisoners in European member states. These rules include provisions related to remission, such as the consideration of good conduct and participation in rehabilitation programs when determining eligibility for early release.

While these international instruments do not establish specific remission laws, they promote principles such as rehabilitation, humane treatment and the protection of prisoner's rights which may influence remission practices at the national level.

Cases related to Remission around the world

R v. Secretary of State for the Home department, Ex p Anderson (1984)

This case, heard by the House of Lords in the UK, concerned the discretionary power of the Home Secretary to refuse parole to a life prisoner who had been recommended by Parole Board. The House of Lords ruled that the Home Secretary's discretion must be exercised in a manner consistent with the principles of fairness and justice.

Makdessi v. European court of Human Rights (2017)

European court of human right held that the issue of remission for a prisoner serving life sentence in Cyprus. The court also held that the absence of a clear and transparent procedure for assessing the prisoner's progress toward rehabilitation and eventual release constituted a violation of his right to a fair trial.

These cases illustrate the importance of procedural fairness, transparency and adherence to human rights principles in remission decisions. They also highlight the role of courts and international human right of pris.

In India context

In Ram Chander v. State of Chhattisgarh¹ on 22 April, 2022

It was held that the opinion of presiding judge can also be taken because they have the appropriate knowledge, aware about the nature of the crime.

In case of **Laxman Naskar v. State of West Bengal (2000)** it was held that before granting remission

¹<https://indiaKanoon.org/doc/145418470/>

<https://www.scobserver.in/journal/remission-policy-a-tug-of-war-between-the-judiciary-and-the-executive/>

<https://indiankanoon.org/doc/569426/>

<https://indianexpress.com/article/india/bilkis-bano-case-supreme-court-quashed-gujarat-government-remission-convicts-9099554>

<https://www.sconline.com/blog/post/2024/01/09/explained-supremecourt-verdict-premature-release-11-convicts-bilkis-bano-gang-rape-case/>

<https://www.barandbench.com/columns/the-remission-policy-and-its-misuse>

<https://www.lexisnexis.in>

few factors will be looked upon:

1. Whether the offence effect the particular or individual or the society at large.
2. Whether that person will commit the similar offence in the future.
3. Whether the convict has potential or not to commit the crime.
4. Whether there is any fruitful benefit for confining a convict anymore.
5. The socio-economic conditions of the convict family.

After considering all these facts the decisions will be taken, if that individual should be granted remission or not.

BILKIS YAKUB RASOOL v. UNION OF INDIA (“Bilkis Bano Case”)

The incident took place in 2002 during the time of Godhra riots. After the Sabarmati slaughter in which 60 Hindu were killed they went for a holy expedition the train set on fusillade and this was believed by Hindus that it was the fault of the Muslims.

They attacked the Muslims who are residing in their neighborhood. In this the girl named Bilkis Bano belonged from the Muslim community is the victim of the gang rape. She was five months pregnant when the heinous incident took place with her. The sinners raped her as well as her family member were killed. Because of the incident the individuals got infuriated round the different states in India. Around 11 people got convicted and sentenced life imprisonment for the commission of the crime. The adjudication was elapsed by a division bench by the judges of supreme court that was KM Joseph and Nagarathna. This crime was frightful that the honorable court had to castigate them with the rigorous imprisonment.

In 2022 the starting news came which says that the prisoners were granted with the “special remission”. The 11 culprits were emancipated from the penitentiary after completing 14 years thralldom only. Along with Bilkis Bano the whole country were disgruntled with the decision of the Gujarat government. The fierce lady didn't give up she again filed the petition against the abortive release of the convicts.

HISTORICAL BACKGROUND OF THE CASE

According to Bilkis Bano

After the horrific incident took place. She remained unconscious for at least 3 hours. While recovering

from the state. She tried to borrow some clothes from an Adivasi woman. And went to police station to file a complaint against those animal humans. According to her the cops rejected to append all the relevant erudition which was compulsory for the case. But not finding any other way she went to the National Human Rights Commission (NHRC) which played the prominent ingenue in supporting the sufferer. J.S Verma the former chief justice of India accumulated with Bilkis Bano in Godhra at a relief camp in march 2002, which was assembled by the human rights commission. The victim was accommodated with the senior advocate and one of the former solicitor General as her council who would defend her before the honorable supreme court. The convicts of the case were arrested within a month and construct before the Gujarat high court. When the proceedings of the case were going on, the accused menace to kill her. Bano immediately took action against the threat she had been receiving than informed honorable supreme court about the threats.

After that honorable supreme court decided to transfer that case from Gujarat court to court of Maharashtra for the equitable and impartial enquiry.

MUMBAI SESSION COURT DECISION:

The trial of the case began 2008 by the Mumbai session court.

The judgement was passed by the Mumbai session court in 2017 convicting only 11 accused for the rest of them there are no solid evidence.

Sentenced to rigorous imprisonment and fine for their crime.

Held contemned under;

Section - 302

Section - 376(2) which are read with Section - 149 of the Indian penal code (IPC)

The decision of the session court approved by the high court of Mumbai in May 2017.

The Gujarat government were guided by the supreme court to dispense the victim with a;

- Altruistic job
- Benevolent
- Housing
- and with an amount of 50 lakh rupees

Convicts and CBI appeal to the Bombay high court.

Convicts: they challenged the judgement of the session court.

It was adjured by the CBI officers to provide the convict with the greater punishment.

Which is capital punishment for the 3 measures preparators of the crime.

BOMBAY HIGH COURT DECISION:

The Bhagora and others who were also the accused of the case were released by the trial court because it was claimed by them that they had no participation in the crime.

Under section 201 and 218 of the Indian penal code the court had charged five policeman and two doctors for tampering the evidence, and not for performing their duties properly.

The decision of supreme court

They dismissed the appeal of the convicts.

On 10th July 2017 the appeal which was filed by the 4 policeman and 2 doctors were rejected.

The decision of the session court for releasing the Bhagora and others who were exonerate earlier by the trial court were supported by the supreme court.

Radheyshyam; Shan

One of the convicts tried for his premature release after spending 14 years imprisonment Gujarat high court rejected for the remission.

By following the Gujarat government 9 July, 1992 policy on Remission he moved to the supreme court and appealed for the remission.

After he spent 15 years and four months in prison he approached the apex court for Remission.

The capability was granted to the government of Gujarat by the supreme court whether they want to granted the release according to the government policy of 1992 within the 2 months or not.

CONCLUSION

The term “Remission” is a prominent term with which most of us are unaware about. As we read above that how the remission can be used for a release or deduction in a sentence of a convict and it can be threat to the society as well, releasing a person who committed the crime as we read in Bilkis Bano case is not just a heartbreak threat to her but for society as well it may use in the favor of wrong

person. The term Remission have more negative aspects rather than the positive. It should be use with care and caution by the government bodies as it can only be granted by them.

It is a famous saying by the fundamental principle of criminal justice that: justice must not only be done but must also be seen to be done.

It is important while granting remission to think about the interest of society and not only about the convicts who committed the crime.

The balance between the interest of society and the convicts is essential while granting remission. Because such commission of (any crime) not only affect the victim Individually but also the society at large.

It is the state's prime culpability to protect it citizen specially when they have given the particular power to do The government must take care of the fact that granting remission does not deteriorate the nature of the crime committed.

REFERENCES:

<https://www.livelaw.in>

<https://www.scconline.com>

<http://www.ijstr.org>

<https://www.lawyersclubindia>

<https://timesofindia.indiatimes.com>

<https://www.researchgate.net>

<https://constitution.congress.gov/browse/essay/artll-asSC-C1-3-4-3\ALDE-00013321\>