Bilkis Bano Case

Why in news?

The 11 convicts in the Bilkis Bano case of the 2002 riots walked out of jail as the Gujarat government has allowed their release under its remission policy.

What are the laws available on remissions?

- Under **Articles 72 and 161** of the Constitution, the President and Governors have the power to pardon, and to suspend, remit, or commute a sentence passed by the courts.
- Since prisons is a state subject, state governments have powers under **Section 432 of the CrPC** to remit sentences.
- Prisoners are often released on the birth and death anniversaries of prominent leaders and other important occasions.

What are the grounds for remission?

- States set up a Sentence Review Board to exercise the powers under Section 432 of the CrPC.
- The Supreme Court has held that states cannot exercise the power of remission arbitrarily, and must follow due process.
- **Factors considered for granting remission**
    - Seriousness of the crime
    - The status of the co-accused
    - Conduct in jail
- In ***'Laxman Naskar v. Union of India'*** **(2000)** the SC laid down five grounds on which remission is considered.
    - Whether the offence is an individual act of crime that does not affect the society
    - Whether there is a chance of the crime being repeated in future
    - Whether the convict has lost the potentiality to commit crime
    - Whether any purpose is being served in keeping the convict in prison
    - Socio-economic conditions of the convict's family
- **Jail manuals** contain rules that allow certain days of remission in every month for good behaviour of convicts.
- However, convicts serving life sentences are entitled to seek remission only after serving a minimum of 14 years.

The remission policy of Gujarat, 1992 permitted prisoners to apply for remission on the basis that life imprisonment is an arbitrary or notional figure of twenty years of imprisonment.

What is the Bilkis Bano case?

- Gujarat had turned violent after the Sabarmati train was burnt in Godhra on 27 February 2002 when 59 karsevaks were killed in the train.
- Fearing the outbreak of violence, a then five-month pregnant Bilkis Bano fled from her village with her three-and-a-half-year-old daughter and 15 other family members.
- They were attacked by about 20-30 people whereas Bilkis, her mother, and three other women were raped and brutally assaulted.
- Only Bilkis, a man, and a three-year-old survived the attack.
- Her case was taken up by the National Human Rights Commission (NHRC) and Supreme Court, which ordered an investigation by the CBI.

What happened in the case?

- The accused in the case were arrested in 2004 and the trial was moved out of Gujarat to Maharashtra after Bilkis Bano received death threats.
- In 2008, the Special CBI Court sentenced 11 accused to life imprisonment on the charges of conspiring to rape a pregnant woman, murder and unlawful assembly under the Indian Penal Code.
- The court acquitted seven other accused for lack of evidence.
- The Bombay High Court, in 2017, upheld the conviction and life imprisonment of 11 people in the gang rape case.
- In 2019, the Supreme Court awarded compensation of Rs 50 lakh to Bilkis — the first such order in a case related to the 2002 riots.

Why have the convicts been released now?

- One of the convicts had approached the Gujarat High Court seeking remission of the sentence under sections 432 and 433 of the Code of Criminal Procedure.
- The high court dismissed his plea while observing that the “appropriate government” to take a decision about his remission is Maharashtra, and not Gujarat.
- He then filed a plea in the Supreme Court, pleading that he had been in jail for over 15 years without remission as of 1 April 2022.
- The apex court directed the Gujarat government to look into the issue of remission of his sentence following which the government formed a committee.
- The committee took a unanimous decision in favour of remission of all the 11 convicts in the case.

Why is the remission criticized?

- **Against treating crimes as heinous**- The remission runs contrary to the spirit of contemporary thinking on treating crimes against women and children as so heinous that the perpetrators should not be considered for remission.
- **No premature release**- The Cr.P.C. does permit premature release in the form of remission or commutation in life sentences, but it should be based on a legal and constitutional scheme, and not on a ruler’s whimsy.
- **Political considerations**- Any decision on remission should be linked to the convict’s expression of regret and some promise of reform.

- It would be unjustified if given for political considerations merely because of elapse of the minimum number of years they have to serve.

References

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