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PUNISHMENT AND ITS COMMUTATION IN INDIA: EXECUTIVE CLEMENCY AND STRUCTURAL LOOPHOLES

~ *Shruti Kumari*

A Research Paper on the Law of Punishment and Commutation of Sentences in India, with an Empirical Account of Convicts Who Received Far Less Punishment Than They Deserved

ABSTRACT

Punishment is at the very core of the criminal justice system and serves simultaneously retribution, deterrence, incapacitation, and reform. The power to commute, remit, or pardon a sentence, which rests in the executive under Articles 72 and 161 of the Constitution of India¹ and Sections 432 to 435 of the Code of Criminal Procedure², 1973 (and now Sections 473 to 476 of the Bharatiya Nagarik Suraksha Sanhita, 2023³) provides a parallel, yet discretionary route that can overturn the verdict of a final criminal trial. This paper is more combative than other conventional academic writing upon this subject, suggesting, based on recent evidence, that this parallel path has become a reliable avenue for escaping from deserved punishment for precisely the convicts whose crimes are the greatest and the political standing is the highest. The paper explores the types of punishment recognised under Bharatiya Nyaya Sanhita, 2023, and the constitutional and statutory framework of clemency. It relies on Supreme Court judgements such as *Maru Ram v. Union of India*⁴, *Epuru Sudhakar v. State of Andhra Pradesh*⁵, *Laxman Naskar v. State of West Bengal*⁶, *Swamy Shraddananda v. State of Karnataka*⁷ and

¹ INDIA CONST. art. 72, 161.

² Code of Criminal Procedure, 1973, §§ 432–435, No. 2, Acts of Parliament, 1974 (India).

³ Bharatiya Nagarik Suraksha Sanhita, 2023, §§ 473–476, No. 46, Acts of Parliament, 2023 (India).

⁴ *Maru Ram v. Union of India*, (1981) 1 SCC 107.

⁵ *Epuru Sudhakar v. State of Andhra Pradesh*, (2006) 8 SCC 161.

⁶ *Laxman Naskar v. State of West Bengal*, (2000) 7 SCC 626.

⁷ *Swamy Shraddananda v. State of Karnataka*, (2008) 13 SCC 767.

Bilkis Yakub Rasool v. Union of India (2024)⁸, along with three recent illustrations that the existing literature does not seem to have analysed as a set: the all seven convicts of the Rajiv Gandhi assassination case were released in 2022, the former minister Amarmani Tripathi was set free in the Madhumita Shukla murder case in 2023⁹, and the Supreme Court itself admitted in the case *In re Policy Strategy for Grant of Bail* (2025)¹⁰ that the practice of granting remissions by the states across the country is not uniform due to the inconsistent approach. The paper contends that the five loopholes it identifies are political use of the remission policy, lack of a uniform national standard, marginalisation of victims, constant delay in death-row cases, and a failure of transparency in the death penalty process, which are not accidental flaws, but hallmarks of an unchecked discretionary power that cannot be fixed through piecemeal litigation. It ends with the reforms that are carefully stated in terms of implementation, not aspiration; some of which the Supreme Court has already sought to impose on the government by order and which it now obliges Parliament and the State legislatures to enact as binding law – not as a matter of policy preference, but as a constitutional necessity arising directly from Articles 14 and 21¹¹.

1. INTRODUCTION

All the legal systems that criminalise behaviour do face a second, tougher question: once guilt is established, what is to be done with the offender? The state is the main provider of solutions to the problem of punishment and in India it can be administered twice. The first is judicial as it refers to a sentence, imposed by a court after a trial, that is commensurate with the crime and that is legally authorized by a statute. The second is executive, allowing the President, the Governor and the appropriate government to suspend, remit and/or completely pardon that very sentence as allowed by the Constitution and criminal procedure code. This second track is defended for good reasons: judicial sentencing is necessarily rigid, fixed at a single point in time, and the executive clemency power lets the system react to the changes in circumstances, i.e. good conduct while in prison, age, illness, new evidence, humanitarian considerations, etc., without re-opening the conviction. This second path is not only susceptible to abuse in isolated cases, but the evidence brought together below indicates a recurring pattern, whereby a more serious the crime the more likely it was to be committed by someone with the practical capacity to obtain early release from a convict.

⁸ *Bilkis Yakub Rasool v. Union of India*, 2024 SCC OnLine SC 25.

⁹ *State of U.P. Through CBI v. Amarmani Tripathi* (2005) 8 SCC 21.

¹⁰ *In re Policy Strategy for Grant of Bail*, 2025 INSC 239.

¹¹ INDIA CONST. art. 14, 21.

In August 2022, eleven members of the Bilkis Bano¹² gangrape and mass killing case were remanded, an action later overturned by the Supreme Court in January 2024, is the most prominent example, but it is not the only one. It stands alongside the release in 2022 of all convicts in the assassination of a former Prime Minister, and the release in 2023 of a convicted murderer who was a sitting Minister of a State government at the time of the crime. Together, these cases force a clear (and long overdue) conclusion from the literature: a lack of codified, transparent and consistently applied criteria is not a gap that occasionally produces injustice, but it is the means by which injustice is produced.

The paper, organized in a logical sequence, first lays down the basis of the categories of punishments recognized by the Indian criminal law, followed by a detailed discussion of the constitutional clemency power, the statutory counterpart, and the jurisprudence that has developed from the two. On this doctrinal foundation, the analysis then examines reoccurring gaps in the commutation regime, supported by case law, and concludes with a specific examination of three groups of convicts whose punishments were clearly disproportionate to their offences. The final section lays out five reforms that are set as binding requirements, instead of recommendations, and shows that these reforms are not abstract ideas, but are already in operation in practice by the Supreme Court by 2025 through judicial fiat, which highlights that the reforms need only to be completed and enforced in the legislation to take effect.

2. TYPES OF PUNISHMENT UNDER INDIAN CRIMINAL LAW

The theoretical Foundation

Indian sentencing law, as with most in the world, borrows, albeit unwelcomely from four overlapping arguments. Retributive theory views punishment as the offender's just deserts, meaning it is not about deterrence, but rather about the offence. Deterrent theory is asking the question: How much punishment is enough to stop the offender and others from committing the crime again, and it works in two ways: specific deterrence and general deterrence. The preventive theory supports punishment for the more limited reason of incapacitation. Lastly, the reformatory theory refers to the offender as deserving of a chance to be rehabilitated and re-integrated. The Indian courts have repeatedly said that sentencing should be based on balancing these theories,

¹² Bilkis Yakub Rasool v. Union of India, 2024 SCC OnLine SC 25.

rather than mechanically applying one of them; the 'rarest of rare' doctrine enunciated in *Bachan Singh v. State of Punjab*¹³ on the death penalty is itself an attempt to limit retribution and deterrence to a specific class of cases while reserving reform for the ordinary sentencing objective. It is worth emphasising, however, that if there is any theory to the death sentence, it must be rooted in a credible theory of the commutation and remission regime that underpins it: a death sentence that is well thought out is undermined entirely if the process by which it is commuted and remitted is not thought out at all, the reality is much closer to that experience than most commentary admits.

Statutory Categories of Punishment

According to section 53 of the Indian Penal Code, 1860,¹⁴ there were five types of punishments: death, prison for life, prison (rigorous or simple), forfeiture of property and fine. The *Bharatiya Nyaya Sanhita, 2023 (BNS)* has significantly retained this structure for minor offences and first offenders in Section 415, and has introduced a new sixth category, community service, in explicit recognition that the legislative intent in minor and first offence cases is to move away from the IPC and embrace the reformative theory.

The death penalty has been and still is the most extreme sentence, which, since the *Bachan Singh*¹⁶ case, has been constitutionally restricted to the 'rarest of rare' cases in which the alternative of life imprisonment is also 'unquestionably foreclosed'. In *Union of India v. V. Sriharan*¹⁷, the Supreme Court explained that while life imprisonment means a sentence for the course of the convict's natural life, it can also be imposed for a 'fixed term' of twenty or thirty years or something akin to it, as a 'calibrated' middle ground between life imprisonment and death in suitable cases. It is important to note that *Sriharan's* fixed-term innovation stems directly from the fact that the ordinary remission regime would not be a reliable means to guarantee the life sentence for a set duration. The Court found it necessary to add a clause to the sentencing process because it knew that the executive process was not reliable. Most sentences for offences not involving murder or terrorism-related offences are spent in prison in some form of rigorous imprisonment or simple imprisonment. Forfeiture of property and fine are used primarily as ancillary and summary forfeiture for lesser and economic offences. It is the first time in India's

¹³ *Bachan Singh v. State of Punjab*, (1980) 2 SCC 684.

¹⁴ Indian Penal Code, 1860, § 53, No. 45, Acts of Parliament, 1860 (India).

¹⁵ *Bharatiya Nyaya Sanhita, 2023*, § 4, No. 45, Acts of Parliament, 2023 (India).

¹⁶ *Bachan Singh v. State of Punjab*, (1980) 2 SCC 684.

¹⁷ *Union of India v. V. Sriharan*, (2016) 7 SCC 1.

history that a minor offence like theft of small value or public nuisance has been first recognized by the law for community service, which is a completely non-custodial form of a punishment aimed at reformation.

The availability of commutation differs by the type of punishment imposed: a death sentence can be commuted to life imprisonment (a change in kind); a term of rigorous imprisonment can be remitted, i.e. reduced in duration without changing its character. This distinction is important because, as this paper will demonstrate, there are unique loopholes in each route that can be exploited individually.

3. COMMUTATION, REMISSION AND PARDON: THE CONSTITUTIONAL AND STATUTORY ARCHITECTURE

Conceptual Distinctions

Indian law recognizes the difference between ‘pardon’, ‘remission’, ‘commutation’, ‘suspension’, and ‘reprieve’ and assigns them varying consequences. A Pardon is an order that completely releases the defendant from both the conviction and the sentence. Commutation in general is the replacement of a punishment by a less harsh one, of a different kind; the classical example being the commutation of a death sentence to life imprisonment. The remission will lessen the duration of the sentence but will not change the nature of the sentence. A respite is a sentence that is reduced because of a special circumstance, such as being pregnant; a reprieve is a postponement of a sentence for further legal action. This taxonomy is hardly academic hair-splitting: each has its own legal test, its own level of judicial scrutiny, and as the *Bilkis Bano*¹⁸ and *Amarmani Tripathi*¹⁹ cases clearly demonstrates that the government have used exactly that taxonomic nuance to shovel the politically desired results through the door that gets the least scrutiny.

The Constitutional Clemency Power : Articles 72 and 161

The President of India under Article 72²⁰ has the power to pardon, reprieve, remit or respite punishment, or to suspend or remit the punishment of any person sentenced to punishment for any offence. It is deliberately broad in scope, including sentences issued by court martial, all

¹⁸ *Bilkis Yakub Rasool v. Union of India*, 2024 SCC OnLine SC 25.

¹⁹ *State Through C.B.I vs Amaramani Tripathi*, AIR 2005 SC 3490.

²⁰ INDIA CONST. art. 72.

death sentences regardless of whether the offence is a Union or a State offence, and sentences for offences against Union law. There is an analogous but narrower power vested in the Governor in Article 161²¹, and it is also limited by death sentences and court-martial sentences, which are within the exclusive purview of Article 72. The powers are in both instances executive, not as a constitutional function but as part of the basis of the Council of Ministers, and must be regarded in that light rather than as an act of individual conscience vested in the President and the Governor.

The Supreme Court in *Kehar Singh v. Union of India*²² held that the exercise of clemency under Article 72 is an act of grace, not an appellate re-examination of the merits of the conviction, but this does not, and must not be read to, place the power beyond the reach of judicial review.

The Statutory Route: Sections 432–435 CrPC (Sections 473–476 BNSS)

In addition to the constitutional power, Chapter XXXII of the Code of Criminal Procedure, 1973²³ (now reproduced largely in Sections 473 to 476 of the *Bharatiya Nagarik Suraksha Sanhita*, 2023²⁴)

confers upon the ‘appropriate government’ (usually State government where the offender was sentenced) a statute to suspend or remit a sentence in whole or in part, with or without conditions (Section 432)²⁵ and to commute a sentence to a lesser punishment (Section 433)²⁶. This restriction is upheld as constitutional under Section 433A²⁷ in *Maru Ram v. Union of India*²⁸, as it applies to persons sentenced to life imprisonment, or whose death sentence has been commuted to life imprisonment, who may not be released on remission before they have served fourteen years in prison. Section 434 gives the Central Government concurrent powers in case of death sentence, while Section 435 obligates the State government to consult Central Government before releasing the prisoner whose case was investigated by a central agency like the CBI²⁹, but this has not been followed in the case of *Bilkis Bano* and the consequences, if any, it created

²¹ INDIA CONST. art. 161.

²² *Kehar Singh v. Union of India*, (1989) 1 SCC 204.

²³ Code of Criminal Procedure, 1973, §§ 432–435, No. 2, Acts of Parliament, 1974 (India).

²⁴ *Bharatiya Nagarik Suraksha Sanhita*, 2023, §§ 473–476, No. 46, Acts of Parliament, 2023 (India).

²⁵ Code of Criminal Procedure, 1973, § 432, No. 2, Acts of Parliament, 1974 (India).

²⁶ Code of Criminal Procedure, 1973, § 433, No. 2, Acts of Parliament, 1974 (India).

²⁷ Code of Criminal Procedure, 1973, § 433A, No. 2, Acts of Parliament, 1974 (India).

²⁸ *Maru Ram v. Union of India*, (1981) 1 SCC 107.

²⁹ Code of Criminal Procedure, 1973, §§ 434–435, No. 2, Acts of Parliament, 1974 (India).

for the officials responsible has not been reflected anywhere beyond the eventual judicial overturning of the release.

Judicial Standards Governing the Exercise of the Power

The discretionary nature of the clemency and remission powers has created a doctrine of standards to regulate their use by the judiciary. The Supreme Court, in *Laxman Naskar v. State of West Bengal*³⁰, laid down five factors to consider for granting premature release: whether the offences were of an individual nature and had no impact on a wider community, whether the likelihood of the convict repeating the offence is reduced, whether the convict has lost his potentiality to commit a crime, whether there is any further utility of keeping him in custody, and the socio-economic condition of the convict's family. These 'Laxman Naskar factors' constitute the linchpin on which remission decisions of the State rest, and, as seen in *State of Haryana v. Jagdish*³¹, the Courts are prepared to set aside any refusal of remission that ignores them. The same checklist, however, has just as often been pulled out of a hat to justify a release determination that a State government had already made for other considerations.

In *Epuru Sudhakar v. State of Andhra Pradesh*³², the Supreme Court held that the pardoning power is an executive grace, but cannot be exercised without an application of mind; it cannot be done maliciously; it cannot be done without referring to what is relevant; it cannot be done without taking into account what is irrelevant; and there cannot be any arbitrary use of the power. In that case, the Court invalidated the pardon because it was granted based on the beneficiary's political ties instead of the severity of the crime, a pattern this paper suggests was repeated, at least in substance, in several of the issues explored later on. The Court in *Sher Singh v. State of Punjab*³³ and even more so in *Shatrughan Chauhan v. Union of India*³⁴ has held that the denial of mercy petition in a prolonged and unexplained manner or the failure to execute a confirmed death sentence amounts to infringement of the right to life and dignity guaranteed under Article 21³⁵ and can be a basis for setting aside a death sentence in favour of life imprisonment.

4. LOOPHOLES IN COMMUTATION AND REMISSION FRAMEWORK

³⁰ *Laxman Naskar v. State of West Bengal*, (2000) 7 SCC 626.

³¹ *State of Haryana v. Jagdish*, (2010) 4 SCC 216.

³² *Epuru Sudhakar v. State of Andhra Pradesh*, (2006) 8 SCC 161.

³³ *Sher Singh v. State of Punjab*, (1983) 2 SCC 344.

³⁴ *Shatrughan Chauhan v. Union of India*, (2014) 3 SCC 1.

³⁵ INDIA CONST. art. 21.

The above doctrinal framework is on paper reasonably well organized. In reality, there are five recurring gaps in the power to commute and remit that enable the power to be exercised in ways that run contrary to the deterrent purpose of the original sentence and the constitutional guarantee of equal treatment under Article 14³⁶. Each of the loopholes is not a theoretical threat, but a real case or ongoing dispute.

Political and Executive Misuse: The Bilkis Bano Case

The most notable example of political abuse was the rape and killing of Bilkis Bano and seven members of her family during the 2002 Gujarat riots. The eleven men convicted were sentenced to life imprisonment by a Mumbai court in 2008, after the Supreme Court had transferred the trial out of Gujarat, due to the communal nature of the offence. However, all eleven convicts were released by the Gujarat government in August 2022, based on the 1992 remission policy which was invalidated by a new policy in 2014 and even though the trial and conviction had occurred in Maharashtra, not in Gujarat. In its judgment dated 8th January 2024 in *Bilkis Yakub Rasool v. Union of India*³⁷, the Supreme Court in a two-judge bench quashed the Gujarat Government's entire remission order, stating that Gujarat was not the 'appropriate government' under Section 432(7) CrPC³⁸ to consider the applications, as the trial had been conducted in Maharashtra itself; that Gujarat had 'usurped' a power properly belonging to Maharashtra; and that the government had 'abused its discretion' and acted 'in tandem' with the convicts and not exercised its 'mind' independently. The convicts were instructed to surrender in two weeks, and subsequently, in 2024, a Gujarat government's review petition was rejected by the same bench. This episode has two related loopholes all rolled into one. First, ambiguity as to which State government is the 'appropriate government' can be, and was, exploited by a State more favourably disposed to the convicts than the one where the trial occurred. Second, the remission was announced with apparent dispatch around a politically symbolic date, namely Independence Day of India, which allows the firm inference that the Laxman Naskar factors were not the primary reasons behind the decision, but rather political considerations. It must be emphasized that during the two years that the Gujarat government allowed the wrongly released convicts to roam free, it faced no institutional consequences, no accountability, it faced only a remedy after 18 months, a remedy that the system itself produced, which is not accountability, it is delayed

³⁶ INDIA CONST. art. 14.

³⁷ *Bilkis Yakub Rasool v. Union of India*, 2024 SCC OnLine SC 25.

³⁸ Code of Criminal Procedure, 1973, § 432(7), No. 2, Acts of Parliament, 1974 (India).

correction, and delayed correction is not a deterrent to the next State government tempted to do the same thing.

Absence of a Uniform National Remission Policy

Remission policy in India is disaggregated by State, with each State having its own definitions of the conditions for eligibility, minimum term required for remission, and consideration of good behaviour in prison. This non-uniformity has the effect that two convicts sentenced to the same length of term for the same offence are treated differently solely because of the State in which they serve, something which is incompatible with the rule of equality before the law guaranteed by Article 14³⁹. In *re Policy Strategy for Grant of Bail* (2025)⁴⁰, the Supreme Court itself held that this is serious enough to require an unprecedented directive, nationwide and binding, to all the States and Union Territories, to draft or revise a written remission policy within a period of two months and consider convicts automatically for remission, without their application. The fact that the Supreme Court had to give command-and-control directions of this nature is the best possible proof that the loophole it spoke about in this section exists, is current, and just could not have been sufficiently filled by case-by-case adjudication over decades. According to the last compliance hearings, only few States like Punjab, Nagaland, and Andhra Pradesh have submitted compliance affidavits, and Uttar Pradesh has sought an extension⁴¹, which undercuts any notion that this reform is nearing its end.

Marginalisation of the Victim

Article 72/161 and Sections 432-435 CrPC (473-476 BNSS) do not require the victim or the family of the victim to be heard prior to the granting of a remission or commutation. The Bilkis Bano convicts were remanded without informing her of the order and she only heard about it after the fact. This is a structural lacuna rather than a single phenomenon; the right of the victim to be heard in the remission process is absent from the Indian criminal procedure, which in other areas has incorporated such rights, for instance, in the case of engaging a private counsel (Section 24(8) CrPC⁴²) or when acquitting an accused, the victim is entitled to the opinion of the presiding

³⁹ INDIA CONST. art. 14.

⁴⁰ *In re Policy Strategy for Grant of Bail*, 2025 INSC 239.

⁴¹ Supreme Court Directs States/UTs to Implement Remission Policy in 2 Months, *The Tribune* (2025), < <https://www.tribuneindia.com/news/india/supreme-court-directs-states-uts-to-implement-remission-policy-in-2-months> >.

⁴² Code of Criminal Procedure, 1973, § 24(8), No. 2, Acts of Parliament, 1974 (India).

officer (Section 432(2) CrPC). In the case of Madhumita Shukla⁴⁴, the gap was repeated where the victim's sister had heard of the convicts' impending release from press reports, rather than from the State.

Delay and its Human Cost

On the opposite side of the spectrum from premature release is the delay in disposing of mercy petitions in cases involving death sentences. In *Triveniben v. State of Gujarat*⁴⁵ and *Shatrughan Chauhan v. Union of India*⁴⁶, the Court ruled that the prolonged delay in deciding a mercy petition amounts to a violation of the right to life (Article 21) and is sufficient of itself to set aside a death sentence without considering the nature of the original crime. This doctrine not only ensures that the condemned is spared from indefinite uncertainty, but also points to the lack of any outer “time-limit” in which the mercy petition is required to be acted upon, and which the judges impose after the fact, case by case, rather than which Parliament imposes in advance. As the *Perarivalan* case demonstrates, the mechanism that was used to fire a convict out the barrel instead of to protect him from execution: for two and a half years the Governor of the State of Madras, by his silence on a remission recommendation, ruled as though he would have permitted the execution of a convict whom he had not in fact executed.

Opacity and the Absence of Accountable Data

Remission and commutation orders are, in the normal course, not published centrally in a searchable order nor are they accompanied by a reasoned order explaining the factors considered by the Laxman Naskar and how they have been weighted. That obscurity makes it hard for victims, the press or research to find patterns of disproportionate leniency before it becomes a full-blown scandal, and rarely gets the reasoning behind a remission decision made public because of litigation as with *Bilkis Bano*. The issue of systematic disclosure of clemency and remission data has been raised by the Law Commission of India separately⁴⁸ and in *Mafabhai Motibhai Sagar v. State of Gujarat*⁴⁹, the Court said that the condition of the remission was unconstitutionally vague because the State had failed to specify, in advance and in writing, what standard was to govern the exercise of its own discretion. The power has not been exercised consistently across similarly placed convicts: and in practical terms, that means it is currently

⁴³ Code of Criminal Procedure, 1973, § 432(2), No. 2, Acts of Parliament, 1974 (India).

⁴⁴ *State of U.P. Through CBI v. Amarmani Tripathi* (2005) 8 SCC 21.

⁴⁵ *Triveniben v. State of Gujarat*, (1989) 1 SCC 678.

⁴⁶ *Shatrughan Chauhan v. Union of India*, (2014) 3 SCC 1.

⁴⁷ INDIA CONST. art. 21.

⁴⁸ Law Commission of India, *Report No. 262: The Death Penalty* 175–79 (2015).

⁴⁹ *Mafabhai Motibhai Sagar v. State of Gujarat*, 2024 INSC 806.

impossible to tell by anyone outside government, which has had to make inferences from press reports, rather than from any official record, whether the power is being exercised consistently across similarly placed convicts, without the benefit of a public database of remission orders, disaggregated by offence, State, and outcome.

CONVICTS WHO RECEIVED FAR LESS PUNISHMENT THAN THEY DESERVED

The above gaps in the laws are not hypothetical. The following three cases, two of which are well documented and the third of which is severely under-documented in the academic literature, illustrate how three real people walked free in fact years and even decades before the sentencing court's own stated reason would have allowed them to.

(a) Rajiv Gandhi assassination convicts (2022)⁵⁰- In the case of the assassination of former Prime Minister Rajiv Gandhi in 1991, a political mass violence perpetrated by a suicide bomber representing a proscribed terrorist organisation, seven people have been convicted. Four had been sentenced to death; all four death sentences were eventually commuted to life imprisonment, principally on grounds of delay in disposing of mercy petitions. On 18 May 2022, in *A.G. Perarivalan v. State*⁵¹, the Supreme Court invoked its extraordinary power under Article 142 of the Constitution to declare Perarivalan, convicted of procuring the batteries used in the assassination bomb 'deemed to have served the sentence' and ordered his immediate release, citing the Tamil Nadu Governor's two-and-a-half-year failure to act on a State Cabinet recommendation for his release. The same reasoning was expanded, in a brief unreported order, to release the remaining six convicts, the original death-row prisoners Nalini Sriharan and V. Sriharan alias Murugan, on 11 November 2022 without any independent judicial review of the factors of the Laxman Naskar type which are particular to each of them.⁵² Out of four of the seven persons convicted of the assassination of a sitting former Prime Minister, all were free within about a quarter of a century of a punishment of execution originally considered by the sentencing courts. It is certainly the case that the very ambiguity that this paper highlights (the lack of a codified remission standard and the doctrine that delay by the Governor is itself a basis for release) which was applied to create a mass release, which no court had ever, on the merits, re-evaluated in substance for six of the seven convicts.

(b) Execution of Amarmani Tripathi, Madhumita Shukla murder case (2023). In October 2007, sitting Uttar Pradesh minister Amarmani Tripathi, along with his wife Madhumani Tripathi, was

⁵⁰ *State of Tamil Nadu v. Nalini*, (1999) 5 S.C.C. 253.

⁵¹ *A.G. Perarivalan v. State*, 2022 SCC OnLine SC 635.

⁵² *Nalini v. State*, Crl. App. Nos. 2032, 2034–2036 & 2040 of 2022, order dated Nov. 11, 2022 (S.C.).

convicted of the murder of Madhumita Shukla in Nainital, Uttar Pradesh, who was a poet and pregnant with the minister's child at the time of the shooting. Both the Nainital High Court and the Supreme Court upheld the conviction and life sentence of the minister.⁵³ The Uttar Pradesh prisons department ordered the couple's release in August 2023, citing both the age and 'good conduct' of the couple in prison, even though they had served some 16 years in actual custody, when the couple's release had been reported in public media. The victim's sister, Nidhi Shukla, challenged the release before the Supreme Court, which dismissed her plea in March 2025, stating that no fundamental rights of hers were found to have been violated and asked her to approach the concerned High Court.⁵⁴ There are three reasons why this case is important to the argument of this case. First, it is a textbook example of the victim-marginalisation loophole as discussed earlier: the family of the victim was not informed of the release in advance, but rather through the media. Second, it was a convicted murderer who, at the time of the crime, was a member of a State government, and was being released under a policy, administered by the very same institutional framework he was once in charge of, that is precisely the sort of conflict of interest a codified, externally audited national policy is meant to eliminate. Lastly, and most importantly for the argument of this paper, the Supreme Court's reasoning in dismissing the challenge (i.e., that the petitioner did not demonstrate a violation of her own fundamental right) points to precisely the doctrinal gap that the petitioner was seeking to fill: Indian law, as it stands, provides no independent vehicle for a murder victim's family to seek judicial review of a remission decision on the merits. The convicts were not only given a chance by a loophole but the loophole itself outlasted direct constitutional challenge.

The exposed limits of State remission discretion: Mafabhai Motibhai Sagar and the 2025 course-correction. A third, more systemic example is not in an individual case of wrongful release, but in the Supreme Court's recent recognition of the unreliability of State remission practice. Dismissing the condition as "manifestly arbitrary," the Court in *Mafabhai Motibhai Sagar v. State of Gujarat*⁵⁵ struck it down because a life convict could not be expected to behave decently for any period of two years after his release – a standard which the State could cancel remission on any whim it may have got. Three months later, in *In re Policy Strategy for Grant of Bail*⁵⁶, the

⁵³ Life Convicts Amarmani Tripathi, Wife Set to Be Released After 16 Years in UP Jail, Deccan Herald (Aug. 25, 2023), < <https://www.deccanherald.com/india/life-convicts-amarmani-tripathi-wife-set-to-be-released-after-16-years-in-up-jail-2660684.html> >.

⁵⁴ Madhumita Shukla Murder Case: SC Dismisses Plea Challenging Premature Release of Amarmani Tripathi, Deccan Herald (Mar. 25, 2025), < <https://www.deccanherald.com/india/madhumita-shukla-murder-case-sc-dismisses-plea-challenging-premature-release-of-amarmani-tripathi-3461645> >.

⁵⁵ *Mafabhai Motibhai Sagar v. State of Gujarat*, 2024 INSC 806.

⁵⁶ *In re Policy Strategy for Grant of Bail*, 2025 INSC 239.

Court went further and directed every State/Union Territory in the country to have a written and reasoned non-arbitrary remission policy within two months, just because the existing patchwork had failed to take care of itself. Keeping these two 2025 judgments together they represent the strongest judicial recognition ever recorded of the non-exaggerated description of the gap set out in this paper: a court of final appeal does not give country-wide administrative directions of this sort without being satisfied that the problem has not been contained by ordinary case by case litigation.

5. TOWARDS CORRECTION: MEASURES FOR REFORM AND FOR EFFECTIVE IMPLEMENTATION.

The reforms that follow are not meant as suggestions but as obligations because the evidence provided earlier indicates that suggestions have been tried and failed. Every one of the reforms listed below is a specific legal change that must occur on a certain deadline and everyone is justified by any of the defects listed above. The most important thing is that three of the five are not just aspirational anymore; the Supreme Court has already started forcing them to become real by rule, and what is left to do is to get them passed and enforced by the legislature, not invented.

First: A national remission policy, in existence but not yet formalized and codified.

Parliament should pass a national remission statute that incorporates the Laxman Naskar factors and the Epuru Sudhakar grounds for review as binding guidelines, which will be uniformly applicable across States with only administrative discretion left to States, and not substantive eligibility for issuance of remission. This is not a novel proposition which has been conceived for the purpose of this paper, but it is, in substance, exactly what the Supreme Court has directed every State and Union Territory to do in two months in *In re Policy Strategy for Grant of Bail*⁵⁷. The legislature's task is not to determine whether such a policy should exist, for the Court has determined that question, but to give it a statutory underpinning and render it binding on those who hold executive power with the possibility of enforcement by ordinary civil remedy and not by a regular series of writ petitions before the Supreme Court. The compliance needs to be monitored by a standing parliamentary committee which should report annually, naming the States that have complied and those that have not, because as of now, only a small minority of States are compliant with the Court's deadline.⁵⁸

⁵⁷ *In re Policy Strategy for Grant of Bail*, 2025 INSC 239.

⁵⁸ Supreme Court Directs States/UTs to Implement Remission Policy in 2 Months, *The Tribune* (2025), <<https://www.tribuneindia.com/news/india/supreme-court-directs-states-uts-to-implement-remission-policy-in-2-months>>.

Second: A statutory, unambiguous definition of 'appropriate government'.

Parliament should insert in Section 432(7) CrPC⁵⁹ / Section 473, BNSS, the phrase 'appropriate government' should be defined explicitly to mean the State where the trial was held and the sentence was passed, and not the State in which the convict actually commits the offence and lives or the State in which the convict's political sympathies lie. With the stroke of a pen, this statute fixes, without the need for any after-the-fact litigation, the same jurisdictional loophole that the Supreme Court was forced to address years after *Bilkis Yakub Rasool*⁶⁰ was decided. The amendment should also state that any remission order issued by a government which has been subsequently determined as not the 'appropriate government' shall be ineffective and shall result in automatic re-arrest, preventing the two-year period of 'unlawful liberty' enjoyed by *Bilkis Bano's* convicts from the time of their release till the time of correction.

Third: Mandatory, rather than discretionary, for victim involvement.

Victim participation in the remission process needs to be made a mandatory statutory requirement and not of executive courtesy. The victim or the next of kin shall have the right to be given advance written notice of any remission or commutation application and to be assured an opportunity to make representations before a decision is made, in line with participative rights already provided in other provisions in the CrPC/BNSS⁶¹. Importantly, the amendment needs to also provide a mechanism for the victim's family to challenge a remission decision on its merits, and not only on the ground that it breaches the family's fundamental rights which proved to be a bar in *Amarmani Tripathi*. If there were no second part to that right, a dogmatic State government could make a show of it and forget about it.

Fourth: A hard statutory time-limit for mercy petitions.

The Governor and President should have an outer time-limit of three months from the date of receipt on which mercy petitions can be disposed of, so that the protection of Article 21 becomes an after-the-fact judicial remedy and not a proactive procedural entitlement.⁶² This reform should be carefully designed to prevent it from being an independent avenue for the early release, as it partially was in the *Perarivalan* case⁶³; what is due a governor for delay is a mandamus for

⁵⁹ Code of Criminal Procedure, 1973, § 432(7), No. 2, Acts of Parliament, 1974 (India).

⁶⁰ *Bilkis Yakub Rasool v. Union of India*, 2024 SCC OnLine SC 25.

⁶¹ Code of Criminal Procedure, 1973, § 24(8), No. 2, Acts of Parliament, 1974 (India).

⁶² *Shatrughan Chauhan v. Union of India*, (2014) 3 SCC 1.

⁶³ *A.G. Perarivalan v. State*, 2022 SCC OnLine SC 635.

a decision within a limited further time rather than a judicially assumed completion of the sentence in the absence of any decision on merits.

Fifth: A nationwide public, disaggregated database of remissions.

Each remission, commutation and pardon order should be published, in reasoned form, within 30 days, on a public database maintained by the National Crime Records Bureau, disaggregated by State, offence category, and outcome, and linked to the existing e-Prisons early-release module, which the Supreme Court had already directed to be developed by the National Informatics Centre in the case of terminally ill and elderly prisoners.⁶⁴ The extension of the same infrastructure to encompass all remission decisions, and not just vulnerable prisoners, would be a relatively minor technical extension of an existing system. This transparency would not end discretion, this is the true essence of the power but it would render patterns of disproportionate leniency visible, in real-time as opposed to years later through litigation, and enable civil society and the press to hold the appropriate government to account at the point of decision, as they did for two years in Bilkis Bano and still do in the case of Amarmani Tripathi.

All five of these measures ensure the preservation of the constitutional structure of executive clemency while rendering ineffective the specific procedural and informational shortcomings that have enabled executive clemency to be misused. The only thing they need to do is have the Parliament and State legislatures, by statute, do what the Supreme Court has begun to do by order, and do it before the next politically appropriate release, not after.

6. CONCLUSION

Punishment and its commutation form two parts of the sentencing continuum, and neither can be considered without the other. India's criminal law has a hierarchy of punishments ranging from community service to death, with each step of the way supposedly designed to fit the crime and the aim of seeking revenge, punishment, protection, and rehabilitation. The commutation and remission system based on Article 72 and 161 of the Constitution and Sections 432–435 of the CrPC (now Sections 473–476 of the BNSS) is designed to mitigate the harshness of that judicial sentence in special cases. This paper has suggested, with the help of the Bilkis Bano cases, the Rajiv Gandhi assassination releases and the Amarmani Tripathi case, that the discretion that makes clemency human should make it structurally prone to political manipulation, lack of clarity, victimization and obscurity, that these are not occasional lapses in a good system, but

⁶⁴ National Legal Services Authority v. Union of India, W.P. (Crl.) No. 162/2025 (S.C.).

predictable outcomes of a system devoid of binding rules. The judicial interventions in the cases of Maru Ram, Epuru Sudhakar, Laxman Naskar, Bilkis Yakub Rasool, Mafabhai Motibhai Sagar and In re Policy Strategy for Grant of Bail have provided, case by case, and now, directly through administrative order, the standards that a codified national policy should have provided beforehand. The job now is legislative and administrative, and not judicial, to make these judicially evolved and judicially imposed safeguards real statute law, and likewise real law, which is visible, consistent, and uniform. These five reforms are not a wish list, three of which, in substance, are the law as announced by the Supreme Court in 2025. Where they're lacking is not the diagnosis, it's not even the judicial remedy anymore, what they're lacking is legislative permanence and enforced compliance, and neither can wait for the next Bilkis Bano.