

GOVERNOR'S POWER AND SECTION 433A OF CrPC

The Supreme Court of India recently held that the governor's power to pardon overrides Section 433A of CrPC. Earlier in January 2021, in a case of mercy petition, the SC noted that the governor can not reject state recommendation but there is no time prescribed to take a decision.

SC held that the Governor of a State can pardon prisoners, even before they have served a minimum 14 years of prison sentence. The Governor's power to pardon overrides a provision in the CrPC Section 433A which mandates that a prisoner's sentence can be remitted only after 14 years of jail. Section 433A states that where a sentence of imprisonment for life is imposed on conviction of a person for an offence for which death is one of the punishments provided by law, or where a sentence of death 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. Section 433-A cannot and does not in any way affect the constitutional power conferred on the President/Governor to grant pardon under Article 72 or 161 of the Constitution. The court noted that the sovereign power of a Governor to pardon a prisoner under article 161 is actually exercised by the State government and not the Governor on his own. The advice of the appropriate government binds the Head of the State.

The action of commutation and release can thus be pursuant to a governmental decision and the order may be issued even without the Governor's approval. However, under the Rules of Business and as a matter of constitutional courtesy, it may seek approval of the Governor, if such release is under Article 161 of the Constitution. The state government can frame a policy of grant of remissions either under Section 432 of the CrPC or under Article 161 of the Constitution. If a prisoner has undergone more than 14 years of actual imprisonment, the state government, as an appropriate Government, is competent to pass an order of premature release. Section 432 of the Code of Criminal Procedure empowers the Government to remit sentence.

Under Article 72 of the Constitution, the President shall have 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 where the sentence is a sentence of death. The President cannot exercise his power of pardon independent of the government. In several cases, the SC has ruled that the President has to act on the advice of the CoM while deciding mercy pleas. These include Maru Ram vs Union of India in 1980, and Dhananjay Chatterjee vs State of West Bengal in 1994. Although the President is bound by the Cabinet's advice, Article 74(1) empowers him to return it for reconsideration once. If the Council of Ministers decides

against any change, the President has no option but to accept it. And, under article 161, the Governor of a State shall have 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.

These powers are:

Pardon: It removes both the sentence and the conviction and completely absolves the convict from all sentences, punishments and disqualifications.

Commutation: It denotes the substitution of one form of punishment for a lighter form. For example, a death sentence may be commuted to rigorous imprisonment, which in turn may be commuted to a simple imprisonment.

Remission: It implies reducing the period of sentence without changing its character. For example, a sentence of rigorous imprisonment for two years may be remitted to rigorous imprisonment for one year.

Respite: It denotes awarding a lesser sentence in place of one originally awarded due to some special fact, such as the physical disability of a convict or the pregnancy of a woman offender.

Reprieve: It implies a stay of the execution of a sentence (especially that of death) for a temporary period. Its purpose is to enable the convict to have time to seek pardon or commutation.

The scope of the pardoning power of the President under Article 72 is wider than the pardoning power of the Governor under Article 161 which differs in the following two ways;

Court Martial: The power of the President to grant pardon extends in cases where the punishment or sentence is by a Court Martial but Article 161 does not provide any such power to the Governor.

Death sentence: The President can grant pardon in all cases where the sentence given is the sentence of death but the pardoning power of the Governor does not extend to death sentence cases.