
CONSTITUTIONAL CLEMENCY VS STATUTORY REMISSION: AN ANALYSIS OF THE SUPREME COURT'S DECISION IN PARVEEN KUMAR V. STATE OF HARYANA

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ABSTRACT

The interface between constitutional executive clemency and statutory remission has long remained an unsettled area of Indian criminal jurisprudence. The Supreme Court's decision in *Parveen Kumar @ Parveen Chauhan v. State of Haryana*(2026) provides important clarity by addressing whether a remission policy framed under Article 161 of the Constitution can be displaced by a subsequent policy issued under statutory powers. Although the dispute arose from the appellant's claim for premature release, the Court was ultimately called upon to resolve a broader constitutional question concerning the source and hierarchy of executive remission powers. This article examines the constitutional and statutory framework governing remission, analyses the reasoning adopted by the Court, and evaluates its treatment of constitutional supremacy and the doctrine of precedent. It argues that the judgment not only settles the legal position governing competing remission policies but also reinforces judicial discipline by reaffirming the binding force of larger Bench decisions. In doing so, the decision strengthens constitutional governance and provides much-needed clarity for the future exercise of executive clemency in India.

Keywords: Executive Clemency; Remission; Article 72; Article 161; Constitutional Law; *Parveen Kumar @ Parveen Chauhan v. State of Haryana*; Doctrine of Precedent.

Introduction

The idea of extending mercy to offenders is not a modern innovation. Across different civilizations and legal traditions, rulers have exercised powers to mitigate punishment in appropriate cases. In contemporary criminal justice systems, these powers have evolved into constitutional and statutory mechanisms that seek to balance the interests of justice with the principles of reformation and rehabilitation. Among the various forms of executive clemency, remission occupies a significant place as an important instrument for advancing these objectives.¹

The term remission is derived from the Latin word *remittere*², meaning "to send back" or "to slacken." Over time, the term evolved to signify the reduction or forgiveness of punishment. Although the Constitution of India does not expressly define remission, its essential features can be understood through two key elements.³ First, remission refers to the reduction of the period of imprisonment awarded to a convict. Secondly, while the duration of the sentence may be reduced, the nature or character of the sentence remains unchanged. Thus, remission affects only the length of imprisonment and does not alter the conviction or the sentence imposed by the court.

The underlying objective of remission is to promote the reformation and rehabilitation of prisoners who demonstrate genuine improvement in their conduct and behaviour during incarceration. It reflects the philosophy that the criminal justice system should not merely punish offenders but should also provide deserving convicts with an opportunity to reintegrate into society as responsible and law-abiding citizens.

To appreciate the constitutional foundation of remission, it is first necessary to understand the broader concept of executive clemency, of which remission is one form. In India, the power of executive clemency is vested in the highest constitutional authorities—the President and the Governor—under Articles 72 and 161 of the Constitution, respectively.⁴ Executive clemency comprises five forms: pardon, commutation, respite, reprieve, and remission. Among these, the present discussion is confined to remission and the constitutional and statutory framework governing its exercise.

¹ Drishti IAS, SC's Direction on Remission, <https://www.drishtias.com/daily-updates/daily-news-analysis/scs-direction-on-remission>, (accessed 4 July 2026).

² Vocabulary.com, "Remission," <https://www.vocabulary.com/dictionary/remission> (last visited July 4, 2026).

³ Drishti IAS, SC's Direction on Remission, <https://www.drishtias.com/daily-updates/daily-news-analysis/scs-direction-on-remission>, (accessed 4 July 2026)

⁴ INDIA CONST. arts. 72, 161.

Constitutional Framework

To understand the legal framework governing remission, it is essential to first examine its constitutional foundation. The Constitution of India recognises that the administration of criminal justice is not confined to punishment alone but also accommodates mercy in deserving cases. Accordingly, it vests the power of executive clemency in the highest constitutional authorities—the President under Article 72 and the Governor under Article 161.⁵ These provisions serve as constitutional safeguards, enabling the executive to exercise mercy where the interests of justice, fairness, reformation, or humanitarian considerations so require. However, the exercise of these powers does not amount to sitting in appeal over judicial decisions; rather, they operate in a distinct constitutional sphere.

Article 72 empowers the President to grant pardon, reprieve, respite, remission, suspension, or commutation of sentences in three categories of cases: convictions by court-martial, offences relating to matters within the Union's executive power, and all cases where the sentence imposed is death.⁶ Owing to its wider constitutional ambit, the President's power extends beyond the ordinary criminal justice framework and ensures that exceptional cases may receive executive consideration where necessary.

Correspondingly, Article 161 confers similar powers upon the Governor in respect of offences falling within the executive power of the State. The Governor may grant pardon, reprieve, respite, remission, suspension, or commutation of sentences in cases arising under State laws. However, unlike the President, the Governor has no authority over court-martial cases, and the exercise of this power remains confined to matters within the State's executive jurisdiction.

Although Articles 72 and 161 operate within different spheres, both embody the constitutional philosophy that justice must be tempered with mercy in appropriate cases. These constitutional powers coexist with the statutory remission mechanism under the Bharatiya Nagarik Suraksha Sanhita, 2023; however, they derive their authority directly from the Constitution and therefore remain distinct from statutory powers. This distinction forms the core legal issue in *Parveen Kumar @ Parveen Chauhan v. State of Haryana*, where the Supreme Court examined the relationship between constitutional clemency and statutory remission.

⁵ INDIA CONST. arts. 72, 161.

⁶ De Facto Law, The Pardoning Powers of the Governor, <https://defactolaw.com> (accessed 5 July 2026)

Statutory framework

Having examined the constitutional framework governing executive clemency, it is equally important to understand the statutory framework governing remission. Section 473 of the Bharatiya Nagarik Suraksha Sanhita, 2023,⁷ which replaces the erstwhile Section 432 of the Code of Criminal Procedure, 1973, empowers the appropriate Government to suspend the execution of a sentence or remit the whole or any part of the punishment, either unconditionally or subject to conditions accepted by the convict. The expression "appropriate Government" refers to the Central Government in matters falling within the executive power of the Union and the State Government in all other cases. Where remission is granted subject to conditions, non-compliance may result in its cancellation and the re-arrest of the convict. Further, before deciding an application for remission, the appropriate Government may seek the opinion of the presiding judge regarding whether such relief should be granted.

Section 475 of the Bharatiya Nagarik Suraksha Sanhita, 2023⁸ operates as a statutory limitation on the general power of remission conferred under Section 473. It applies to two categories of cases: first, where a person has been sentenced to life imprisonment for an offence for which death is one of the punishments prescribed by law; and secondly, where a sentence of death has been commuted to life imprisonment under Section 474. In such cases, the convict cannot be released from prison unless he or she has undergone at least fourteen years of actual imprisonment.⁹ The rationale behind this provision is to ensure that, while the law recognises the importance of mercy and rehabilitation, the gravity of the most serious offences and the interests of justice are not overlooked. It reflects the legislature's attempt to strike a balance between humanitarian considerations and the need to ensure that punishment for heinous crimes remains proportionate and meaningful.

Although the present statutory framework is contained in the Bharatiya Nagarik Suraksha Sanhita, 2023, the dispute in *Parveen Kumar @ Parveen Chauhan v. State of Haryana* arose when the corresponding provisions of the Code of Criminal Procedure, 1973, namely Sections 432 and 433A, were in force. Since Sections 473 and 475 of the BNSS substantially correspond to Sections 432 and 433A of the Code of Criminal Procedure, the principles governing statutory remission discussed above remain equally relevant for understanding the Court's reasoning in the present case

⁷ Bharatiya Nagarik Suraksha Sanhita, No. 46 of 2023, § 473.

⁸ Bharatiya Nagarik Suraksha Sanhita, No. 46 of 2023, § 475.

⁹ Id.

Basis of Comparison	Constitutional Framework	Statutory Framework
Legal Provision	Articles 72 & 161 of the Constitution	Sections 432 & 433A, Code of Criminal Procedure, 1973 (now Sections 473 & 475 BNSS, 2023)
Authority Exercising the Power	President and Governor	Appropriate Government (Central/State Government)
Source of Power	Constitution of India	Parliamentary legislation (BNSS)
Nature of Power	Constitutional power of executive clemency	Statutory power to suspend or remit sentences
Amendment	Can be amended only through a constitutional amendment under Article 368	Can be amended through ordinary legislation enacted by Parliament
Scope	Covers pardon, commutation, remission, respite and reprieve	Primarily governs suspension and remission of sentences subject to statutory conditions and restrictions

The above comparison demonstrates that the constitutional and statutory frameworks derive their authority from different legal sources and operate through different authorities. While the constitutional power of executive clemency is vested in the President and the Governor, the statutory power is exercised by the appropriate Government under the BNSS. Although both mechanisms seek to balance mercy with justice, they function independently within their respective legal spheres. The interaction between these two frameworks formed the central issue before the Supreme Court in *Parveen Kumar @ Parveen Chauhan v. State of Haryana*.¹⁰

¹⁰*Parveen Kumar @ Parveen Chauhan v. State of Haryana & Ors.*, Supreme Court of India, decided on 1 July 2026, available at <https://indiankanoon.org/doc/63395072/> (accessed 3 July 2026).

Facts of the Case

The dispute in *Parveen Kumar @ Parveen Chauhan v. State of Haryana & Ors.* (2026)¹¹ did not concern the appellant's conviction, which had already attained finality. Rather, the controversy before the Supreme Court centred on determining which remission policy—the Policy Regarding Release of Life Convicts, 2002 (hereinafter referred to as "the 2002 Policy"), dated 12 April 2002 or the Premature Release of Life Convicts, 2008 (hereinafter referred to as "the 2008 Policy"), dated 13 August 2008—would govern the appellant's claim for premature release.

The appellant, Parveen Kumar @ Parveen Chauhan, was convicted on 3 January 2009 for the murder of a 12-year-old child and sentenced to life imprisonment under Section 302 of the Indian Penal Code, 1860, along with separate terms of imprisonment under Sections 365 and 201 IPC. On 16 July 2013, the Punjab and Haryana High Court partly allowed his appeal by setting aside his conviction under Section 365 IPC, while upholding the remaining convictions. A further appeal before the Supreme Court was dismissed on 15 September 2015, thereby rendering the conviction final.

Having completed fourteen years of actual imprisonment, the appellant submitted a representation on 26 May 2022 seeking premature release under the 2002 Policy. As no decision was taken on his representation, he approached the High Court through a writ petition. By order dated 16 August 2022, the High Court directed the prison authorities to decide the pending representation within three months.

Pursuant to the High Court's direction, the appellant's representation was rejected on 20 October 2022. The State held that the 2008 Policy, and not the 2002 Policy, governed his case. It further observed that the appellant had not completed the minimum period of imprisonment prescribed under the 2008 Policy and was therefore ineligible for premature release. The appellant challenged this decision before the High Court; however, the writ petition was dismissed on 27 January 2025, leading to the present appeal before the Supreme Court.

¹¹ *Parveen Kumar @ Parveen Chauhan v. State of Haryana & Ors.*, supra note 9.

Timeline of Events

<i>Date</i>	<i>Event</i>
<i>25 September 2007</i>	<i>FIR registered at P.S. City, Gurgaon</i>
<i>3 January 2009</i>	<i>Appellant convicted and sentenced to life imprisonment under Section 302 IPC (along with sentences under Sections 365 and 201 IPC).</i>
<i>16 July 2013</i>	<i>High Court partly allowed the appeal by setting aside the conviction under Section 365 IPC.</i>
<i>15 September 2015</i>	<i>Supreme Court dismissed the appeal; conviction attained finality.</i>
<i>26 May 2022</i>	<i>Representation filed seeking premature release under the Haryana Policy, 2002.</i>
<i>16 August 2022</i>	<i>High Court directed prison authorities to decide the representation within three months.</i>
<i>20 October 2022</i>	<i>Representation rejected; State applied the 2008 Policy and held the appellant ineligible for premature release.</i>
<i>27 January 2025</i>	<i>High Court dismissed the writ petition challenging the rejection.</i>
<i>2026</i>	<i>Appeal filed before the Supreme Court.</i>
<i>1 July 2026</i>	<i>Supreme Court allowed the appeal, held that the 2002 Policy governed the appellant's claim, declared Raj Kumar per incuriam, and directed the State Government to reconsider the appellant's application within four weeks.</i>

Issues Before the Court

Although the appeal arose from the rejection of the appellant's application for premature release, the controversy before the Supreme Court extended beyond the individual claim for remission. The central issue was whether the appellant's application ought to be considered under the 2002 Policy, or under the subsequently issued 2008 Policy. The resolution of this question was significant because the two policies were issued under different legal sources and prescribed different conditions governing premature release.

More fundamentally, the case required the Court to determine whether a remission policy framed in exercise of the Governor's constitutional powers under Article 161 of the Constitution could be superseded by a later policy issued under the statutory powers contained in the Code of Criminal Procedure (now the Bharatiya Nagarik Suraksha Sanhita, 2023).

Thus, the dispute was not merely about the applicability of competing remission policies, but about the relationship between constitutional and statutory powers in the field of executive clemency. The Court's determination of this issue would have important implications for the scope of constitutional executive powers, the supremacy of the Constitution, and the rights of prisoners seeking remission.¹²

¹² Parveen Kumar@ Parveen Chauhan v. State of Haryana, supra note 9.

Arguments of the Parties

A. *Arguments of the Appellant*

The appellant contended that his claim for premature release ought to be considered under the 2002 Policy, as it was more beneficial and had been framed in exercise of the Governor's constitutional powers under Article 161 of the Constitution. It was argued that although the policy did not expressly refer to Article 161, its provisions clearly contemplated the exercise of the Governor's constitutional power of clemency. Consequently, the policy derived its authority from the Constitution rather than the statutory provisions of the Code of Criminal Procedure.

The appellant further submitted that the 2008 Policy was issued under the statutory powers contained in the Code of Criminal Procedure. Since constitutional and statutory remission powers operate in distinct legal spheres, a statutory policy could not supersede or override a constitutional policy. Reliance was also placed on the larger Bench decision in *State of Haryana v. Jagdish*¹³, which recognised the distinction between constitutional and statutory remission powers and affirmed the applicability of the more beneficial policy.¹⁴

B. *Arguments of the State*

The State opposed the appeal by contending that the appellant's case was governed by the 2008 Policy, which had already come into force before his conviction. It was argued that the appellant could not claim the benefit of the earlier 2002 Policy.

In support of its contention, the State relied upon the Supreme Court's decision in *State of Haryana v. Raj Kumar* (2021)¹⁵. The State argued that the 2002 Policy had not been issued under Article 161 of the Constitution because it contained no express reference to the constitutional provision. Consequently, both the 2002 and 2008 Policies were statutory in nature, and the later policy superseded the earlier one. On this basis, the State submitted that the appellant's application for premature release had been rightly rejected.¹⁶

¹³ *State of Haryana v. Jagdish*, (2010) 4 SCC 216.

¹⁴ Parveen Kumar, *supra* note 9.

¹⁵ *State of Haryana v. Raj Kumar*, (2021) 9 SCC 292.

¹⁶ Parveen Kumar @ Parveen Chauhan v. State of Haryana & Ors., *supra* note 9.

Judgment / Decision of the Court

The Supreme Court allowed the appeal and held that the appellant's claim for premature release must be considered under the 'Policy Regarding Release of Life Convicts, 2002' and not under the 'Premature Release of Life Convicts Policy, 2008'.¹⁷

The Court observed that the earlier remission policies of 1993, 2000 and 2002 were substantially identical with respect to their source of power. Although the 2002 Policy did not expressly mention Article 161 of the Constitution, it required the approval of the Governor for granting remission, thereby indicating that it was framed in exercise of the Governor's constitutional powers.

Relying upon the three-Judge Bench decision in *State of Haryana v. Jagdish* (2010), the Court reiterated that a remission policy framed under Article 161 derives its authority directly from the Constitution and cannot be overridden by a subsequent policy issued under Sections 432 and 433 of the Code of Criminal Procedure. Consequently, the Court concluded that the Premature Release of Life Convicts Policy, 2008, being statutory in nature, could not supersede the constitutional policy of 2002.

The Court further held that the contrary view taken in *State of Haryana v. Raj Kumar* (2021), which treated the 2002 Policy as statutory, was inconsistent with the binding larger Bench decision in *Jagdish*. Since *Jagdish* constituted the controlling precedent, the decision in *Raj Kumar* was declared per incuriam and was therefore not binding.

Accordingly, the Court held that the appellant was entitled to have his application considered under the more beneficial 2002 Policy, making him eligible for consideration of remission.

However, the Court clarified that this ruling would operate prospectively. Applications for remission that had already been finally decided would not be reopened. The State of Haryana was directed to decide the appellant's remission application in accordance with this judgment within four weeks.¹⁸

¹⁷ Parveen Kumar @ Parveen Chauhan v. State of Haryana & Ors., supra note 9.

¹⁸ Id.

Ratio Decidendi

The ratio decidendi of *Parveen Kumar v. State of Haryana* (2026) is that a remission policy framed in exercise of the Governor's constitutional power under Article 161 of the Constitution cannot be superseded or nullified by a subsequent remission policy issued under the statutory powers contained in Sections 432 and 433 of the Code of Criminal Procedure. Where two conflicting precedents exist, the decision of a larger Bench prevails as the binding precedent. Accordingly, the Supreme Court held that the decision in *State of Haryana v. Jagdish* (2010) governed the issue, while the contrary observations in *State of Haryana v. Raj Kumar* (2021) were *per incuriam*. Therefore, prisoners whose cases are governed by the constitutional Policy Regarding Release of Life Convicts, 2002 are entitled to its benefit notwithstanding the subsequent Premature Release of Life Convicts Policy, 2008.¹⁹

¹⁹ Parveen Kumar @ Parveen Chauhan v. State of Haryana & Ors., supra note 9.

Critical Analysis

The Supreme Court's decision is legally sound as it reinforces the distinction between constitutional and statutory sources of executive clemency. By holding that the Policy Regarding Release of Life Convicts, 2002 was issued in exercise of the Governor's constitutional powers under Article 161, the Court reaffirmed that a constitutional power cannot be diluted or superseded by a subsequent statutory policy. The judgment therefore upholds the supremacy of the Constitution, a fundamental principle of Indian constitutional law.²⁰

Another notable aspect of the decision is its reaffirmation of the doctrine of precedent. The Court correctly relied upon the larger Bench decision in *State of Haryana v. Jagdish*²¹ and declared the contrary view taken in *State of Haryana v. Raj Kumar*²² to be *per incuriam* for overlooking a binding precedent. This approach strengthens judicial consistency and reinforces the principle that decisions of larger Benches are binding on smaller or co-equal Benches.

The judgment also advances the reformatory philosophy of criminal justice. By ensuring that a prisoner is considered under the remission policy applicable in accordance with constitutional principles, the Court protects fairness, legitimate expectation, and the constitutional safeguard embodied in Article 161. It recognises that executive clemency is not merely an act of mercy but an important constitutional mechanism that balances punishment with the objectives of reformation and rehabilitation.²³

At the same time, the Court exercised judicial restraint by directing that its ruling would operate prospectively. While this promotes legal certainty and prevents the reopening of numerous concluded cases, it may also result in hardship for prisoners whose applications were finally rejected under the legal position prevailing before this judgment. Consequently, although the prospective application serves the interests of administrative stability, it limits the immediate benefit of the corrected legal interpretation for some similarly situated prisoners.²⁴

Overall, the judgment makes a significant contribution to Indian remission jurisprudence by reaffirming constitutional supremacy, preserving the hierarchy of judicial precedents, and

²⁰ Parveen Kumar @ Parveen Chauhan v. State of Haryana & Ors., supra note 9

²¹ State of Haryana v. Jagdish, (2010) 4 SCC 216.

²² State of Haryana v. Raj Kumar, (2021) 9 SCC 292.

²³ Parveen Kumar @ Parveen Chauhan v. State of Haryana & Ors., supra note 9

²⁴ Parveen Kumar @ Parveen Chauhan v. State of Haryana & Ors., supra note 9

clarifying the relationship between constitutional and statutory remission powers. It is likely to serve as an important precedent in future cases involving executive clemency under Article 161 of the Constitution.²⁵

²⁵ Parveen Kumar @ Parveen Chauhan v. State of Haryana & Ors., supra note 9

Conclusion

The decision in *Parveen Kumar v. State of Haryana* (2026) makes a significant contribution to the jurisprudence on executive clemency and remission. Although the dispute arose from the appellant's claim for premature release, it ultimately required the Supreme Court to determine a broader constitutional question concerning the relationship between constitutional and statutory remission powers.

In resolving this issue, the Court reaffirmed the supremacy of the Constitution by holding that a remission policy deriving its authority from Article 161 cannot be displaced by a subsequent policy founded solely on statutory provisions. The judgment also reinforces the importance of judicial discipline by reiterating that decisions of larger Benches are binding and that a contrary decision rendered in ignorance of such precedent may be declared *per incuriam*. In doing so, the Court not only corrected the legal position but also promoted certainty, consistency, and predictability in the administration of justice.

Ultimately, the judgment extends beyond determining the appellant's entitlement to premature release. It clarifies the distinction between constitutional and statutory remission powers, provides authoritative guidance for future remission disputes, and reaffirms that constitutional values must remain the foundation of executive action. For these reasons, *Parveen Kumar* is likely to remain an important precedent in the evolving jurisprudence of executive clemency in India.²⁶

²⁶ *Parveen Kumar @ Parveen Chauhan v. State of Haryana & Ors.*, supra note 9

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