
THE UNSEEN SIDE OF MERCY: A STUDY ON VICTIMS' RIGHTS, REMISSION AND THE INSTITUTIONAL SHORTCOMINGS IN THE CRIMINAL JUSTICE SYSTEM

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ABSTRACT

The idea of remission, commutation, premature release, mercy petitions and suspension, founded partly on humanitarian considerations to the prisoners, raises an important question concerning the corresponding interests of victims within the criminal justice system. When the State reduces or terminates the period of incarceration imposed through the judicial process, the question arises as to whether the existing framework adequately accommodates the victim's interest in justice, participation, dignity and protection. This paper attempts to infiltrate through the institutional shortcomings of the prison administration system of the country, that covers the blanket of humanity over one, and leaves the other to struggle.

Through an examination of legislation, Government Orders, judicial decisions, administrative policies, publicly available records and comparative international approaches, the significant gaps in the existing framework, from the victim's point of view elaborating upon the executive's hegemony over the judiciary's authority. It also examines the extent to which political considerations may intersect with ostensibly humanitarian remission policies, while recognising the need to distinguish documented governmental objectives from allegations of political influence. The paper ultimately seeks to examine whether the present remission framework strikes an adequate balance between prisoner rehabilitation, victims' rights, executive discretion, judicial authority and transparency.

Keywords: Remission, Commutation, Suspension, Premature Release, Mercy Petitions.

INTRODUCTION

The legal relief to a prisoner's life in the confines of jail come in different ways. Bail, parole, remission, commutation, suspension, mercy petition, or even premature release. But one often remembers these concepts with the blanket term of "exception". In reality, each term represents a different form of legal relief, which may be guaranteed at certain times or conferred upon a prisoner in particular circumstances, subject to an ample number of conditions.

The primary concept of introduction of prisons in India has been reformation rather than retribution. Reformation is necessary, as the state cannot treat all the crimes, criminals and punishments on an equal scale. Psychological evaluation of the degree of seriousness of the commission of offence to the mental state of the accused, the courts rinse every available possibility before convicting any person, for it follows the principle of allowing "thousand guilty to escape but not an innocent to be imprisoned." Our Constitution of India, 1950 also guarantees right to life with dignity through articles 14, 19 and 21.¹ Thus the impact of these exceptions in the life of prisoners have been vast.

Remission refers to the reduction of the period of a sentence without altering the nature or character of the sentence imposed by the court. For example, where a prisoner is sentenced to a fixed term of imprisonment, remission may reduce the period that the prisoner is required to remain incarcerated, subject to the applicable statutory and prison rules. Under Section 473 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS), the appropriate Government may, at any time and subject to conditions accepted by the sentenced person, suspend or remit the whole or any part of a sentence.²

Commutation, in contrast, involves substituting one form of punishment with another less severe form and therefore changes the character of the sentence. Section 474 BNSS expressly recognises the power to commute sentences, including commutation of a death sentence to imprisonment for life and imprisonment for life to imprisonment for a term of not less than seven years.³

¹ INDIA CONST. arts. 14, 19, 21.

² Bharatiya Nagarik Suraksha Sanhita, No. 46 of 2023, § 473 (India).

³ Bharatiya Nagarik Suraksha Sanhita, No. 46 of 2023, § 474 (India).

Suspension of sentence means the temporary cessation or postponement of the execution of a sentence; under Section 473 BNSS, the appropriate Government may suspend the execution of a sentence, either wholly or subject to conditions.⁴

A mercy petition is distinct from these ordinary remission and commutation mechanisms and principally arises in death-sentence cases. Section 472 BNSS provides the statutory procedure for a condemned prisoner, legal heir or relative to submit a mercy petition to the Governor⁵ under Article 161⁶ or the President under Article 72⁷, following the prescribed procedure and time limits.

Premature release, on the other hand, is the actual release of a prisoner before the sentence would otherwise expire, pursuant to an applicable remission, commutation or executive premature-release policy. It is therefore better understood as the *outcome* of the application of the relevant legal and administrative framework rather than as a single, independent form of sentence reduction. The Supreme Court has repeatedly distinguished the existence of a power of remission from an automatic right to release and has recognised that statutory restrictions, including the minimum fourteen-year requirement in cases covered by Section 475 BNSS, may limit such release.⁸

INTERNATIONAL PERSPECTIVE

The French criminal justice system distinguishes between sentence reduction, presidential pardon and conditional release, thereby separating the reduction of a sentence from the actual release of a prisoner. French law provides for mechanisms of *réduction de peine*, through which the period of imprisonment may be reduced in accordance with statutory conditions. More significantly, *libération conditionnelle*, or conditional release, permits a prisoner to serve the remainder of the sentence outside prison subject to prescribed conditions and is closely connected with the objectives of rehabilitation, reintegration and prevention of reoffending. The French framework is particularly significant from the perspective of victims because the circumstances surrounding the offence, the prisoner's reintegration efforts and efforts towards

⁴ Bharatiya Nagarik Suraksha Sanhita, No. 46 of 2023, § 473 (India).

⁵ Bharatiya Nagarik Suraksha Sanhita, No. 46 of 2023, § 472 (India).

⁶ INDIA CONST. art. 161.

⁷ INDIA CONST. art. 72.

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

compensating victims may be taken into account while considering conditional release. Separately, the President of the Republic possesses the power of *grâce*, or pardon, which may dispense a convicted person from serving all or part of a sentence. Thus, the French model demonstrates a distinction between sentence reduction, conditional release and executive clemency, while placing considerable emphasis upon the reintegration of the offender and the interests of victims.⁹

In England and Wales, the modern system similarly distinguishes executive clemency from ordinary mechanisms of prisoner release. The Royal Prerogative of Mercy permits the grant of a pardon and may include remission or commutation of a sentence. However, the ordinary release of prisoners is primarily governed by statutory sentencing and licensing arrangements rather than by the exercise of the prerogative. Depending upon the nature of the sentence, a prisoner may be released on licence and remain legally subject to the sentence in the community, with conditions governing his or her conduct and the possibility of recall to custody in the event of breach. For prisoners whose cases fall within the parole system, the Parole Board considers whether release is appropriate under the applicable statutory framework. Consequently, the British model illustrates that release from physical custody does not necessarily amount to forgiveness or extinguishment of the sentence; rather, it may constitute a supervised continuation of the sentence within the community.¹⁰

The United States provides a particularly clear distinction between executive clemency and judicial or administrative mechanisms of sentence reduction. Under Article II of the United States Constitution, the President possesses the power to grant reprieves and pardons for federal offences, and the federal clemency framework distinguishes between a pardon and a commutation. A pardon constitutes an act of executive forgiveness, whereas commutation reduces the sentence imposed upon an individual without invalidating the underlying conviction. The federal system also recognises mechanisms such as compassionate release, through which a federal court may reduce a prisoner's sentence where the statutory requirements, including extraordinary and compelling circumstances, are satisfied. Thus, the American framework distributes sentence-reduction powers among the executive and judiciary rather than treating every form of early release as an exercise of executive remission. This

⁹ Code de procédure pénale [C. pr. pén.] arts. 729–733 (Fr.).

¹⁰ Criminal Justice Act 2003, c. 44, §§ 244–256 (UK).

distinction is particularly relevant when examining the relationship between executive clemency and judicially imposed sentences.¹¹

Australia adopts a federal structure in which the precise rules concerning imprisonment and parole differ between the Commonwealth and the individual States and Territories. At the Commonwealth level, the Royal Prerogative of Mercy may take the form of a pardon, conditional pardon including commutation, or remission of a sentence or fine. Ordinary release mechanisms, however, are substantially distinguished from executive mercy and operate through parole arrangements. The New South Wales framework provides an illustrative example: parole permits an offender to serve the remainder of the sentence in the community subject to supervision and conditions and does not itself shorten the sentence. The decision-making framework for parole expressly takes into account matters including community safety, the interests of victims, the offender's progress in custody and the intentions of the sentencing court. Victims may also have opportunities to make submissions concerning parole in appropriate cases. The Australian experience therefore demonstrates an institutional separation between executive clemency and supervised conditional release, while expressly incorporating victim interests and the sentencing court's objectives into the release process.¹²

The United Arab Emirates provides an example of a legal system in which executive clemency occupies a significant constitutional position while conditional release is dealt with separately through the criminal and correctional framework. The UAE Constitution recognises the President's power to grant a pardon or commute a punishment in accordance with the prescribed constitutional procedure, while general pardons may be established through legislation. At the same time, the UAE criminal and correctional framework contain provisions concerning conditional release of prisoners, subject to statutory requirements relating to the period served, conduct and other prescribed considerations. The distinction is therefore between an executive act of pardon or commutation, which may alter or dispense with the punishment, and conditional release, which permits a prisoner to leave custody while remaining subject to the legal consequences and conditions of the sentence. The UAE model illustrates how executive clemency and ordinary prison-release mechanisms may coexist without necessarily being

¹¹ U.S. CONST. art. II, § 2, cl. 1; 18 U.S.C. § 3582(c)(1)(A).

¹² Crimes Act 1914 (Cth) ss. 19AU–19AV (Austl.); Crimes (Administration of Sentences) Act 1999 (NSW) ss. 135–137.

treated as identical legal concepts.¹³

Saudi Arabia provides another distinct approach in which executive pardon constitutes an important mechanism for reducing or removing the unserved portion of a prison sentence. The Saudi Government provides an official procedure through which a request may be made for pardon of a prisoner and exemption from the remainder of the sentence, subject to the applicable conditions and administrative framework. Such a mechanism differs conceptually from ordinary parole because the latter concerns the supervised serving of the remaining sentence in the community, whereas pardon or exemption may extinguish the obligation to serve the remaining portion of the punishment. The Saudi framework therefore demonstrates the importance of distinguishing between executive forgiveness of punishment and conditional or administrative release mechanisms. At the same time, the precise operation of these mechanisms is dependent upon the relevant Saudi legislation, royal directives and administrative rules applicable to the particular category of prisoner.¹⁴

The international experience demonstrates that remission, commutation, suspension, mercy and premature release are not universally interchangeable concepts. Different jurisdictions distribute these powers between courts, parole authorities, prison administrations and executive heads of State. France places substantial emphasis upon judicially supervised sentence execution and reintegration; England and Wales distinguish release on licence from the Royal Prerogative of Mercy; the United States separates presidential clemency from judicial sentence-reduction mechanisms; and Australia demonstrates how parole can operate as a distinct supervised form of release while expressly taking account of victims and the objectives of the sentencing court. The UAE and Saudi Arabian approaches, meanwhile, illustrate stronger executive dimensions to pardon and sentence reduction. The comparative picture therefore suggests that the principal issue is not merely whether a State permits prisoners to obtain early release, but which institution is empowered to grant it, what criteria govern the decision, whether the sentencing court and victims have a meaningful role, and what safeguards exist against arbitrary or insufficiently transparent exercise of discretion.

¹³ U.A.E. CONST. arts. 51, 54; Federal Decree-Law No. 31 of 2021, Penal Code, arts. 45–46 (U.A.E.).

¹⁴ Royal Decree No. M/39 of 28 Rajab 1423 AH (Saudi Arabia).

EXECUTIVE HEGEMONY OVER JUDICIARY

The exercise of remission occupies an unusual position within the criminal justice system because it permits the executive to alter the practical duration of a sentence imposed by a competent court, without reopening the conviction itself. As several studies noted, sentencing is fundamentally a judicial function whereas remission is an executive function, creating an inherent institutional tension between the two branches. The distinction is constitutionally important: the judiciary determines criminal liability and imposes the sentence according to law, while the executive subsequently determines whether, and to what extent, that sentence should continue to be served in custody. Remission therefore does not ordinarily erase the conviction or judicial judgment; rather, it affects the enforcement of the sentence. The existence of this power is not itself constitutionally objectionable, since remission is recognised under statutory and constitutional frameworks. The concern arises when the exercise of that power becomes insufficiently reasoned, inconsistent, opaque or apparently disconnected from the considerations that justified the original sentence.

Effect of executive interference on the public's perception of justice

The executive's intervention in remission can affect public confidence in criminal justice because a sentence represents more than the period for which an offender remains physically confined. It is also the legal consequence attached by the judicial system to the gravity of the offence proved at trial. Where a court has examined evidence, determined guilt beyond reasonable doubt and imposed imprisonment after considering the applicable sentencing framework, an unexplained or inadequately reasoned reduction of the period of incarceration may create a perception that the judicial determination can subsequently be diluted through an administrative process. This is particularly significant in serious offences involving multiple victims, sexual violence, communal violence or murders that have caused wider social harm.

We identify precisely this difficulty: the rationale for remission decisions has historically been characterised by opacity, while the absence of granular information makes it difficult to determine how remission policies are actually applied. One must also note the Supreme Court's attempt to place limits upon executive discretion through factors such as likelihood of recurrence, the nature of the offence, the purpose served by continued incarceration and the prisoner's circumstances. The Supreme Court's decision in *Epuru Sudhakar v. Government of*

Andhra Pradesh further establishes that constitutional clemency is subject to judicial review on recognised grounds such as mala fides, non-application of mind, irrelevant considerations and failure to consider relevant material.¹⁵ Emphasizing that executive remission is not an unchecked political or administrative privilege. However, the stance remains the unchanged. The broader public-interest question is whether the exercise of remission is sufficiently transparent to demonstrate that the executive is implementing a legally structured clemency power rather than substituting its own unexplained assessment for the judicially determined sentence.

“Good conduct” in prison versus punishment for the original crime

This produces a deeper conceptual problem in the Tamil Nadu remission framework. Rule 330 of the Tamil Nadu Prison Rules, 2024 provides an additional fifteen days of ordinary remission to an eligible prisoner who, for one year, commits no prison offence. Rule 324 separately provides ordinary remission for thoroughly good conduct, compliance with prison regulations, industry and performance of daily work.¹⁶ The 2024 Rules therefore treat conduct inside prison, in simple words, not committing an offence inside the prison as a basis for earning remission.

The difficulty, however, is that absence of a prison offence is not equivalent to expiation of the original offence. A prisoner who refrains from disciplinary violations during incarceration has demonstrated compliance with prison rules; that does not retrospectively alter the fact that the prisoner was convicted after a judicial determination of criminal liability. This distinction is especially important where remission becomes substantial enough to reduce the actual period of incarceration. The question is therefore not whether good prison conduct should ever be considered—it plainly can be relevant to rehabilitation and prison administration—but how much legal weight should be assigned to good conduct in prison when balanced against the nature of the original offence, the harm caused to victims, the likelihood of recurrence, public safety and the purpose served by the sentence.

The Supreme Court's jurisprudence supports precisely such a distinction. In *Laxman Naskar*, the Court identified several factors relevant to premature release, including whether the offence

¹⁵ *Epuru Sudhakar v. Government of Andhra Pradesh*, (2006) 8 S.C.C. 161 (India).

¹⁶ Tamil Nadu Prison Rules, 2024, rr. 324, 330 (India).

affected society at large, the possibility of recurrence, whether the prisoner has lost the potential to commit further offences, whether continued confinement serves a useful purpose, and the prisoner's socio-economic circumstances.¹⁷

In *Sangeet*, the Court rejected the misconception that a life convict acquires an entitlement to release merely because fourteen years have been completed and stressed that remission must be considered case by case rather than wholesale.¹⁸ In February 2013, the Ministry of Home Affairs issued an advisory prescribing that remission should not be granted in a “wholesale manner.”¹⁹

However, G.O.M. was issued in connection with the birth centenary of the late Chief Minister of Tamil Nadu, Mr M.G. Ramachandran, creating a one-time framework for premature release of eligible life convicts.²⁰ A Madras High Court judgment records that the scheme was specifically a “one time affair” and applied to prisoners who fulfilled the conditions as on 25 February 2018. Judicial records subsequently indicate that approximately 1,650 convict prisoners were released under the 2018 scheme.²¹ But that was not quite the “one time affair”.

The repeat of the “one time affair” happened through the premature release of the remaining surviving convicts in the Melavalavu massacre case²², through G.O.Ms.Nos.603–615 dated 8 November 2019.²³ Further, the next “one time affair” was G.O.Ms.No.488, Home (Prison-IV), 15.11.2021, Annadurai's 113th birth anniversary where judicial records initially identified 565 eligible cases for consideration²⁴, while a later 2026 judgment records that more than 700 life convicts were ultimately released under the scheme. Then again through, G.O.Ms.No.430, Home (Prison-IV), 11.08.2023, Annadurai's 115th birth anniversary.²⁵ How ironical!

¹⁷ *Laxman Naskar v. Union of India*, (2000) 2 S.C.C. 595 (India).

¹⁸ *Sangeet v. State of Haryana*, (2013) 2 S.C.C. 452 (India).

¹⁹ Ministry of Home Affairs, Government of India, Advisory on Premature Release of Prisoners (Feb. 2013).

²⁰ G.O.Ms. No. 64, Home (Prison-IV) Department, Government of Tamil Nadu (Feb. 1, 2018).

²¹ *P. Rathinam v. State of Tamil Nadu*, W.P. (MD) Nos. 24324, 25333 of 2019 & 3431 of 2020 (Madras High Court, Feb. 3, 2023)

²² *Alagarsamy v. State by Deputy Superintendent of Police*, (2006) (Madras High Court).

²³ G.O.Ms. Nos. 603–615, Home (Prison-IV) Department, Government of Tamil Nadu (Nov. 8, 2019).

²⁴ G.O.Ms. No. 488, Home (Prison-IV) Department, Government of Tamil Nadu (Nov. 15, 2021)

²⁵ G.O.Ms. No. 430, Home (Prison-IV) Department, Government of Tamil Nadu (Aug. 11, 2023).

Mass remission on political anniversaries: what happens to the victim's share of justice?

Tamil Nadu's history makes this question particularly important because several large-scale premature-release schemes were connected with commemorative occasions involving political leaders. The first significant example is G.O.Ms. issued on the occasion of the 98th birth anniversary of C.N. Annadurai. Acting under Article 161, the Governor remitted the unexpired portion of the life sentences of 472 convicts who had completed ten years of actual imprisonment as on 15 September 2006, subject to exclusions and conditions.²⁶ This was followed by G.O.Ms. associated with Annadurai's 99th birth anniversary, involving approximately 190 life convicts,²⁷ and G.O.Ms. associated with his birth centenary, involving approximately 1,405 prisoners.²⁸ These three schemes together account for approximately 2,067 documented releases during that period.

Further, G.O.Ms.²⁹, subsequently modified by G.O.Ms., dated 3 May 2018, established a premature-release framework in connection with the birth centenary of M.G. Ramachandran.³⁰ Judicial records indicate that approximately 1,650 convict prisoners were ultimately released under the scheme. The policy was subsequently relevant to the release of the remaining surviving Melavalavu convicts. The chronology therefore establishes that occasion-linked mass-release policies occurred under governments led by both major Dravidian political parties.

There is also a later example under G.O.Ms. framed in connection with the 113th birth anniversary of C.N. Annadurai.³¹ Further, G.O.Ms. established another premature-release framework associated with the 115th birth anniversary of Annadurai.³² Recent litigation demonstrates that these occasion-specific schemes continued to have legal consequences well after their issuance.

What the historical record legitimately demonstrates is that mass remission has repeatedly been associated with politically significant commemorative occasions under different governments.

²⁶ G.O.Ms. No. 873, Home (Prison-IV) Department, Government of Tamil Nadu (Sept. 14, 2006)

²⁷ G.O.Ms. No. 1326, Home (Prison-IV) Department, Government of Tamil Nadu (Sept. 12, 2007)

²⁸ G.O.Ms. No. 1155, Home (Prison-IV) Department, Government of Tamil Nadu (Sept. 11, 2008).

²⁹ G.O.Ms. No. 64, Home (Prison-IV) Department, Government of Tamil Nadu (Feb. 1, 2018)

³⁰ G.O.Ms. No. 302, Home (Prison-IV) Department, Government of Tamil Nadu (May 3, 2018)

³¹ G.O.Ms. No. 488, Home (Prison-IV) Department, Government of Tamil Nadu (Nov. 15, 2021)

³² G.O.Ms. No. 430, Home (Prison-IV) Department, Government of Tamil Nadu (Aug. 11, 2023).

That chronology raises a legitimate constitutional question: when the State chooses a political leader's birth anniversary or centenary as the occasion for releasing large numbers of prisoners, how is the victim's interest in the finality and meaningfulness of the criminal justice process accommodated?

The question is not whether commemorative remission is automatically unlawful. Rather, it concerns whether the symbolic occasion for the release should have any substantive bearing upon the individual assessment of prisoners and whether victims' objections, the nature of the offence and the societal consequences of the offence are adequately incorporated into the decision-making process.

This question became particularly visible in the Melavalavu litigation. In *P. Rathinam v. State of Tamil Nadu*,³³ petitions were filed seeking, among other reliefs, the quashing of G.O.Ms.Nos.603–615 dated 8 November 2019, through which the remaining thirteen surviving life convicts in the Melavalavu massacre case were released under the MGR-centenary premature-release scheme. Importantly, petitions were filed not merely by an individual prisoner but also by persons challenging the release and subsequently by family members of victims. Following petitions challenging the remission, the Madras High Court placed strict movement restrictions on the released convicts. In August 2024, the Madurai Bench of the Madras High Court further directed the state government to revoke the remission order of one of the convicts who had been implicated in a fresh criminal case in 2023.³⁴ This raises the important question: Why release prematurely?

The legal significance is therefore broader than the individual release. It demonstrates the collision between executive clemency, judicially imposed life sentences and the victim's continuing interest in justice. The fact that a prisoner satisfies an executive policy's eligibility conditions does not necessarily mean that release is automatic. Indeed, recent Tamil Nadu decisions continue to emphasise that eligibility for consideration is distinct from an entitlement to premature release.

³³ *P. Rathinam v. State of Tamil Nadu*, W.P. (MD) Nos. 24324 & 25333 of 2019 & 3431 of 2020 (Madras High Ct. Feb. 3, 2023)

³⁴ *A. Manikandan v. State of Tamil Nadu*, W.P. (MD) No. 31073 of 2023 (Madras High Ct. Aug. 1, 2024).

THE TRANSPARENCY DEFICIT

An article from the Supreme Court Observer, specifically identified the lack of reliable, granular remission data, particularly information concerning the executive's reasons for its decisions.³⁵ It noted that NCRB data showed 2,350 convicts prematurely released across India in 2021, but also observed that the NCRB data had not been updated beyond 2021 at the time of its 2023 analysis.³⁶ The current edition available is 2024, but the need for data is of 2026.³⁷

The problem is not merely statistical. Without information concerning who was considered, who was rejected, what offences were involved, how long prisoners had actually served, what the prison conduct record contained, what the probation report stated, whether victims objected, what the Advisory Board recommended and why the Government ultimately accepted or rejected the recommendation, meaningful scrutiny of remission becomes extremely difficult.

This is particularly striking because the Supreme Court has increasingly insisted upon reasoned decision-making in remission matters. A 2025 Supreme Court decision expressly observed that reasons for granting or refusing remission must be clearly delineated, and that the order should contain sufficient reasons to enable the prisoner to understand and challenge the decision.³⁸ Thus, the legal system increasingly demands reasoned remission decisions, while the empirical architecture necessary for public examination of those decisions remains comparatively weak.

The problem is compounded by the federal structure. Remission policies differ between States because prison administration is a State subject.³⁹ Consequently, two similarly situated prisoners may be subject to different policy frameworks depending upon the State concerned. This makes publicly accessible, comparable data particularly important.

If remission is an exercise of public power capable of reducing the practical effect of a judicial sentence, transparency should not be treated as an administrative luxury. It is an institutional safeguard. The absence of publicly accessible, prisoner-level or at least sufficiently granular

³⁵ Supreme Court Observer, *Remission and Premature Release of Prisoners in India* (2023).

³⁶ National Crime Records Bureau, *Prison Statistics India 2021* (Ministry of Home Affairs, Government of India, 2022).

³⁷ National Crime Records Bureau, *Prison Statistics India 2023* (Ministry of Home Affairs, Government of India 2026).

³⁸ *In Re: Policy Strategy for Grant of Bail*, 2025 INSC 239, ¶¶ 17–18 (India).

³⁹ INDIA CONST. art. 246, sch. VII, List II (State List), Entry 4.

anonymised data makes it difficult to determine whether remission is being administered consistently.

THE CLASH BETWEEN JUSTICE GUARANTEED TO THE VICTIM AND THE RIGHTS OF THE PRISONERS

Remission is a mechanism of sentence reduction; rehabilitation is a process of reform and reintegration. The former does not automatically establish the latter.

The Tamil Nadu Prison Rules themselves reflect a reformatory philosophy. Yet early release based primarily upon eligibility, good conduct or passage of time cannot automatically establish that a prisoner has been rehabilitated sufficiently to return safely to society.

The Melavalavu case provides a particularly powerful illustration. In 2019, the remaining thirteen surviving life convicts in the massacre were released under G.O.Ms.Nos.603–615⁴⁰ pursuant to the MGR-centenary premature-release policy. Subsequently, one of the released convicts, Sekar, became involved in a fresh criminal case in 2023. In *A. Manikandan v. State of Tamil Nadu*⁴¹, the Madurai Bench of the Madras High Court in August 2024 directed the State to revoke his remission and restore the conviction and sentence after finding that the conditions attached to his premature release had been violated.

The case nevertheless demonstrates a genuine institutional problem: the State must have an effective mechanism for monitoring whether the assumptions underlying premature release continue to hold after the prisoner returns to society.

It also exposes the limitations of treating the 14-year threshold⁴² as though it were a substantive measure of rehabilitation. The Supreme Court has repeatedly clarified that a life convict does not acquire an automatic right to release after fourteen years. The Supreme Court Observer's account of *Sangeet*⁴³ expressly records this point and notes the Court's insistence upon case-by-case consideration. Fourteen years is therefore better understood as a statutory or policy

⁴⁰ G.O.Ms. Nos. 603–615, Home (Prison-IV) Department, Government of Tamil Nadu (Nov. 8, 2019)

⁴¹ *A. Manikandan v. State of Tamil Nadu*, W.P. (MD) No. 31073 of 2023 (Madras High Ct. Aug. 1, 2024).

⁴² Bharatiya Nagarik Suraksha Sanhita, No. 46 of 2023, § 475 (India)

⁴³ *Sangeet v. State of Haryana*, (2013) 2 S.C.C. 452 (India).

threshold for consideration in applicable cases, not a judicial declaration that the purposes of imprisonment have necessarily been fulfilled.

A criminal trial determines guilt and sentence on the basis of evidence tested through the judicial process. Remission does not ordinarily reopen that conviction, but it can substantially alter the actual period during which the offender remains incarcerated. For the victim, therefore, remission can have consequences beyond the prisoner's liberty. The victim or victim's family may have to confront the offender's return to the same community, possible threats to safety, social pressure, trauma, or the perception that the punishment imposed after trial has been substantially shortened. The fact that remission is legally permissible does not make these consequences legally irrelevant.

A significant concern in the existing discourse on remission, premature release and executive clemency is the disproportionate emphasis placed upon the rights, rehabilitation and humanitarian circumstances of the convicted prisoner, while the continuing position of the victim and the victim's family often receives comparatively limited attention. Human-rights discourse and prison-reform jurisprudence understandably focus upon the dignity of prisoners, including life convicts and persons sentenced to death. However, an equally important question is whether the criminal justice system adequately recognises the fact that the victim is the person upon whom the consequences of the offence have been directly inflicted. The prisoner's suffering is a consequence of the punishment imposed for an offence of which he or she has been judicially found guilty, whereas the victim's physical, psychological, social and familial consequences arise from the offence itself and may continue long after the judicial proceedings have concluded.

This distinction becomes particularly significant when remission or premature release is considered. The mere absence of disciplinary violations within prison, or the prisoner's compliance with institutional rules, cannot necessarily be equated with rehabilitation. A prisoner may demonstrate exemplary institutional conduct without necessarily establishing that he or she has developed sufficient insight into the offence, remorse for the harm caused, empathy towards the victim, or the behavioural and psychological capacity necessary for safe reintegration into society. Consequently, the determination of "good conduct" should not become the sole or predominant basis upon which the practical duration of a judicially imposed sentence is reduced. Prison discipline is evidence of conduct within a controlled institutional

environment; it is not, by itself, conclusive evidence of rehabilitation or the absence of a risk of reoffending.

A victim-sensitive remission framework should therefore require consideration of the victim's continuing circumstances before premature release is granted. This need not necessarily confer an absolute veto upon the victim, since remission remains an exercise of public power and the criminal sentence is imposed by the State rather than constituting a private claim exclusively belonging to the victim. Nevertheless, the victim or the victim's family should be given a meaningful opportunity to make representations concerning safety, continuing psychological trauma, threats, social consequences, the possibility of confrontation with the released prisoner and other circumstances arising from the proposed release. Such representations should not be treated as a procedural formality; they should form part of the material objectively considered by the remission authority, with reasons recorded where significant victim concerns are accepted or rejected.

Further, the assessment of a prisoner's suitability for premature release should extend beyond the conventional prison record. An independent forensic psychological and behavioural assessment could examine the prisoner's insight into the offence, remorse, empathy, impulse control, aggression, behavioural transformation, risk of recurrence and capacity for reintegration. Such an assessment would not determine whether a prisoner "deserves" release, nor would psychological evaluation replace the statutory decision-making authority. Rather, it would provide an independent evidentiary component to the decision-making process. The final determination could be entrusted to a multidisciplinary remission review committee comprising appropriate prison authorities, probation or social-work officers, legal experts and independent psychological or psychiatric professionals, with the victim-impact material placed before the committee wherever practicable.

Such a model would transform remission from a predominantly prison-administration exercise into a more comprehensive assessment of rehabilitation, public safety and the continuing consequences of the offence. The central question should not merely be whether the prisoner has behaved well while incarcerated, but whether there is sufficient material to establish that the objectives served by continued incarceration have been adequately addressed and that release would not expose the victim, the victim's family or society to an unacceptable risk. The victim's continuing interest in justice should therefore constitute a substantive component of

remission consideration rather than an incidental consideration.

The underlying principle, therefore, should not be that the rights of convicted persons are to be disregarded, but that recognition of those rights must be accompanied by institutional recognition of the victim's continuing interest in justice. A system that evaluates only the prisoner's conduct risks reducing rehabilitation to institutional compliance. A more balanced framework would require the State to examine, through a reasoned and transparent process, the prisoner's conduct, rehabilitation, psychological readiness, risk of recurrence, the nature and circumstances of the original offence, the victim's representations, public safety and the purposes underlying the judicial sentence before remission or premature release is granted.

RECOMMENDATIONS AND SUGGESTIONS

The primary suggestion this paper puts forth is that the concept of rehabilitation must be distinguished from the mere act of early release or commutation. Rehabilitation is an important objective of imprisonment, but early release cannot, by itself, be equated with rehabilitation. Where remission is granted merely on the basis of good conduct in prison, what is effectively being recognised is a “reward for good behaviour” rather than the “completion of the rehabilitative process”. The pendency of the punishment imposed for the commission of the crime cannot be ignored merely because the prisoner has behaved well while serving the sentence. Good behaviour within prison is undoubtedly relevant, but it cannot automatically nullify the punishment that was imposed for the harm caused by the offender.

Jail time is served by a person because of the crime that he or she has committed and the punishment is imposed for that crime. Therefore, premature release raises a fundamental question as to whether the punishment imposed by the judicial process is being substantially altered through executive action. From the perspective of the victim, repeated or routine early release can signify that greater institutional concern is being placed upon prisoners than upon the persons who suffered because of the crime. Rehabilitation is important, but so is retribution. A criminal justice system cannot completely disregard the latter in its attempt to advance the former.

Therefore, remission and commutation should not become an ordinary or an expected consequence of imprisonment. They should be available only in genuinely exceptional

circumstances and should be subjected to severe scrutiny and rigorous monitoring. The government must consider the grant of commutation or remission itself as a part of the “rarest of rare doctrine”. Remission should not become a direct or automatic right of prisoners in the same manner in which rights such as education or equal opportunity in employment in prisons are understood. A prisoner may have the right to seek remission or mercy under the applicable constitutional and statutory framework, but this cannot be understood as a right to be pardoned or released before the punishment has otherwise run its course.

As a general principle, a prisoner should not be prematurely released before the completion of the punishment imposed merely because the prisoner has fulfilled ordinary conditions of conduct. The central question before the government should be whether the prisoner's release into society is of such paramount importance to society that it outweighs the degree of harm caused by the crime for which the person was punished.

Such scrutiny should not be confined to prison authorities or remain entirely within the executive structure. Rule 337(c) of the Tamil Nadu Prison Rules, 2024 provides for a Remission Committee in each institution, comprising the Superintendent of the Prison as Chairman, the Additional Superintendent, the Jailer or senior-most Prison Officer, the Deputy Jailer/Assistant Jailer in charge of the remission section, and the officer in charge of Industries/Vocational Training. Rule 337(e) further provides that the members of the Committee assist the Superintendent in matters relating to the award of remission and expressly states that the decision of the Superintendent shall be treated as final. The Rules also provide for further institutional consideration of remission and premature-release matters under the subsequent provisions, including Rule 345.⁴⁴ Such rules repeatedly signify the apparent hegemony of executive over judiciary.

An independent committee should be constituted, and must include former judges, psychologists and psychiatrists, prison authorities and legal scholars, so that the decision may be examined from judicial, psychological, correctional and legal perspectives. The committee must function independently and freely from executive influence. It must not become an instrument through which the executive can introduce political considerations or predetermined outcomes. No organ of government should be permitted to puppet-play the committee or

⁴⁴ Tamil Nadu Prison Rules, 2024, rr. 337(c), 337(e), 345 (India).

introduce bias into a decision concerning the premature release of a person convicted of a serious crime.

The present approach to prison administration must also reconsider the use of overcrowding as a justification for premature release. Overcrowding of prisons should not automatically imply that prisoners should be released before the completion of their punishment. Similarly, the birthday or commemoration of a great leader should not, by itself, become a reason for reducing the punishment imposed upon convicted persons. If overcrowding is the problem, the solution should be better prison infrastructure, increased capacity and improved correctional and rehabilitation facilities. The burden of inadequate prison infrastructure should not be transferred to victims through the premature release of prisoners.

The State must therefore invest in rehabilitation within the prison system rather than treating remission as the principal reward for rehabilitation. Better education, vocational training, psychological support, counselling, skill development and reintegration facilities can advance rehabilitation without making premature release the guaranteed or expected consequence of good conduct.

Transparency is equally essential. Information concerning remission, suspension, premature release and commutation should be made publicly available to the greatest extent permissible by law. Government Orders, policies, aggregate statistics, number of persons released, categories of offences, eligibility criteria, reasons for release and information concerning revocation should be maintained and made accessible. The Right to Information Act must remain an important mechanism through which such information can be scrutinised. The exercise of executive power affecting the duration of criminal punishment cannot remain entirely inaccessible to public examination.

CONCLUSION

The institutional shortcomings in the existing framework of remission and premature release reveal a serious lack of empathy towards victims and their families. The present approach appears to place paramount importance upon the prisoner while insufficiently considering the position of the victim, who continues to bear the consequences of the crime. In the midst of the institutional and constitutional power clash between the executive and the judiciary, the person

who is ultimately left without adequate consideration is the victim. The debate between executive discretion and judicial authority cannot be allowed to eclipse the actual human consequences suffered by victims and their families.

The distinction between a “right to seek mercy” and a “right to receive mercy” must also be maintained. The constitutional mechanism under Articles 72 and 161 should not be understood as creating an automatic right of a convicted person to be pardoned. The constitutional authority has a responsibility to consider such petitions carefully and to exercise the power within the constitutional framework. Manini Kaur in her article titled *Mercy Petition in Death Sentences*,⁴⁵ she claims the terminology of “mercy petitions” to be a “misnomer” and that “the government appears to be completely unaware of both its legal responsibilities and the human side of the suffering of those on death row, as seen by the excessively lengthy time that these petitions have been pending. It handles them as though they are waiting in line for food rations.”

I simply seek to point out that, in the discourse surrounding remission, commutation and mercy, an empathetic hand is often extended towards prisoners while the trauma and continuing suffering faced by victims and their families receive comparatively less attention. If, after the completion of judicial scrutiny and the imposition of a sentence, a prisoner is nevertheless regarded as having a guaranteed right to seek mercy, one must also ask: what, then, is the purpose and significance of judicial sentencing? Does this reflect such inadequacy in the prison administration and criminal justice system that the prisoner is increasingly viewed as the new “victim”, while the actual victim and the harm suffered by them are pushed into the background?

Ultimately, the criminal justice system cannot be understood exclusively through the lens of the prisoner. The humanity of prisoners is important, but the humanity, dignity and suffering of victims are equally important. Rehabilitation must not become synonymous with early release, and executive compassion must not eclipse judicial punishment. Retribution and rehabilitation must coexist within a framework of legality, accountability and transparency. Remission and commutation should remain exceptional mechanisms exercised for exceptional circumstances, rather than becoming an expected reward attached to imprisonment.

⁴⁵ Manini Kaur, *Mercy Petition in Death Sentences*, 6 NLU Delhi Student L. Rev. 1 (2019).

The ultimate objective should therefore be to create a remission system in which the prisoner is not denied humanity, but the victim is not denied justice; rehabilitation is not confused with release; executive discretion does not undermine judicial authority; and compassion does not operate at the cost of accountability.