

Commutation or Remission

Commutation:- In law, a commutation is reducing a punishment for a crime. After getting a commutation, an incarcerated person's original sentence of ten years in prison might be reduced to five years. A commutation is different from a pardon, which eliminates the actual conviction. For example:- A death sentence may be commuted to rigorous imprisonment.

The President or Governor's constitutional power to commute a sentence, under Art.72 and Art.161 respectively, the Central and the State Governments can also statutorily commute a sentence. In the BNSS, **Section 475** titled 'Power to commute sentence' lays down the extent of this statutory power.

A major change brought about by the BNSS is concerning the limit imposed on the commutation of a death sentence. Under S.433(a) CrPC, a sentence of death could be commuted to 'any other punishment' stipulated in the IPC.

However, the BNSS restricts the discretionary power of the government by limiting the scope of commutation of a death sentence to a sentence of life imprisonment alone. This is intended to increase the deterrence of such offences, for which the death penalty has been awarded. Similarly, the scope of commuting any sentence into a fine has been curtailed with this provision only applicable to offences punishable with 3 years or less.

Remission :- Remission means decreasing the period of the sentence without changing its character

Section 477 BNSS relates to the State Government's power to remit or commute sentences of persons convicted for the offences linked to the Central Government. The parallel text in S.435 CrPC, provided that the State Government could remit the sentence only after 'consultation with Central Government in certain cases'. However, the BNSS sees the replacement of 'consultation' with that of 'concurrence'. The change reflects existing case law, which had interpreted 'consultation with the Central Government' in S.432 to require agreement, or concurrence, of the Central Government

For example:- A person sentenced to a term of two years, his sentence is now reduced to one year. The effect of the remission is that the prisoner is given a certain date on which he shall be released and he would be a free man in the eyes of the law.

Comparison of powers of commutation		
Sentence	Cr.PC	BNSS
<i>Sentence of Death</i>	Section 433(a) Any other punishment provided by the IPC	Clause 474(a) Imprisonment for life
<i>Sentence of life imprisonment</i>	Section 433(b) Imprisonment for a term not exceeding 14 years or fine	Clause 474(b) Imprisonment for a term not less than seven years
<i>Sentence of imprisonment for 7 years or 10 years</i>	Nil	Clause 474(c) Imprisonment for a term not less than 3 years
<i>Rigorous imprisonment</i>	Section 433(c) simple imprisonment for any term to which that person might have been sentenced or fine	Section 474(e) simple imprisonment for any term to which that person might have been sentenced
<i>Imprisonment less than 7 years</i>		Clause 474 (d) fine

Provision of Commutation and Remission under New Criminal Laws		
BNS	BNSS	BSA
<p>➤ Commutation:-</p> <p>➤ Section 5 Commutation of sentence:- The appropriate Government may, without the consent of the offender, commute any punishment under this Sanhita to any other punishment in accordance with section 474 of the Bharatiya Nagarik Suraksha Sanhita, 2023.</p> <p>Explanation—For the purposes of</p>	<p>➤ Commutation:-</p> <p>➤ Section 456:- Postponement of capital sentence on pregnant woman:- If a woman sentenced to death is found to be pregnant, the High Court shall commute the sentence to imprisonment for life.</p> <p>➤ Section 474:-Power to commute sentence:- The appropriate Government may,</p>	<p>Commutation and remission have not been mentioned in BSA,2023.</p>

<p>this section the expression “appropriate Government” means,—</p> <p>(a) in cases where the sentence is a sentence of death or is for an offence against any law relating to a matter to which the executive power of the Union extends, the Central Government; and</p> <p>(b) in cases where the sentence (whether of death or not) is for an offence against any law relating to a matter to which the executive power of the State extends, the Government of the State within which the offender is sentenced.</p> <p>➤ Section 8(2):- Amount of fine, liability in default of payment of fine, etc:- (2) In every case of an offence—</p> <p>(a) punishable with imprisonment as well as fine, in which the offender is sentenced to a fine, whether with or without imprisonment;</p> <p>(b) punishable with imprisonment or fine, or with fine only, in which the offender is sentenced to a fine, it shall be competent to the Court which sentences such offender to direct by the sentence that, in default of payment of the fine, the offender shall suffer imprisonment for a certain term, in which imprisonment shall be in excess of any other imprisonment to which he may have been</p>	<p>without the consent of the person sentenced, commute—</p> <p>(a) a sentence of death, for imprisonment for life;</p> <p>(b) a sentence of imprisonment for life, for imprisonment for a term not less than seven years;</p> <p>(c) a sentence of imprisonment for seven years or more, for imprisonment for a term not less than three years;</p> <p>(d) a sentence of rigorous imprisonment, for simple imprisonment for any term to which that person might have been sentenced;</p> <p>(e) a sentence of imprisonment up to three years, for fine.</p> <p>➤ Section 475:- Restriction on powers of remission or commutation in certain cases:- Notwithstanding anything contained in section 473, 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 474 into one of imprisonment for life, such person shall not be released from prison unless he had served at least fourteen years of imprisonment</p> <p>➤ Section 477(2):- State</p>	
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sentenced or to which he may be liable under a **commutation** of a sentence.

➤ **Section 260** :- Intentional omission to apprehend on part of public servant bound to apprehend person under sentence or lawfully committed:-

(b) with imprisonment of either description for a term which may extend to seven years, with or without fine, if the person in confinement or who ought to have been apprehended, is subject, by a sentence of a Court, or by virtue of a **commutation** of such sentence, to imprisonment for life or imprisonment for a term of ten years, or upwards; or

➤ **Section 263 (d)**:- **Resistance or obstruction to lawful apprehension of another person**:-

(d) if the person to be apprehended or rescued, or attempted to be rescued, is liable under the sentence of a Court or by virtue of a **commutation** of such a sentence, to imprisonment for life, or imprisonment for a term of ten years or upwards, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine; or

Government to act after concurrence with Central Government in certain cases:-

(2) No order of suspension, **remission** or **commutation** of sentences passed by the State Government in relation to a person, who has been convicted of offences, some of which relate to matters to which the executive power of the Union extends, and who has been sentenced to separate terms of imprisonment which are to run concurrently, shall have effect unless an order for the suspension, remission or commutation, as the case may be, of such sentences has also been made by the Central Government in relation to the offences committed by such person with regard to matters to which the executive power of the Union extends.

Remission:-

➤ **Section 473(2)(3)**:- **Power to**

Remission:-

➤ **Section 266:- Violation of condition of remission of punishment:-**

Whoever, having accepted any conditional **remission** of punishment, knowingly violates any condition on which such remission was granted, shall be punished with the punishment to which he was originally sentenced, if he has already suffered no part of that punishment, and if he has suffered any part of that punishment, then with so much of that punishment as he has not already suffered.

suspend or remit sentences:-

(2) Whenever an application is made to the appropriate Government for the suspension or **remission** of a sentence, the appropriate Government may require the presiding Judge of the Court before or by which the conviction was had or confirmed, to state his opinion as to whether the application should be granted or refused, together with his reasons for such opinion and also to forward with the statement of such opinion a certified copy of the record of the trial or of such record thereof as exists.

(3) If any condition on which a sentence has been suspended or remitted is, in the opinion of the appropriate Government, not fulfilled, the appropriate Government may cancel the suspension **or remission**, and thereupon the person in whose favour the sentence has been suspended or remitted may, if at large, be arrested by any police officer, without warrant and remanded to undergo the unexpired portion of the sentence.

➤ **Section 477(2):- State Government to act after concurrence with Central Government in certain cases:-**

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