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The Appropriate Government for releasing of convicts : The Bilkis Bano Case

Introduction

There is a higher court than courts of justice and that is the court of conscience. It supersedes all other courts.

MK Gandhi

The imprisonment system has a number of flaws that must be addressed. Prisoners have always been perceived negatively by society. In order to achieve this aim, the system attempts to treat them as individuals by allowing them some rights. The Executive does this through a variety of means, including pardon, respite, commutation, or remission of offences.

Remission is a substantial and suitable remission granted to a criminal in appreciation of good behaviour and effective completion of their sentence for certain offences. Sentence remission refers to the complete conclusion of a sentence at a reduced point. It differs from furlough or parole in that it is a sentence reduction rather than a suspension of incarceration.

Because remission changes the character of the sentence without affecting its duration, the remaining time does not have to be served. The prisoner is given a date by which he will be considered legally released as a result of the remission. If any of the requirements are not met, the remission is revoked, and the offender must serve the balance of his original sentence.

Power on Remission Policy in India

Remission refers to the release of a condemned prisoner before the end of their sentence. The Prisons Act of 1894 established the notion of remission. Lets look at some of the relevant provisions of remission in Indian Legal System.

Constitutional: The President of India has the authority to commute a sentence under Article 72. The power extends to a convict for offences under the jurisdiction of the central government, including court-martial decisions.¹

Article 161 empowers the governor of a state to grant remission. The governor has no authority to commute the death penalty or a death penalty converted to a life term.²

Criminal Procedure Code (CrPC): Sections 432, 433, 434, and 435 of the Criminal Procedure Code (CrPC) include pertinent laws dealing with the rights of the elected government to award remission.³

The state government can form a board to consider a criminal serving a life sentence's application for remission.

Section 432 of the CrPC states that before determining on remission, the state government may seek the opinion of the trial court judge.

Section 435 of the CrPC requires the state government to confer with the Centre before deciding on a remission application if the prosecuting agency is under the control of the central government.

Prisons Act: Only state governments can set regulations for awarding remission under the Prisons Act. In this context, the union government may provide non-binding directives.

FACTS

During the Gujarat riots of 2002, a sad occurrence occurred when the Sabarmati Express was set on fire, killing fifty-nine Karsevaks on board. Bilkis Bano, who was five months pregnant at the time, abandoned her town with her three-and-a-half-year-old daughter and 15 other family members, fearing greater bloodshed in the aftermath.⁴

They took refuge in the Chhaparvad area, but their dreams for protection were dashed on March 3rd when a group of 20-30 people armed with sickles, swords, and clubs launched a surprise and savage attack. The assailants included 11 guys who are implicated in this case. During the incident, Bilkis, her mother, and three other women were subjected to heinous rapes and savage

¹ The Constitution of India 1949, Article 72

² The Constitution of India 1949, Article 161

³ Criminal Procedure Code 1973, s 432, 433, 434, and 435

⁴ Prabhaskar K Dutta, 'Bilkis Bano case: Story of brutality and 15-year-long wait for justice' *INDIA TODAY* (New Delhi, Oct 23, 2017)

assaults. Tragically, eight inhabitants of Radhikpur village died, six went missing, and only Bilkis (who was allegedly five months pregnant at the time), one man, and a three-year-old boy survived this horrible event.

Because to the flawed investigation by the local police, the matter was sent to the CBI. On the victim's request, the case was moved to the state of Maharashtra for a free and fair trial.

In January 2008, a special CBI court in Mumbai convicted the suspects to life imprisonment on gang rape and murder charges. In 2017, the Bombay High Court upheld the accused's conviction, and in 2019, the Supreme Court ordered the Gujarat state government to compensate the victim with Rs 50 lakh, a job, and a home.⁵

While it appeared that the situation had been resolved, one of the prisoners, Radheshyam Shah, petitioned the Gujarat High Court for the sentence to be commuted under sections 432 of the Code of Criminal Procedure (which mentions the state government's authority to commute sentences because prison is a state matter under the constitution) and 433 (which adds a caveat; prisoners who have received a life sentence for an offence that even carries a death sentence).⁶

The high court dismissed his petition, citing that it was the "appropriate government" in Maharashtra, not Gujarat, to decide on his remission. According to remission, the obligatory penalty was likewise 14 years in prison, which they had previously served. When the Supreme Court considered the remission, it had to evaluate the remission committee that was established in 1992. Eleven inmates were freed from custody.

CONTENTION

Petitioners:

Maharashtra is the 'Appropriate Government' for Considering Remission

The Gujarat Government is not the competent authority to give remission to those who have been convicted. According to Section 432 of the Criminal Procedure Code (CrPC), after a criminal submits a formal application, a 'relevant government' can consider remission. The Supreme Court ruled in Sangeet v State of Haryana (2012)⁷ that a government cannot remit a criminal on its own initiative—it must reply to an appeal by the guilty individual.

⁵ ANUPAMA KATAKAM, 'All 11 persons convicted of rape in 2002 Bilkis Bano case released' *FRONTLINE*, Aug 16, 2022.

⁶ *Ibid.*

⁷ *Sangeet v State of Haryana* [2012] AIR 2013 SC 447

According to Section 432(7) of the CrPC, the 'appropriate government' is the state government in which the criminal was convicted. The trial of the convicts in this case was moved from Gujarat to Maharashtra. This was done because the victim, Bilkis Bano, had received death threats in Gujarat while the trial was still proceeding. According to this law, Maharashtra, not Gujarat, is the competent government.

The Supreme Court decided in State of Madhya Pradesh v Ratan Singh (1976)⁸, Hanumant Dass v Vinay Kumar (1982)⁹, and Government of Andhra Pradesh v M.T. Khan (2003)¹⁰ that the 'appropriate Government' would be the one where the offence was committed. In 2015, a Five-Judge Constitution Bench affirmed this ruling in V. Sriharan v Union of India.¹¹

Gujarat Government did not consider the opinion of the presiding judge

The Gujarat government ignored the presiding judge's decision to convict the guilty. The Constitution Bench in Sriharan required the state administration to communicate with the case's sitting judge. This was a departure from previously established legislation, which did not need such consultation. The Court stated in **Ram Chander v State of Chhattisgarh (2022)**¹² that the 'final order of suspension or remission shall be influenced by the view to be provided by the Presiding Judge'.

The Crimes Committed were Heinous

The CBI study establishes that the atrocities were planned, heinous, and part of a communal attack. While Bilkis Bano was pregnant, the accused gang-raped her. Her baby kid died after being slammed to the ground. 14 of her family members were also cruelly slain. Their bodies had been brutally mangled, and only seven of them could be recognised. The attack on Bilkis Bano and her family was not a spur-of-the-moment occurrence.

Early Release was Granted Without Considering the Nature of the Crime

It might be claimed that the Superintendent's decision was based simply on Shah's conduct in jail, rather than the seriousness of the crime, the number of deaths, or the impact on Bilkis.

⁸ *State of Madhya Pradesh v Ratan Singh* [1976] AIR 1552 1976 SCR 552 1976 SCC (3) 470

⁹ *Hanumant Dass v Vinay Kumar* [1982] AIR 1052, 1982 SCR (3) 595

¹⁰ *Government of Andhra Pradesh v M.T. Khan* [2003]

¹¹ *V. Sriharan v Union of India* [1987] Writ Petition (CrL.) No. 48 of 2014 with Writ Petition (CrL.) No. 185 of 2014, Writ Petition (CrL.) No. 150 of 2014, Writ Petition (CrL.) No. 66 of 2014 & Criminal Appeal No. 1215 of 2011

¹² *Ram Chander v State of Chhattisgarh* [2022] 4 SCR 1103

Remission Policy was 'Oblivious' to Latest Legal Developments

The Gujarat government was accused of failing to recognise the issues that drove the tougher 2014 policy. Furthermore, the Gujarat Government ignored four Supreme Court decisions—all issued before to the 2014 Policy—that called for stricter conditions for the remission of heinous crime offenders.

Failed to payment of Fines before Release

11 prisoners had failed to pay a fine of Rs. 34,000, which was supposed to be given to Bano as reparation. Because the inmates did not pay their penalties, their sentences were unfinished. As a result, the remission was deemed 'illegal'. In **Sharad Hiru Kolambe v State of Maharashtra (2018)**¹³, it was determined that a criminal must suffer further imprisonment for failing to pay a fine.

Remission of Convicts Affected Public Conscience

While granting remission, the Gujarat government neglected to consider other aspects such as impact test, impact on society at large, impact on public conscience, and so on. In **Sriharan**, the Supreme Court said that the 'effect of the public at large' should be considered while providing remission.

Respondent:

Gujarat government as an appropriate government for considering remission.

The Gujarat government followed Section 435 of the Criminal Procedure Code (CrPC), which states that if a matter has been investigated by a central agency such as the Central Bureau of Investigation (CBI), the state government must "**consult**" with the Union government. In this case, the Gujarat government sought advice from the Union government, which then resorted to the CBI. The CBI had expressed "no negative opinion" and had "left it to the Central Government." Following this, the Union granted the Gujarat government permission to commute the sentences.

Furthermore, the Supreme Court stated that the case was relocated to Maharashtra due to "exceptional circumstances" and that the trial would normally have taken place in Gujarat. The

¹³ *Sharad Hiru Kolambe v State of Maharashtra* [2018] 18 SCC 718

court then instructed the Gujarat government to make a decision on remission based on a policy it established in 1992.

Allowing Third-Party PILs Will Set a Dangerous Precedent

The PILs were 'speculative' and relied on 'media accounts rather than an actual copy of the remission decision. In **Simranjit Singh Mann v Union of India (1992)**¹⁴, the court ruled that third parties may not file a PIL in criminal proceedings involving an accused's conviction. Furthermore, in **Janata Dal v H.S. Chowdhary and Ors (1992)**¹⁵, it was determined that only a person with a significant interest in a process can file a PIL, with no 'personal gain', 'private profit', or 'political motivation'.

It should be noted that "remission is a reduction of sentence without changing its character," which means that the accused's guilt is unaffected; only the penalty is modified. As a result, no third party may have a voice in sentence reduction.

Third-Party Interference is Impermissible

The petitioners were unable to file a case against the convictions. A 'penal couple' is a notion. A 'couple' in a crime was merely the culprit and the victim. As a result, only the victim has the right to hire a private lawyer to assist the state-appointed public prosecutor.

Shiv Kumar v Hukam Chand (1999)¹⁶, which concluded that the private counsel must follow the public prosecutor's instructions. **Sundeep Kumar Bafna v. State of Maharashtra (2014)**¹⁷ and **Mallikarjun Kodagali v. State of Karnataka (2018)**¹⁸ found that a public prosecutor must conduct a trial without intervention from a third party.

In this scenario, the prosecution, i.e. the State Government, has jurisdiction over the sentence reduction. In the current instance, the convicted have been given remission by the state government—the government of Gujarat. So, here is the notion of a 'penal pair,' or better, a 'penal trio,' consisting of the victim, the prisoner, and the State, with no third-party intervention.

A Writ of Mandamus Cannot be Reversed

¹⁴ *Simranjit Singh Mann v Union of India* [1992] AIR 1993 SC 280

¹⁵ *Janata Dal v H.S. Chowdhary and Ors* [1992] AIR 1993 SC 892

¹⁶ *Shiv Kumar v Hukam Chand* [1999] 7 SCC 467

¹⁷ *Sundeep Kumar Bafna v. State of Maharashtra* [2014] 2014(16) SCC 623

¹⁸ *Mallikarjun Kodagali v. State of Karnataka* [2018] AIR 2018 SC 5206

Remission cannot be revoked in a court of law because a writ of mandamus is not easily reversed.

The Court concluded in **Jaya Thakur v Union of India (2023)**¹⁹ that extending the tenure of the existing director of the Enforcement Directorate by legislative means violated a mandamus that clearly prohibited such extensions. So, as a writ of mandamus cannot be "removed" by law, so can a decision.

Validity of the 1992 Gujarat Remission Policy cannot be challenged

The legitimacy of the 1992 Gujarat Remission Policy is a reoccurring question in this case. The Gujarat Remission Policy of 1992 cannot be challenged since the Supreme Court issued a writ of mandamus imposing that policy. The Supreme Court reasoned that the 11 defendants were convicted when the 1992 Policy was in effect. In **Hitesh v State of Gujarat (2022)**²⁰, the Supreme Court decided that the 1992 Gujarat Remission Policy be applied to a man convicted of murder in 2002.

Remission is an opportunity to start a new life

Remission allows offenders to begin a new life. Someone who committed a horrible crime should not be denied this chance indefinitely, especially if they have showed indications of rehabilitation. Good conduct in jail shows reform, and the necessity for the law to allow for rehabilitation was emphasised.

Heinousness of crime “not relevant”

In this case, the "heinousness of the crime" and "society's cry for justice" are "not relevant" reasons because the convicting court sentenced the defendant to life in prison with the opportunity of remission.

In **Swamy Shraddananda@Murali... v. State of Karnataka**²¹, the defendant was sentenced to life imprisonment "*till the last breath*" since the court was "conscious that remission would be applicable."

Supreme Court Judgement

¹⁹ *Jaya Thakur v Union of India* [2023]

²⁰ *Hitesh v State of Gujarat* [2022]

²¹ *Swamy Shraddananda@Murali... v. State of Karnataka* [2008] 13 SCC 767

The bench stated that the Supreme Court order of May 13, 2022, was obtained by deception and so invalid. It further determined that the Gujarat government lacked authority to consider the remission application. According to constitutional law and the Code of Criminal Procedure, the powers of remission lay with the court that condemned the persons and where the trial was held, in this instance Maharashtra, rather than the jurisdiction of the state where the offence was committed.²²The Gujarat government's "exercise of discretion" was termed by the court as an example of "usurpation of jurisdiction". The final ruling of remission was to be influenced by the view of the special (CBI) court in Mumbai.²³

MY OPINION:

On Appropriate Government

Following an examination of the entire case, I believe that the right government for granting remission in this particular circumstance is the Maharashtra Government.

Section 432(7) of the CrPC states that the 'appropriate government' is the state government in which the offender was convicted, which in this case was Maharashtra. The Prisons Act also states that only state governments can frame rules for granting remission, which in this case would be Maharashtra. The Gujarat government ignored the presiding judge's decision to convict the defendants. Despite the fact that there are legal precedents on the subject, in **Ram Chander v State of Chhattisgarh (2022)**²⁴, the Court stated that the 'final decision of suspension or remission shall be influenced by the view to be provided by the Presiding Judge'. Petitioners further claimed that remission was given without explanation and despite written objections from the Special CBI judge and Special CBI Special Agent who performed the investigation. When deciding on the release of prisoners, the federal government did not include Maharashtra as a party, and their input was not considered. This is a breach of the principle of "Audi alteram partem" and natural justice. The Supreme Court's decision was limited to prisoner Radheshyam's application, but the Gujarat government granted exemption to all 11 convicts (the broad generalisation was unneeded and irrelevant).

²² Ananthakrishnan G,' Abuse of power': Supreme Court scraps release of Bilkis case rape-murder convicts', (*Indian Express*, New Delhi January 9, 2024)

²³ Ibid

²⁴ *Ram Chander v State of Chhattisgarh* [2022] 4 SCR 1103

Conclusion

The Bilkis Bano case is a horrifying and terrifying occurrence that occurred in the aftermath of the Gujarat carnage. The rape event is a very serious and serious act that calls for a very serious penalty. However, the occurrence in which a young mother was virtually targeted, gangraped, and her family, including her three-year-old daughter, were murdered in front of her goes beyond Brutality. The act of those who were part in the deed not only offends the modesty of one woman, but it also has a chilling impact on the entire community. The fact that the crime was purposeful and directed towards members of one community adds to the case's amplification.

Convict remission is a growing aspect of our criminal system. However, before granting remission to a criminal, the nature and gravity of the crime committed by him/her must be determined. In this case, the offenders' actions go way beyond remission.

In my opinion, the incident was a political ploy intended to polarise society. The circumstances and clear manner in which the convicts were granted remission without considering and following adequate checks and balances play a significant part in supporting my point of view. The timing of Remission so close to the general election also casts doubt on the intentions of the ruling administration, which is now in control both at the federal and state levels.

Thus, in my opinion, the judgement is horrible and must be reconsidered. A proper judicial inspection of the remission must be performed with no legal ambiguity since the case is so serious in nature that an unclear scenario casts a hazardous and gloomy precedence on society at large.