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## Bilkis Bano Case Commentary

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### Introduction

“Justice delayed is justice denied”—this oft-repeated maxim finds haunting resonance in the case of *Bilkis Bano* it finds renewed significance where delayed justice was further imperilled by the arbitrary remission of convicts, raising serious questions about the limits of executive discretion, federal competence, and the enforceability of victims’ rights under Articles 14 and 21 of the Constitution. Whether the remission violated the victim’s right to be heard? how unfair it is when the state is more concerned to shield the convicts rather support the victim? The case of Bilkis Bano is not just a personal tragedy but a constitutional moment that had forced the judicial system to confront the fragility of the rule of law when it comes to communal conflict zones.

### Background

After the Godhra train burning of 2002, Gujarat witnessed massive communal riots. On March 3 of that same year, when the family of Bilkis Bano was abducted while escaping from their village, Bilkis was gang-raped in front of her relatives and fourteen members of her family were killed, including the daughter of Bilkis, who was aged 3 years. Initially, the case was bungled by the local authorities. Because of serious doubts about the integrity of the investigation, the Supreme Court, in 2004, transferred the trial to Mumbai. In 2008, a special CBI court convicted 11 persons of rape and murder.

In an astonishing move, the Gujarat Government passed orders for remission of the sentences of these convicts in August 2022. Bilkis Bano went on to challenge the premature release by way of a writ petition; due to which the Court annulled the remission orders in 2023.

The Incident enraged then people across the nation and has shook the conscience of the society in terms of moral and social dilemma. The Government was censured from all the sections of the society. This dreadful Incident remained as the most harrowing case of the sexual violence and highlighted the delay in justice in such heinous crimes against women.

## **Findings by the CBI Investigation**

Bilkis Bano contended that the police denied to add all the relevant information that was essential while registering the FIR. With no other way left, she had to move to NHRC (National Human rights Commission) and later on to the Supreme court. The role of NHRC was pivotal throughout the journey of justice, they aided her providing a senior advocate and former Solicitor General as her counsel.

A petition was filed by the victim- Bilkis Bano before the Supreme Court after which the SC directed the CBI to investigate through the matter. For the sake of fair trial the case has been transferred to the Mumbai Sessions Court in 2007.

In the process of investigation by the CBI, 19 accused were came into light inclusive of the doctors and the police officers who were suspicious of tampering the evidence and they even tried to draw a veil over the crucial facts and details of the crime. The medical examination was delayed purposely so that the crucial evidence lost. Later on it was proven by the CBI investigation that the doctors and the police officers were responsible with the tampering of the evidence and were charged for the same.

CBI submitted a chargesheet with the names of all nineteen accused and prepared a report after investigation revealing all the important details that has happened during the crime.

## **Decision of the Mumbai Sessions court**

The trial began in 2008 at the Mumbai Sessions Court, as there was lack of proper and systematic investigation by the Gujarat Police Station.

In 2017, judgement passed by the Mumbai court convicted 11 accused as the offenders of the crime including the police officer. The remaining were acquitted due to insufficient evidence found against them to establish their commission of crime.

Mumbai Court held them guilty under section 302 and section 376 (2), read with section 149 of the Indian Penal Code, 1860. This verdict given by the Sessions Court was affirmed by the Bombay High Court in May 2017. The sentence of life imprisonment of the 11 convicts was upheld by the Bombay HC on the grounds of no direct participation and they were merely caught up in the web of circumstances.

The Hc forbid capital punishment as it was held that the death penalty is awarded in the rarest of the rare situations.

The Supreme court directed the Gujarat Government to provide the victim a job, house and amount of fifty lakhs as compensation.

## **Plea for Remission**

In 2022, one of the convicts, Radheyshyam Shah , pleaded for premature release before the Gujarat HC claiming that he has served more than 14 years of the sentence in prison.

Plea rejected by the Gujarat HC and then he moved to the SC appealing for his premature release under the Gujarat governments' 1992 remission policy.

After hearing the arguments of the convict, the Supreme court instructed the Gujarat Govt. to decide upon whether his remission could be granted in accordance with the Gujarat Remission Policy of 1992.

The Gujarat HC cannot pass verdict on this plea of remission since it lacked jurisdiction over the case. Since the case was transferred to and tried in the Mumbai sessions Court. Thus. they can allow remission in this case.

While moving the Supreme Court for remission and stating that he had been in jail for more than 15 years, the Supreme Court held that the Gujarat High Court had the right to deal with the remission of the said convict since Gujarat was the State of occurrence of the incident and the remission policy of the year 1992 would be followed, and not the one in 2014.

The Supreme Court, while explaining further, said that the State had constituted a committee to inquire into the remission issue. The committee unanimously decided to grant remission to all the convicts in the case and release them under the Remission Policy of 1992 and not 2014.

The Prime Minister of India accepted the plea for remission and ordered the early release of all convicts. This enraged several columns and the convicts had gang-raped a pregnant Muslim woman and then murdered her family members without even a moment's mercy.

### **The Gujarat's Remission Policy of 1992**

In the sentence of life imprisonment, a convict must remain in the prison for his entire life but the state and the central governments can release the convicts from prison on the condition that they have served a sentence of fourteen years imprisonment. This process of remitting the prison term by the government is known as remission.

The approval has to be on the certain grounds such as birth or death anniversaries of the prominent leaders, granted by the courts.

Gujarat's remission policy states that the opinion of the district magistrate , chairman of the jail, and the police officer of the specific district is essential for consideration by the inspector general in the process of initiation of the remission.

However the 2014 Remission policy prohibit the government from granting the remission to the prisoners by early release in the cases of heinous crimes such as rape or murder as investigated by the CBI.

It is right to conclude that the convicts of the Bilkis Bano Case got remission only due to the provisions of the 1992 policy , if the court has taken into consideration the 2014 policy they were not entitled to get premature release from the sentence of life imprisonment.

Now, the question arises why the 1992 Remission Policy Considered ?

The Mumbai Sessions court started the trial in 2004 after the case being transferred from the Gujarat. The SC had decided that this remission policy would be followed up to the year 2008 for all the cases and the 11 convicts were sentenced in 2004.

Thus, the Supreme court of India instructed the Guj high court to follow the remission policy of 1992 and not the new one.

On 15<sup>th</sup> August 2022, all the convicts were granted the remission. The release of the convicts on the day of Independence has led to a global outrage and the government faced strong criticism by almost all the varied sections and communities of the nation.

### **Review Petition filed by Bilkis Bano**

After learning about the release of the convicts on remission, Bilkis Bano filed a review petition in the supreme court and the grant of remission was challenged on 23<sup>rd</sup> August, 2022.

Advocate Shobha Gupta, the counsel of the victim filed a review petition against the premature release of all the 11 convicts in the case.

The Supreme court after hearing all the arguments from both of the sides objugated the Gujarat Government on April 18<sup>th</sup>, 2023 for the premature release of the accused in such heinous crime. It was the duty of the government to understand the gravity of the case before remitting convicts from prisons. The Supreme Court observed that the convicts should never have been released after committing such horrendous offences. Those persons who gang-raped a pregnant woman along with other women of her family and murdered her family members had no right to ever come out of prison.

The plight raising a very serious question, Justice K. M. Joseph sought to observe that it is the Government's responsibility to exercise its power in such a way as to benefit the people of the State. He further asked whether the Gujarat Government was trying to compare the murder of 14 helpless persons who were family members of the victim with the murder of a single person. He said that a massacre in no manner could be equated to the killing of one person.

The Gujarat government and the Centre resolved to challenge the order passed by the Court and so needed all relevant documents in regard to remission. This was done by them through a review petition dated 27<sup>th</sup> March, 2023. But the bench was strongly against such an idea and so declined it. The Supreme Court then extended time to the parties to make up their mind as to whether or not they will press for the review petition.

### **The Final Verdict: Justice Delayed not Denied**

On 8 January 2024, a two-judge Bench of the Supreme Court set aside remission orders granting premature release to 11 convicts in the Bilkis Bano gangrape case. Justice B.V. Nagarathna directed the 11 convicts to return to prison within the two weeks.

The judgement was closely associated with the issues of maintainability of the petitions, the authority of the Gujarat Government to grant remission and the personal liberty of the convicts. However the verdict favoured the petitioners in all aspects.

It has been argued by the opposition that victim could have approached the Gujarat High court under article 226 and can keep the remedy of appeal in the supreme court as an alternative. Justice Nagarathna quashed the argument, stating that Bilkis Bano's petition could not be dismissed merely on the grounds of an "alternative remedy".

The judgement held that the "appropriate government" under Section 432(7) of the Criminal Procedure Code, 1973 would be the place of trial and sentence of the offender. It would not be the place where the trial was conducted, as submitted by the Gujarat government. Reliance was placed on *State of Madhya Pradesh v Ratan Singh* (1976) where the Supreme Court held that the convicting state of Madhya Pradesh would be the "appropriate government" even if the convict was discharging his sentence in Punjab. It also relied on *Union of India v V. Sriharan* (2016) where a Constitution Bench reinforced the above definition of "appropriate government." Justice Nagarathna stated that the "appropriate government" should exercise the power to grant remission "in accordance with the law" and not in an "arbitrary or perverse manner without regard to the actual facts."

A question faced by the Supreme Court was whether the personal liberty of the convicts under Article 21 should be protected i.e. should they be allowed to continue their freedom?

One of Bano's arguments was that the convicts should be sent back to prison because the rule of law had been complied with. The judgement accepted the argument, holding the liberty of a person can only be protected in accordance of the law. It stated that liberty and other fundamental rights will only prevail if rule of law is established. Further, it iterated the role of the Supreme Court in acting as "a beacon in upholding rule of law."

Adopting this reasoning, the judgement held that the convicts cannot be allowed to stay out of jail as it would be a violation of the rule of law. It also pointed out that "emotional appeals" about liberty and reformation "become hollow and without substance" when juxtaposed with the abuse of process.

Thus, answering all the questions that arises before the supreme court regrading maintainability of the petitions, "authority of the government" and the personal liberty of the convicts , on top of that the core principle of Natural justice – rule of law was taken care of and hence *neither the justice nor the dignity denied.*