

DUTY TO ACT FAIRLY: BILKIS BANO

Rajat Tripathi*

ABSTRACT

*It was believed from ancient times that in a society where women are honored, there only god resides. The worth of the civilization of any country can be measured by giving place to women in society. But during that period time, people in society draw a blank on women's modesty and perform heinous crimes of sexual offenses like rape, sexual assaults, etc. There are many binding legislations for the safety of women to curb the accessible and deteriorating conditions regarding offenses against women. The principle of natural justice in reference to Articles 14 and 21 of the Indian constitution which states to make a sensible and reasonable decision which not violate personal equality before the law and the right to freedom and personal liberty but is it so fulfilled in the **Gangrape And Murder Case of the lady Bilkis Yakub Rasool** during Gujrat riots in 2002. The controversy behind remitting those 11 convicts of the Bilkis Bano case by the Gujarat Government under its Remission policy is fair and reasonable and whether it seems to satisfy the principles of natural justice.*

TIMELINE OF THE CASE

This incident took place on 3 March 2002 Chhaparvad district of Gujarat during the period of the Gujarat riots. Gujarat had to become violent after the burning of the Sabarmati Express which led to the Death of 60 Hindu Pilgrim passengers including 59 Karsevaks in Godhra Town. A Group of Hindus started Rioting by a misconception that Muslims Initiated the Fire and its consequences led to the death of 1000 persons mostly composed of Muslims. During the period of riots, A mob of 20 to 30 People attacked the family of **Bilkis Bano** in Randhikpur village in Limkheda Taluka of the Dahod district after the era of the Godhra riots. About 20 to 30 persons attacked the premises where 5-month pregnant lady Bilkis Bano and her Family took refuge.¹ Among the attackers, 11 persons were the culprit for 7 murders including the murder of 3 years old daughter of Bilkis Bano, as well as the stark facts of a young pregnant woman being gang-raped in front of her mother and then forced to watch the rape of her mother and her two sisters. Make no mistake-these facts were proven in court. As per sources, Bilkis

*SHRI RAMSWAROOP MEMORIAL UNIVERSITY, LUCKNOW.

¹<https://www.livelaw.in/columns/remission-granted-to-convicts-in-bilkis-bano-case-is-it-legal-207063>

regained consciousness three hours later when the horrific incident took place, after borrowing clothes from Adivasi women, she went to Limkeda police station to complain. She approached the nearest police station to register a case against the attackers but the police refused to register her case and threatened her with dire outcomes, Then Bilkis with the support of NGOs, including Janvikas and the National Human Rights Commission, petitioned the Supreme Court, which ordered the Government of Gujarat to Reopen the case in September 2003. The police then began a campaign of moral harassment, even waking her in the middle of the night to return to the location of the rape and murders to re-enact the events. In December 2003, the Apex court directed the CBI to reopen the case. The accused in the case were arrested in 2004.

While on 21st January 2008 the Special CBI Investigation sentenced the 11 accused to life imprisonment on the charges of rape of pregnant women, murder, and unlawful assembly under **Sections 141, 300, and 376 of the Indian Penal Code, 1856²**, and acquitted seven others based on lack of evidence against them.

Bilkis led her concerns regarding tampering of evidence and witnesses could be harmed, it was agreed that courts in Gujarat could not deliver her justice then the Supreme Court transfers the case from Gujarat to the Bombay High Court. It was the first Riot case in Independent India to transfer out of Gujarat to Bombay. The transfer of the case was valid at that time as in the Case of **The Best Bakery 2004³**, a shop in Vadodara where 14 people were burnt alive on March 1, 2002, has persuaded the Apex court with a contention that victims would not get Justice in Gujarat. One of the accused made an appeal to the Bombay High Court regarding his conviction but the Court in its decision upheld the decision of the CBI Court. Later the accused moved to the apex court but the Court also upheld the decision of the Bombay High Court and also granted monetary compensation of 50 Lakh INR to Bilkis Bano. The misconception between the two courts regarding the role of appropriate government in the view of **Remission**, the appeal was filed in Supreme Court and it was held by the two-judge Bench on 22nd May 2022 that Gujarat Government is the Appropriate Government to decide its **Remission** application in the policy dated July 9, 1992. On the direction issued by the apex court, Gujarat Government constituted the panel, which recommended the premature release of 11 convicts on 15 August 2022.

² Indian Penal Code 1860

³ (CrL.) No. 676 of 2003

REMISSION: LEGAL PROVISIONS

What Is Remission

The word “remission” is defined as remitting or releasing the accused from their duration of punishment. Under the provisions of ARTICLE 72 and ARTICLE 161, the president, Governor have the power to remit, pardon, suspend, or commute the sentence passed by any court.⁴ Under section 432 of CRPC⁵, the State Government has the power to remit the sentences of the accused.

GROUNDS

The Statutory bodies of States constitute a panel of the sentence review boards to exercise power under **Section 432 CrPC** which must accompany the following due process as follows:

- The Gravity of Crime
- Status of the Co-accused
- Conduct in jail

Exercising these powers by the State can be subjected to judicial review. Certain jail Manuals contain certain rules regarding the release of the accused on specific days every month for good behavior. Accused serving life sentences are entitled to seek remission only after serving a minimum punishment of 14 years.

In the case of **Laxman Naskar v. Union of India**,⁶ the Apex Court laid down certain grounds on which remission is considered as follows:

- Whether the crime is committed does not affect society.
- The Socio-Economic condition of the convicts' family.
- Whether there is a chance of a crime being repeated in the future.
- Whether the purpose is being served in keeping the convict in prison.

⁴ Article 72 and Article 161, The Constitution of India

⁵ Code of Criminal Procedure 1973

⁶ <https://www.iasparliament.com/current-affairs/bilkis-bano-case>

In the case of **Sudhakar v. The State of Andhra Pradesh**⁷, the Apex court set aside the order granted by the Governor on the grounds of extraneous and irrelevant consideration before passing the order.

WHY HAS THE CONVICT BEEN RELEASED NOW?

There are two remission policies applicable to Gujarat as follows:

The 1992 Remission Policy-The accused are convicted based on good behavior and conduct after serving significant numbers of years in prison. This policy was lenient and did not allow them to set their statutory limits⁸.

The 2014 Remission Policy-The Supreme court annulled the existing policy and directed the Gujarat government to formulate a new policy by adding several restrictions in the public interest. This policy explains various reasons to not remit the accused of gang rape and murder after the “**Nirbhaya Incident**” takes place.⁹

In 2013, one of the convicts named “Ramesh Rupabhai” approached the Bombay High Court to seek remission of his sentence but, the High Court held that even though the trial took place in Bombay but the execution of remission policies will be conducted by the appropriate government of Gujarat.

Another convict named “**Radheshyam Shyam Shah**” approached Gujarat High Court, the court held that the appropriate government will be Maharashtra Government and the appeal was filed before the Supreme Court.

The Apex Court held that the Gujarat Government is authorized to decide its Remission application and then remission gets awarded to all the accused under **sections 432 and 433 of CRPC** and they get convicted on 15th August 2022. The Supreme Court in the case of **State of Madhya Pradesh v. Ratan Singh (1976)**¹⁰ settled the debate about remission policy by clarifying that pardon, remission, and commutation are within the exclusive domain of executive machinery, but rather the executive machinery.

⁷ <https://www.casemine.com/judgement/in/5609ae36e4b0149711413316#69>

⁸ <https://www.outlookindia.com/national/explained-gujarat-1992-remission-policy>

⁹ <https://www.thehindu.com/news/national/gujarats-2014-policy-bars-remission-of-sentence-for-rape-murder-convicts/article65775750.ece>

¹⁰ 1976 AIR 1552, 1976 SCR 552

MAJOR LEGAL ISSUES CONFLICTING WITH REMISSION

As per **Section 432(7)** CRPC¹¹, the appropriate Government is the state within which the offender is sentenced but here the remission application is decided by the Gujarat government instead of Maharashtra.

Section 435¹² directs the State Government to consult with the Central Government and Judges involved in the particular case but no consultation was made in this case.

The Government's malevolence in applying the **1992 remission policy**, its updated **2014 policy** explicitly lists gang raped and murder as offenses for which remission is impermissible but this does not mean a request for early release made by rapists and murderers under the 1992 policy has been granted? To have a gang-rapist, the killers of a two-year-old walk out of a jail and be feted with a hero's welcome with the active connivance of an entire establishment requires a very special kind of evil. No Premature Release-The Crpc does not permit premature release in the form of remission or commutation in life sentences, but it should also accompany legal and constitutional schemes.

WHETHER THE REMISSION OF THESE ACCUSED FOLLOWED THE PRINCIPLE OF NATURAL JUSTICE

The remission of all those accused is ordained by law, but there exists, historically, immense inconsistency in judgments regarding the death sentence and life imprisonment. The 1992 policy under which the Bilkis Bano convicts were released is at odds with the Center's guidelines, which bars relaxation in cases investigated by the CBI and for heinous crimes such as murder and rape. My subjective view is that the remission is inconsistent with the spirit of the Criminal Law (Amendment) Act 2013, which incorporated several key amendments proposed by the **JS Verma Committee**¹³ toward gender justice.

When the lady Bilkis sees that accused of the heinous crime committed against herself and her family will be walking free on the roads with no fear, who will take guarantee that they will not be capable of performing such crimes in the future, and did the remission provide justice to Bilkis and did it lead to the projection of women's rights. Things changed a few months

¹¹ Section 432(7) CRPC, 1973

¹² Section 435, CRPC, 1973

¹³ <https://prsindia.org/policy/report-summaries/justice-verma-committee-report-summary>

later, not because the government of India changed, but because the Supreme Court's approach appeared to have changed too. Many people who had been sentenced to heavy penalties were liberated, like 11 convicts of the Bilkis Bano case. As with all heinous crimes, it is most often the spectators who play a greater role than even the perpetrators. Indians today risk being reduced to collective participants in the crime against Bilkis, in the murder of her child and the decimation of the members of her family, for each one of us who engages in¹⁴. Placing the crimes of these 11 men in a make-believe moral spectrum of bad, worse, and worse must. It does not get any worse than this.

CONCLUSION

Justice in full flow is like the heavens opening and rains coming down after a particularly long and hot summer, but the meaning of this phrase didn't lie under the justice done to the lady Bilkis. She never stopped fighting and tells her story endlessly to the world in search of justice but whether the remission of those 11 convicts will be considered a part of Natural Justice remain to be seen.

Rape is regarded as a serious crime not only committed against the person but also against the community she represents, the commission of heinous crime led the women belonging to minorities in Gujarat to feel safe, and it simply reveals the message of fear among them, Will it be constitutionally tolerable? Even article 15 of the Indian Constitution guarantees to all citizens, that there shall be no discrimination based on sex, caste, religion, and place of birth, so minorities should not be treated equally in society. Protests and riots against the government and its policies should not affect the local minority and social people. If the constitution guarantees every citizen the Right to protest and raise their voice regarding government policies, then people should put their contentions within the ambit of law and order, committing these heinous crimes against women and minorities will not lead the protestors to achieve their goal. We are confronted here with a cultural, moral, and constitutional issue. The immoral decision should not have the imprimatur of the Supreme Court or any court in India. The morality of democracy in India has been damaged, and this has in turn damaged our constitutional morality.¹⁵

¹⁴ MAHUA MOITRA, "OUR BILKIS MOMENT" THE INDIAN EXPRESS(INDIA) AUGUST 23, 2022

¹⁵ INDIRA JAISING, "Bikis Bano Case: Will Supreme Court Restore Constitutional morality?" THE INDIAN EXPRESS(INDIA) August 30, 2022

The ambiguity of the law notwithstanding, the collective conscience of the nation must prevail. The silence of the Union Government regarding the remission of the 11 accused is deafening and it forces the people to think about whether the democracy of India guarantees it will be capable of doing justice to all its citizens. The Apex Court should also lay down provisions regarding remissions and pardons, and whoever is capable of granting them will do so under the ambit of morality and justice by considering various aspects of the crime.

