

BILKIS YAKUB RASOOL VS. UNION OF INDIA (2024, INSC 24)

Nikita Sonker***INTRODUCTION**

BENCH: B.V. NAGARATHNA J., UJJAL BHUYAN J.

The Bilkis Bano case, officially known as Bilkis Yakub Rasool vs. Union Of India (2023), unfolded amidst the aftermath of the Godhra riots in 2002, triggered by the Sabarmati massacre where around 60 Hindus lost their lives. In the wave of communal violence that ensued, targeting Muslims, a tragic incident occurred involving Bilkis Bano. Attempting to flee with her family during the turmoil, she fell victim to a violent mob. Bilkis, who was five months pregnant at the time, faced a horrific ordeal of gang rape, coupled with the brutal killing of most of her family members.

The heinousness of the crime led to the conviction of 11 perpetrators, who were sentenced to life imprisonment by a division bench of the Supreme Court, with justices KM Joseph and BV Nagarathna presiding. The court deemed their actions "horrendous," warranting stringent punishment.

In 2022, a controversial turn of events occurred when the convicts were granted "Special Remission" as part of the 'Azadi Ka Mahotsav' commemorating 75 years of independence. After completing a 14-year imprisonment sentence, the 11 convicts were released from prison, evoking widespread public disapproval. Bilkis Bano, the victim, and many others across the nation were aggrieved by the Gujarat Government's decision to grant premature release to the perpetrators. In response, Bilkis Bano filed a petition challenging the convicts' early release, sparking a legal battle that raised crucial questions about justice, remission policies, and the rights of the convicts. This article will delve into the intricacies of the case, exploring the stages of conviction for rape, the contentious grant of remission, and the subsequent inquiry into the convicts' right to practice law.¹

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¹ Civils Daily, What is Bilkis Bano Case?, March 28, 2023, <<https://www.civildaily.com/news/what-is-bilkis-bano-case/>>

BACKGROUND OF THE CASE

The Bilkis Bano case unfolded during communal riots in Gujarat in March 2002. Fearing for her safety amidst the unrest, Bilkis Bano and her family tried to escape but were captured by a group of twenty to thirty individuals. In a horrific incident, she, along with other women in her family, was gang-raped, and seven family members were murdered. Bilkis, who was five months pregnant, remained unconscious for over three hours. She later filed a complaint with the police, but alleged that crucial details were omitted from the FIR. Turning to the National Human Rights Commission (NHRC) and then the Supreme Court, she sought justice.

With NHRC's support, including legal representation, and a Supreme Court directive for a CBI inquiry, the accused were swiftly arrested.² Bilkis faced death threats during this time, prompting a move of the case from Gujarat to Maharashtra for an impartial investigation. The case highlighted the rise of crimes against women in India, leading to widespread public outrage and criticism of the government's handling of the situation.

INITIAL INVESTIGATION OF THE CASE

The initial investigation into the heinous crime against Bilkis Bano was marred by serious lapses and a blatant cover-up. Despite the grave nature of the offense, the authorities failed to conduct a thorough and proper investigation. Disturbingly, the medical examination of Bano, a critical aspect of gathering evidence, was delayed by several days, resulting in the loss of crucial forensic information.

Compounding the negligence, the police initially refused to register a First Information Report (FIR), a vital step in criminal proceedings. When they finally acquiesced, the FIR was conspicuously lacking in essential details related to the incident. This failure to promptly and accurately document the crime not only hindered the pursuit of justice but also pointed towards a disturbing pattern of attempting to suppress and manipulate the facts surrounding the case.

ISSUES RAISED

- Whether the writ petition by Bilkis Bano was maintainable.

² SCO (Supreme Court Observer), Early Release of Bilkis Bano Gangrape Convicts, 2024, <<https://www.scobserver.in/tag/bilkis-bano/>>

- Whether the Public Interest Litigations filed by third parties against the remission were maintainable.
- Whether the Gujarat government was the appropriate government for considering remission.
- Whether the remission was granted to the 11 convicts as per law.

CONTENTIONS OF THE VICTIMS

Advocate Shobha Gupta, representing the petitioner, asserted that the crimes committed by the convicts were pre-planned, constituting a criminal conspiracy to rape and murder the victim's family. The convicts pursued the victims relentlessly, displaying a brutal and bloodthirsty nature. The petitioner highlighted the heinous acts, including the gang rape of a five-month pregnant woman, resulting in her loss of consciousness. The convicts not only raped other women in the family but also murdered the victim's first child by smashing her to death on a rock. Subsequently, they killed the victim's mother, cousins, aunts, uncles, and four minor siblings in a manner that rendered them unidentifiable. The petitioner argued against leniency, emphasizing the merciless nature of the convicts and pleading for the court to consider the gravity of the crime in its judgment.

CONTENTIONS OF THE CONVICTS

The convicts in this case put forth an appeal contending that the victim had given birth to a child post the incident, challenging the assertion that she had been gang-raped. They further argued that the evidence presented by the CBI was fabricated, disputing the lack of proof for the alleged murders of the victim's family members, as their bodies were not recovered. The convicts maintained their innocence, questioning the validity of the evidence against them.

TIMELINE OF JUDGEMENTS

The horrifying events that transpired on March 3, 2002, in Ahmedabad, left an indelible mark on the life of Bilkis Bano. A violent mob descended upon her family, resulting in the tragic loss of seven family members. Amidst the chaos, Bilkis, who was five months pregnant, endured the brutality of a gang rape while six other family members managed to escape. The subsequent years saw a harrowing struggle for justice as the local police consistently rejected Bilkis's case, citing insufficient evidence and even resorting to threats against her. Bilkis turned to the National Human Rights Commission (NHRC) for help and eventually sought refuge in

the Supreme Court, leading to a landmark decision in December 2003. Responding to her plea, the Supreme Court mandated the Central Bureau of Investigation (CBI) to conduct an inquiry. In January 2004, following a comprehensive examination of the evidence, the CBI apprehended all the suspects allegedly involved. As the trial progressed, concerns about potential tampering with evidence and risks to witnesses prompted the High Court to transfer the trial from Ahmedabad to Bombay in August 2004. The culmination of this legal journey occurred in January 2008 when the trial court found 12 individuals guilty of various charges, including rape, conspiracy, and murder. Eleven of them received life sentences.

Although, the legal saga did not end there. Challenges to their convictions were mounted in the High Court, seeking to overturn the trial court's verdict. The subsequent years saw appeals, requests for re-examination of witnesses, and arguments before the courts. Despite these legal intricacies, the Bombay High Court, in May 2017, upheld the life sentences for the 11 convicts.

Grant of remission: As the Maharashtra government was evaluating Shah's application for remission, key authorities, including the presiding Judge of the convicting court, the Director-CBI, and the Director General and Inspector General of Police of Maharashtra, unanimously opposed granting remission. Shah, however, failed to disclose this information to the Supreme Court, which led to the court's order favoring him on May 13, 2022. The court, on January 8, determined that Shah's act of misrepresenting and withholding relevant facts amounted to committing fraud on the court.³

During Shah's petition hearing in the Supreme Court, the Gujarat government acknowledged that it lacked the authority to grant remission, as per the legal competency vested in the Maharashtra government under its remission policy. The Supreme Court's order on May 13, 2022, directing the consideration of Shah's case for remission under the 1992 policy, seemingly prompted the Gujarat government to file a review petition. However, the Gujarat government mistakenly perceived the direction as an order to grant remission within two months, leading to a failure to highlight factual errors and omissions on record in a review petition. Fast forward to August 15, 2022, when the Gujarat government, under its remission policy, granted release to the eleven convicts from the Godhra sub-jail. This decision sparked widespread public

³ Frontline, Supreme Court's landmark ruling in Bilkis Bano case sets higher bar for remission in gruesome cases, V. Venkatesan, Jan 13, 2024, <<https://frontline.thehindu.com/columns/supreme-courts-landmark-ruling-in-bilkis-bano-case-sets-higher-bar-for-remission-in-gruesome-case/article67737284.ece>>

outcry, leading to PILs filed in the Supreme Court by notable figures, including Trinamool Congress MP Mahua Moitra and former CPI member MP Subhashini Ali, in August 2022.

In November 2022, Bilkis Bano herself appealed to the Supreme Court, contesting the Gujarat government's decision to permit the early release of the 11 men. However, the Supreme Court's dismissal of Bano's review petition in December 2022 raised questions about the trajectory of justice. The legal battle continued into March 2023, when the case challenging the release of the eleven accused men was listed before a Bench of Justices KM Joseph and BV Nagarathna. Subsequent months witnessed extensive arguments, with the Supreme Court questioning the Gujarat government's decision to allow the premature release and emphasizing the need to consider public interest in such heinous crimes. As the hearings progressed into September 2023, the Supreme Court observed disparities in the treatment of convicts, questioning the privileges granted to some. Moreover, concerns were raised about one convict practicing law after his conviction. By October 2023, the top court reserved its verdict, seeking original records of files where the decision of remission was taken from the Centre and the Gujarat government.

FINAL VERDICT BY THE HON'BLE THE SUPREME COURT OF INDIA:

Finally, in January 2024, the Supreme Court, acknowledging the Gujarat government's incompetence, canceled the High Court order that permitted the early release of Bilkis Bano's rapists. A bench of Justices B V Nagarathna and Ujjal Bhuyan validated the petition challenging the premature remission of the eleven convicts in the Bilkis Bano case.⁴ The Supreme Court granted two weeks for the convicts to surrender, marking a crucial juncture in the prolonged quest for justice.

⁴ Frontline, Supreme Court's landmark ruling in Bilkis Bano case sets higher bar for remission in gruesome cases, V. Venkatesan, Jan 13, 2024, <<https://frontline.thehindu.com/columns/supreme-courts-landmark-ruling-in-bilkis-bano-case-sets-higher-bar-for-remission-in-gruesome-case/article67737284.ece>>