

Bilkis Bano Case Study

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DOI: <https://doi.org/10.51584/IJRIAS.2025.100500065>

Received: 25 May 2025; Accepted: 29 May 2025; Published: 11 June 2025

ABSTRACT

The decision by the state of Gujarat to release 11 convicts, who were sentenced to life imprisonment for the brutal murder of seven individuals and the gang-rape of three women during the tragic communal riots of 2002, raises significant concerns. It seems to have been remitted without the required consultation with the union government to release the convicts of such a heinous crime under the remission policy may have a bad impact on society. It's nothing but a political move which ultimately destroyed the ends of justice and a stroke to the emotions of the victim and other who thinks the state is the protector of their rights

Keywords: Bilkis Bano, Communal Pogrom, Godhra Roits, Remission, Henious Crime

INTRODUCTION

Bilkis Yaqoob Rasool she is a victim of Gujarat POGROM 2002 she was gang raped during 2002 Godhra riots in Gujrat. Out of her three daughters, seven family members were slain by the rioters while she was 21 years old and five months pregnant. SAHELA, her eldest daughter, was slain during the 2002 Gujarat riots. The family arrived at Chaparwad village on March 3, 2002. The charge sheet states that perhaps 20–30 individuals with sickles, swords, and sticks attacked them. The 11 accused men were among the assailants. After the attack, Bilkis was unconscious for at least three hours. She met a home guard who drove her to the Limkheda police station after she recovered consciousness and borrowed clothing from an Adivasi woman. According to the CBI, she filed a complaint with Head Constable Somabhai Gori, who, “suppressed material facts and wrote a distorted and truncated version” of her complaint which forced them to left the place and in order to protect their life they went here and there they left their property their destroyed house and start the fight to get the justice.

This case became well-known not only because of the horrifying nature of the crime but also because of the court cases that followed over time. From societal shame to structural defects in the justice delivery system, Bilkis Bano faced several obstacles in her quest for justice. The case acts as a microcosm of larger problems with communal conflicts, gender-based violence, and the fight for justice despite institutional barriers.

Facts of the Bilkis Bano Case

1. On 27 Feb 2002 a coach of the Sabarmati express was going Godhra from Ayodhya carrying most Hindu passengers. The train was stopped by a mob and ignited the train in which 51 Hindu devotees were killed.
2. The act infuriated Gujarat's Hindu population, which sparked the state's riots the following day. Mobs start attacking the Muslims and vandalizing their properties in various parts of the Gujarat
3. Bilkis spent nearly two to three days trying to flee with her family. However, on March 3, 2002, a group of 20–30 individuals brandishing swords and sticks attacked them.
4. Bilkis, and other female members of their family were brutally gang-raped and a man from a mob snached Bilkis daughter and smashed her on the stone

5. According to media reports after almost three hours of this brutal incident she regained consciousness she managed to escaped from that place
6. Then, seeing a policeman close by, Bilkis went to provide assistance. She made her statement to the head constable, Somabhai Gori, after the policeman brought her to the police station. She was sent to the relief camp by the head constable, who failed to register the complaint.
7. When Bilkis first arrived at the refugee camp, she was examined by a doctor. The National Human Rights Commission then took up her case, which the Supreme Court then forwarded to the CBI.
8. Later, after getting death threats, Bilk is petitioned the Supreme Court to have her case moved outside of Gujarat. In 2004, the court sent her to Mumbai, where she was charged with the crimes of 19 men, including six police officials.
9. on 21 Jan 2008 13 men were convicted of rape out of which 11 were sentenced to life imprisonment.
10. The High Court of Bombay affirmed the Mumbai Special Court's ruling in May 2017. The Gujarat government was ordered by the Supreme Court in 2019 to compensate Bilkis RS 50 lakhs, but she refused to accept the money.

Procedural Journey: Case Summary

Allocation of events

A number of years passed throughout the course of the Bilkis Bano case's court proceedings. Bilkis Bano, a survivor, pursued justice against the criminals who had done horrible crimes against her and her family. The following is a synopsis of the rulings in the Bilkis Bano case:

Trial Court Judgment (2008)

The trial court first found 11 people guilty of the gang rape and murder of Bilkis Bano's family members, then 13 people were found guilty on charges of rape, murder, and conspiracy.

The court held the accused responsible for their acts during the communal violence and acknowledged the seriousness of the offenses in its ruling.

High Court Judgment (2017)

The Bombay High Court in 2017 reversed the acquittal of a number of previously prosecuted individuals and maintained the convictions of the 11 accused. Bilkis Bano received some justice from the High Court's ruling, which reaffirmed the gravity of the crimes and the necessity of accountability.

Compensation and Relief (2019)

The Supreme Court of India granted Bilkis Bano extra relief and compensation in 2019 after the legal proceedings.

In recognition of the survivor's anguish and adversity, the compensation included both monetary support and rehabilitation aid.

Landmark Supreme Court Judgment (2019)

The Supreme Court, in a historic ruling, not only upheld the convictions but also denounced the state authorities for their part in trying to conceal the crimes and protect the accused.

The Supreme Court underlined that those who obstruct justice must also be held accountable, in addition to the offenders.

Symbolic Compensation (2020)

In 2020, the Supreme Court granted symbolic compensation to Bilkis Bano in recognition of the shortcomings in the initial investigation and the difficulties the survivor endured in pursuing justice.

In addition to leading to the conviction of individuals personally accountable for the crimes, the Bilkis Bano case has influenced the legal discussion surrounding accountability for mass crimes. The rulings have emphasized how crucial a strong judicial system is to combating crimes, providing survivors with justice, and making offenders and complicit officials answerable for their deeds.

Current status (In the year 2023)

Bilkis Bano filed a review petition in the Supreme Court after learning of the convicts' release on remission. She joined forces with CPI(M) leader Subhashini Ali, independent journalist Revati Laul, and Trinamool Congress MP Mahua Moitra. They also filed a Public Interest Litigation (PIL) based on the Gujarat government's remission of the 11 convicts, which permitted them to leave jail freely after committing the heinous crimes of gangraping the victim and all of her family members and killing fourteen family members.

On 18th April, 2023, the Supreme Court of India slammed the Gujarat Government for the premature release of the rape and murder accused convicts.

In addition to asking the Gujarat government if they were equating the killing of 14 defenseless members of the victim's family with the killing of a single person, Justice K. M. Joseph said that it is the duty of the government to use its authority in a way that benefits the people of the State and that a massacre is in no way comparable to the killing of a single person.

The Center and the Gujarat government agreed to contest the court's ruling. They accomplished this by filing a review petition on March 27, 2023. However, the bench was adamantly opposed to the idea. That's why they didn't like it. They were given time by the Supreme Court to determine whether or not to file the review petition. Additionally, the Court requested an extension of the parole that had been given to the convicted individuals throughout their life term. The Court further noted that until and until the remission order was issued arbitrarily by the government, judicial review could not change the State Government's authority to provide remission.

Remission of Bilkis Bano Case Covicts

The Gujarat government has defended its decision to award remission to the eleven convicts in the Bilkis Bano case in an affidavit submitted to the Supreme Court of India. According to the Gujarat government, 11 convicts in the Bilkis Bano case were awarded remission on August 15th after completing a 14-year prison sentence and demonstrating good behavior. This was carried out in accordance with the state government's 1992 policy of remission and early release for lifers. The release of the prisoners under this antiquated procedure sparked a great deal of criticism. Bilkis Bano also reported that she was never alerted or consulted about the prisoners' release.

There Remission is Not as Per Legal and Constitutional Scheme:

These 11 convicts have been sentenced to life imprisonment which normally means that convicts had to undergone to natural life in the prison.

Premature release in the form of remission is prohibited under the Cr.pc. However, it ought to be founded on a legal and constitutional framework rather than the caprices of a monarch.

1. Not qualified for an early release. Gujarat's current remission policy is similar to that of the majority of states. In 2014, it implemented an updated and new remission policy for inmates and prevents rape convictions from granting early release.

2. Against justice for the victim and the minorities community
3. Remission of the accused as politically motivated

How this Release Will Affect the Victim

The release of the convicts of a brutal crime their release is a mockery of Bilkis Bano struggle it reopens old wounds. The state govt cannot hide behind technicalities. Government's own policy and center's guidelines bar rapists and CBI investigated convicts from being released.

The 2014 remission policy superseded the 1992 policy on Supreme Court's order the 1992 policy had to be changed as it was not consistent with law anymore

1992 Remission Policy

By today's standards the 1992 policy was liberally drafted as the policy did not have restrictions on the remission most of the convicts with recorded good behaviour having completed a considerable number of years in prison were remitted under the said policy

New Remission Policy

New remission policy expressly excludes the persons to be remitted from the scheme who have been convicted with sentence of life imprisonment

Why in News?

In honor of the 75th anniversary of independence, the Ministry of Home Affairs has released a set of instructions for the States and Union Territories for the granting of exceptional remission to inmates.

What are the Guidelines for Special Remission?

Special Remission

A specific group of prisoners would receive special remission as part of the Azadi Ka Amrit Mahotsav festivities. There would be three stages to the release of these inmates.

Prisoners Eligible for Special Remission

1. Male inmates aged 60 and up, as well as female and transsexual inmates aged 50 and up.
2. These prisoners must have served half of their whole sentence, except the time they were granted general remission.
3. Convicts who are physically challenged or disabled and have served 50% of their sentence and have a disability of 70% or more
4. Convicted inmates with terminal illnesses who have served two-thirds (66%) of their whole sentence, and
5. Poor or impoverished inmates who have served their time but remain incarcerated because they have failed to pay the fine or waived it.
6. Individuals who committed an offense when they were young (18–21 years old), had no prior criminal history, and had served out half of their sentence would also qualify.

Prisoners Excluded from the Scheme

- Persons convicted with death sentence or where death sentence has been commuted to life imprisonment or persons convicted for an offence for which punishment of death has been specified as one of the punishments.

- Persons convicted with sentence of life imprisonment.
- Convicts involved in terrorist activities or persons convicted under- Terrorist and Disruptive (Prevention) Act, 1985, Prevention of Terrorist Act, 2002, Unlawful Activities (Prevention) Act, 1967, Explosives Act, 1908, National Security Act, 1982, Official Secrets Act, 1923, and Anti-Hijacking Act, 2016.
- Persons convicted for counterfeiting currency notes, dowry death, offences under Protection of Children from Sexual Offences (POCSO) Act, 2012, offence of rape & human trafficking, Immoral Trafficking Act, 1956, Prevention of Money Laundering Act, 2002, etc., offences against the State (Chapter-VI of IPC) and any other law which the State governments or the Union Territory administrations consider appropriate to exclude would not qualify for the special remission.

Breach of Rule of Law

The judgment does not shy away from criticizing the Gujarat government for breaching the rule of law by granting remission without the proper authority. This aspect of the judgment serves as a potent reminder of the court's commitment to maintaining the sanctity of legal processes. The court's scrutiny of arbitrary orders and its willingness to censure a government body for breaching the rule of law exemplify its role as a vigilant guardian of justice. In pointing out the breach of the rule of law, the court underscores 3/4 the importance of adherence to legal processes, irrespective of the nature or context of the case. The court's criticism serves as a deterrent against future violations and reinforces the principle that no individual or entity is above the law. This robust stance ensures that the rule of law remains a sacrosanct principle within the Indian legal system.

Balance of Rule of Law and Personal Liberty

A delicate and pivotal issue addressed in the judgment is the balance between the rule of law and personal liberty. The court grapples with the question of whether personal liberty can be sustained in the face of a breach of the rule of law. This introspection reveals the court's role as a constitutional arbiter, carefully weighing competing interests to ensure justice is served in a nuanced and principled manner. The court acknowledges the paramountcy of the rule of law but also recognizes the importance of individual liberties. This nuanced approach reflects the court's commitment to a holistic understanding of justice, considering both the legal framework and the impact on individuals. By navigating these complexities, the court exemplifies its role as a constitutional safeguard against any arbitrary deprivation of personal liberty.

Directives for Surrender and Correction of Arbitrary Orders

In a decisive move, the court directs the convicts to surrender within two weeks, underscoring the imperative to correct erroneous orders promptly. The court's directives for surrender and correction of orders demonstrate its proactive approach in safeguarding justice. By ensuring swift corrective measures, the court underscores the accountability of the legal system and reinforces the idea that no arbitrary or erroneous decision will be allowed to stand uncorrected.

The Role of the Supreme Court

At its core, the Supreme Court serves as the ultimate arbiter of justice in the Indian legal system. Its authority extends beyond the mere interpretation of laws; it is a custodian of constitutional values, a defender of individual rights, and a bulwark against the erosion of the rule of law. The Bilkis Bano case exemplifies how the court, through its judgments, shapes the legal landscape, reaffirming the primacy of justice and the rule of law. The court's meticulous legal analysis, commitment to constitutional principles, and resolute stance against fraudulent practices showcase its indispensable role in safeguarding justice and the integrity of legal processes. The judgment reflects the court's dedication to ensuring 4/4 that justice is dispensed with fairness, transparency, and fidelity to constitutional values. As the custodian of the rule of law, the Supreme Court remains an unwavering beacon, ensuring that justice prevails undeterred and resolute.

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. The 251-page judgement was authored by Justice B.V. Nagarathna where she directed the 11 convicts to return to prison within two weeks.

Criticism

Remission of these Convicted is Questionable

The early release of inmates must be handled carefully and sensibly. On the surface, the state's decision to release these vicious offenders who committed atrocities during the Gujarat communal POGROM 2002 is dubious. It also seems unlawful because it was made without the necessary union government consultation.

The Remission is Totally a Political Move

The current government has many concerns about the release of these convicted criminals, and they have justified their decision to send them back by citing their good behavior. However, since they were the subject of FIRs prior to the Godhra riots, it is impossible to say that they behaved well; rather, they are repeat offenders.

The Release will Have Negative Impact

The utilization of punishment is justified in terms of DETERENCE, RETRIBUTION or INCAPACITATION. The deterrence position maintains that if the offender is punished not only the offender but also those who see his example are deterred from further offence. The release of these criminals will set a negative example and will weaken the fear of these types of criminals.

So, the remission to these convicted should be cancelled and secure the ends of justice

Factual Statement Missing

The statement ought to have been factual. The Gujarat government made a very large counter. Where is the application of the mind and where is the factual statement? A bench with Justice Ajay Rastogi at the head watched.

CONCLUSION

This case has a very long history started from 2002 Gujarat communal violence which led to the mass rapes and murders in the state and the Bilkis Bano family was brutally killed, though the justice was delayed in favor of Bilkis Bano but as the year passed and Bilkis Bano was healing from the trauma she was again targeted by the Government by acquitting the accused. This only led to unsafe of women and completely lost hope on justice and freedom of life. We the people of India who worship women as Goddess have left with no value. The life of a Woman is very delicate one who has lost everything and yet has to live with all the incident. It is high time Government should think and instead of mercy to the accused should reconsider the heinous of crime.

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