

CASE COMMENTARY ON BILKIS YAKUB RASOOL V. UNION OF INDIA & ORS.

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Abstract

The Supreme Court in *Bilkis Yakub Rasool v. Union of India & Ors.*, Writ Petition (Crl.) No. 491 of 2022 (8 Jan 2024) quashed Gujarat's 2022 remission orders for eleven convicts in the 2002 gang-rape of Bilkis Bano and the murder of 14 members of her family. The Court held the petitions maintainable under Article 32 and clarified that, in transferred trials, the "appropriate government" empowered to consider remission under Section 432(7) CrPC is the State where conviction and sentence were recorded (Maharashtra), not the State where the crime occurred. The remission grants were set aside for jurisdictional error, non-application of mind and procedural illegality: authorities ignored negative recommendations from the CBI, the trial court and local officials, relied on a rescinded policy, and suppressed material facts. The judgment reaffirmed that executive clemency is amenable to judicial review when exercised arbitrarily, mala fide, or beyond jurisdiction, and emphasized that victims' interests, constitutional morality and the public interest in accountability must inform remission decisions—particularly in cases of grave sexual and communal violence. The decision strengthens limits on state remission powers, clarifies inter-state remission jurisdiction, and underscores courts' role in protecting rule of law and victims' rights.

Key words: Bilkis Yakub Rasool, remission, murder, violence.

Case overview

Case: *Bilkis Yakub Rasool v. Union of India & Ors*

Citation: Writ Petition (Crl.) No. 491 of 2022

Date of judgement: 8 January 2024

Jurisdiction: Supreme Court of India

The Bench: Justices B.V. Nagarathna and Ujjal Bhuyan

Subject matter: Subject Matter Legality of remission/premature release of 11 convicts

Background

During the 2002 Gujarat riots triggered by the Godhra train event, the situation involving Bilkis Bano began. That day, March 3rd, she – pregnant and twenty-one years old – was escaping violence alongside relatives when chaos erupted

close to Randhikpur village in Dahod. A group assaulted them; she endured multiple perpetrators committing rape while thirteen others from her kin lost their lives, among them a young child just three years old. Survival came despite extreme brutality, after which she turned toward courts aiming at accountability instead of silence.

Later scrutiny revealed flaws in how regional officials handled early procedures – omissions tied to overlooked materials drew sharp remarks. Because doubts grew around neutrality, top legal bodies stepped in, assigning federal agents to assume control instead. Movement of court proceedings followed, shifting geographic responsibility toward another state amid growing demands for safety among those

testifying. Distance changed; oversight tightened.

One November morning in 2008, inside a courtroom in Mumbai, eleven individuals found themselves convicted on charges ranging from gang rape to murder, tied together through criminal conspiracy. Though appeals followed, the Bombay High Court stood by the original verdict without wavering. Over time, this particular trial began standing out – not for its scale alone – but because it exposed how deeply bias can shape violent conflict between communities. What emerged was less about one event and more about systems: how fair inquiries matter, why shielding witnesses changes outcomes, and when courts must step in to hold power in check.

Back in 2022, the issue came up again after Gujarat's government gave early release to eleven prisoners sparking strong backlash and court disputes. By January 2024, India's top court overturned those releases, ruling they were made without proper grounds and ordered the individuals back behind bars. This decision underlined fairness in governance, respect for victims, and limits on official authority.

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 judgement (2017)

On 30.05.2017, the Supreme Court refused to stay the conviction of IPS officer RS Bhagora in the Bilkis Bano Gang rape case and said that there is no urgency for hearing the matter as the convicted officer has already undergone the sentence. The Court will, however, hear the matter in the second week of July, 2017. The IPS

officer, who, along with 4 other police officers, was convicted by the Bombay High Court had sought for the stay on the conviction order on the ground that if the stay is not granted then he will be terminated from the service as per service rules. The Bombay High Court had, on 04.05.2017, reversed the trial court verdict acquitting RS Bhagora and others. The High Court had convicted 2 doctors along with 5 policemen.⁵⁰⁵

Supreme court judgement and relief (2019-2020)

Though rare, moments like this shift legal ground – this time, guilt reached beyond perpetrators alone. Officials once shielded by rank now face scrutiny too. A court decision, firm in tone, rejected silence as complicity. When cover-ups follow crime, responsibility spreads wider than expected. Not just acts matter; enabling them does too. Power claimed neutrality, yet actions betrayed alignment. Judgment arrived not merely to confirm facts, but to redefine duty.

That year, the highest court awarded Bilkis Bano a form of moral reparation due to flaws found in the original inquiry along with her long struggle for legal resolution. While resulting in convictions against those directly involved, her legal battle also shifted broader conversations about responsibility during large-scale violence. These judgments highlighted the importance of an independent judiciary when addressing atrocities ensuring victims receive closure while holding both perpetrators and enabling authorities responsible. Though delayed, the outcome underscored what institutional integrity can achieve under extreme societal pressure.

Remission review (2023)

Once the eleven prisoners walked free due to remission, Bilkis Bano turned to the Supreme Court to contest it. Standing beside her were CPI(M) figure Subhashini Ali, freelance writer Revati Laul, and Trinamool Congress representative Mahua Moitra – each submitting

⁵⁰⁵ (seconline, n.d.)

legal pleas against Gujarat's move. Though labeled a routine administrative act, releasing those found guilty of raping Bilkis Bano and killing fourteen relatives struck many as a break from fairness and established legal norms.

Held on 18 April 2023, the Supreme Court raised sharp concerns about Gujarat's stance. Not one to mince words, Justice K. M. Joseph pointed out how killing fourteen vulnerable individuals differs vastly from typical homicide mercy here demands broader social consideration. Though both central and state authorities stood by their release policy, explaining it as lawful, scrutiny intensified when documents were requested, especially those tied to earlier parole approvals. Yet even if such decisions rest with executives alone, courts can step in whenever rulings seem capricious, unlawful, or at odds with constitutional values. What emerged was a careful balance between governance autonomy and legal oversight.⁵⁰⁶

Statutory and constitutional provisions

Section 302 IPC Punishment for murder.—Whoever commits murder shall be punished with death, or 1 [imprisonment for life], and shall also be liable to fine.⁵⁰⁷

Section 376D IPC Gang rape.—Where a woman is raped by one or more persons constituting a group or acting in furtherance of a common intention, each of those persons shall be deemed to have committed the offence of rape and shall be punished with rigorous imprisonment for a term which shall not be less than twenty years, but which may extend to life which shall mean imprisonment for the remainder of that person's natural life, and with fine.⁵⁰⁸

Section 432 CRPC Power to suspend or remit sentences.—(1) When any person has been sentenced to punishment for an offence, the appropriate Government may, at any time, without conditions or upon any conditions which

the person sentenced accepts, suspend the execution of his sentence or remit the whole or any part of the punishment to which he has been sentenced.⁵⁰⁹

Article 14 Equality before law.—The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India⁵¹⁰

Article 161 Power of Governor to grant pardons, etc., and to suspend, remit or commute sentences in certain cases.—The Governor of a State shall have the power to grant pardons, reprieves, respites or remissions of punishment or to suspend, remit or commute the sentence of any person convicted of any offence against any law relating to a matter to which the executive power of the State extends.⁵¹¹

Remission under Bilkis Banu case

Defending its choice, the Gujarat government cited adherence to a decades-old rule in court papers sent to the nation's highest judicial body. Eleven men convicted in the Bilkis Bano matter walked free on August 15 following time served – 14 years behind bars – along with records showing compliant conduct. Such freedom came through application of a remission framework put in place back in 1992, meant for those sentenced to life terms. Yet using this dated mechanism stirred widespread disapproval across various quarters. Not once did anyone reach out to Bilkis Bano before their discharge; she learned afterward, left uninformed throughout.

When remission is allowed⁵¹²

1. Male convicts of 60 years of age and above, who have completed 50% of their total sentence period (without counting the period of general remission earned).
2. Physically challenged/disabled convicts with 70% disability and more (duly certified by a Medical Board) who have completed 50% of their

⁵⁰⁶ (drishtias, n.d.)

⁵⁰⁷ (indiacode, n.d.)

⁵⁰⁸ (indiacode, n.d.)

⁵⁰⁹ (india code, n.d.)

⁵¹⁰ (hcmimphal, n.d.)

⁵¹¹ (hcmimphal, n.d.)

⁵¹² (mha.gov, n.d.)

total sentence period (without counting the period of general remission earned).

3. Terminally ill convicts (duly certified by a Medical Board).

4. Convicted prisoners who have completed two-third (66%) of their total sentence period (without counting the period of general remission earned).

5. Poor or indigent prisoners who have completed their sentence but are still in jail due to non-payment of fine imposed on them by waiving off the fine. (Note: The State Government shall satisfy itself about the legitimacy of the indigent and economic condition of such prisoners, by following appropriate measures/procedure; to ensure that only legitimate persons get benefit of this relief).

6. Persons who committed an offence at a young age i.e. between 18-21 years and with no other criminal involvement/case against them, who have completed 50% of their sentence period (without counting the period of general remission earned).

When remission is not allowed ⁵¹³

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.

2. Persons convicted with sentence of life imprisonment.

3. Convicts involved in terrorist activities or persons convicted under Terrorist and Disruptive Activities (Prevention) Act, 1985 (TADA), The Prevention of Terrorism Act, 2002 (POTA), Unlawful Activities (Prevention) Act, 1967 (UAPA), The Explosive Substances Act, 1908, The National Security Act, 1982 (NSA), Official Secrets Act, 1923, Anti-Hijacking Act, 2016

4. Prisoners convicted for Dowry death

5. Prisoners convicted for counterfeiting currency notes (FICN) – cases under section 489 (A to E) of Indian Penal Code

6. Prisoners convicted for the offence of Rape, human trafficking and the Protection of Children from Sexual Offences Act, 2012 (POCSO), Immoral Traffic (Prevention) Act, 1956;

Issues

1. Whether the Government of Gujarat was competent to pass the order of remission in the Bilkis Bano case?

It was the Supreme Court which decided the Gujarat government had no power to free those eleven prisoners early. Since the sentencing happened in Maharashtra, even though crimes occurred in Gujarat, authority shifted elsewhere. A move ordered by the top court brought the trial out of Gujarat, placing it under different administrative control. Because conviction followed in a Mumbai courtroom, legal responsibility landed with Maharashtra officials instead. Rules laid down in Section 432(7) of the CrPC assign such decisions only to where punishment takes shape. Early release requests now fall solely within Maharashtra's reach, simply because judgment came from there.

It saw how Gujarat used authority meant for Maharashtra, making the release orders void from the start. When judges ruled in the Bilkis Bano Remission Case, they canceled what had been given and required those freed to return. Power over such releases must follow clear legal steps, nothing more, nothing less. Should someone act beyond their role, the result cannot stand – it falls apart by law itself. What matters here is who holds the right to decide, not just whether a choice was made. Legal boundaries shape these actions; stepping outside means losing ground entirely. One state acting for another shifts the foundation – judges noticed, then corrected. Decisions like these rest on proper channels being followed to the letter. Even well-intended acts fail when placed in wrong hands. Authority without rightful place

⁵¹³ (mha.gov, n.d.)

crumbles under scrutiny. The court did not question mercy – but insisted it unfold through correct doors only. No gesture overrides structure, especially where justice is shaped piece by piece.

2. Whether the writ petition filed by the petitioner is maintainable?

It was decided by the Supreme Court that legal complaints against the release decisions could proceed. Not everyone agreed at first – some said people like Bilkis Bano and others acting in public interest didn't have proper standing under Article 32. Still, the judges noted something clear: those release rulings struck at the heart of the survivor's rights, her dignity, her ability to reach justice. Because claims involved basic rights protected under Articles 14 and 21, space opened up for the top court to step in. Questions about whether freedom given early followed law became fair game for review.

Not far into its reasoning, the court underlined how legal fairness demands judges review decisions made by authorities – especially when those choices touch violent crimes like group sexual assault and killing. Instead of dismissing the challenge outright, it chose to look deeper at what was argued. What stood out was the acknowledgment that someone harmed by a crime holds a real stake in seeing laws applied properly, with power used justly, not arbitrarily or beyond limits set by statute. Because of that view, the petitions weren't thrown aside; they moved forward, assessed based on substance rather than form.

Verdict in Bilkis Bano case

Early that January Tuesday, India's top judicial body withdrew freedom granted to eleven individuals found guilty in the case involving Bilkis Bano. With legal oversight transferred earlier to Maharashtra, Gujarat lacked power to assess requests for reduced prison terms. Owing to this change in control, permission issued by Gujarat officials in August 2022 fell apart – declared invalid at its origin.

Still, one prisoner held back critical details during proceedings tied to the court's May 2022 order requiring Gujarat to reconsider his release request. As a result, the bench determined that prior judgment lacked validity, being legally ungrounded due to incomplete disclosure. Authority – such as decisions on inmate release – must operate strictly within defined legal bounds, it was emphasized. This idea forms a cornerstone of rule-bound state function. Without emphasis or drama, the observation emerged clearly: bypassing process weakens foundation.

Rarely has the Court stepped outside established boundaries, regardless of requests. Still, its position remained clear – though Article 142 grants authority, that power does not justify supporting illegality. Freedom holds value, admittedly, provided it follows prescribed legal paths. Where a remission lacks basis in law, reversing it infringes on no true right. Apparent deprivation turned out to be mere adjustment, no further than that.

For two weeks, the eleven detainees remain free before surrender becomes required. When the highest court erased their early freedom, structure replaced exception. Not every path leads forward – some loop back to custody. What seemed settled shifted once law reasserted its terms. Confinement waits, inevitable now. Control was stretched; it snapped back. Order returns, not by choice, but design.

Conclusion

Law's role in India's system stands clear through the Bilkis Bano matter. Though state power exists, it cannot override legal boundaries when releasing prisoners. Because guidelines were ignored, higher judges canceled early release decisions. With firm reasoning, they showed that even officials must follow set rules. Unless processes are lawful, freedom remains at risk. After all rulings, one point holds: structure guard's justice more than discretion does.

It is within the court's duty, noted the ruling, to uphold constitutional principles alongside trust

in legal processes. Examined closely were gaps in procedure and false assertions influencing the release approval, showing how oversight and openness support equitable outcomes. That rulings by governing bodies altering major entitlements require examination through law was reinforced here, adherence to precedent being non-negotiable.

In closing, a key benchmark emerges concerning remission, authority at the national level, and court supervision. Without applying Article 142 to uphold improper leniency, the judiciary signaled that exceptional tools must not excuse unlawful outcomes. Through this decision, fairness under law gains clarity; so does adherence to legal structure. Protection for those affected by crime holds firm, just as the soundness of legal procedures is preserved.

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