

Bilkis Bano Case

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Abstract:

In my research paper, I talked about the Bilkish Bano case, In 2002, the Indian riots in Gujarat resulted in over 1,000 deaths, primarily among Muslims. Bilkis Bano, a Muslim woman, attempted to evacuate her hometown with her family. On March 3, 2002, she and her mother were brutally abused and raped in the Sabarmati Express massacre. After regaining consciousness, she filed a complaint with the National Human Rights Commission and the Supreme Court. The Supreme Court requested a CBI probe, leading to 11 of Bano's attackers being found guilty and given life sentences. But one of the accused filed an appeal for remission which was allowed by the Hon'ble Gujarat High Court.

Keywords: Bilkis Bano case , Gujarat riots, The Hon'ble Gujarat High Court, The Hon'ble Bombay High Court, An appeal for remission

Fact:

The Indian riots in Gujarat in 2002 were survived by Bilkis Bano. Over 1,000 people, mostly Muslims, died in these riots, which were a series of inter-communal clashes that led to thousands of people being displaced.

During the riots, Bilkis Bano was one of the many Muslim inhabitants who attempted to leave the state. In 2002, when violence in Gujarat reached an all-time high, Bilkis Bano attempted to evacuate her hometown with her infant daughter and 15 other family members.

On 3rd March 2002, Bano, who was five months pregnant at the time, her mother, and three other women were viciously abused and raped, they were attacked by 20 to 30 attackers in the Sabarmati Express massacre, the state was devastated by unprecedented levels of violence. The attack was only survived by Bilkis, a male, and a three-year-old.

Bilkis regained consciousness hours after being unconscious, which signalled the beginning of a ferocious battle for respect and justice. The state police declined to update the FIR with the necessary details when she attempted to file a complaint. Bilkis then went to the National Human Rights Commission (NHRC) and filed a case with the Supreme Court.

Bilkis Bano's case came to represent the fight for justice for the Gujarat riot victims. She as well as her family pursued legal action against the violent offenders.

The Supreme Court requested a CBI probe because of the horrible nature of the crime and the outrage that followed. As a result, 11 of Bilkis Bano's attackers were found guilty and given life sentences for the atrocious deed.

Issue in this case:

The Bilkis Bano case highlights a number of critical questions about communal violence, justice, and human rights in India. Among these concerns are:

Communal violence: As a result of this violence, communal violence got an importance and members of various sects are targeted during riots and other violent situation, led to death of 1000 people and most of them were muslims.

Lack of action by the police: At the time of riots, many people including Bilkis Bano and her family was attacked by the police. And afterward when Bilkis Bano went to police station to fill a complaint the officers and even not taken the first step action on the matter.

Justice delayed: There is a quote, justice delayed is justice denied. We can see the reflection of the quote in this case, as on the way to get justice, Bilkish Bano had to face a lot of problem in each and every small step. Also when time passes, many things got neglected and many criminals didn't got punishment for their own deed.

Justice for all: Victims suffers a lot in the way to get justice they have to fight for the years to get justice, but even after sufferance of so many victims do not get the remedy for the actions of criminals. When the defendants were convicted, they encountered difficulties in obtaining restitution.

Human rights violations: The rape and murder of Bilkis Bano's family members, as well as the violence and prejudice encountered by members of India's minority populations, are all abuses of human rights. The case emphasises the need for improved human rights protection in India, particularly for marginalised people.

Procedural Journey:

In 2002-2003, Despite her best efforts, the neighbourhood police repeatedly dismissed Bilkis's claim due to a lack of supporting evidence and even threatened legal action if she persisted. Bilkis sought assistance from the National Human Rights Commission (NHRC), and in December 2003, he appealed to the Supreme Court. The Central Bureau of Investigation (CBI) was ordered to conduct an investigation in response to her pleading, by the Supreme Court.

In January 2004 following an in-depth examination of the evidence submitted in Bilkis' complaint, the CBI detained all of the persons allegedly involved.

In August 2004, After Bano stated that the accused had threatened to murder them, the Supreme Court ordered that his case be transferred from Gujarat to Maharashtra to guarantee an impartial investigation

and fair trial. The Central Bureau of Investigation (CBI) investigated the matter at the request of the Supreme Court, and the trial was held in Maharashtra.

In January 2008, a Mumbai Sessions Court found the 11 defendants guilty of breaking Sections 302 and 376(2)(e),(g) of the Indian Penal Code (IPC), read in conjunction with Section 1497, and sentenced them to a severe life sentence in prison as well as a fine. And the remaining seven were acquitted due to a lack of evidence.

On July 15, 2016, the Bombay High Court heard pleas from the 11 people indicted in connection with the 2002 gang rape case.

On September 2016, The inmates' counsel sought that numerous witnesses be re-examined, but the Bombay High Court denied the request. The Bombay High Court denied the case under the Code of Criminal Procedure in October 2016, signalling that Bilkis might potentially file an appeal.

The Bombay High Court reserved judgement in December 2016 on appeals filed by 11 defendants condemned to life in prison. Furthermore, the Court postponed judgment on a CBI appeal seeking the death punishment for three of the guilty persons, citing it as an exceptional case.

In May 2017, a division bench of the Mumbai High Court confirmed the Sessions Court's decision. A division bench reversed the acquittals of seven persons, including physicians and police officers, resulting in their conviction for tampering with evidence in the case. The high court also dismissed a CBI motion to commute the sentences of three convicts - Jaswant Nai, Govind Nai, and one other--from life in prison to the death penalty, while allowing the CBI to appeal the convictions of seven more defendants. The Gujarat government was ordered by the Supreme Court in 2019 to pay Rs 50 lakh in compensation, a job, and accommodation to Bilkis Bano, who was gang raped during the state's 2002 riots (which is not yet paid).

Remission and the Laws That Regulate I

- Remission is defined in the Prison Act of 1894 as a system of "rules for the time being in force regulating the award of marks to, and the consequent shortening of sentences of, prisoners in jail.
- Remission laws are essentially the State's efforts to improve criminal justice and defend human rights.
- According to the legislation, there are three types of remissions: constitutional, statutory, and obtained in accordance with jail manuals:-
 - Article 72 of the Constitution gives the President the authority to grant remission, but Article 161 gives the Governor the same authority.
 - Section 432 of the Code of Criminal Procedure authorises the 'relevant government' to postpone or commute a prisoner's sentence.
 - Section 433A of the Code of Criminal Procedure provides that a prisoner found guilty of a capital offence and whose death sentences were commuted to life imprisonment under Section 433 shall not be freed before the age of 14 years.

- Section 435 of the Code of Criminal Procedure provides that in matters investigated by the Delhi Special Police Establishment or other body investigating an offence under a Central Act other than the CrPC, the provides must confer with the Central government.

Appeal for remission:

One of the condemned, Radheshyam Shah, addressed the Gujarat High Court in 2022 with a remission plea based on Sections 432 & 433 Cr PC. The court dismissed the petition, citing a lack of jurisdiction on remission and power in the hands of the Maharashtra government. However, the Supreme Court overruled the high court and asked the Gujarat government to consider remission because Gujarat was the state of occurrence of the offence and the trial was held in Maharashtra under extraordinary circumstances and for a limited purpose.

For this, consider the remission policy in effect at the time of sentence, i.e., the 1992 remission Policy rather than the most recent 2014 policy. As a result, all 11 criminals received a reduction in their sentences and were freed from prison on August 15th, 2022, because they had already served 14 years. It sparked outrage across India since they were granted remission without regard for the severity of the offence.

This remission granted by the Gujarat government was challenged before the Supreme Court on August 23, 2022, by CPI(M) MP Subhasini Ali, journalist Revati Laul, and Prof Roop Rekha Verma through Advocate Aparna Bhat, and was mentioned before N.V. Ramana, the former Chief Justice of India, and the court agreed to take the matter into consideration. Justices Ajay Rastogi and Vikram Nath are seated with Justice Ramana. Following that, the court heard both parties and issued an order on August 25, 2022, to serve notice to the Gujarat government on the suit contesting the remission.

Justice Ramana clarified the May 2022 judgement, first saying that he read someplace about the court granting permission for remission, and then correcting that it is not like that, the court merely asked for consideration on remission.

The Gujarat government points out that the counter-affidavit disputes the constitutionality of the writ petition, beginning with the argument that the politicians, activists, and journalists who filed the writ petition are third-party strangers to the case. It claims that the presence of such third parties with no locus standi undermines the rule of law and invites outsiders to intervene in criminal processes. In reality, the counter accuses the petitioners of having a concealed objective when they filed the present writ case with the Supreme Court. In reality, the counter accuses the petitioners of having a concealed objective when they filed the present writ case with the Supreme Court.

According to the judgement made by the Apex Court on May 13, 2022, which found that Gujarat would be the appropriate authority to offer remission, the Gujarat Authority is expected to assess the appeal within two months in line with its 1992 remission policy. According to the counter-affidavit, the aforementioned judgement made it apparent that remission should be based on the policy of early release in effect at the time of the defendant's conviction by the Trial Court, rather than a subsequent policy. It is also noted that only a Review Petition may be utilised to challenge the Apex Court's decision beginning

in May 2022, which is what the writ petition seeks to do. It is further claimed that a writ petition filed under Article 32 cannot challenge the Apex Court's May 2022 judgement, but only a Review Petition may.

Critical Analysis

As per me, Bilkis Bano case is significant in Indian legal history since it brought to light the issue of communal violence, rape, and the police's reluctance to take appropriate action. The case resulted in the conviction of 12 accused, including a police officer, and a life sentence for the accused. The recent Supreme Court judgement in the case underscored the need of holding public employees accountable for their actions and ensuring justice for victims of communal violence and rape. The case also emphasised the importance of reforming the Indian criminal justice system in order to prevent such incidents in the future.

But when the accused of such a heinous crime of rape and murder are released on the basis of the appeal of remission, is a disappointment for the victim as well as whole nation.

Even if in the policy of 2014 for remission, prohibits the state government from releasing inmates on remission for rape and murder.

And instead Gujarat High court applied 1992 remission policy on the basis, according to Gujarat's Additional Chief Secretary (Home), Raj Kumar, is that there is an order from the Hon'ble Supreme Court for taking the policy for remission, which was in effect at the time of sentence, i.e. in 2008. According to Raj Kumar, the 11 people were convicted by a special court in Mumbai in 2008. Gujarat was implementing a remission programme that went into force in 1992 at the time of the conviction. When the case reached the Supreme Court, it asked the Gujarat government to decide on the release under the 1992 policy, which was in effect at the time of the conviction in 2008.

And this not only spark public outrage since it let rapists and murderers to go free, but specialists also pointed to discrepancies in the remission laws that made this possible. In this case, the 1992 policy benefits the convicts. And if the policies of 2014 would be applied then, the appeal for remission would have been dismissed.

Justice Nagarathna interjected, saying, "Here, the highest punishment is awarded after the death penalty. When life imprisonment is awarded, it has to be concurrent. It cannot be consecutive. There is only one life...hopefully."

The Cr.P.C. does permit premature release in the form of remission or commutation in life sentences, but it should be based on a legal and constitutional scheme, and not on a ruler's whimsy.

All its seems that for Gujarat its more a political topic then to give punishment to the accused for rare of rarest crime. Its makes a assumption to make a positive voting polls Gujarat government emphasised such a decision, which totally opposes human kind and also create a question on the legal system of India.

We talked about justice delayed is justice denied, in this case Bilkis already suffered a lot and gone through a very though road to get justice which is already late. Its creates a image for legal system of India that

how much complicated and difficulties to get justice in India. As the case was going from 2002 till 2017 to get punishment, this all may lead that evidence can deteriorate or be lost, making it difficult to establish the facts of a case accurately. Delayed justice cause prolonged suffering for victims, defendants, and their families, especially in cases involving serious crimes or civil disputes. It reduce the deterrent effect. When people perceive the legal system as slow and inefficient, it can erode public trust and confidence in the judiciary.

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Conclusion

The Bilkis Bano case in India highlighted the issue of communal violence and rape, leading to the conviction of 12 accused and a life sentence for the accused. The Supreme Court's recent judgement highlighted the need for accountability and justice for victims of communal violence and rape. However, the release of rapists and murderers on the basis of remission appeals is disappointing for the victim and the nation. The 2014 policy prohibits remission for rape and murder, but the Gujarat High Court applied the 1992 policy, which was in effect at the time of the conviction. This decision sparked public outrage and raised concerns about the legal system. Justice Nagarathna argued that the highest punishment is awarded after the death penalty, and life imprisonment should be concurrent. The case highlights the complexity and difficulties in obtaining justice in India, as delayed justice can cause prolonged suffering for victims, defendants, and their families, erode public trust and confidence in the judiciary. The Cr.P.C. permits premature release in life sentences, but it should be based on a legal and constitutional scheme.

The premature release of rapists and murders, including Bilkis Bano's gang rape and her family's murder, has sparked outrage and calls into question the doctrine of justice and constitutional protection of women, with the All India Working Women Forum demanding immediate withdrawal and remission.

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