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A study on the infamous case of Bilkis Bano.

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ABSTRACT :

On the 75th anniversary of India's independence, 11 men sentenced to life in prison for gang raping Bilkis Yakub Rasool and murdering seven of her family members during the 2002 Gujarat riots were released from Godhra prison. The Gujarat government said it relied on its old remission policy from 1992 to approve the applications for remission of the sentence of the 11 convicts who walked out of the prison after 15 years, rather than the current policy of 2014. While the release of the 11 convicted men sparked widespread outrage, it also reawakened traumatic memories across the country.

INTRODUCTION :

The Gujarat riots¹ in India in 2002 are remembered as one of the most heinous episodes of violence since the partition. The violence and trauma experienced by the riot victims were reignited 20 years later with the premature release of 11 gang-rape and murder convicts sentenced to life in prison in the Bilkis Bano case.

Bilkis Bano, then 21, was gang-raped while five months pregnant during the Gujarat riots in 2002. Her mother and sister were raped, and her entire family was murdered in front of her eyes, including her three-year-old daughter. A special Central Bureau of Investigation (CBI) court sentenced the 11 defendants in her case to life in prison in 2008. The Bombay high court later upheld the ruling in 2017.

What happened to Bilkis Bano in 2002, and who is she?

On February 28, 2002, Bilkis fled her village of Radhikapur in Dahod district after violence erupted in the state following the previous day's incident at Godhra station, in which the

¹ A Muslim mob in Godhra, Gujarat, set fire to a train leaving Ayodhya on February 27, 2002. As they were leaving Ram Janmabhoomi after making a pilgrimage, 59 karsevaks were set ablaze. After that, Gujarat experienced extensive racial unrest that left hundreds of people dead.

Unfortunately, the riots were exploited by opportunistic vultures who used them to discredit Gujarat and the then-chief minister Narendra Modi through shady politics. A few things to never forget are listed below.

Sabarmati Express was set ablaze, killing dozens of pilgrims and Kar sewaks returning from Ayodhya. Bilkis was accompanied by her three-and-a-half-year-old daughter Saleha, as well as 15 other members of her family. They fled, fearing a repeat of the arson and looting that had occurred in their village a few days before on the occasion of Bakr-Id.

The family arrived in Chapparwad village on March 3, 2002. They were attacked by about 20-30 people armed with sickles, swords, and sticks, according to the charge sheet. The 11 accused men were among the attackers.

Bilkis, her mother, and three other women were brutally assaulted and raped. Eight of the 17 Muslims from Radhikapur village were found dead, and six were missing. The attack killed only Bilkis, a man, and a three-year-old child.²

Bilkis was knocked out for at least three hours after the attack. She regained consciousness and borrowed clothes from an Adivasi woman before meeting a Home Guard, who took her to the Limkheda police station. She filed a complaint with Head Constable Somabhai Gori, who "suppressed material facts and wrote a distorted and truncated version" of her complaint, according to the CBI.³

Bilkis was only taken to a public hospital for a medical examination after arriving at the Godhra relief camp. Her case was taken up by the National Human Rights Commission⁴ (NHRC) and the Supreme Court, which ordered the CBI to investigate.

What did the CBI discover during its investigation of the Bilkis Bano case?

The CBI came to the conclusion that the post-mortem examination was conducted carelessly in an effort to shield the accused. None of the seven bodies had skulls, according to CBI

² <https://indianexpress.com/article/explained/explained-bilkis-bano-gangraped-2002-gujarat-riots-8093937/>

³ <https://www.cut-short.com/post/what-s-hot/explained-bilkis-bano-gangrape-case-and-why-all-convicts-were-released>

⁴ With the goal of promoting and defending human rights, the National Human Rights Commission, also known as the NHRC, is a stand-alone organization under the control of the Indian government. The "Protection of Human Rights Act" of 1993 saw the creation of this statutory body, which is mentioned in the Indian Constitution. A new amendment to this law was made in 2006. (<https://www.cut-short.com/post/what-s-hot/explained-bilkis-bano-gangrape-case-and-why-all-convicts-were-released>)

investigators who exhumed the victims of the attack. The CBI claims that after the autopsy, the heads of the corpses were severed, making it impossible to identify the bodies.⁵

How did the trial go?

After Bilkis Bano received death threats, the trial was relocated from Gujarat to Maharashtra. Charges were filed against 19 men in a Mumbai court, including six police officers and a government doctor.⁶

A special court convicted 11 people in January 2008 of conspiracy to rape a pregnant woman, murder, unlawful assembly, and other charges under the Indian Penal Code. To save the accused, the Head Constable was convicted of "making incorrect records." The court acquitted seven people based on a lack of evidence. One person died during the trial. The court determined that Jaswantbhai Nai, Govindbhai Nai, and Naresh Kumar Mordhiya (deceased) raped Bilkis and killed her daughter, Saleha, by "smashing" her on the ground.⁷

Radheshyam Shah, Bipin Chandra Joshi, Kesarbhai Vohania, Pradeep Vohania, Bakabhai Vohania, Rajubhai Soni, Nitesh Bhatt, Ramesh Chandana, and Head Constable Somabhai Gori were among those convicted. Despite being bystanders to the crime (with the exception of Gori), these accused were convicted of rape and murder, as the court observed that being a part of "an unlawful assembly" distributes the liability of the crime. The court sentenced all 11 convicts to life imprisonment.⁸

So, what happened next?

The Bombay High Court upheld the convictions and life sentences of 11 people in the gangrape case in May 2017 and overturned the acquittals of seven others, including police officers and doctors.

In April 2019, the Supreme Court ordered the Gujarat government to pay Bilkis Rs 50 lakh in compensation within two weeks. She had refused to accept the Rs 5 lakh compensation and had petitioned the Supreme Court for exemplary compensation from the state government.

The 1992 and 2014 remission policies in Gujarat:

⁵ See *Supra note 3*

⁶ See *Supra note 3*

⁷ Citation 2008 (Bilkis Bano)

⁸ <https://www.firstpost.com/explainers/explained-what-is-the-2002-bilkis-bano-gang-rape-case-and-why-have-11-convicts-been-released-now-11066141.html>

The 11 convicts were released by the Gujarat government in accordance with the 1992 remission policy rather than the 2014 policy that is still in effect today. According to Raj Kumar, Gujarat's Additional Chief Secretary (Home), the Supreme Court had instructed the Gujarat government to rely on the policy in place at the time of their 2008 conviction, which is why the 1992 policy was used.

He spoke to PTI⁹, "In 2008, a Mumbai special court found these 11 people guilty. Gujarat was enforcing a 1992-enacted remission policy at the time of conviction. The Supreme Court instructed us to make a decision regarding the release under the 1992 policy because it was in effect when the conviction was obtained in 2008."

As part of the Azadi Ka Amrit Mahotsav amnesty, Kumar further clarified that the prisoners were not released in accordance with the Center's remission guidelines. According to the 2014 policy, the state cannot release individuals convicted of rape and murder. According to an article in India Today, the Supreme Court "has also taken the view that if there are two policies that can be applied, it is the policy which adopts a liberal stance towards the accused that should be implemented," which was made by Rishi Malhotra, who represented the convicts in court.

The 1992 policy is in this instance lenient toward the prisoners. Malhotra added that the Supreme Court had to decide whether to apply the remission policy in effect at the time of the conviction (1992) or the policy in effect at the time the remission was being considered (the 2014 policy). After some deliberation, the top court decided that the state should apply the policy at the time of the conviction.

Recent Advancement of the case:

On August 25, the Supreme Court (SC) responded to a petition contesting the release of the 11 accused in the Bilkis Bano case. Journalist Revati Laul, academic Roop Rekha Verma, and CPI(M) MP Subhashini Ali filed the petition to contest the Gujarat government's decision. The petitioners were also asked to plead the 11 convicted defendants, and the case was scheduled for listing after two weeks. Now the issue of whether mass killers and gang rapists should be pardoned arises. Given that they were committed during a time of inter-

⁹ The Press Trust of India (PTI) is a news agency owned cooperatively by Indian newspapers that came together to take over the management of the Associated Press of India and the Indian outlets of the British news agency Reuters. It was founded in February 1949 and is based in Mumbai.

communal violence against a minority community, the crimes against Bilkis Bano would be considered crimes against humanity in any system of law practiced in a civilized society. Now that the SC has issued a notice and a PIL by concerned citizens requesting a quashing of the order of remission, the question of whether such convicts can be granted remission after 14 years will be one that the SC must address.

There shall not be discrimination on the basis of sex, caste, religion, or place of birth, according to Article 15 of the Constitution, which guarantees this to all citizens. It's time to evaluate how criminal laws are implemented using the Constitution as a yardstick and to acknowledge that some laws are selectively applied and that the accused often benefits from this. The Supreme Court's decision in May of this year, which asked Gujarat's government to take into account one of the convicts' requests for an early release in accordance with the state's 1992 remission policy, has a troubling flaw.

Because the crime was committed in Gujarat and not in the state where the trial was transferred, the court determined that Gujarat was the "appropriate government" to make decisions regarding issues like remission or early release. However, the Gujarat High Court had determined that Maharashtra was the proper government to grant remission because the trial had taken place there in response to another petition submitted by one of the convicts. Aside from that, the law stipulates that the judge who sentenced the defendants must be contacted. This wasn't completed. The Bombay High Court's Justice U D Salvi has publicly stated that he was not aware that remission was being considered for the convicts.

CONCLUSION: -

We are dealing with a moral and constitutional problem that is specific to our civilization. The SC and other Indian courts will not sanction immoral decisions. I'm hoping that the morality of democracy in India can still be restored. Our constitutional morality has suffered as a result. The SC must also clarify how and why an order of the Gujarat High Court was overturned in a petition under Article 32 rather than in an appeal of the order. In *Mirajkar* (1966), the SC ruled that no court decision can be contested under Article 32 and that an appeal is the proper course of action.

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