Jus Corpus Law Journal
Open Access Law Journal – Copyright © 2022 – ISSN 2582-7820
Editor-in-Chief – Prof. (Dr.) Rishikesh Dave; Publisher – Ayush Pandey

The Remission through the Lens of Bilkis Bano's Case

Jimna P V[a]

[a]Kannur University, Kannur, India

Received 27 September 2022; *Accepted* 09 October 2022; *Published* 18 October 2022

The President and Governors have the authority to commute, suspend, or remit a court-ordered sentence under Articles 72[1] and 161 of the Constitution[2]. Additionally, because prisons are a state concern, state governments have the authority to commute sentences under Section 432 of the Code of Criminal Procedure (CrPC)[3]. Here in this article, I explained the controversial impacts of the remission policy availed to the accused persons in Bilkis Bano's case happened in 2002 and also make a look at the 1992 and 2014 policies. The Gujarat government made this order for remission to the accused persons in the crime of gang rape of the victim Bilkis Bano. The actions of the Gujarat administration not only sparked public outrage since they allowed murderers and rapists to go free, but experts also hinted at inconsistencies in the remission rules that made this possible. In this situation, the 1992 policy favors convicts. The main difference between the regulations from 1992 and 2014 is that the latter is clearer regarding who is eligible for remission while the former is not.

Keywords: *remission policy, bilkis bano, policy, government, crpc.*

[1] Constitution of India, art 72
[2] Constitution of India, art 161
[3] Code of Criminal Procedure 1973, s 432

INTRODUCTION

On this year 2022 August 15th, India celebrated its 75th Independence years. Prisoners will receive special remission as part of 'Azadi Ka Mahotsav' celebrations, and Prisons have added a new module called 'Special Remission'. On the much-sweetened day, the convicts of the controversial Bilkis Bano's gang rape and murder case were released on remission enlightened with the 1992 remission policy instead of the 2014 new policy by the Gujarat government on its remission power under Article 161, on the Supreme Court direction. Actually, what does remission means? Remission of a sentence refers to a reduction in the total time served in prison without altering the nature of the sentence. The 11 condemned men in the Bilkis case, got remission in their sentencing sparked intense debate, but for Bilkis Bano and her family, it brought back painful memories. Here, the article describes the two remission policies, why the government of Gujarat adhered to the 1992 policy rather than the modified 2014 policy in effect, how the convicts obtained their re-launch and the issues with it.

BILKIS BANO CASE; A LOOK BACK

The tragic Bilkis Bano story serves as a stark reminder of the horrible tragedies of the Gujarat Riots on February 27th, 2002. In the Dahod district of Gujarat on March 3, 2002, Bano, who was 21 years old at the time and five months pregnant, was gang-raped as unprecedented violence ravaged the state in the wake of the Sabarmati Express massacre. On that tragic day, seven other members of her family, including her 3-year-old daughter Saleha, also perished and maintain Bilkis Bano.

Hours after losing consciousness, Bilkis recovered it, marking the start of a bitter fight for justice and respect. When she tried to make a complaint, the state police refused to add relevant details to FIR. Subsequently, Bilkis approached National Human Rights Commission [NHRC] and moved to Supreme Court. The court directed for CBI inquiry. Within 1 month accused got arrested and the trial began. In 2004, the Supreme Court ordered Bano's case be moved out of Gujarat and to Maharashtra to ensure an unbiased investigation and a fair trial after Bano claimed the accused had threatened to kill them. On the Supreme Court's instruction, the Central

Bureau of Investigation (CBI) looked into the situation, and the trial took place in Maharashtra. A Mumbai Sessions court in 2008, found the 11 accused guilty of violating Sections 302[4] and 376(2)(e)[5],(g)[6] read in connection with Section 149[7] of the Indian Penal Code (IPC) and sentenced them to a rigorous life sentence in prison as well as a fine. And the remaining 7 got an acquittal for the lack of shreds of evidence.

Mumbai High Court division bench upheld the Sessions court's verdict in May 2017. Seven people, including doctors and police officers, had their acquittals overturned by a division bench, which led to their conviction for interfering with the evidence in the case. The high court also denied a CBI petition to change three convicts' sentences from life in prison to the death penalty-Jaswant Nai, Govind Nai, and one other, while allowing the CBI to appeal the convictions of seven additional defendants.[8] The Gujarat government was ordered by the Supreme Court in 2019, to provide Bilkis Bano, who was gang raped during the state's 2002 riots, with Rs 50 lakh in restitution, a job, and housing. The Gujarat government notified a bench presided over by Chief Justice of India Rajan Gogoi that action had been taken against the responsible police officers in the case. The state's attorney informed the bench that the IPS officer who was found guilty by the Bombay High Court in the matter's case has had his pension payments suspended, as well as Justice Deepak Gupta and Justice Sanjiv Khanna.

WHAT WAS NEXT?

One of the convicted Radheshyam Shah approached Gujarat high court this year 2022 for moving a remission petition on the grounds taken under Section 432[9] & 433[10] Cr PC. The court rejected the plea on the ground that they are a lack of jurisdiction on remission and authority in the hands of the Maharashtra government. But the Supreme court, inconsistent with the high court's view and directed to Gujarat government to look at remission because Gujarat was the

[4] Indian Penal Code 1860, s 302
[5] Indian Penal Code 1860, s 376(2)(e)
[6] Indian Penal Code 1860, s 376(2)(g)
[7] Indian Penal Code 1860, s 149
[8] *Jaswantbhai Chaturbhai Nai & another v state of Maharashtra* (2017) Criminal Appeal No 1020 of 2009
[9] Code of Criminal Procedure 1973, s 432
[10] Code of Criminal Procedure 1973, s 433

state of occurrence of the offense, and the trial was held in Maharashtra under exceptional circumstances and with the limited purpose of the trial. For that, considering the remission policy existed at the time of sentencing, i.e., the 1992 remission Policy instead of the latest 2014 policy. Subsequently, all the 11 convicts got remission on their sentencing and were released from jail on August 15th independence day in this year 2022 because they already covered 14 years of imprisonment. It made controversy all over India, the matter is they got remission without considering the nature of the crime.[11] On 23rd August 2022, this remission allowed by Gujarat Government was challenged before the supreme court by CPI(M) MP Subhasini Ali, journalist Revati Laul & 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. Justice Ajay Rastogi and Justice Vikram Nath are seated with Justice Ramana. Subsequently, both sides were heard by the court, and on 25th August 2022 released an order to issue notice to the Gujarat government on the petition for challenging the remission.[12] And Justice Ramana also makes a clarification on the order on May 2022, firstly he said that he read somewhere about the court granting permission for remission and also he corrected that it is not like that, the court only said for consideration on remission.

The government of Gujarat points out that while replying, beginning with the assertion that politicians, activists, and journalists who submitted the writ petition are third-party strangers to the said case, the counter affidavit questions the legality of the writ petition. It asserts that the presence of such third parties, who lack locus standi, tends to undermine the rule of law and invite outsiders to get involved in criminal proceedings. In actuality, the counter accuses the petitioners of having a hidden agenda when they approached the Apex Court with the current writ petition. In actuality, the counter accuses the petitioners of having a hidden agenda when they approached the Apex Court with the current writ petition.

[11] Padmakshi Sharma, 'Remission Granted To Convicts In Bilkis Bano Case: Is It Legal?'(*Live Law.in*, 21 August 2022) <https://www.livelaw.in/columns/remission-granted-to-convicts-in-bilkis-bano-case-is-it-legal-207063?infinitescroll=1> accessed 26 September 2022

[12] *Subhashini Ali & Ors v The State of Gujarat & Anr* (2022) Writ Petition (Criminal) No 319 of 2022

It is asserted that petitions by strangers who are not attempting to vindicate their fundamental rights under Article 32 of the Constitution cannot be submitted, citing the ruling of the Apex Court in Simranjit Singh Mann v Union of India.[13] It goes a step further and claims that the Apex Court has previously opposed such outside participation in criminal matters. The ruling in Janata Dal v H.S. Chowdhary and others[14] is cited in the counter-affidavit. In a criminal case of this nature filed against specific accused persons, the apex court observed that, even if there are a million legal issues that need to be thoroughly investigated and examined, it is up to them and them alone to raise all of them and to contest the legality of the actions taken against them at the proper time and before the proper forum, not for third parties posing as public interest litigants. The Gujarat Authority is expected to evaluate the appeal within two months in accordance with its 1992 remission policy, according to the judgment issued by the Apex Court on May 13, 2022, which determined that Gujarat would be the suitable government to provide remission. The counter affidavit states that the aforementioned ruling made it clear that remission should be based on the policy of early release that was in place at the time of the defendant's conviction by the Trial Court, not a later policy. It is further stated that only a Review Petition may be used to appeal the Apex Court's ruling from May 2022, which is what the writ petition aims to accomplish. It is further asserted that the writ petition cannot dispute the Apex Court's May 2022 judgment by a writ filed under Article 32 but only through a Review Petition.

Abhay Thipsay, a former judge from the Bombay High Court, discussed remission in an interview. He believes that, even for relatively minor transgressions, offenders typically experience a lot of shame. When someone has been found guilty of such a horrible crime, how can we stand them? Why should the prisoners be praised even if the remission was legitimately granted? Is it because some people think that these warriors were involved in the conquest of a specific community? There is a very slim probability that someone who has been judged guilty is actually innocent. Those whose appeals are rejected are deemed to be guilty. The victims of gang rape typically are not eligible for remission.

[13] *Simranjit Singh Mann v Union of India & Anr* (1992) AIR 1993 SC 280
[14] *Janata Dal v HS Chowdhary & Ors* (1992) AIR 1993 SC 892

ADOPTION OF THE 1992 POLICY

The 11 offenders were released by the Gujarat government in accordance with the 1992 remission policy rather than the 2014 policy that is still in place today. According to Gujarat's Additional Chief Secretary (Home), Raj Kumar, the justification for applying the 1992 policy is that; there is a direction from the Hon'ble Supreme court for taking the policy for remission, prevailing at the time of sentencing, i.e. in 2008. Raj Kumar opinioned that the 11 persons were convicted by a special court in Mumbai in 2008. At the time of conviction, Gujarat was following a remission policy which came into effect in 1992. When the matter reached the Supreme Court, it directed the Gujarat government to decide about the release under the 1992 policy, because that was prevalent when the conviction came in 2008. Additionally, Kumar made it clear that as part of the Azadi Ka Amrit Mahotsav amnesty, the inmates were not freed in accordance with the Center's remission rules.

In 2014 remission policy, it restrained the state government to release convicts on remission relates to Rape and Murder. Rishi Malhotra, the advocate, who appeared for the convicts in the Supreme Court said that- "The apex court, in some cases, has also taken the view that if there are two policies which can be applicable, it is the policy which adopts a liberal stance towards the accused that should be implemented." Malhotra added that the Supreme Court has to decide whether to apply the remission strategy that was in vogue at the time of the sentencing (1992) or the policy that was in effect at the time of the remission examination (the 2014 policy). The state would apply the policy at the time of the conviction, the top court ultimately concluded.[15]

ADDITIONAL REMISSION INQUIRIES

Whether the Gujarat government engaged the Union government before reducing the term of the convicts has also been revealed. The Deccan Herald, an Indian- English newspaper reports that Questions have also been raised about whether the Gujarat government consulted the

[15] 'Explained: Gujarat's 1992 Remission Policy And Why Bilkis Bano Case Convicts Wouldn't Be Freed Under 2014 Policy'(*Outlook*, 18 August 2022) <https://www.outlookindia.com/national/explained-gujarat-1992-remission-policy-and-why-bilkis-bano-case-convicts-would-not-be-freed-under-2014-policy-news-217267> accessed 25 September 2022

Centre on remission as per Section 435 of the CrPC as the case was investigated by the CBI. As the CBI looked into the issue, concerns have also been raised about whether the Gujarat government consulted the Center regarding remission by Section 435 of the CrPC. The Supreme Court stated in 2015 that in this Section, consultation means the center's assent.

Section 435 CrPC – State Government to act after consultation with Central Government in certain cases.[16]

Regarding the state's remission powers under CrPC Section 433, these cases that need the Center's intervention are ones that the CBI is looking into. Notably, these 11 criminals were punished by a Special CBI court. It has also been questioned whether the release complies with Azadi Ka Amrit Mahotsav amnesty rules. Moreover, those queries are unfounded because the remission was granted by the 1992 Gujarat remission policy, not with the Azadi Mahotsav amnesty.

1992 V 2014 - GUJARAT REMISSION POLICY

The key distinction between the 1992 and 2014 rules is that the latter is more specific about who qualifies for remission while the earlier is not. According to the 2014 guidelines, remission was not available to prisoners in the Bilkis Bano case. Add. Chief Secretary Raj Kumar said that the 1992 remission policy is not specific, Who is eligible for remission and who is not was not made clear in that policy. Compared to the 2014 policy, that one was less comprehensive.

The 2014 policy is crystal clear that the offenders do not qualify for remission, along with many other convicts specified in Annexure 1 of the 2014 notification outlining the remission policy. Not eligible are -prisoners who have been investigated by the Delhi Special Police Establishment established under the Delhi Police Establishment Act, 1946. The CBI, which was established by the Delhi Police Establishment Act, investigated the Bilkis Bano case. And also Ineligible are - prisoners convicted of murder with rape or gang rape. The defendants in the Bilkis Bano case received sentences for murder and gang rape.

[16] Code of Criminal Procedure 1973, s 435

CONCLUSION

The Gujarat government's steps not only caused a popular outcry because it allowed rapists and murderers to walk free, but experts also alluded to contradictions in the remission policies that allowed this to happen. In this instance, the 1992 policy treats the prisoners favorably. The key distinction between the 1992 and 2014 rules is that the latter is more specific about who qualifies for remission while the earlier is not. This means, in 1992 policy did not clearly distinguish between prisoners who were eligible for early release from jail and those who were not. According to the 2014 guidelines, remission was not available to prisoners in the Bilkis Bano case. Gujarat carried this remission policy under the direction of the Supreme Court to take the policy of remission prevailing at the time of conviction. The tragic events surrounding Bilkis Bano serve as a sharp reminder of the terrible catastrophes surrounding the Gujarat Riots. The accused are convicted in 2008 and at that time 1992 remission policy is alive. By considering the gravity of the offense and the victim's mental condition the policy should be adaptable to the present scenario. The government added that the action taken by them, reliance is put on the ruling issued by the Supreme Court on May 13, 2022, which determined that the Gujarat Government would be the proper government to provide remission and ordered it to consider the plea within two months by its 1992 remission policy. The counter affidavit states that the aforementioned judgment made it clear that remission should be determined by the premature release policy in effect at the time of the Trial Court's conviction, not by a later policy. It is further stated that only a Review Petition may be used to appeal the judgment of the Supreme Court that was rendered in May 2022 in the writ petition. It is further asserted that the writ petition cannot dispute the Apex Court's May 2022 judgment by a writ filed under Article 32 but only through a Review Petition.

In the 2014 Gujarat remission policy, prisoners are charted and categorized for the remission policy. Rape accused never get the benefit under this policy. If 2014 is adopted by the government, the convicts of this Bilkis Bano case never be free. Remission policy should have deep scrutiny needed, it may give liberty to future criminals.