



# The Indian Journal for Research in Law and Management

Open Access Law Journal – Copyright © 2024

Editor-in-Chief – Prof. (Dr.) Muktai Deb Chavan; Publisher – Alden Vas; ISSN: 2583-9896

This is an Open Access article distributed under the terms of the Creative Commons Attribution-Non-Commercial-Share Alike 4.0 International (CC-BY-NC-SA 4.0) License, which permits unrestricted non-commercial use, distribution, and reproduction in any medium provided the original work is properly cited.

---

## Bilkis Bano: A Case Brief

In the annals of India's legal history, the Bilkis Bano case stands as a stark reminder of the brutalities that can be inflicted upon innocent lives during periods of social unrest. Bilkis Bano, a survivor of the 2002 Gujarat riots, became a symbol of resilience and justice as her case unfolded, revealing not only the horrors of communal violence but also the challenges within the criminal justice system. The incident not only tested the mettle of India's legal framework but also spotlighted the need for accountability and protection of the rights of the vulnerable during turbulent times. As the Gujarat government granted remission to the eleven convicts in the case a few days back, which was quashed by the Supreme Court on 8th January 2024<sup>1</sup>, it is important to know what really went down in this harrowing case.

### Facts of the Case

The Bilkis Bano case<sup>2</sup> took place during sectarian disturbances<sup>2</sup> between Hindus and Muslims. The incident occurred in Gujarat on March 3, 2002, in the Dahod district. Bilkis Bano, the victim, was scared of being caught up in such a situation, so she fled with her entire family. Twenty to thirty Hindus nabbed them as they attempted to flee. They then gang raped her and the other ladies in her family. She was 21 years old and 5 months pregnant at the time. The criminals not only raped her, but also murdered seven of her family members. Bilkis Bano claimed that the police failed to include all pertinent facts for the case when registering the FIR. As a result, having exhausted all other options, she reported it to the National Human Rights Commission (NHRC) and subsequently to the Supreme Court, which requested a CBI investigation. The NHRC supported and assisted her by appointing a senior advocate and former Solicitor General as her lawyer to defend her before the Supreme Court. Within a month of starting the investigation, the accused were arrested and brought before the Gujarat High Court. During that time, the accused threatened to kill her. Bano went to the Supreme Court and complained about the death threats she was receiving. As a result, the Supreme Court decided to transfer the case from Gujarat to Maharashtra in order to conduct a fair and unbiased investigation.

---

<sup>1</sup> SUPREME COURT OF INDIA, 38741\_2022\_12\_1501\_49383\_Judgement\_08-Jan-2024.pdf (sci.gov.in)(last visited 24th January 2024)

<sup>2</sup> Upsana Sarkar, *Bilkis Bano Case*, IPLEADERS (January 29, 2024, 9:24 AM) Bilkis Bano case - iPleaders

The Central Bureau of Investigation (CBI) performed a thorough investigation and produced a charge sheet that revealed the names of 19 accused, including police officers and doctors who attempted to cover up the crimes that occurred.

### **Decision of the Mumbai Sessions Court and the High Court**

The Mumbai Court delivered its verdict in 2017, convicting 11 suspects of the crime, including a police officer. The remaining defendants were acquitted because there was insufficient evidence against them to prove they committed the crime. They were sentenced to rigorous life imprisonment and a fine for their crimes. They were found guilty under Sections 302 and 376(2), which should be read along with Section 149 of the Indian Penal Code, 1860. In May 2017, the Bombay High Court upheld the 11 defendants' life imprisonment sentences. Those who were discharged by the Trial Court because they had no direct involvement in the crime were found guilty by the High Court. The verdict given by the Sessions Court was affirmed by the Mumbai High Court in May 2017, and the Government of Gujarat was directed by the Supreme Court<sup>3</sup> to provide the victim with a job, housing, and an amount of fifty lakh rupees. The Bombay High Court charged five policemen and two doctors with tampering with evidence under Section 201 and failure to discharge their responsibilities under Section 218 of the Indian Penal Code, 1860. However, the HC has prohibited capital punishment, stating that it is only used in the rarest of circumstances.

### **Contentions of both the Parties**

The petitioner's lawyer, Advocate Shobha Gupta, maintained that the convicts' offences were pre-planned. They devised a criminal conspiracy to rape the woman and murder other members of her family. They did not act impulsively. The petitioner contended that anyone who commits such an inhumane act does not deserve leniency. So the counsel continued by stating that the Court should evaluate the gravity of the offence before giving any judgement in this case.

The convicts in this case lodged an appeal claiming the facts that the victim had given birth to a child after that incident, which indicates that she had not been gang-raped as has been alleged. They also claimed that the evidence presented by the CBI was entirely concocted by them. There was no evidence that the victim's family members had been slain, as their remains had not been recovered, which would have proven them guilty of murder.

### **Plea for Remission**

Radheshyam Shah, one of the convicts in the case, petitioned the Gujarat High Court for his early release after serving more than 14 years in prison. However, the Gujarat High Court dismissed his appeal and denied his early release from prison. So he went to the Supreme Court and filed a plea for his early release, citing the Gujarat government's remission policy of July 9, 1992. One of the offenders filed a request for remission in the Gujarat High Court in 2022 under Sections 432 and

---

<sup>3</sup> SCC ONLINE, Remission of Convicts in Bilkis Bano case: SC issues notice to Centre-State | SCC Blog (sconline.com) (last visited 24th January 2024)

433 of the Code of Criminal Procedure, 1973. After hearing the convict's arguments, the Supreme Court awarded the Gujarat Government the authority to determine whether he could be released in compliance with the 1992 Gujarat remission policy within two months or not. The Court decided that the Gujarat High Court had the authority to deal with the convict's remission policy because Gujarat was the state where the incident occurred, and that the 1992 remission policy will be implemented rather than the 2014 one, which posed a bar on the power of the State government.

### **Conclusion**

When the convicts were released on 15th August 2022, it enraged people all over the country. Bilki Bano filed a review petition on 23rd August 2022 to challenge the release. This case is a blaring reminder of the atrocities that a woman faces and at what lengths one goes to save oneself.