
BILKIS BANO AND THE BROKEN PROMISE OF JUSTICE: A CRITICAL ANALYSIS OF INDIA'S REMISSION POLICIES

Avanish Kumar, Research Scholar, Faculty of Law, University of Lucknow, Lucknow

Ananya Verma (LL.B., LL.M.), Faculty of Law, University of Lucknow, Lucknow

ABSTRACT

The release of 11 convicts, sentenced to life imprisonment for the gang rape of Bilkis Bano and the murder of her family during the 2002 Gujarat riots, has ignited a firestorm of controversy in India. This decision, rooted in the state's remission policy, has sparked outrage and reignited debates about justice, victim's rights, and the role of the state in upholding the rule of law. This article delves into the complexities surrounding the Bilkis Bano case, scrutinizing the legal framework that enabled the remission of these convicts. It critically examines the remission policies in India, highlighting the discretionary powers vested in state governments and the potential for political considerations to overshadow the principles of justice and accountability. The Bilkis Bano case serves as a stark reminder of the vulnerabilities inherent in India's legal system, particularly when it comes to protecting the rights of marginalized and vulnerable groups. The remission of these convicts has been condemned as a betrayal of justice, not only for Bilkis Bano but also for countless survivors of sexual violence and communal violence who seek redress through the courts. Beyond the specifics of this case, this article raises key questions about the purpose of punishment, the efficacy of rehabilitation, and the delicate balance between societal healing and individual justice. It argues for a more transparent, accountable, and victim-centric approach to remission, making sure such decisions are not made in haste or under political pressure, but rather with due diligence and a commitment to upholding the principles of fairness and equity. Ultimately, this article seeks to spark a wider conversation about the need for comprehensive reforms in India's remission policies, so as to prevent future miscarriages of justice and ensure that the voices of victims are heard and respected. It advocates for a deeper grasp of the intricate relationship between law, politics, and social justice in a society grappling with its past traumas and striving for a more equitable future.

Keywords: Bilkis Bano case, India, Political Neutrality, Remission Policies, Victim's Rights, Justice.

1. Introduction

In the wake of the devastating 2002 Gujarat riots, a young pregnant woman named Bilkis Bano endured unimaginable horrors. She was gang-raped and many members of her family, including her three-year-old daughter, were brutally murdered by a mob.¹

The case, marked by its brutality and the vulnerability of the victims, garnered national attention. The Central Bureau of Investigation (CBI) took over the investigation, leading to the conviction of 11 men in 2008 by a special court in Mumbai. They were sentenced to life imprisonment for their heinous crimes.

However, in a controversial turn of events in 2023, the Gujarat government granted remission to all 11 convicts, leading to their early release. This decision, based on a 1992 remission policy², sparked widespread outrage and condemnation.³ Critics argued that the decision disregarded the severity of the crimes, undermined the principles of justice, and trivialized the suffering of the victims.

The Bilkis Bano case sparks debates on justice, victim's rights, and remission powers' appropriate use. It highlights worries about political influences in legal decisions, especially in cases with communal implications. Public scrutiny and legal challenges persist, urging accountability and a review of convicts' remission.

The remission granted to the 11 convicts in the Bilkis Bano case triggered a wave of public outrage across India. Protests erupted in various cities, with citizens, activists, and legal experts condemning the decision as a travesty of justice. Messages of solidarity flooded social media platforms with Bilkis Bano and demands for the revocation of the remission. Numerous legal challenges emerged against the remission decision, prompting petitions to the Indian Supreme Court questioning its legality and morality. These filings contended it was arbitrary, breached natural justice, and disregarded victims' rights, stressing its potential adverse effects on women's safety, notably in minority communities.

¹ Bilkis Bano: India PM Modi's government okayed rapists' release, <https://www.bbc.com/news/world-asia-india-62574247> (last visited May.21, 2024).

² In 1992, the Gujarat government introduced a new remission policy. Under this policy, life sentence convicts who had served at least 14 years could request consideration, pending approval from the Jail Advisory Board.

³ The laws around remission policy | Explained, <https://www.thehindu.com/news/national/the-laws-around-remission-policy-explained/article67728274.ece> (last visited May 21, 2024).

Public outcry and legal challenges revealed profound concerns over remission power abuse, emphasizing the call for enhanced accountability and transparency. They underscored the necessity of safeguarding victims' rights and maintaining justice integrity, beyond political expediency's sway.

The Bilkis Bano case has laid bare the deep-seated flaws and potential for gross injustice embedded within India's remission policies. The premature release of 11 convicts, sentenced to life imprisonment for the heinous crimes of gang rape and murder during the 2002 Gujarat riots (The 2002 Gujarat riots, also termed as the 2002 Gujarat disturbances, unfolded over a span of three days in the western Indian state of Gujarat. The catalyst for the violence was the tragic burning of a train in Godhra on February 27, 2002, resulting in the loss of lives of 58 Hindu pilgrims and Karsevaks returning from Ayodhya. This incident is widely regarded as the spark that ignited the subsequent unrest. Subsequent to the initial outbreaks of rioting, Ahmedabad witnessed continued violence for a duration of three months. Moreover, across the state, further instances of violence targeted at the minority Muslim community persisted for the next few years)⁴, has shocked the nation's conscience and prompted serious questions regarding the integrity and fairness of the justice system.

This case underscores the flaw in the remission framework, designed for offender rehabilitation but prone to manipulation. State governments' discretionary powers, paired with opaque decision-making, allow political motives and biases to trump justice principles, highlighting the need for transparency and accountability in remission processes to uphold fairness and integrity.

The Bilkis Bano case exemplifies the remission process' potential misuse, rewarding heinous crime perpetrators while neglecting victims' rights and suffering. The decision to release convicts not only retraumatized Bilkis Bano and her family but also conveyed a troubling message to survivors of sexual and communal violence nationwide.

This case is a clarion call for urgent and comprehensive reforms in India's remission policies. These reforms must address the following critical issues:

Clear and Stringent Guidelines: Remission criteria need tightening, emphasizing offense severity, victim impact, and rehabilitation potential. Guidelines should explicitly bar early release for heinous crimes like rape and murder, prioritizing justice and victim welfare.

⁴ 2002 Gujarat riots, https://en.wikipedia.org/wiki/2002_Gujarat_riots (last visited May 21, 2024).

Transparency and Accountability: The remission process must be made more transparent and accountable, with clear mechanisms for public scrutiny and judicial oversight. The reasons for granting remission should be clearly articulated and made available to the public.

Victim Participation: In the remission process, victims deserve a meaningful voice, with their views and concerns duly considered, and they should receive adequate support and protection.

Political Neutrality: The remission process must be insulated from political interference. Independent review mechanisms should be established to guarantee that decisions are founded upon merit and not on political expediency.

Via these reforms, India can reshape remission into a tool for rehabilitation, not injustice. The Bilkis Bano case highlights a broken system needing urgent repair. Inaction risks perpetuating injustice and undermining public trust in the criminal justice system's integrity and fairness.

2. The Bilkis Bano Case: A Betrayal of Justice

In 2002, during the Gujarat riots, Bilkis Bano, a pregnant woman, was gang-raped, and her many family members were brutally murdered by a mob. Among the victims was her three-year-old daughter, who was killed by being smashed on the ground.

The ordeal began when Bilkis and her family were forced to flee their home village due to the escalating violence, they sought refuge in Chappawrwad dist. but were tragically ambushed by the armed mob on March 3, 2002.⁵ The attackers were not unknown to Bilkis. In her testimony, she identified several individuals from her village.

The incident was not only a horrific instance of sexual and physical violence but also a blatant violation of human rights. The aftermath of the attack saw Bilkis facing significant challenges in seeking justice. The local police initially refused to file her complaint,⁶ and when they eventually did, crucial details, including the names of many assailants, were omitted. The case

⁵ Bilkis Bano Case Brief: The timeline, the key milestones, <https://indianexpress.com/article/cities/ahmedabad/bilkis-bano-case-timeline-key-milestones-9099716/> (last visited May 21, 2024).

⁶ Bilkis Bano case: Timeline of events from 2002 to SC verdict, <https://www.hindustantimes.com/india-news/bilkis-bano-case-timeline-of-events-from-2002-to-sc-verdict-101704694459166.html> (last visited May 21, 2024).

was eventually transferred to the Central Bureau of Investigation (CBI), leading to the conviction of 11 men in 2008. They received life imprisonment for their involvement in the gang rape and murders.

However, in a controversial move, the Gujarat government granted remission to the convicts in Aug 2022, leading to their premature release. This decision sparked outrage and was challenged in the Supreme Court, which subsequently quashed the remission order.

The Bilkis Bano case serves as a poignant reminder of communal violence horrors and the enduring quest for justice for victims of such crimes.

The legal proceedings, conviction, and sentencing of the 11 perpetrators

The legal proceedings in the Bilkis Bano case were long and complex, marked by initial setbacks and eventually leading to the conviction of 11 perpetrators.

- **Initial Investigation and Trial:**
 - After the horrific incident, Bilkis faced resistance from the local police, who initially refused to register her complaint. When they finally did, crucial details were omitted, hindering the investigation.
 - Because of the mishandling of the case by the local police, the Apex Court of India transferred the investigation to the Central Bureau of Investigation (CBI).
 - To ensure a fair trial, the Supreme Court transferred the case from Gujarat to Maharashtra.

- **Conviction and Sentencing:**

In 2008, a special CBI court in Mumbai convicted 11 men for their involvement in the gang rape of Bilkis Bano and the murder of her family members. All 11 convicts were sentenced to life imprisonment for their heinous crimes. The court also convicted seven others, including police officers and a government doctor, for tampering with evidence and obstructing justice.

- **Appeals and Remission:**

- The convicts appealed their sentence to the High Court of Bombay, which upheld their convictions in 2017.
- In 2022, the Gujarat government controversially granted remission to the 11 convicts, leading to their premature release. However, the Supreme Court intervened, nullifying the remission order, citing it was made without adequate consideration of the crimes' severity.

Legal proceedings in the Bilkis Bano case showcase survivors' challenges in obtaining justice, particularly in cases with communal aspects. Perpetrators' conviction, sentencing, and Supreme Court intervention emphasize the judiciary's role in upholding the rule of law and delivering justice impartially.

The remission process's legitimacy and adherence to legal principles

The remission process in the Bilkis Bano case was marred by several concerning aspects prompted serious questions about its legitimacy and adherence to legal principles.

- **Lack of Transparency:**

The Gujarat government's decision to grant remission to the 11 convicts lacked transparency. The lack of transparency prevented public scrutiny and accountability, raising concerns about potential biases and political motivations influencing the decision.

- **Disregard for Victims' Rights:**

- The remission process completely disregarded the trauma and suffering endured by Bilkis Bano and her family.
- The premature release of the convicts, ignoring their crimes' severity, undermined justice principles and suggested heinous acts could be forgiven without true remorse or rehabilitation.

- **Questionable application of legal principles:**

- The remission decision ignored legal principles, overlooking the crime's severity, convicts' prison behaviour, and potential societal threat.
- The discretionary powers granted to the government in matters of remission were seemingly misused in this case, raising concerns about the arbitrary exercise of such powers without proper checks and balances.⁷

The flawed remission process in the Bilkis Bano case had a devastating impact, retraumatizing the victim, eroding her family's faith in justice, and discouraging survivors of sexual violence.

The Bilkis Bano case remission underscores the urgent need for transparency, accountability, and strict adherence to legal principles. It emphasizes considering victims' rights and making remission decisions with utmost care and sensitivity, acknowledging the crime's severity and its impact on victims and society.

3. India's Remission Policies: A Critical Evaluation

India's remission policies delineate procedures for sentence reduction based on conduct, rehabilitation potential, and other factors. Governed by legal frameworks and judicial precedents, these policies aim to ensure fairness and consistency in granting remission.

Legal Framework Governing Remission in India

The legal framework governing remission in India is a combination of constitutional provisions, statutory laws, and executive guidelines.

- **Constitutional Provisions:**

- Article 72⁸: Empowers the President of India to grant pardons, reprieves, respites, or remissions of punishment, or to suspend, remit, or commute the

⁷Bilkis Bano Case | 'Abuse of power by Gujarat govt': What the Supreme Court said, in 10 points, <https://indianexpress.com/article/india/bilkis-bano-case-supreme-court-quashes-remission-granted-to-11-convicts-10-points-9099709/> (last visited May.21, 2024).

⁸ INDIA CONST. art. 72 provides Power of President to grant pardons, etc., and to suspend, remit or commute sentences in certain cases.

sentence of any person convicted of any offence.

- Article 161⁹: Grants similar powers to the Governor of a state, but only for offenses under state laws.
- **Statutory Provisions: Code of Criminal Procedure (CrPC), 1973:**
 - Section 432: Gives the 'appropriate government' (central or state, depending on the law under which the person was convicted) the power to suspend or remit a sentence, in whole or in part, with or without conditions.
 - Section 433: Empowers the appropriate government to commute a sentence to a lesser one.
 - Section 433A: Imposes restrictions on the power of remission in cases of life imprisonment, requiring a minimum of 14 years imprisonment before considering remission.
- **Rules and Guidelines:**
 - State-specific Prison Rules: Each state has its own prison rules that provide detailed procedures for processing remission applications.
 - Ministry of Home Affairs Guidelines: The central government has issued guidelines from time to time¹⁰, providing a framework for the exercise of remission powers. For instance, the guidelines issued in 2014 emphasized that remission should not be granted in a wholesale manner and should be considered on a case-by-case basis.
- **Key Principles Governing Remission:**
 - Discretionary Power: Remission is a discretionary power vested in the executive, not a right of the convict.

⁹ INDIA CONST. art. 161 provides Power of Governor to grant pardons, etc., and to suspend, remit or commute sentences in certain cases.

¹⁰ Guidelines for granting Special Remission to Prisoners on 15th August, 2022 (75th anniversary of Independence), 26th January 2023 (Republic Day) and again on 15th August, 2023.

- Factors to be Considered: The appropriate government must consider various factors while deciding on remission, including the nature and gravity of the offence, the convict's behaviour in prison, the opinion of the trial court, and the views of the victim.
- Public Interest: The decision to grant remission should be based on the larger public interest and not merely on individual considerations.
- **Judicial Review:**
 - Limited Scope: The courts have a limited scope of judicial review over remission decisions. They can interfere only if the decision is arbitrary, capricious, or mala fide.
 - Guidelines Issued: The Supreme Court has, in various judgments given below, laid down guidelines for the exercise of remission powers, emphasizing the need for a fair, transparent, and non-discriminatory process: -
 - **Laxman Naskar v. Union of India**¹¹: The Supreme Court stressed considering crime nature and relevant factors, cautioning against mechanical or routine remission grants.
 - **Union of India v. V. Sriharan @ Murugan**¹²: The Supreme Court clarified governmental power, noting it must be exercised individually, not wholesale.
 - **State of Haryana v. Mohinder Singh**¹³: The Supreme Court ruled against arbitrary remission, stressing fairness and reasonableness, highlighting the importance of careful consideration in remission applications.
 - **Rajo @ Rajwa @ Rajendra Mandal vs The State of Bihar on 25 August, 2023**: The Supreme Court of India examined remission and its judicial review potential, stressing the need for thorough, fair consideration of applications based on conduct, age, health, and rehabilitation.

¹¹ (2000) 2 SCC 595.

¹² (2016) 7 SCC 1.

¹³ AIR 2001 SC 1108.

The Bilkis Bano case highlighted the complexities and potential for misuse of the remission process in India. While the legal framework provides for remission as a tool for showing mercy and rehabilitation, the lack of transparency and the disregard for victims' rights in this case raised serious questions about its application. It underscored the need for greater accountability and adherence to legal principles in the exercise of remission powers.

Discretion vested in state governments and the potential for misuse or political influence

The Indian legal framework grants state governments significant discretion in deciding whether to grant remission to convicts. This discretion is enshrined in the Code of Criminal Procedure (CrPC), 1973 and state-specific prison rules, allowing governments to consider various factors such as the nature of the crime, the convict's behaviour in prison, and the views of the victim.

However, this discretionary power also raises concerns about the potential for misuse or political influence. The lack of clear and objective criteria for granting remission leaves room for subjective interpretations and biases. This can lead to decisions that are not in line with the principles of justice and fairness.

- **Potential for Misuse:**

- Political Considerations: Governments may be tempted to grant remission to convicts based on political considerations rather than on the merits of the case. This could be to appease certain constituencies or to gain political mileage.
- Corruption and Influence: There is a risk that the remission process could be influenced by corruption or undue influence from powerful individuals or groups.
- Discrimination: Remission decisions could be discriminatory, favouring certain groups or individuals over others based on their social status, caste, religion, or political affiliations.

- **Evidence of Misuse in the Bilkis Bano Case:¹⁴**

¹⁴ 'Abuse of power': Supreme Court scraps release of Bilkis case rape-murder convicts, <https://indianexpress.com/article/india/bilkis-bano-case-supreme-court-quashed-gujarat-government-remission-convicts-9099554/> (last visited May 22, 2024).

The remission granted in the Bilkis Bano case raised serious concerns about discretionary power misuse. Despite the heinous crimes and strong objections from the victim's family, the decision faced allegations of political bias and lacked transparency, highlighting significant flaws in the decision-making process.

- **Need for Reform:**

To address the potential for misuse and political influence, there is a need for reforms in the remission process:

- **Clear and Objective Criteria:** The criteria for granting remission should be made more clear and objective, leaving less room for subjective interpretations and biases.
- **Transparency and Accountability:** The decision-making process should be transparent and accountable, with clear reasons provided for each decision.
- **Independent Review Mechanism:** An independent review mechanism should be established to scrutinize remission decisions and ensure that they are fair and just.
- **Victim Participation:** The views of the victim and their family should be given due consideration in the remission process.

By implementing these reforms, India can ensure that the power of remission is used judiciously and in accordance with the principles of justice, fairness, and human rights.

Critical analysis of the factors considered for remission, such as good conduct, the nature of the crime, and the impact on victims

The decision to grant remission to convicts in India is a complex one, involving a careful consideration of several factors. However, the application of these factors often raises concerns about fairness, justice, and the rights of victims.

- **Good Conduct:**

- Good conduct in prison is often considered a primary factor for remission. This includes adherence to prison rules, participation in rehabilitation programs, and demonstration of remorse.
- **Criticism:** Critics argue that good conduct in a controlled environment doesn't necessarily reflect genuine remorse or rehabilitation. It also overlooks the severity of the crime and the lasting impact on victims.

- **Nature of the Crime:**

- The nature and gravity of the crime are crucial factors. Heinous crimes, such as murder, rape, and terrorism, are usually not considered for remission.
- **Criticism:** In the Bilkis Bano case, the remission granted to convicts of gang rape and murder raised serious questions about the application of this factor. It seemed to disregard the horrific nature of their crimes and the lifelong trauma inflicted on the victim.

- **Impact on Victims:**

- The impact of the crime on the victim and their family is a significant factor. It includes the physical, emotional, and psychological trauma they have endured.
- **Criticism:** In many cases, the voices of victims are not adequately heard in the remission process. Their pain and suffering are often overlooked, and their right to justice is undermined when perpetrators are released prematurely.

- **Additional Factors:**

- Remorse and Rehabilitation: Genuine remorse and evidence of rehabilitation are essential considerations. However, these are subjective factors and difficult to assess accurately.
- Public Safety: The potential risk posed by the convict to society upon release is also a factor. However, predicting future behaviour is challenging and can be

influenced by biases.

The current framework for remission in India needs a critical review. The overemphasis on good conduct and the disregard for the nature of the crime and the impact on victims raise serious concerns about justice and fairness. The remission process should be more transparent, accountable, and victim-centric. Here are some *suggestions* for improvement:

- Prioritize Victim's Rights: The voices of victims should be heard and given due consideration in the remission process.
- Clearer Guidelines: The criteria for remission should be more clear, objective, and consistent across states.
- Independent Review: An independent body should review remission decisions to ensure fairness and prevent misuse of discretion.
- Focus on Rehabilitation: The focus should shift from good conduct to genuine remorse, rehabilitation, and the reduced risk of reoffending.

By addressing these issues, India can create a remission process that is fair, just, and respects the rights and dignity of both victims and offenders.

4. Remission of Convicts: Impact on Victims' Rights and their mental condition

The remission of convicts, particularly in cases involving violent crimes, can have a profound and detrimental impact on victims' rights and mental well-being.

Psychological and emotional trauma experienced by victims of heinous crimes like Bilkis Bano.

Victims of heinous crimes often experience profound and long-lasting psychological and emotional trauma. The brutality and violation they endure can shatter their sense of safety, trust, and well-being, leaving deep scars that may never fully heal.

- **Psychological Impact:**

- Post-Traumatic Stress Disorder (PTSD): PTSD often follows traumatic events,

causing flashbacks, nightmares, hypervigilance, emotional numbness, difficulty concentrating, and irritability. Victims may relive the trauma, leading to severe distress and impaired daily functioning.

- Depression and Anxiety: Overwhelming grief and injustice can trigger depression and anxiety, causing persistent sadness, hopelessness, loss of interest, and excessive worry in victims.
- Guilt and Shame: Survivors of sexual violence often internalize guilt and shame, blaming themselves for the crime. This self-blame can further exacerbate their emotional distress and hinder their recovery.
- Social Isolation: Trauma can hinder victims' ability to connect, fostering feelings of misunderstanding, stigma, and judgment, often resulting in social withdrawal and isolation.

- **Emotional Impact:**

- Loss of Trust: Violated trust deeply affects a victim's relationship skills. They may become cautious, struggle with intimacy, and find it hard to trust even closed ones.
- Anger and Resentment: The injustice of the crime can lead to intense anger and resentment. Victims may direct their anger towards the perpetrator, the justice system, or even themselves.
- Fear and Helplessness: The experience of being victimized can instill a deep sense of fear and helplessness. Victims may feel vulnerable and constantly on edge, fearing for their safety and the safety of their loved ones.

- **The Case of Bilkis Bano:**

Bilkis Bano's case exemplifies the profound trauma experienced by victims of heinous crimes. The gang rape and the brutal murder of her family members, including her infant daughter, left her with deep psychological scars. She faced immense challenges

in seeking justice, including initial resistance from the police and a protracted legal battle.

The premature release of her attackers further compounded her trauma, reopening old wounds and undermining her sense of security and justice.¹⁵ This betrayal by the system likely amplified her feelings of anger, helplessness, and distrust.

- **Support and Healing:**

Victims of such crimes require comprehensive support and care to begin their healing journey. This includes:

- Psychological Counselling
- Social Support
- Legal Assistance
- Advocacy: Victim advocacy groups can provide resources, information, and support to victims and their families.

It is important to remember that healing from such trauma is a long and complex process. It requires patience, understanding, and unwavering support from loved ones and the community.¹⁶

The importance of victims' rights, including the right to be heard, the right to justice, and the right to reparations

In a just legal system, victims' rights are fundamental. Upholding these rights not only empowers victims but also enhances the integrity of the judicial process. Particularly in cases like Bilkis Bano's, the importance of victims' rights is magnified, emphasizing justice's core principles.

¹⁵ New SC bench to hear pleas on early release of Bilkis case convicts, <https://indianexpress.com/article/india/supreme-court-bench-bilkis-bano-gangrape-convicts-release-hearing-8517133/> (last visited May 23, 2024).

¹⁶ Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, <https://www.ohchr.org/en/instruments-mechanisms/instruments/declaration-basic-principles-justice-victims-crime-and-abuse> (last visited May 23, 2024).

- **Right to be Heard:**

Victims possess the inherent right to be heard and engage in legal proceedings affecting their lives, such as providing impact statements, expressing views on the case, and participating in decisions regarding sentencing or remission.

- Section 357A of the Code of Criminal Procedure (CrPC): Mandates the establishment of victim compensation schemes by state governments.
- Section 15A of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989: Guarantees the right of victims to be heard at every stage of the legal process.

Denying victims, the right to be heard, as seen in the Bilkis Bano case where her views were disregarded during the remission process, is a grave injustice. It silences their voices and disregards their experiences, thereby undermining their dignity and agency.

- **Right to Justice:**

Victims have the right to seek justice and hold perpetrators accountable for their crimes. This encompasses the right to a fair trial¹⁷, access to legal representation, protection from intimidation or retaliation, and the right to appeal decisions.

- Article 21 of the Indian Constitution: Guarantees the right to life and personal liberty, which includes the right to access justice¹⁸.
- Section 304 of CrPC, 1973: Provides for the payment of compensation to victims of crime.

The premature release of the perpetrators in Bilkis Bano's case without her knowledge or consent negated her right to justice. It highlighted the need for a legal system that prioritizes victims' rights and ensures their meaningful participation in the legal process.

¹⁷ Hussainara Khatoon v. State of Bihar AIR 1979 SC 1369.

¹⁸ Anita Kushwaha v. Pushap Sadan, (2016) 8 SCC 509.

- **Right to Reparations:**

Victims have the right to reparations for the harm they have suffered. This can include financial compensation, restitution, medical care, psychological counselling, and other forms of support to aid in their recovery and rehabilitation.

- Section 357 of CrPC: Empowers courts to order compensation to be paid to the victim by the accused upon conviction.
- The Victims Compensation Scheme: Provides financial assistance to victims of crime.

In cases like Bilkis Bano's, where the trauma is profound and enduring, reparations are crucial for healing and rebuilding lives. However, reparations should go beyond monetary compensation and address the multifaceted needs of victims, including psychological and emotional support.

The Bilkis Bano case serves as a reminder of the importance of upholding victims' rights in the pursuit of justice. It underscores the need for legal reforms, institutional changes, and societal shifts that prioritize victims' needs, ensuring their meaningful participation and access to remedies. By upholding victims' rights, we can create a justice system that is more equitable, trauma-informed, and truly serves the interests of those who have been harmed.

How the remission of perpetrators can undermine victims' rights and impede their healing process.

Perpetrators' remission, especially in heinous crimes like Bilkis Bano's, devastates victims' rights and healing. Premature release retraumatizes victims, eroding faith in justice, highlighting remission's profound impact on victim recovery and faith in the legal system.

- **Undermining the Right to Justice:**

Perceiving premature release as justice denial, victims feel society and the legal system undervalue their suffering and crime gravity. It breeds betrayal and disillusionment, hindering healing and progress, amplifying the challenge of moving forward.

- **Re-traumatization:**

News of perpetrator release can retraumatize victims, evoking intense emotional distress with painful memories, nightmares, and fear. Sense of safety can shatter, hindering healing, underscoring the profound impact on victim well-being.

- **Sense of Insecurity and Fear:**

The knowledge of attackers' freedom can breed constant insecurity, fostering vulnerability and anxiety without adequate safety measures, hindering rebuilding efforts. This underscores the necessity for robust protection and support.

- **Loss of Trust in the System:**

Remission of perpetrators without considering victims' views erodes trust in the legal system, discouraging support-seeking and alienating victims from authorities, highlighting the need for inclusive victim participation.

- **Impact on Healing and Recovery:**

Perpetrators' release impedes victims' healing, stirring anger, helplessness, and despair, hindering progress and emphasizing the formidable challenge of overcoming emotional trauma.

Perpetrators' remission, particularly in severe crime cases, deeply impacts victims, compromising their rights to justice, retraumatizing, and fostering insecurity. This hampers healing and progress. Upholding victims' rights necessitates assessing remission's effects, involving them, offering support, and guaranteeing safety, underscoring their well-being's utmost significance.

5. Calls for Reform India's Remission Policies

The Bilkis Bano case, along with other instances of remission misuse, has sparked widespread calls for reform in India's remission policies. Legal experts, activists, and civil society organizations have put forth several recommendations aimed at creating a more just, transparent, and accountable system.

recommendations for reforming India's remission policies

- Clear and Stringent Guidelines:
 - Standardization: Establish clear, standardized guidelines for remission across all states, minimizing inconsistencies and arbitrary decisions.
 - Heinous Crimes Exclusion: Explicitly exclude heinous crimes like rape, murder, and terrorism from remission eligibility, except in extraordinary circumstances.
 - Victim Participation: Mandate victim participation throughout the remission process, including consultations and the right to submit impact statements.
 - Public Transparency: Ensure transparency by making the remission process, including the reasons for decisions, accessible to the public.
- Independent Review Mechanism:
 - Oversight Committee: Establish an independent committee, comprising legal experts, retired judges, and victim representatives, to review remission applications.
 - Judicial Scrutiny: Allow for judicial review of remission decisions to ensure compliance with legal principles and prevent political interference.
 - Accountability: Hold authorities accountable for decisions that deviate from established guidelines or violate victims' rights.
- Focus on Rehabilitation and Reintegration:
 - Rehabilitation Programs: Strengthen prison rehabilitation programs to address the root causes of criminal behaviour and reduce the risk of reoffending.
 - Reintegration Support: Provide comprehensive support services for released convicts to facilitate their reintegration into society and reduce the likelihood of recidivism.

- Long-Term Monitoring: Monitor the behaviour of released convicts to ensure they are not posing a threat to society.
- Protecting Victims' Rights:
 - Victim Impact Statements: Give greater weight to victim impact statements in remission decisions, ensuring their voices are heard and their concerns are addressed.
 - Compensation and Restitution: Ensure adequate compensation and restitution for victims, including financial support, medical care, and psychological counselling.
 - Safety and Security: Implement measures to ensure the safety and security of victims after the release of perpetrators, including restraining orders and monitoring.
- Public Awareness and Education:
 - Educating the Public: Raise awareness among the public about the remission process, its purpose, and the factors considered in decision-making.
 - Promoting Dialogue: Encourage open dialogue and debate on the issue of remission, involving stakeholders from all walks of life.

By implementing these recommendations, India can create a remission system that is fair, just, and transparent, while upholding the rights and dignity of both victims and offenders. This will not only strengthen the justice system but also foster a safer and more equitable society.

Need for greater transparency, accountability, and victim participation in the remission process.

The Bilkis Bano case has exposed critical flaws in India's remission process, underscoring the urgent need for reform. Greater transparency, accountability, and victim participation are essential to ensure fairness and justice.

- **Transparency:** Remission decisions should be made in an open and transparent manner, with clear reasons and criteria publicly accessible. This will help prevent arbitrary decisions and potential political influence.
- **Accountability:** Authorities granting remission must face accountability. An independent review mechanism, possibly comprising legal experts and victim representatives, should scrutinize decisions, ensuring compliance with legal principles and guidelines.
- **Victim Participation:** Victims have a right to be heard and participate in decisions that directly impact them. Their views, experiences, and concerns should be given due consideration throughout the remission process, including the opportunity to provide victim impact statements and participate in hearings.

These essential reforms will rebuild trust in the justice system, ensuring judicious remission use. They'll prevent premature convict release, safeguarding society, and uphold victims' rights. Transparency, accountability, and victim-centricity are not just legal obligations but moral imperatives for a fair and just remission process.

Proposal for stricter guidelines for granting remission in cases of heinous crimes, particularly those involving sexual violence and communal violence

Given the gravity and long-term impact of heinous crimes, particularly those involving sexual and communal violence, stricter guidelines are imperative for the remission process. The following measures are proposed:

- **Categorical Exclusion:** Implement an explicit exclusion of remission for heinous crimes like rape, murder, and those with communal motives. This stance sends a robust message of zero tolerance towards such offenses.
- **Mandatory Minimum Sentence:** Implement a mandatory minimum sentence for heinous crimes, ensuring that convicts serve a substantial portion of their sentence before any consideration of remission.
- **Victim-Centric Approach:** Prioritize the views and concerns of victims throughout the remission process. This includes mandatory consultation with victims, consideration of

victim impact statements, and provisions for victims to appeal remission decisions.

- **Stringent Review Process:** Institute a stringent and transparent review process for exceptional remission cases, comprising a panel of experts—legal professionals, psychologists, and victim advocates—to evaluate convict rehabilitation, remorse, and societal risk.

These stricter guidelines will uphold the principles of justice, protect victims' rights, and ensure that the decision to grant remission is made with utmost care and consideration for the gravity of the offense and its impact on society.

6. Conclusion

"Justice should not only be done but also seen to have been done"¹⁹

The Bilkis Bano case starkly exposes justice's unfulfilled promise in India. The premature release of rapists and murderers, amid a flawed remission process despite their heinous crimes, reveals systemic neglect of victims' rights and vulnerability to political sway. Urgent legal reforms are imperative, advocating for transparency, accountability, and victim involvement to uphold justice principles and safeguard survivors' rights, exemplified by Bilkis Bano's case.

The Bilkis Bano case underscores India's remission system's dire need for comprehensive reform. Stringent guidelines are crucial, especially for heinous crimes, ensuring judicious remission. A victim-centric approach prioritizing survivor rights is essential. An independent review mechanism, devoid of political influence, is vital for fairness and accountability. These reforms are not just legal necessities but moral imperatives, crucial for justice and preserving victims' dignity.

The Bilkis Bano case prompts a deeper societal reflection on justice's essence in India. It urges scrutiny of punishment's purpose—whether it's retribution alone or includes rehabilitation and deterrence. Above all, it requires reassessing the prioritization of victims' rights and dignity. Fostering a society where justice transcends legalities, becoming a tangible reality for survivors

¹⁹ The statement "Justice should not only be done, but also seen to be done" is attributed to Lord Chief Justice Hewart in the English case of *R v Sussex Justices, ex parte McCarthy* ([1924] 1 KB 256).

like Bilkis Bano, demands open dialogue and introspection. Only then can India genuinely honor its pledge to justice and equality.