

UNLAWFUL REMISSION: THE HINDU EDITORIAL ON THE BILKIS BANO CASE

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The [Supreme Court of India verdict quashing the orders releasing 11 men convicted for the heinous gang-rape and murder](#) of several members of a family during the Gujarat pogrom in 2002 is an unequivocal indictment of the State government. The men had been sentenced to life by a Sessions Court in Mumbai after the investigation in the '[Bilkis Bano](#) case' was shifted from the Gujarat police to the Central Bureau of Investigation and the trial transferred to Mumbai. A disgraceful story that began with the Bharatiya Janata Party government facilitating their premature release and the freed men being garlanded by their supporters has now ended with the Court directing them to return to prison within two weeks. [The verdict](#) is based on the ground that Gujarat did not have any jurisdiction to decide on granting remission to convicts sentenced in Maharashtra. In a telling observation, the Bench, comprising Justices B.V. Nagarathna and Ujjal Bhuyan, said, "the State of Gujarat has acted in tandem and was complicit" in one of the convicts' petition for a direction to the State government to grant remission of the remainder of his life term based on a defunct 1992 policy. It has noted that the Gujarat government — which took the correct stand during earlier proceedings that only the government of Maharashtra, where the trial and sentencing took place, was the appropriate government to consider remission — had failed to seek review of a two-Bench judgment's order in May 2022, even though it was wrongly decided based on suppression of material facts. In citing the Court direction as the reason for it to pass orders in favour of the convicts, the State government was guilty of usurpation of power, the Bench said.

The [ruling represents a blow for the rule of law](#) and the restoration of faith in the judiciary at a time when there are doubts about the institution's capacity to hold power to account. On merits, it is a timely reiteration of the core principles that animate exercise of the power to grant remission — that it should be fair and reasonable and based on a set of relevant parameters such as whether the crime involved affected society at large, whether the convict retained the potential for committing similar offences or is capable of reform. The release of life convicts, who are generally expected to spend the entirety of their lives in prison, unless remission is granted after a prison term that should not be less than 14 years, ought to be individually considered and not part of any omnibus gesture without regard to the impact of their freedom on the victims, survivors and society. Any rational remission policy should encompass humanitarian considerations and the convicts' scope for reform without violating the rule of law or societal interests. In this case, none of the conditions for remission was met.

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