

EXPRESS VIEW ON BILKIS BANO VERDICT: DOING THE RIGHT THING

Relevant for: Indian Polity | Topic: Judiciary in India: its Structure, Organization & Functioning, Judges of SC & High Courts, Judgments and related Issues

The Supreme Court verdict Monday is enormously welcome and reassuring. Quashing the remission granted by the Gujarat government to those convicted of rape and murder in the Bilkis Bano case, the highest court has, in the words of Bilkis, “lifted a stone the size of a mountain.” I can breathe again, she said, this is what justice feels like. Since 2002, her struggle and that of her husband and children, has been heartbreakingly arduous — for them, justice itself seemed to shrink when the 11 convicted in 2008 were allowed to walk free on August 15, 2022. Succour has also been provided by the apex court to all those who fought alongside Bilkis, indeed, to all those who believe in the primacy of due process and the need to insulate it from the abuse of political power. As the bench of Justice BV Nagarathna and Justice Ujjal Bhuyan said, what needed to be protected is the “rule of law”, so essential for meeting the constitutional promise of equality before law or equal protection of law. Going ahead, the SC has ensured that the Bilkis Bano case will be seen not just as emblematic of the horrific communal violence that swept Gujarat in 2002, but also of the highest court’s efforts in the aftermath to guard against a wayward justice.

Of course, this may still not be the end of the matter. Since the SC has scrapped the remission on the ground that it can only be granted by the “appropriate” government within whose territorial jurisdiction the conviction took place, not where the crime happened, the convicts may now petition Maharashtra for relief. But the distinction that the SC has made is not just a technical one. Following the Gujarat violence, it had intervened to hand the investigation in some cases, including this one, to the CBI in 2003 and transferred the trial from Gujarat to Maharashtra in 2004. This was amid fears of possible evidence tampering and absence of a conducive climate for a fair trial in Gujarat. The Court’s emphasis on the violation of due process in granting remission is, therefore, not merely procedural — the Gujarat government, which is usurping power that does not belong to it, “acted in tandem and was complicit with the convicts”, it says. It also asks: Why did the Gujarat government not file a review petition seeking correction of the May 2022 order by another SC bench, which was misled into letting Gujarat decide on remission?

To be sure, the apex court erred too. It did not ask the probing questions that it should have, when it was petitioned by one of the convicts in 2022. If it had, it would not have to now set aside its own verdict that paved the way for the Gujarat government’s remission to the convicts. But having said that, Monday’s verdict must also be heralded as a much-needed rebuke to those who had felicitated the convicts when they walked out of jail early. That hero’s welcome did not just offend basic principles of humanity and justice, it also mocked constitutional morality and the rule of law. Days after their release, Maharashtra’s Deputy Chief Minister [Devendra Fadnavis](#) rightly flagged this wrong — “a convict is a convict,” he said, “and they cannot be felicitated.” If and when his government receives a fresh remission request, hopefully those words will ring louder than ever.

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