

REFLECTING ON BILKIS BANO'S RESILIENT PURSUIT OF JUSTICE

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'The applause the verdict has received is a testament to the collective yearning for a justice system that stands unwavering against impunity' | Photo Credit: AFP

Two weeks ago, on January 8, the Supreme Court of India delivered a landmark ruling in the harrowing case of Bilkis Bano. The ruling [quashed the remission granted by the Gujarat government](#) to the [11 people convicted in the case](#), on the basis that the State government had "no jurisdiction" to have done so. In keeping with the deadline imposed by the Court, all [11 convicts surrendered on the night of January 21](#) at Godhra sub-jail.

The convicts in question were [part of a Hindu mob implicated in the gangrape of Ms. Bano](#), who was pregnant at that time, coupled with the brutal killing of several of her relatives, including her infant daughter, during the 2002 Gujarat riots. What made the experience worse for Ms. Bano was that she knew the convicts — they had been her neighbours.

For years, her case has been a symbol of resilience and an emblem of the larger struggle for justice for survivors of sexual violence and communal violence. The Supreme Court's decision to quash the remission not only upholds the integrity of the legal process but also underscores the need for a consistent, impartial application of the law, regardless of the socio-political context. The applause the verdict has received is a testament to the collective yearning for a justice system that stands unwavering against impunity.

Though the ruling has stirred optimism in the justice system, it has simultaneously ignited a profound reflection on the ineffectiveness of the justice system for people with multiple subordinating identities, especially when such crimes are backed by the state. The case prompts a critical examination of the intersectionality that defines Ms. Bano's identity — a Muslim woman navigating a society marked by entrenched biases against religious minorities and women, and how that has determined her relationship with justice. As we celebrate this verdict and the return of the convicts to prison, we must also acknowledge the work that lies ahead. Ms. Bano's journey must serve as an introspective lens for us to think through the broader struggle towards justice, and how best we can serve survivors of sexual violence.

Justice B.V. Nagarathna, who authored the judgment, drew upon the wisdom of Greek philosopher Plato to justify directing the convicts back to prison: "... punishment is to be inflicted

not for the sake of vengeance but for the sake of prevention and reformation. In his treatise, Plato reasons that the lawgiver, as far as he can, ought to imitate the doctor who does not apply his drug with a view to pain only, but to do the patient good. This curative theory of punishment likens penalty to medicine administered for the sake of the one being chastised.”

However, the convicts in Ms. Bano’s case paint a disconcerting picture of our legal and penal systems, highlighting their inadequacies. Despite being behind bars for about 15 years, they showed no signs of remorse upon their release, underscoring a critical flaw in the prison system’s ability to deliver what is expected from it — a “curative theory of punishment” as Plato puts it. The convicts were jubilant as they were garlanded and fed sweets by their supporters and relatives upon their release, almost as if they were battlefield heroes returning home. They even participated in a meeting with the Vishwa Hindu Parishad, a right-wing Hindu nationalist organisation, where they were garlanded once again and their release celebrated.

The Supreme Court’s recent decision offering temporary respite to Ms. Bano reveals a disconcerting gap between legal theory and the prison system’s stark reality. Despite relying on Plato’s notion of punishment as a transformative tool, the judgment overlooked the function of prisons as mere holding cells, failing to instigate genuine rehabilitation. The professed objective of reformation and reintegration into society as responsible citizens rings hollow when one takes into account the glaring lack of essential resources and programmes within most Indian prisons. Without exposure to a better way of life or an alternative thought process that prompts individuals to recognise the errors of their actions, the prospect of genuine personal evolution while in prison becomes elusive. Ms. Bano’s experience exemplifies this flaw— once the convicted individuals in her case are released after the completion of their sentence, it is unlikely that they will be reformed, if they have not thus far. Their freedom upon release will again leave Ms. Bano with a lingering sense of trauma. The judgment’s fleeting impact exposes a systemic failure to deliver permanent justice or sustainable relief for survivors like Ms. Bano.

Editorial | [Unlawful remission: On the Bilkis Bano case](#)

Ms. Bano’s case serves as a poignant reminder that the pursuit of justice goes beyond punitive measures. It necessitates a comprehensive re-evaluation of our penal institutions and societal norms. Only through such systemic changes can we hope to break the cycle of crime and ensure a more just and compassionate society. The quest for justice must extend beyond courtrooms to encompass a commitment to building an ecosystem that genuinely addresses the root causes of criminal behaviour and facilitates lasting change.

In the realm of feminist discourse, a term has emerged that demands our scrutiny and contemplation: “carceral feminism”. Coined by Barnard College’s professor, Elizabeth Bernstein, this term delves into the complexities of advocating for feminist goals in an increasingly carceral state. It sheds light on the paradoxical relationship between feminism and the state, recognising the state as both a potential ally of patriarchy and a depriver of liberties.

India is grappling with the perils of carceral feminism. Feminists have been demanding stricter penalties under the law, without questioning why many women opt not to report cases of rape in the first place. The deeply rooted mistrust in the criminal justice system stems from the entrenched patriarchy which grips each institution of the criminal legal system, starting from their encounters with the police to interactions with medical officers and the judiciary, which cannot adequately be addressed through exclusive reliance on legal reforms and punitive measures. The police force, notorious for dismissing complaints of sexual violence, often compounds the trauma of survivors by subjecting them to uncomfortable and insensitive questioning. This hostile environment extends to the medical examination process, which further distresses survivors and leaves them feeling additionally violated. Sociologist and feminist legal scholar

Pratiksha Baxi aptly describes the rape trial as “pornographic,” revealing the retraumatizing nature of the questions survivors endure, which perpetuates a culture of victim-blaming: “Why were you out so late?”; “Why were you alone?”; “Why were you with a boy?”; “Why were you drinking?”; “Why were you wearing that?” Such questions serve to gaslight survivors, insinuating that their actions or choices somehow warranted the heinous crime perpetrated against them.

By understanding the limitations and pitfalls of carceral feminism and the prison’s ability to reform perpetrators, we can strive for a more nuanced, victim-centered approach that does not overly rely on legal avenues and remedies to uphold the principles of justice, while simultaneously safeguarding and prioritising the dignity and the safety of survivors.

As we applaud the Supreme Court for its resolute decision, we must collectively commit to fostering a society where survivors’ voices are heard, their pain is acknowledged, and their quest for justice is validated. In celebrating Ms. Bano’s triumph in the face of every adversity, we must also recognise that it is unfair to expect of every survivor the strength and courage that Ms. Bano had to have to persistently fight for justice despite facing innumerable obstacles from the criminal legal system.

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