

By ALBERTINA ALMEIDA



Remission for Bilkis Bano Case Convicts: In Praise of Terror?
The news of the remission of life sentence and consequent release of the 11 convicts in the Bilkis Bano case, sent shock waves down many a person's spine. How could people, who had gang raped multiple times, committed multiple murders, and killed Bilkis' three-year-old child in front of her eyes, be released? Worse still, how could they be feted when they were released? What signals was that sending? Wasn't it about some men enjoying impunity? Wasn't it conveying that it is heroic to murder and rape persons of the minority communities?

We do not have access to the documentation, but if one goes by the interview with a member of the Remission Board, it seems that he was driven by the fact that the convicts were Brahmins, and that they have good 'sanskars', and consequently they deserved to be released. He even raised doubts as to whether they had actually committed the crimes or not. Could somebody from a remission board do this?

Expectedly, this evoked outrage from people all over the country, even from some from the ruling BJP party though the said convicts were garlanded upon release at the office of their sister organisation Vishwa Hindu Parishad. The outrage was reflected in rallies and protest meetings held, post card campaigns and signature petitions conducted all over the country, and I also joined in the same.

Talking to various persons across the spectrum, there are various thoughts that are expressed. Some feel that the life sentence particularly is a grave sentence and it is given for a reason, and it should only be reduced in the rarest of rare circumstances, where the convicts have exceptionally shown good behaviour. If that be so, just what is that exceptional behaviour that the 11 convicts in the Bilkis Bano case displayed that led the Remission Board to consider them for remission? Others feel that sentencing is not about retribution, but even then the nature of the crime here was such that it did not merit even consideration of remission and therefore remission would send wrong signals.

The worst part is that this does not seem to be a transparent process, because Bilkis or her lawyer were caught unawares when the convicts were released. In fact, her lawyer stated that she has gone numb, and further that she had just started living life again, after the culmination of the whole ordeal for justice.

To me, now, the next train of thought has been around the stories of remission/no remission of sentence beginning with two relatively recent cases in Goa. One clear issue is the lack of transparency in these processes, particularly when the State Government (not the prison authorities) are taking the decision on remission. Is this not arbitrary and is this not a pathway to a pardon for lawlessness? The Prison Rules, at least the Goa Prison Rules 2021,

seem to permit release of prisoners on national occasions like Independence Day. How is this connected? Where is the scheme of the Constitution that provides for such arbitrary terms of release? It also raises questions about unfettered powers given to the State for release, besides raising questions about non-consultation with the victim/s of the crime before such a release.

The Police and the Public Prosecutor who handled the cases who would have been in engagement with the victim, are also not consulted for the say. The concerned court that convicted is also not expected to be consulted. Here there are mixed opinions about whether the convicting court should have a say. There are some who feel that since the judge convicted the person and sentenced him or her to imprisonment after due application of mind, how would one expect her to grant remission. Others feel that the convicting court would be in a position to appreciate whether there could possibly be insecurity for the victim.

How then will the State decide these rarest of rare cases? One fails to understand the logic of the exceptions that have been made? But on the face of it, it seems that it is purely based on affiliation to the political party in power.

I am reminded of a case in Goa. That of a woman whose father had been murdered in broad daylight by this man in Panjim, after she was issued threats, which complaint the police ignored. It was vigilance about the police's functioning and a sterling prosecution that had resulted in the conviction. The man was convicted by the Trial Court, that is, the Sessions Court, and the case went up, as I have been given to understand, right up to the Supreme Court, where the sentence was upheld. The man would convey messages through his visitors to her and attempt to disturb her personal life. He had also been released on parole earlier on special occasions. But the shocker came when he was released as a special case by a Cabinet decision under the BJP led Government, obviously because he was a party karyakarta (worker). As if this was not enough, he has now been rewarded with a job at a premier Government institution in Goa.

Am I suggesting that there should be no remission? Am I suggesting that it is impossible for convicts to be reformed and lead a normal life? Certainly not. That sentencing is a path to reformation, is clearly set out. The concern arises when it is arbitrary and does not take into account the nature of the crime, the views of the victim or the witnesses and her family (where s/he is deceased) and the repercussions for the security of the victim, the family of the deceased, and the messages that this would send out, more so when the processes are opaque. It also comes on the heels of the fact that several political dissenters, including Professor Anand Teltumbde who taught at the Goa Institute of Management, have remained indefinitely incarcerated using the draconian provisions of the Unlawful Activities Prevention

Act, while this law has not been applied to such who terrorised the minorities in Gujarat. Even though one is for repeal of UAPA, this is just by way of comparison.



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The concerns also arise because the convicts in the Bilkis Bano case were welcomed and congratulated upon their release, and the Gujarat violence is being pushed into oblivion, negating the sufferings of the Muslim minorities that were targeted for extinction, and creating an insecurity among the minorities. This, despite the fact, that UN treaty bodies, like the CEDAW (Convention on the Elimination of All Forms of Discrimination Against Women) Committee, for instance, had specifically noted with great concern that the dominating features in the communal violence which took place in 2002 were acts of violence, including torture, murder, gang rape, forced nudity, parading women naked, mutilation of breasts and other body parts, insertion of wooden and metal objects into genital parts and other forms of sexual violence specifically targeted at women and girls, which was in violation of its General Recommendation No. 19 on gender-based violence.

On the issue of remission, there is a March 2019 judgement of the High Court of Bombay at Goa which puts the issue in proper perspective. even though it may not have addressed the issue of arbitrary decisions by the State (possibly because it was not a direct issue in the particular case). At that time, the Court had considered the provisions of three sections, that is, section 432 of the Criminal Procedure Code which give the appropriate Government the power to remit the whole or part of the punishment to which a person is sentenced, of section 433 which give it the power to commute the sentence of imprisonment for life to imprisonment for a term not exceeding fourteen years or to fine, and section 433A which restricts that the remission of convict sentenced to life imprisonment can only be exercised after 14 years of undergoing imprisonment.

The case that the Court was considering was an application from the parents of a deceased victim who were wondering as to how the convicts who abducted and killed their unsuspecting son, all of 17 years of age in such a brutal manner can even deserve to dream about liberty, and why the parents of the convicts should also not suffer just as they now suffer for the loss of their son who was deceitfully taken away from their midst and mercilessly murdered. The Court recognised the sentiments of the parents and also recognised what it termed as the 'latent expectations of retribution in a society'. Having recognised these facets, the Court opined that it cannot discount the reformatory object of judicial sentencing and drew on the famous adage that "Just as every saint has a past, so also, every sinner may have future", stating that the Court has to endeavour to strike a balance *between* the expectations of the victim's parents that the perpetrators of such ghastly crimes are awarded the severest of sentences *and* the expectations of the convicts that they too are given a chance to hope, a chance to reform. It remarked that just as the

sentence cannot be manifestly inadequate, the same must also not be dispassionately severe. The principle of proportionality in sentencing, is by now, well entrenched in our criminal jurisprudence.

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The conduct of the convicts in prison and their repentance, and the security of the victims or the victims' relations or the witnesses, are just some of the many relevant considerations that must inform the decision on remission. Pertinently, the Court laid a condition that after the convicts have completed the statutory minimum sentence of fourteen years, in order to be considered for remission, the concerned appropriate authority should make available copies of any remission orders to the father of the victim, 30 days before any such orders are passed so that he has due opportunity to challenge the orders. Unfortunately, such a condition was limited to that particular case.

But these checks and balances need to be considered in every case for remission of life sentence. This is the only way to avoid remission of sentence becoming a travesty of justice and sending the wrong signals to those who commit ghastly crimes and don't even have a sense of remorse.

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