

## THE PARDONING POWER UNDER THE CONSTITUTION OF INDIA

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### Abstract

*"In spite of the fact that it is a significant power, the exercise of pardoning power in India has been met with a wide range of difficulties and debates. The study into the breadth of judicial review that pertains to clemency judgements involves a number of different dimensions, such as the extent of such review, the delays that are involved with the processing of mercy petitions, and the consequences that political considerations have on these findings. These variables, when taken together, amount to a body of jurisprudence that is both complicated and constantly developing. Through a series of landmark decisions that have shaped the way in which this authority is exercised in contemporary settings, the Supreme Court of India has exerted a substantial amount of impact on the separation of this power."*

*This research conducts an investigation into the constitutional, legal, and practical aspects of the pardoning authority in India. It examines the historical development of the authority, as well as its constitutional structure, extent, judicial interpretation, and the issues that it faces today. The purpose of this analysis of a significant constitutional provision is to improve one's understanding of the operational dynamics of the pardoning authority within the context of India's democratic administration. In addition to this, it investigates the continuous importance of this power in relation to the values of justice and humanitarianism."*

**Keywords** – Pardon, Clemency Powers, President, Governor, Humanitarian

### 1. Introduction

One of the most important discretionary powers that are delegated to the executive arm of the government is the authority to forgive sentenced individuals. In the context of India, this power emerges as a fundamental constitutional mechanism that fulfils a variety of functions. It function as a protective measure against the possibility of judicial inaccuracies, it provides humanitarian assistance in extraordinary circumstances, and it functions as an essential check and balance within the

structure of the constitution. In some circumstances that are deemed to be worthy of executive action, the authority in question gives the President and Governors the ability to grant clemency to those who have been convicted of a crime. This allows them to take precedence over court decisions.

Furthermore, the concept of pardoning authority is rooted in a solid historical foundation that extends across a variety of different legal frameworks and civilisations. Throughout the course of human history, the

capacity to issue pardons has been inextricably linked to sovereign authority. It is typically considered as an expression of grace or mercy that originates from the institution that is in power. The authority in question has been formalised within a network of checks and balances in current constitutional democracies such as India. This has resulted in the transformation of what was historically a royal prerogative into a constitutional obligation that is carried out for the benefit of the general public.

The President, who exercises this power at the federal level as provided in Article 72, and the Governors, who possess equivalent rights at the state level as outlined in Article 161, are the two individuals who are responsible for the distribution of pardoning authority within the framework of the Indian Constitution. Both the dual structure and the operation of clemency authority across several levels of governance are guaranteed by the dual structure, which embodies the federal nature of India. A number of different forms of clemency, including pardon, commutation, remission, respite, and reprieve, are included in the pardoning authority. Each of these forms of clemency has a distinct function within the framework of the criminal justice system.

## 2. Historical Evolution of Pardoning Power

It is possible to trace the origins of the power to pardon back to ancient periods, which existed prior to the foundation of present constitutional frameworks. Throughout the history of many different civilisations, the ability to offer clemency has typically been associated with royal authority. This is to serve as an illustration of the ruler's divine or supreme capacity to provide mercy.

In ancient India, the Arthashastra, which was written by Kautilya, outlines the ability of the monarch to grant pardons. This authority is acknowledged as an essential component of the royal prerogative (Rangarajan, 1992). It was agreed that the concept of "Kshamadaan" existed, which meant that the sovereign had the

ability to show compassion to those who had committed transgressions under certain conditions. The right to give pardons, known as indulgentia, was exercised by emperors in ancient Rome as a demonstration of imperial clemency (Keyes, 1940). Examples of similar procedures may be found in ancient Rome.

When it comes to the development of the pardoning authority in England throughout the mediaeval period, it is possible to define it as a royal prerogative that was exercised by the monarch. According to Cox (1893), this authority was considered to be a manifestation of grace that was drawn from the divine right of the Crown to govern. One of the most significant examples of how the English common law heritage has been instrumental in determining the development of pardoning authority throughout a number of Commonwealth states is represented by India. However, its use was gradually restrained by a variety of limits (Duker, 1977). The right to grant pardons had emerged as a recognised privilege of the English Crown by the 13th century during this time period.

The idea of the authority that is linked with pardoning power has undergone a significant transformation as a result of the transition from monarchical regimes to constitutional democracies. A movement towards the exercise of authority with the goal of advancing public welfare while being restrained by set limitations is represented by the transformation of a royal prerogative that was formerly arbitrary into a constitutional obligation. This transition is indicative of a more extensive evolution in the philosophies of government, most notably the introduction of the division of powers and the establishment of constitutional checks and balances.

The Governor-General, in his capacity as the representative of the Crown, was the one who had the authority to use the pardoning power during the time that India was under colonial rule. This authority was authorised by the Criminal Procedure Code of 1898. According to

Jain (2018), this legal structure made it possible to commute sentences and provide remissions of penalties. Immediately following the attainment of independence, the individuals responsible for the draughting of the Indian Constitution engaged in extensive deliberations concerning the incorporation of the pardoning authority into the newly constituted constitutional framework. During the process of creating Articles 72 and 161, the conversations that took place within the Constituent Assembly provide evidence that the framers were cognisant of historical antecedents as well as current constitutional practices in other democratic states (Austin, 1999).

During the negotiations that took place inside the Constituent Assembly, concerns were brought to light regarding the potential for this authority to be abused. At the same time, the Constituent Assembly acknowledged the crucial function that this authority plays as a humanitarian remedy to offset the defects that are inherent in the legal system. The relevance of the pardoning authority was stated by Dr. B.R. Ambedkar, who was functioning as the Chairman of the Draughting Committee at the time. He asserted that the pardoning power is not merely an executive privilege but also an essential mechanism for correcting potential judicial errors (Constituent Assembly Debates, 1949).

There has been a significant impact that judicial interpretation has had on the growth of the pardoning authority in India since the country gained its independence. As a result of a string of major decisions, the Supreme Court has outlined the parameters of this power, including its extent, its limitations, and the rules that should be followed when exercising it. Discretionary power has been reimagined as a result of the development of jurisprudence, which has transformed it from an initially unrestricted authority into one that, despite the fact that it is still discretionary, is now required to be exercised in a manner that is reasonable, equitable, and in accordance with constitutional principles (Singh, 2013).

In the course of its development, the ability to grant pardons has undergone a gradual transformation from a discretionary royal privilege to a constitutional obligation. This transformation has taken place within the framework of democratic administration, adherence to the rule of law, and judicial oversight. This ongoing evolution has a significant impact on the ongoing discussions that are taking place over the appropriate execution of clemency powers within the context of India's constitutional democracy.

### 3. Constitutional Framework of Pardoning Power in India

#### 3.1 Article 72: Presidential Pardoning Power

Article 72 of the Constitution of India gives the President the ability to award pardons, reprieves, respites, or remissions of punishment. This authority is also known as the Executive Branch. Furthermore, it grants the President the authority to suspend, remit, or commute the sentence of any individual who has been successfully convicted of committing a criminal act. The scope of this authority includes the following parameters:

1. All cases where the punishment or sentence is by a Court Martial;
2. All cases where the punishment or sentence is for an offense against any law relating to a matter to which the executive power of the Union extends;
3. All cases where the sentence is a sentence of death (Constitution of India, Article 72).

In accordance with this constitutional article, the President is granted the right to show clemency in a variety of situations, with a particular emphasis on cases that involve the application of the death penalty. According to Bakshi (2019), cases of this nature fall completely under the ambit of presidential authority, regardless of whether the offence in question is related to the laws of the Union or the laws of the State.



The use of the President's authority to pardon should be regarded as a function that is not purely a personal prerogative, as this is not the only way that it can be exercised. Instead, it is carried out in accordance with the provisions established in Article 74 of the Constitution, and it is based on the advice that is supplied by the Council of Ministers. The Supreme Court of India clarified in the case of *Maru Ram v. Union of India* (1981) that the authority that is placed in the President under Article 72 constitutes "an official act, not a private act" and that it must be carried out in accordance with ministerial counsel. The framework of India's parliamentary form of governance, in which the President acts as the constitutional head, but the real administrative authority is vested in the Council of Ministers, as established in the case of *Maru Ram v. Union of India* (1981), finds this interpretation to be consistent with the structure of the system.

### 3.2 Article 161: Gubernatorial Pardoning Power

Article 161 confers similar clemency powers on the Governor of a state, though with a more limited scope. It states:

The Governor of a state is vested with the jurisdiction to issue pardons, reprieves, respites, or remissions of punishment. This authority comprises the capacity to grant certain types of relief. Furthermore, according to Article 161 of the Constitution of India, the Governor is vested with the authority to suspend, remit, or commute the sentence of any individual who has been found guilty of committing an infraction that is related to any statute that falls under the jurisdiction of the executive power of the state.

The breadth of the President's and Governor's separate jurisdictions is the key factor that differentiates the authority that is bestowed upon the President in accordance with Article 72 and that which is bestowed upon the Governor in addition to Article 161. For offences that are in violation of state legislation, the Governor's jurisdiction to give mercy is restricted to criminal cases. In contrast, the President is

vested with a more expansive jurisdiction that embraces not only the laws of the Union but also those of the states. In addition, the President is the only person who has the right to give clemency in cases involving death sentences, regardless of whether the offence in question is committed in accordance with state law (Basu, 2018).

In a manner analogous to that of the President, the Governor exercises this power on the basis of the advice that is supplied by the Council of Ministers belonging to the state. *Epuru Sudhakar v. Government of Andhra Pradesh* (2006) was the case in which the Supreme Court of India emphasised that the exercise of authority, albeit being nominally given to the Governor, is basically a collaborative process that involves the state government. In addition to this, it was stated that the Governor is obligated to act in accordance with the assistance and advice that is supplied by the state cabinet.

### 3.3 Types of Clemency Powers

The Constitution provides for various forms of clemency that the President and Governors can exercise:

1. **Pardon:** The purpose of a pardon is to completely absolve the individual of any and all associated fines and disqualifications that are the result of the conviction it was granted for. Consequently, the individual is essentially exonerated from the alleged offence as a result of the action, which results in the annulment of both the punishment and the conviction (*Kehar Singh v. Union of India*, 1989).
2. **Commutation:** The use of this authority makes it possible to substitute a different kind of punitive punishment with one that is relatively less severe than the original one. The case of *Jagmohan Singh v. State of Uttar Pradesh*, which took place in 1973, is an example of a situation in which a death penalty can be changed into a life sentence or a life sentence can be changed into a fixed period of incarceration.

3. **Remission:** By reducing the length of a sentence while preserving its inherent essence, remission works to reduce the duration of the punishment. As an illustration, a sentence of incarceration that was initially set at twenty years may be reduced to 10 years, as was proved in the case of *State of Punjab v. Joginder Singh* (1990).

4. **Respite:** This process entails the imposition of a reduced penalty compared to what is typically mandated, taking into account specific mitigating factors, including the pregnancy of a female offender or the mental health condition of the individual found guilty (Jain, 2018).

5. **Reprieve:** A reprieve serves to temporarily delay the enforcement of a judicial sentence, with particular emphasis on capital punishment cases. It may be permitted to allocate time for the individual convicted to pursue a pardon or commutation (Singh, 2015).

The constitutional framework sets a precise structure for the implementation of clemency powers, and it distributes this authority between the federal and state leaders in a manner that is consistent with India's federal system. The dual system in question makes it easier to exercise compassion on numerous levels, and as a result, it provides a variety of avenues through which persons can seek relief from judicial penalties in situations that are regarded to be acceptable.

#### 4. Scope and Nature of the Pardoning Power

##### 4.1 Discretionary Nature

The discretionary nature of the pardoning authority in India is a defining characteristic of the institution to which it belongs. When it comes to the clemency ability that is conferred in both the President and Governors, the Constitution uses the phrase "shall have the power" rather than "shall exercise the power" to describe the authority. This language gives the impression that although if these constitutional officers have the authority to grant clemency, there is no necessity for them to exercise that

authority in any particular situation (*Saraswati, 2015*).

The clemency authority was defined by the Supreme Court of India in the case of *Maru Ram v. Union of India* (1981) as a "act of grace," with the emphasis being placed on the fact that it is not a right but rather a privilege that is granted to the individual who has been condemned. On the other hand, the Court emphasised how important it is for such discretion to be applied in a manner that is not arbitrary. Justice Krishna Iyer made the observation that the authority that is bestowed upon the government by Articles 72 and 161 "cannot be treated merely as a privilege of the prerogative... but constitutes a constitutional obligation that must be fulfilled in accordance with specific self-imposed guidelines."

There have been a number of judicial rulings that have reinforced the discretionary nature of the pardoning power. One of these decisions was the case of *Epuru Sudhakar v. Government of Andhra Pradesh* (2006). Despite the fact that the authority is discretionary, the Court stated in this particular case that its utilisation must be based on pertinent reasons and that it cannot be held as an entitlement by any convict.

In spite of the fact that it is discretionary in nature, the ability to pardon is not boundless or unrestricted; rather, it is marked by constraints. In the case of *Kehar Singh v. Union of India* (1989), the Supreme Court of India explained that the power, although its broad extent, is bound by the fundamental rights of people as entrenched in Part III of the Constitution. This particular decision was a landmark in the history of India. The recognition of this fact establishes a significant limitation on the authority of the executive branch, so ensuring that decisions about clemency are made within the bounds of constitutional law.

##### 4.2 Grounds for Exercise

Although the Constitution does not explicitly delineate the criteria for the exercise of pardoning authority, judicial precedents and

administrative practices have recognised various factors that may warrant the granting of clemency:

1. **Correcting Judicial Errors:** The fundamental justification for the exercise of pardoning authority lies in its capacity to rectify possible miscarriages of justice, particularly in instances where all available legal remedies have been fully utilised. In the case of *Kehar Singh v. Union of India* (1989), the Supreme Court acknowledged that the power of clemency functions as "an act of grace which is essentially an executive decision influenced by a wide spectrum of considerations beyond the judicial record."

2. **Humanitarian Considerations:** The consideration of various factors, including the age, health, and mental condition of the convict, the duration of incarceration during trial or appeal, familial circumstances, and behaviour following conviction, may justify the granting of clemency on humanitarian grounds, as evidenced in the case of *Kuljeet Singh v. Lt. Governor of Delhi* (1982).

3. **Public Interest:** The executive may take into account a range of public interest considerations, including the preservation of social harmony, the achievement of diplomatic goals, and the rectification of historical injustices, when exercising the power of pardon (*Gopal Vinayak Godse v. State of Maharashtra*, 1961).

4. **Rehabilitation Potential:** The presence of evidence indicating reformation, exemplary behaviour while incarcerated, and favourable prospects for societal reintegration can serve as justifications for clemency in suitable circumstances, as demonstrated in the case of *Mohd. Munna v. Union of India* (2005).

5. **Changed Circumstances:** Substantial alterations in legal frameworks, policy directives, or public perceptions regarding specific offences may necessitate a reevaluation of sentencing through the process

of pardoning, as evidenced in the case of *Raghubir Singh v. State of Haryana* (1980).

The Ministry of Home Affairs has established internal guidelines for the processing of mercy petitions. These guidelines take into account various factors, including the nature and severity of the crime, the age and health status of the convict, socio-economic background, conduct following conviction, and the repercussions of the crime on victims and society (Ministry of Home Affairs, 2010).

### 4.3 Procedural Aspects

The clemency process in India involves multiple stages and stakeholders:

1. **Initiation:** The submission of a mercy petition can be undertaken by the individual convicted, their relatives, or by citizens who have a vested interest in the matter. In cases involving the death penalty, it is incumbent upon prison authorities to notify the convicted individual regarding their entitlement to submit a mercy petition subsequent to the exhaustion of judicial remedies, as delineated in the Prison Manuals of various states.

2. **Processing at State Level:** The initial examination of petitions concerning offences under state laws is conducted by the state government, which subsequently submits its recommendations to the Governor. In the event of a rejection by the Governor, the petition has the potential to be escalated to the President, as established in the case of *Shatrughan Chauhan v. Union of India* (2014).

3. **Processing at Union Level:** The processing of mercy petitions directed to the President is conducted by the Ministry of Home Affairs. This process involves consultations with the relevant state government and other pertinent ministries prior to the formulation of a recommendation to the President, which is facilitated through the Council of Ministers (Ministry of Home Affairs, 2010).

4. **Time Considerations:** In the case of *Shatrughan Chauhan v. Union of India* (2014), the Supreme Court determined that excessive



delay in the adjudication of mercy petitions, especially in instances involving the death penalty, may constitute a valid basis for the commutation of sentences, owing to the psychological distress experienced by the individual facing execution. The Court underscored the necessity for a prompt decision-making process in matters pertaining to clemency.

**5. Communication of Decision:** The communication of the decision to the petitioner and pertinent authorities is imperative. In cases pertaining to the death penalty, the Supreme Court has established a requirement for a minimum interval of 14 days between the notification of the denial of a mercy petition and the planned execution. This interval is intended to provide the convict with the opportunity to mentally prepare, arrange personal affairs, and investigate any remaining legal avenues (Shatrughan Chauhan v. Union of India, 2014).

The procedural framework for the exercise of pardoning power encompasses a multifaceted interaction among constitutional authorities, administrative mechanisms, and judicial guidelines, underscoring the significance of decisions that may supersede judicial determinations.

## 5. Judicial Review of Pardoning Power

### 5.1 Early Judicial Approach

The preliminary approach taken by the Indian judiciary with regard to the review of clemency decisions displayed a significant amount of prudence. The initial position held that the authority to grant pardons, which was considered to be a significant prerogative that was allocated to the executive branch, was mostly guarded from judicial review. In the case of K.M. Nanavati v. State of Bombay (1961), the Supreme Court made the decision to refrain from scrutinising the Governor's decision to postpone the sentence while waiting for the conclusion of a mercy petition. This decision is an example of the deferential approach that was observed in that case.

In the case of Nanavati, the Supreme Court agreed that the power to grant pardons is basically an executive function. However, the Court displayed reluctance to intervene in the application of this power, with the exception of situations in which there was a clear violation of the constitution. The Honourable Justice Subba Rao pointed out that "the power of reprieve is vested in the Executive Government, and it is not within the purview of this Court to determine the considerations upon which the Government should or should not grant a reprieve."

This methodology illustrated the customary understanding of the separation of powers, which is typified by the unwillingness of the judiciary to interfere upon what was seen to be the constitutional domain of the executive branch. The understanding that issues of clemency encompassed considerations that extended beyond rigid legal frameworks, incorporating policy factors and humanitarian concerns that were more appropriately addressed through executive discretion (Agarwala, 1964) was the origin of the self-imposed limitation that the judiciary imposed against itself.

However, it is essential to keep in mind that even at this first phase, the judicial system did not totally give up its authority to review. Through its decision in the case of Maru Ram v. Union of India (1981), the Supreme Court of India acknowledged the considerable discretion that is granted to the executive branch. Nevertheless, it also hinted at the possibility of judicial scrutiny in situations where the pardoning power was exercised in a manner that was arbitrary or based on factors that were completely unrelated to the case at hand.

### 5.2 Landmark Judgments

The evolution of judicial review over pardoning power gained significant momentum through several landmark judgments that progressively expanded the scope of court intervention:

**1. Kehar Singh v. Union of India (1989):** This case represents a significant development in the

legal framework concerning the authority to grant pardons. The Court acknowledged that the President's authority under Article 72 possessed the "widest amplitude." However, it simultaneously asserted its jurisdiction to evaluate whether the exercise of this power adhered to constitutional parameters. Chief Justice Pathak articulated that "it is within the purview of this Court to assess whether the actions of the constitutional functionary align with the constitutional parameters or transgress them."

**2. Swaran Singh v. State of U.P. (1998):** The Supreme Court rendered a judgement nullifying the remission granted by the Governor of Uttar Pradesh to a minister who had been convicted. The Court determined that the decision was swayed by extraneous factors and contravened established constitutional principles. The Court determined that decisions regarding clemency should be grounded in pertinent information and cannot be issued solely based on political factors.

**3. Epuru Sudhakar v. Government of Andhra Pradesh (2006):** This ruling notably broadened the extent of judicial oversight concerning the authority to grant pardons. The Court determined that the decisions regarding clemency are subject to examination based on the following criteria:

- Whether the decision was taken without application of mind
- Whether it was based on irrelevant or extraneous considerations
- Whether relevant materials were not considered
- Whether the decision was mala fide or arbitrary
- Whether it violated any fundamental right under Part III of the Constitution

**4. Shatrughan Chauhan v. Union of India (2014):** The Supreme Court determined that excessive and unaccounted delays in the resolution of mercy petitions amount to torture and infringe upon Article 21, which pertains to the right to life and personal liberty.

Consequently, the presence of such a delay may serve as a basis for the commutation of a death sentence to a term of life imprisonment. This ruling notably enhanced the scope of judicial oversight through the incorporation of procedural fairness within the clemency process.

### 5.3 Evolving Jurisprudence

The jurisprudence on judicial review of pardoning power has continued to evolve, addressing various dimensions of executive clemency:

**1. Procedural Fairness:** In the case of *Yakub Abdul Razak Memon v. State of Maharashtra (2015)*, the Court underscored the importance of procedural fairness within the clemency process, especially concerning cases involving the death penalty. The ruling underscored the necessity for the recognition of specific procedural rights afforded to inmates on death row, which must be upheld in the context of evaluating mercy petitions.

**2. Relevant Considerations:** The case of *Union of India v. V. Sriharan (2016)* elucidated the parameters of factors that may be appropriately taken into account in the context of clemency determinations. The Court determined that although the executive possesses considerable discretion, such decisions must be grounded in rational and pertinent considerations that align with the objectives of punishment and the overarching interests of justice.

**3. Multiple Mercy Petitions:** In the case of *Devender Pal Singh Bhullar v. State of NCT of Delhi (2013)*, the Court examined the matter of successive mercy petitions. It acknowledged that, although there exists no constitutional prohibition against the submission of multiple petitions, each subsequent petition is required to introduce new and pertinent grounds that have not been previously evaluated.

**4. Scope of Intervention:** The case of *Yakub Memon v. State of Maharashtra (2015)* delineated the boundaries of judicial



intervention, establishing that the judiciary lacks the authority to compel the President or Governor to exercise their clemency powers in a specified manner. Instead, the courts are permitted to review decisions that have been rendered, but only on the restricted basis of constitutional adherence.

The prevailing legal framework demonstrates a measured perspective that recognises the inherently discretionary character of the pardoning authority, while simultaneously guaranteeing that its application adheres to constitutional limits. The Supreme Court has consistently upheld the principle that, although it is not positioned to replace the executive's judgement in matters of clemency, it possesses the jurisdiction to examine these decisions for adherence to constitutional standards, procedural equity, and rationality (Raghubir Singh v. State of Haryana, 2012).

The evolving jurisprudence signifies a notable advancement in the constitutional governance of India, wherein the judiciary has established a refined role in supervising a power that has historically been regarded as outside the scope of judicial oversight. This development ensures that the exercise of mercy is balanced with justice and adherence to constitutional principles.

## 6. Contemporary Challenges and Controversies

### 6.1 Delay in Disposal of Mercy Petitions

The clemency system in India faces a significant challenge characterised by the prolonged duration associated with the processing of mercy petitions. Historically, certain petitions have persisted in a state of pending status for extended periods, often spanning decades. This prolonged uncertainty has significant implications for individuals convicted of crimes, as it undermines the overall efficacy of the clemency mechanism. The 262nd Report of the Law Commission of India, published in 2015, provides a comprehensive analysis of instances in which

mercy petitions have remained unresolved for periods exceeding a decade, resulting in significant psychological distress for individuals on death row.

In the case of Shatrughan Chauhan v. Union of India (2014), the Supreme Court provided a thorough examination of the matter, determining that an unexplained delay in the adjudication of mercy petitions amounts to torture and contravenes Article 21 of the Constitution. The Court noted that an extended delay in the execution of a death sentence results in a dehumanising impact, which carries constitutional implications by unjustly, unfairly, and unreasonably depriving an individual of life.

The ruling identified delay as a basis for the commutation of death sentences and initiated a reassessment of outstanding mercy petitions. Although the judicial intervention has resulted in certain enhancements, the issue continues to endure as a consequence of inherent structural inefficiencies within the processing mechanism. The intricate review process, which encompasses state governments, multiple ministries, and constitutional authorities, is a significant factor in the occurrence of delays (Amnesty International, 2016).

The findings of a study conducted by the Death Penalty Research Project at National Law University, Delhi, in 2016 indicate that a considerable proportion of mercy petitions experience extended processing durations. Contributing factors to these delays include political transitions, bureaucratic obstacles, and the absence of defined timelines. The results underscore the necessity for comprehensive reforms within the clemency process to facilitate the prompt evaluation of mercy petitions.

### 6.2 Political Considerations

The impact of political variables on clemency determinations represents a significant area of debate within the framework of constitutional practices in India. Critics contend that the exercise of pardoning power has, at times, been

influenced more by political expediency than by principled considerations, especially in cases involving prominent political figures or their associates (Sathe, 2015).

The examination of various clemency decisions reveals a pattern that has elicited significant concerns regarding the potential influence of political bias. The remission afforded to convicted politicians in certain jurisdictions has been subject to scrutiny, with critiques suggesting that such actions are driven more by political loyalty than by valid justifications for clemency. The Supreme Court, in the case of *Swaran Singh v. State of U.P.* (1998), rendered invalid a remission that had been granted to a convicted minister, thereby explicitly acknowledging the inappropriateness of allowing political factors to affect decisions regarding clemency.

The temporal alignment of clemency decisions with significant political events, such as electoral cycles or governmental transitions, has contributed to a prevailing scepticism regarding the impartiality of the clemency process. A study conducted by the Centre for Death Penalty Research in 2018 identified patterns that indicate a correlation between electoral cycles and specific high-profile clemency decisions. This finding prompts an examination of the extent to which mercy powers are insulated from political pressures.

In response to these concerns, researchers have suggested the implementation of institutional safeguards, including the establishment of independent clemency boards characterised by diverse membership to provide counsel to constitutional authorities, the adoption of transparent decision-making processes, and the necessity of issuing reasoned orders for clemency decisions (Krishnan, 2017). There exists a discourse advocating for the establishment of legislative guidelines aimed at structuring executive discretion, while simultaneously ensuring that the inherently flexible nature of the pardoning power is not unduly restricted.

### 6.3 Death Penalty Cases

The application of clemency authority in cases involving the death penalty introduces a range of intricate challenges, primarily attributable to the irreversible consequences associated with capital punishment. In the case of *Bachan Singh v. State of Punjab* (1980), the Supreme Court acknowledged the clemency process as a significant constitutional safeguard within the framework of capital punishment in India. It was characterised as the "final fail-safe" mechanism designed to prevent miscarriages of justice in cases involving the death penalty.

However, several issues have emerged in the context of death penalty clemency:

- 1. Inconsistency in Decision-making:** The investigation conducted by the Death Penalty Research Project (2016) has identified notable discrepancies in the processing of mercy petitions related to the death penalty, wherein analogous cases yield divergent results without a transparent elucidation of the factors that differentiate them. The observed inconsistency prompts significant concerns regarding the potential arbitrariness associated with decisions that pertain to matters of life and death.
- 2. Non-disclosure of Reasons:** The executive generally refrains from providing comprehensive justifications for the denial of mercy petitions in cases involving the death penalty. The absence of transparency has been subject to criticism, as it is perceived to contravene the principles of administrative accountability and procedural fairness, as outlined in the Law Commission's 262nd Report (2015).
- 3. Mental Health Considerations:** The Supreme Court, in the case of *Shatrughan Chauhan v. Union of India* (2014), acknowledged that the presence of mental illness following a conviction may serve as a valid basis for the commutation of a sentence. Nevertheless, the evaluation of mental health conditions and their significance in relation to clemency

determinations continues to exhibit inconsistencies and is insufficiently addressed within the existing framework.

**4. International Obligations:** The approach of India concerning clemency in cases involving the death penalty has been subject to critical examination, particularly in the context of advancing international human rights norms. Concerns regarding the limited transparency and the seemingly arbitrary nature of mercy proceedings in capital cases have been articulated by organisations such as the UN Human Rights Committee (United Nations Human Rights Committee, 2019).

The 262nd Report of the Law Commission of India, published in 2015, advocates for extensive reforms to the clemency process associated with the death penalty. Key recommendations include the provision of mandatory legal assistance for the preparation of mercy petitions, the establishment of time-bound decision-making protocols, the implementation of periodic reviews for all pending capital cases, and the incorporation of socio-economic factors that may have impacted the commission of the crime. The implementation of these recommendations has the potential to mitigate certain systemic challenges present in the clemency proceedings associated with the death penalty.

The relationship between the evolving judicial standards regarding the death penalty and the decisions surrounding executive clemency constitutes a persistent area of constitutional conflict. The judiciary's refinement of the "rarest of rare" doctrine and the identification of new procedural safeguards in capital cases have not been consistently matched by the executive's approach to clemency. This discrepancy may lead to potential inconsistencies in India's overall framework regarding capital punishment (Bhushan, 2020).

## 7. Conclusion

An intricate relationship between administrative authority, constitutional constraints, and the

evolution of legal interpretations over the course of time is embodied in the pardoning authority that is outlined in the Indian Constitution. In the beginning, the authority was derived from royal prerogative; however, it has undergone a considerable transition into a constitutional obligation, and it is now exercised within the constraints of democratic governance and the rule of law. The federal nature of India is exemplified by the divided framework of clemency jurisdiction, which is granted to both the President and state Governors. This system simultaneously provides a variety of avenues for persons to request relief from judicial sentences.

From a more passive judicial position to a more robust system of constitutional inquiry, the evolution of jurisprudence surrounding the power of pardoning demonstrates a progressive and remarkable transformation. This transition has occurred over the course of time. The Supreme Court has established, through a series of major decisions, that the exercise of the power, despite the fact that it is fundamentally discretionary, must comply to constitutional principles, relevant considerations, and the norms of procedural fairness. In light of this development, it is clear that there is a complex interaction taking place between the recognition of executive authority and the requirement to adhere to constitutional demands.

The contemporary landscape of the clemency system is marked by severe problems that limit its proper operation. These challenges affect the system's environment. Notable problems include the impact of political forces on the decision-making process, the lack of consistency in the treatment of cases involving the death penalty, and the protracted delays that occur in the processing of requests for mercy. The issues that have been found underline the importance for institutional reforms that aim to improve openness, consistency, and fairness in the application of pardoning authority while also preserving the inherent flexibility of the authority.



The development of India's constitutional democracy has brought to light the relevance of the pardoning authority as an essential mechanism for the administration of justice, which is defined by an element of mercy. The careful use of this strategy, which is informed by constitutional principles and humanitarian concerns rather than political expediency, is set to play a significant role in the development of India's governance frameworks and the actualisation of its constitutional values. This is because the application of this approach is informed instead by political expediency.

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