

Periodic Research

Pardoning Power of the President in India: A Judicial Approach



Devesh Saraswat

Research Scholar,
Deptt. of Law,
Aligarh Muslim University,
Aligarh, U.P.

Abstract

A pardon to pardon is one among the highest of the clemency mechanisms because it not only officially nullifies the punishment of a sentence but also neutralizes the punishment of the crime. Since ancient days it is known to be the biggest power but now it becomes the part of a Constitutional scheme in almost all civilized societies. Similarly, in India, the power to grant pardon is also enshrined under Article 72 and Article 161 of the Constitution for the President and the Governor of the State respectively. The main purpose of incorporating this power in the Constitution is to provide the last opportunity to death row convict against harsh punishment or to rectify the mistakes or error committed by the judiciary. However, in past, it has been observed that this power is also coupled with defects of delay while disposing of mercy pleas, due to which death row convict's and their family has to undergo mental agony and socio-economic constraints. Therefore, the present paper seeks to examine the nature and scope of pardoning power of the President in India as well as to analyse the judicial review of cases involving delay in disposal of mercy petition. Because if this delay in disposal of mercy petition is not checked by judiciary it will cause a dehumanizing effect on convict's and his/her family and thereby lowering the confidence of general public from the criminal justice system.

Keywords: President, Pardon, Delay, Mercy Petition, Judicial Review.

Introduction

The concept of pardon is nearly as old as the concept of punishment, though some societies which subscribe to the theory of retribution, do not feel satisfied till the guilty is punished. In all civilized and refined societies pardon has been considered as an act of grace. The Constitution of India permits any convict who is sentenced to death to appeal for mercy. However, Article 72(1) of the Constitution of India gives to the president the power to grant pardons, reprieves, respites or remissions of punishment or to suspend, remit or commute the sentence of any person convicted of any offence, inter alia, where the sentence is one of death. The object of conferring this "judicial" power on the President seems to be to correct possible judicial errors because judges being part of the human system of judicial administration are not free from imperfections. Also with regards to pardon power, it seems as an unprincipled and unwelcome intrusion in the law's enlightened process as it leads to an overlap between the functions of judiciary and executive. Moreover, with the large political influence on the pardoning power has further marred it with controversies. This nature of the pardoning power has to lead to various petitions seeking for judicial assessment of presidential clemency power.

Review of Literature

Though many researches had been conducted on the pardoning power of the President in India and these are some of the existing and relevant recently available literatures on this area of study.

Paylee, M.V., *Crisis, Conscience and the Constitution*, Asia publishing House, 1982 is a classic work on Indian Constitution where in author magnificently and comparatively describe the Pardoning Power of President and loopholes in procedure thereof. And the present work is used in this paper to analyse the procedure for disposal of mercy petitions.

Gupta, C. Subhash C, *Framing of India's Constitution: A Study*, 2nd edition, 2000, dealt with the constitutional provisions which were debated in the Constituent Assembly on 29th December, 1948 and 17th September, 1949.

Basu, D.D., *Commentary on the Constitution of India*, 12th edition, 2008, Kamal Law House, Kolkata here author describe comparative position of the Pardoning Power of the President in U.S.A. and U.K. etc.

E: ISSN No. 2349-9435

Periodic Research

Seervai, H.M., *Constitutional law of India*, Universal law Publishing Co. Pvt. Ltd. Volume 2, Fourth Edition, Reprint 2008. Mr. Seervai treats this as a means of caution on part of the Constituent Assembly to avoid leaving it to the Court for determining the content of pardoning power. Here author finds critical evaluation of pardon power of the President in India.

Narayana, P.S., J., *Law of Pardons*, Universal law Publishing Co. Pvt. Ltd. First Edition, 2013 in his work author dealt with the case related to pardon by the president and the governor under the Constitution of India together with the provision of Army Act, Code of Criminal Procedure, Air Force Act, Navy Act etc. several relevant legislation and rules had been placed in this book for convenient understanding of the subject.

Novak Andrew, *Comparative Executive Clemency: The Constitutional Pardon Power and the Prerogative of mercy in Global Perspective*, Routledge-Taylor & Francis Group, London, 2016 is a commendable work done by the author wherein he analysed the throughout development in clemency and its procedure at global level including India. He in his magnificent work tell us the role of judicial review and executive consultation makes this mercy process transparent.

Journals/Articles

1. Balkrishna, "Presidential Power of Pardon", 13 *JILI* 103, dealt with the comparative analysis of distinctiveness in prerogative of power between British Crown and President of India.
2. Gandhi, G.P, "President's Prerogative of Mercy – A Point of View" *CULR* 116-22 describes the exercise of the pardoning power of the president and its socio-legal analysis.
3. Baxi, Upendra., "Clemency Erudition and Death: The Judicial Discourse in Kehar Singh", 30 *JILI* 501 – is not only a critique on Kehar Singh judgment but shows a clear position of role of court in dealing with mercy pleas.
4. Daniel T Kobil, "Compelling Mercy, Judicial Review and the Clemency Power", 9 *University of St. Thomas Law Journal* 698 (2012); where the author describes the role of judiciary in mercy process by utilising its power of judicial review. Here author through his work also gives suggestion for the reformation of federal clemency process so that equal protection and due process principles can be followed.
5. Dash Zubin & Singh Shashank, "A Case against delay as ground for Commutation of Death Sentence", 7 *NUJS Law Review* 321 (2014) Here author shoes the clear picture of the judicial approach in commuting the death sentence in to life imprisonment where the executive wing is failed to provide the mercy remedy to the death row victim or if there is delay in disposal of the mercy petition.
6. Andrew Novak, "*Transparency and Comparative Executive Clemency: Global Lessons for Pardon Reform in the United States*", 49 *U. Mich. J. Law Reform* 817 (2016). though his Article authors makes a comparative study of the common law

countries' constitutional clemency mechanisms designed to promote openness, public and victim participation, and rational decision-making. In addition, this Article proposes four reforms to the U.S. pardon system that other English-speaking countries use, which will be explored in the four phases that follow: Firstly he explains implementation of an open decision-making structure which allows judicial review of clemency decisions; second phase describes applying freedom of information laws and reporting and third phase examine publication requirements to clemency deliberations and final phase observes the role created by victims and communities in the decision-making process.

7. Udofa Imo, "The Abuse of Presidential Power of Pardon and the Need for Restraints", 9 *Beijing Law Review* 113-131(2018) wherein author describes the nature and application of presidential power of pardon in Nigeria, the United States of America, India and South Africa, amongst others. The paper also examined some of the incidents of abuse of presidential power of pardon in Nigeria and India and proffered suggestions aimed at ensuring a more purposeful and beneficial exercise of the pardon power, particularly in Nigeria.

Objective of study

In order to understand the nature of the research problem the present study focuses on the following aims:

1. To find out the nature and object of the Pardoning Power of the President as he is the only highest authority after all judicial resort are exhausted.
2. To analyse the root causes of pendency in mercy petitions so that a fair, just and reasonable justice be served and in a more expedient manner.
3. To find out the manner in which clemency power is exercised by President and the procedure thereof in exercise of the said power.
4. To analyse the socio-legal effect of delay of mercy petition and rejection thereof on death row convicts and his family members.
5. To explore the recent jurisprudential development with regard to Capital Punishment by examining the merit of the cases and other relevant consideration in light of president pardoning power.
6. To delineate the role played by the judiciary regarding curbing delay in mercy petition and in streamlining the clemency power of president.

Meaning and Definition

The word pardon has been derived from the late Latin term "*perdonare*" which is the combination of two words i.e. '*per*' and '*donare*'. '*per*' means completely and '*donare*' means to give. Therefore, in common parlance, a pardon is forgiveness, release, remission; forgiveness for an offense, regardless of whether it is one for which the individual conferring it is subject to law or something else.

The term pardon means remission of punishment. A pardon is an act of grace, mercy or clemency, ordinary by an executive, by which a

E: ISSN No. 2349-9435

Periodic Research

criminal is excused from a penalty that has been imposed by a court. It cannot be requested as an issue of right. Pardon wiped away the guilt and makes the person who committed the crime as innocent as though a crime had not been committed.¹ Whereas Black's Law Dictionary defines 'a pardon' as an act or an instance of officially nullifying punishment or other legal consequences of a crime.²

Being an act of elegance, pardon emanate from the power vested with the implementation of the law which absolves the person on whom punishment is imposed for the commission of a crime.³

Thus from the above definitions, it can be analysed that pardon is a merciful act of the executive head of the state where the convict is absolved from the execution of the punishment of the sentence which is imposed by the Court.

Brief Historical Development of Pardoning Power

Since in ancient ages the pardon power is vested in the head of the family or the tribe who could examine this power to punish or forgive his family members if any one of them commit misdeeds.⁴ Thereafter with the development in society, the rulers uses pardon power in the form of ceremonial customs and usages to mitigate the crime⁵ and thereafter with the evolution of full-fledged concept of pardon power in England, the king have the prerogative power to grant mercy to turn over any sentence.⁶ The power of pardoning was a sort of political prudence that was used to be in hands of King in the UK⁷ and even termed as 'super-political' nature in the U.S.⁸ In India genesis of the pardoning power can be traced from the colonial period were law relating to pardon had evolved statutorily with timely amendments to the Code of Criminal Procedure⁹ the exercise of the King's prerogative as it was in England, remained unaffected since both the countries had a common sovereign. This particular intention of the constitution framers can be seen when word pardons, reprieves, respites, commutation and remissions of punishment as a specific matter to be conferred on the highest dignitary of the country, the President of India under Article 72 of the Constitution. Thus, with the coming into force of the Constitution of India¹⁰, the power to grant pardon, which was earlier recognized under section 295¹¹ of the Government of India Act, 1935, has now been recognized constitutionally, through the statutory provisions of pardons as incorporated in the Code of Criminal Procedure which have been remained in force, with a varied scope and intent.¹²

Nature and Scope of Pardoning Power under Article 72

The scope of the power conferred on the President by Article 72 is very extensive as it extends to the whole of India. As regards the nature of the power of pardon vested in the President by Article 72, the Supreme Court has recently propounded the American, rather than the British, view. In Britain, the mercy power is viewed as the prerogative privilege of pardon practiced by the sovereign. It is regarded as an act of grace issuing from the sovereign. But in the United States, the position is quite different as here President's Pardon power is not considered as his

own act of grace but is an integral part of the Constitutional framework. Similarly, first time after the independence of India in *Re Channugdu* case¹³ Madras High Court while referring to various foreign judgment¹⁴ discussed the comparative nature of pardon power as "there is a similarity in the provision of our Constitution with those of the United States Constitution in regard to confirmation of power to confer reprieve and pardon". Besides this Court also clearly demarcated the scope of the President of India to exercise his mercy power in three phase – (i) Prior to the conviction of the person, (ii) when a prisoner is under the trial proceedings and (iii) after conviction of the prisoner.¹⁵ Further the division bench comprising of Justice Govinda Menon and Justice Chandra Reddi held that if a prisoner is released by the order of the appropriate government under Section 401 of Cr.P.C., 1898¹⁶ and by the Governor of the concerned State it could not be said that such exercise of power causes any interference in due and proper cause of justice. In other words, it could be said that Court's power¹⁷ remains unaffected even if the prisoner is absolved by the order of State's executive who has been convicted by the Court. Further, Madras High Court made it clear that pardoning power may be exercised at any time after the commission of offence, before initiation of legal proceedings or during their pendency, either before or after conviction.

The Supreme Court, in *Kehar Singh v. Union of India*,¹⁸ have preferred to adopt the view propounded by Holmes, J., in the context of India. Pathak, CJ, has observed on behalf of a unanimous Court:

"The power to pardon is a part of the constitutional scheme, and we have no doubt, in our mind, that it should be so treated also in the Indian Republic. It has been reposed by the people through the Constitution in the head of the state and enjoys high status. It is a constitutional responsibility of great significance, to be exercised when the occasion arises in accordance with the discretion contemplated by the context."

It has now been judicially clarified that though the power to pardon is officially vested in the Union Executive, he exercises this power in the same manner as other power is practiced by him, in accordance with Article 74(1), on the advice of the Council of Minister. The Apex Court also clarified in *Maru Ram v. Union of India*,¹⁹ that whenever a decision relating to release or refusal of release is made by the President then such decision is not his own choice or his independent determination. "It is fundamental to the Westminster system that the Cabinet rules and the Queen reign being too deeply rooted as foundational to our system...". "The President is an abbreviation for the Central Government." Thus it signifies here that the President while exercising his mercy power has to take advice from the Council of Minister along with the assistance from the Ministry of Home Affairs.

E: ISSN No. 2349-9435

Periodic Research

In *Kehar Singh v. Union of India*,²⁰ the issue of oral hearing was raised before the Court, which was refused by the same Court and held that no prisoner shall have right of oral hearing before the President on his petition invoking his power under Article 72. Further, Court held that as the matter lies within the discretion of the President and it is for him to decide how he will deal with the case. Whenever any mercy petition is filed by the prisoner before the President along with all information, then whatever proceeding takes place for the disposal of mercy petition are of the executive in character.

Judicial Approach

Being an absolute power couple with the constitutional duty to absolve the sentence of the convict. However, the pardoning power must be exercised in very cautiously and in a due manner for the prisoner in need. Moreover, the executive must also be considered that while exercising pardon power the basic spirit of rule of law is not violated and if it acts against such principle then it is judiciary which could come into check the rationalization, reasonableness, and fairness of the executive order in mercy cases.

Judicial Review of the Pardon Power

The Apex Court has been of the consonant view that executive order under Article 72 ought to be subject to restrictive judicial scrutiny in light of the method of reasoning that clemency power under Article 72 is in essence above the judicial review but the procedure by which power is exercised is under the preview of the judicial review. As the Supreme Court is invested with the power of judicial review and it can be exercised whenever individual rights are violated. Following are the leading cases in this regard-

In *Maru Ram v. Union of India*,²¹ where issues were raised that whether newly created Section 433-A of the Cr.P.C., 1973 violates the power contained under Article 72 and Article 161 of the Constitution of India. Here Court held that the constitutional power contained under Articles 72 and 161 and statutorily power under Section 433-A are though seems to be similar in nature but in reality they are different. Because the power which is created under the Criminal Procedure Code cannot be made equivalent to the prerogative power which is conferred upon the Union and the State executive by the Constitution. Further Court states that "their source, strength is different although the stream may flow to the same bed", and held that Section 433-A cannot be made invalid as indirectly violates Article 72 and 161 of the Constitution of India. Supreme Court also said that power contained under Article 72 of the Indian Constitution shall not be arbitrarily or disingenuously be exercised by the executive and in the normal course of action, the executive must discharge its function in accordance with guidelines for fair and equal execution of sentence along with the consultation of Council of Ministers only.

However, in *Kuljit Singh v. Lt. Governor of Delhi*,²² a question relating to the nature and scope of the President's pardon power was brought. The Supreme Court held that no doubt that under Article

72 of the Constitution the President is empowered to mitigate any sentence awarded by the court in the appropriate case, but in the present case as per the guidelines and circumstances shows that no one can interfere with this death sentence.²³ Moreover, Court also held that there is no need of any justification in a case where President refused to commute the death sentence, as it is manifested that no transgression has been made in his power to pardon under Article 72. The court again said that regarding the appropriateness of the power contained under Article 72 it depends upon the facts and circumstances of the case. And the Court will examine the justification of the matter on the case to case approach. In the present case, the apex court also asked the president to reassess his decision when it was of the view that the decision of president was totally arbitrary and unfair. Further, a three judge-bench held that court has the power to touch the order of President/Governor if such power was exercised arbitrary, malafide or in absolute disregard of the finer canons of the Constitutionalism.

Later in the landmark case of *Epuru Sudhakar and Anr. v. Government of Andhra Pradesh*,²⁴ where one of the convicts was sentenced to death and the other convicted person naming Ambi Reddy's death sentence was altered into 10 years rigorous imprisonment under section 304(1) of I.P.C read with Section 109 of I.P.C. Thereafter his wife applied for his parole which on 18th October 2003 was granted but later on with the report of Superintendent of Police, Karnool his parole was rejected on 30th October 2003 on the ground of law and order problem of the said area. Thereafter his wife contested the election of Andhra Pradesh Assembly and she was elected as the Member of Legislative Assembly for Andhra Pradesh Assembly. Again she applied for the parole of convict Ambi Reddy and it was granted on 19th May 2004 and thereafter it was further extended from time-to-time. Thereafter Madam MLA filed a mercy petition before the Governor of Andhra Pradesh State. Which then Governor granted remission for the remaining sentence of the convicted. When the case reached before Court, it was examined that there was a political enmity due to which executive action is influenced. Herein, Arijit Pasyat J. has laid down that judicial review under Article 72 is available on following grounds – wherein order has been passed in (a) non-application of mind (b) malafide (c) extraneous or wholly irrelevant consideration (d) suffer from arbitrariness. Court also signifies that for the effective exercise of judicial review reasons for the exercise of power under Article 72/161 of the Constitution of India must also be provided. Besides this Court also held that pardon obtained on the basis of manifest mistake or fraud can also be rescinded or canceled.

Phenomenon of Delay as a ground for Commutation

It is well known that whenever there is a delay in execution it is also delayed in the justice delivery system. Due to delay in justice the last ray of hope is also likely to be shaken. Relating to delay in execution of death sentence the Court laid down

E: ISSN No. 2349-9435

certain rules in *Triveniben Case*²⁵, where Court have divergent view that if in cases of death sentences if the delay is made then it could not make execution unconstitutional. Further, the Supreme Court said that on the ground that no such time period is fixed for the execution did not make decision arbitrary or unfair under Article 21. Meanwhile Court also held that delay must be seen in the light of all circumstances to constitute a ground for commutation of death sentence.²⁶ In *T.V. Vatheswaran v. State of Tamil Nadu*,²⁷ where a death row convicts in prison for more than eight years claims that he is not now liable to hang after such a prolonged delay. While considering the matter the Supreme Court held that prolonged confinement to await the execution of death sentence is the unjust, unfair and unreasonable procedure and is liable to quash the order of death sentence.

In *Devendra Pal Singh Bhullar*,²⁸ where the petitioner is found guilty under Sections 2, 3(2)(1) and 4 of Terrorists and Disruptive Activities (Prevention) Act, 1987 along with several sections of I.P.C., 1860²⁹ and under Section 12 of Indian Passport Act, 1967 and convicted for a death sentence. The issue was raised whether Court is empowered by the power of judicial review on the ground of undue delay in the judicial process. And whether the delay in disposal of mercy petition filed under Article 72 could justify the review of the decision taken by the President. Supreme Court in a pessimistic sense said that the circumstance of the case as of terrorist in nature then in such a case if there is any delay in disposal of mercy petition filed before the president under Article 72 does not make liable it for judicial review.

Subsequently, in *Mahendra Nath Das*³⁰, the Court acknowledges the existence of the rule that an inordinate delay will, in fact, give rise to a cause of action to the petitioner. The Court also stated that the decisions in *Madhu Mehta v. Union of India*,³¹ and *Daya Singh v. Union of India*,³² where delay alone was considered sufficient to commute the death sentence, were not in the exercise of the Court's power to do complete justice under Article 142 but under Article 136.

Later in *Shatrughan Chauhan v. Union of India*,³³ where the issue was came before the Supreme Court that whether the decision taken by the president for disposal of mercy petition case is outside the judicial review. The Court resumed the discussion from *Vatheeswaran*, and took note of Justice Shetty's concurring opinion in *Triveniben*, which held that "inordinate delay may be a significant factor, but that cannot render execution unconstitutional". In the instant case, the petitioner challenged the rejection of mercy petition on the ground that delay in mercy petition disposal is also made violation of Article 21 of the Constitution. Clarifying the position the Apex Court held that excluding the terrorist case where gravity of crime, extraordinary cruelty is involved or it caused horrible consequences to society the commutation of sentence can be made if it is found that undue, inordinate, unreasonable delay in execution then it is contravention of Article 21 and is a valid ground for commutation of death sentence in to life imprisonment.

Periodic Research

In *Navneet Kaur v. State of NCT of Delhi*,³⁴ where petitioner was the wife of Devendra Singh Bhullar who was found guilty of the death sentence under TADA filed a curative petition³⁵ and made a claim that whenever an inordinate, unreasonable or unexplained delay for more than eight years would be reviewable. Court held that whenever the supervening circumstances such as mental illness or Schizophrenia are present due to inordinate, unreasonable or unexplained delay in disposal of mercy petition then the Court is empowered to commute death sentence into, life imprisonment.

Again in *V. Sriharan v. Union of India*,³⁶ where the petition was filed by Rajeev Gandhi Assassins V. Sriharan alias Murugan, Santham, Arivu before the Madras High Court which was transferred under Article 139A before Supreme Court, the vital issues were raised regarding delay in disposal of mercy petition filed under Article 72 and 161 of the Constitution would violates fundamental rights of the death row convicts. The Court held that in relation to the cases of death sentence whenever there is an exorbitant delay in disposal of mercy petition is seen and which makes the process of execution of death sentence to be arbitrary, fanciful and capricious and therefore in executable. Further Court said that in death sentences whenever any prolonged delay occurs in its execution and as a result, it gives mental suffering and agony, which renders the subsequent sentence inhuman and barbaric. Then it is not the obligation of the convict to show suffering occasioned by such delay as precondition for commutation of the death sentence into life imprisonment.

In 2015 case of *Ajay Kumar Pal v. Union of India and another*,³⁷ where the convict petitioner was awarded death sentence by the Special Session Judge of CBI Court, Ranchi which was conferred by the High Court of Jharkhand thereafter an appeal³⁸ was moved before Supreme Court which also dismissed the appeal and confirmed the death sentence imposed by the CBI Court. Thereafter petitioner through Superintendent of Birsa Munda Jail, Ranchi file a mercy petition which is forwarded to president of India and Governor of the Jharkhand on April 10., 2010 and on January 01, 2014 Superintendent of Jail was informed by the Ministry of Home, Government of Jharkhand that petitioner's mercy petition was rejected by the President of India. Which was also communicated to the Ministry of Home Affairs, Government of India through a letter dated November 08, 2013. Thereafter through this petition, before this Court issue was raised that communication of rejection was made almost three and four months from the date of petitioners plea of mercy, wherein he was solitary confined for such a long period. The court while relying on the self-imposed rule held that "long and interminable delay in disposal of mercy petition not only causes a severe obstacle in dispensing justice but it also shake the confidence of people in the administration of criminal justice system. Thereafter Court held that there if there is undue, unexplained and inordinate delay in execution of mercy petition or the executive as well as

E: ISSN No. 2349-9435

the Constitutional authorities have failed to take note of the relevant aspect, then this Court is empowered under Article 32 to hear the grievance of the convict and commute the death sentence into life imprisonment on this sole foundation. Court also said that the delay is should not be caused on the part of the petitioner itself. Further with regard to solitary confinement Apex Court also held that "combined effect" of prolonged delay in disposal of mercy petition together with solitary confinement has caused a great deprivation of the most cherished right under Article 21, therefore, it is the duty of this Court under Article 32 to allow the solace and reach out the petitioner so that justice can be done. Thus in instant case, Supreme Court held that inordinate delay in disposal of mercy petition for a death sentence and solitary confinement for such a long period is the defiance of Article 21 of the Constitution and duty bounds the Court to commute the death sentence into life imprisonment.

Even in Most recent case of *Sonu Sardar v. Union of India*,³⁹ The bench of Justices G.S.Sistani and Vinod Goel of Delhi High Court while allowing the petition of the convict under Article 226 of the Constitution of India read with Section 482 of the Code of Criminal Procedure for quashing the orders of the President of India and the Governor of Chhattisgarh rejecting the mercy petition of the petitioner, commute the death sentence of the petitioner into life imprisonment on account of delay, improper exercise of power and illegal solitary confinement.

Conclusion

Thus while summing up, it can be said that the pardoning power of the President is very significant as it corrects the error of the judiciary. It eliminates the effects of conviction without addressing the defendant's guilt or innocence. The process of granting pardon is simpler but because of the lethargy of the government, political considerations and delaying in the disposal of mercy petitions. Therefore, there is urgent need to make amendment in the law of pardoning to make sure that clemency petitions are disposed of quickly. There should be a fixed time limit for deciding on mercy pleas i.e. mercy petition must be decided between 15 days to ten-eleven months from their date of receipt which was suggested by the Apex Court suggest in *Shatrughan Chauhan's Case*. Regarding the judicial review debate, pardoning power should not be absolute as well as judiciary should not interfere too much in the exercise of this power. As the judicial review is the basic structure of our Constitution, and pardoning power should be subject to limited judicial review on the basis of the grounds such as non-application of mind, in prolonged delay cases, arbitrariness, insanity, solitary confinement, procedure failure or when judgment declared was *per incuriam* in nature. If this power is exercised properly and not misused by the executive, it will certainly prove useful to remove the flaws of the judiciary for the ends of the justice. At last to remember the quote of Voltaire who once said that "love truth but pardon error" therefore, it can be said that the pardoning power of the President of India

Periodic Research

being a constitutional obligation must be exercised in a judicious manner so that welfare of humankind can be served.

References

1. *Sutherland E.H. and Cressy D.R., Principles of Criminology, 550 (Universal Law Publishing Co. Pvt. Ltd., New Delhi, 11th Edition, First Indian Reprint, 2013)*
2. *Black Law Dictionary, 3519 (Thomson Reuters Publishers, 8th Edition, 2004)*
3. *C.J John Marshall in United State v. Wilson, 7 Pet 150*
4. *The Attorney General's Survey of Release Procedures, Federal Sentence Reports, (2000-2001); 13:200, Available at <http://www.jstor.org/stable/10.1525/fsr.2000.13.3-4.192> (Last visited on March 4, 2017)*
5. *Id*
6. *Clark Josh, How Pardon Power Works, Available at <https://people.howstuffworks.com/presidential-pardon6.htm> (Last visited on 26.07.2017)*
7. *Jennifer Schweppe, 'Pardon me: the contemporary application of the prerogative of mercy' The Irish Jurist (2013); 49:213, Available at <https://www.jstor.org/stable/44027260> (Last visited on 27.07.2017)*
8. *Ibid. at 214*
9. *K.M. Nanavati v. State of Bombay, AIR 1961 SC 112 at 134, hereinafter cited as Nanavati. Kapur J. in his dissenting judgment summed up the statutory law relating to pardon; The Codes of Criminal Procedure of 1861 and 1872, confined the powers of the executive to remitting at any time, the punishment inflicted on a person; the Codes of 1882 and 1898 conferred on the executive the additional power of suspending the sentence at any time; the Criminal Procedure Codes of 861, 1872, 1882 and 1898 conferred on the appellate court power to suspend a sentence pending appeal, but the Codes of 1882 and 1898 provided that the power was to be exercised for "reasons to be recorded in writing".*
10. *Constitution of India Came into force on 26 January 1950. Also cited in Krishan and Verma Archana, Constituent Assembly of India: An Overview, Research Journal of Humanities and Social Sciences, 2015; 6(2): 123-126*
11. *The Government of India Act, 1935, Section 295(1); Where any person has been sentencing to death in a Province, the Governor-General in his discretion shall have all such powers of suspension, remission or commutation of sentence as were vested in the Governor General in Council immediately before the commencement of Part III of this Act, but save as aforesaid no authority in India, outside a Province shall have any power to suspend, remit or commute the sentence of any person convicted in the Province; Provided that nothing in this sub-section affects any power of any officer of His Majesty's forces to suspended, remit or commute a sentence passed by a court-martial.*

E: ISSN No. 2349-9435

- Nothing in this Act shall derogate from the right of His Majesty, or of the Governor-General, if any such right is delegated to him by His Majesty, to grant pardons, reprieves, respites or remissions of punishment.*
12. H.M. Seervai, *Constitutional Law of India*, 1763-1764 (N.M.Tripathi Pvt. Ltd., Bombay, Volume 2, 2nd Edition, 1984).
 13. *Re Channugadu*, AIR 1954 Mad 911.
 14. Cases referred such as *Burdick v. U.S.*, (1914) 59 Law Ed. 476 (E), *Ex parte Grossman*, (1924) 69 Law ed 527 (F) and *Ex parte Garland*, (1867) 71 U.S. (4Wall), 366 by Madras High Court to discuss nature of pardoning power.
 15. AIR 1954 Madras 911
 16. Now it is substituted by Section 432 of the Code of Criminal Procedure, 1973
 17. Power to decide the correctness, propriety, and validity the conviction and sentence for an offence.
 18. AIR 1989 SC 653 : (1989) 1 SCC 204.
 19. AIR 1980 SC 2147
 20. AIR 1989 SC 653
 21. AIR 1980 SC 2147
 22. AIR 1982 SC 774
 23. *Ibid.* at 774-775. As the murder is done by savage planning coupled with a professional stamp and for the survival of the society and for in order to eliminate the menace which Ranga and Billahave created for the social order and society it is the demand of society to extinct the life of these convicts.
 24. AIR 2008 SC 3385
 25. *Triveniben v. State of Gujarat*, AIR 1989 SC 1335
 26. *Ibid.*
 27. (1983) 2 SCC 68
 28. *Devendra Pal Singh Bhullar v. State (NCT of Delhi)*, AIR 2013 SC 1975
 29. Section 419, 420 461 and 471 of Indian Penal Code
 30. *Mahendra Nath Das v. Union of India*, (2013) 6 SCC 253
 31. (1989) 4 SCC 62
 32. AIR 1991 SC 1548
 33. (2014) 3 SCC 1
 34. (2014) 7 SCC 264
 35. Supreme Court Commutes the Death Sentence of Devendra Pal Singh Bhullar Available at <https://www.livelaw.in /supreme-court-commutes-death-sentence-devender-pal-singh-bhullarread-judgment/> (Last visited on 11.09.2018)
 36. AIR 2014 SC 1368; Recently the demand for Rajeev Gandhi Assassination case was again raised as Tamil Nadu cabinet recommends for the release of convicts before Governor of Tamil Nadu. Now the question was raised whether Governor is bound by the Cabinet decision to release. Editorial, "Clemency Question Rajeev Gandhi Assassination Case" *The Hindu*, September 11, 2018.
 37. (2015) Cr.LJ 1161
 38. Criminal Appeal Nos. 1295-96 of 2007
 39. Writ Petition No. 441 of 2015, See also *Breaking: Delhi HC Quashes President's Order Rejecting Mercy Petition, Commutes Death Sentence Of Sonu Sardar To Life Imprisonment*, Live Law, June 28, 2017. Available at <https://www.livelaw.in/breaking-delhi-hc-quashes-presidents-order-rejecting-mercy-petition-commutes-death-sentence-sonu-sardar-life-imprisonment.htm> (Last visited on 27.01.2018)

Periodic Research