

# Bibliography

## BOOKS:

Agrawal Shipra (2013), Legal Research Methodology, Allahabad Law Agency.

Bakshi P. M.- The Constitution Of India (2015) 13<sup>TH</sup> Edition by (Universal Law Publication, an imprint of LexisNexis, a Division of Reed Elsevier India Pvt. Ltd., 14<sup>th</sup> floor, Building No. 10, Tower – B, DLF Cyber City, Phase – II, Gurgaon, India):

Basu, D.D., (1997), Introduction To The Constitution of India, Prentice-Hall of India, New Delhi.

Bhagwan Vishnoo, Bhushan Vidya, Mohla Vandana, World Constitutions A Comparative Study, Sterling Publishers Private Ltd., New Delhi, 10<sup>th</sup> Revised and Enlarged Edition 2013 Reprint 2014S

Bishop, New Criminal Law, 8<sup>th</sup> ed., 1892,

D. Hay, P. Linebough, J. Rule. E. Thompson, & C. Winslow, Albians Fatal Tree: Crime and Society in Eighteenth Century England, 22 (1975).

DAFNA LINZER & JENNIFER LAFLEUR, PRESIDENTIAL PARDONS: SHADES OF MERCY (2012)

Dr. J.J. R. - Administrative Law 5th Edition

Ekwenze, S.A.M., Presidential Pardon and Prerogative of Mercy: A Necessary National Soothing Balm for Social Justice, Anambra State University, Igbariam Campus, Lagos, (2011), p.2

Hastedt, Glenn P. Presidential Pardon, White House Studies Compendium, Nova Science Publisher. Inc. (2007) p.328 ISBN 978-1-60021-680-0

Jain. M.P., (2014), Indian Constitutional Law, 7<sup>th</sup> Edition, LexisNexis publication, Gurgaon, Haryana.

Jain, M.P., Constitution of India, 2010 (44<sup>th</sup> ed.), LexisNexis Butterworths, Wadhwa, Nagpur, p. 253.

John Rawls, THE LAW OF PEOPLES, 128 (1999)

John Rawls, A Theory of Justice, at 245-248

MP Jain, Outlines of Indian Legal History, Wadhwa and Co, Nagpur: 2005 (5th ed)

Justice Raghavan - Law of Crimes - (3rd Edition)

Pandey J.N.(1993),Constitutional Law Of India, 25<sup>th</sup> Edition, Central Law Agency, Allahabad.

Pillai P.S.A. - Criminal Law - (9th Edition)

Pfiffner, J.P., The Scope of the President's Pardon Power, George Mason University, (2010)

Prof. Rao Manohar G., Dr. Reddy G.B., Rao V. Geeta,Judiciary in India Constitutional Perspective, Asia Law House Hyderabad, 1<sup>st</sup> Edition 2009.

Ray S.N., (2006) Modern Comparative Politics (Approaches, Methods and Issues), Prentice-Hall of India, New Delhi.

Roldan Jimeno, Amnesties, Pardons and Transitional Justice: Spain's Pact of Forgetting, Routledge, 2018.

Sarkar S. and Munir J.J. - The Constitution of India - 2003 Edition

Seervai H.M. Constitutional Law of India: A Critical Commentary, volume II 2104 (2004).

### **JOURNALS & NEWSPAPERS**

Austin, T.L., Hummer, D. The Effect of Legal and Extra-Legal Variables on the Recommending and Granting of a Pardon, Law and Policy, 22(1), January, 49-65 (2000)

Barkow, R. E., The politics of forgiveness: reconceptualising clemency, Federal Sentencing Reporter, 21(3), ABA Roundtable on "Second Look" sentencing reforms, 153- 159 (2009)

- Baumgartner, J., Morris, M., Presidential Power Unbound: A comparative Look at Presidential Pardon Power, *Politics & Policy*, 29(2), (2001)
- Chhangani, R.C. Presidential Power of Pardon and the Constitution, *Journal of Constitutional and Parliamentary Studies*, Jan-Dec, 1989.
- Drago, F., Galbiati, R., Vertova, P., The Deterrent Effects of Prison: Evidence from a Natural Experiment, *Journal of Political Economy*, 117(2), 257-280 (2009)
- Eksterowicz, A. and Roberts, R.N., The spectre of presidential pardon, *White House Studies Compendium*, 6, 319- 331 (2006)
- Erler, H.A., Executive clemency or bureaucratic discretion? Two models of the pardon process, *Presidential Studies Quarterly*, 37(3), 427-448 (2007)
- Ewal, A.C., Civil Death: The Ideological Paradox of Criminal Disenfranchisement Law in the United States, *Wisconsin Law Review*, 9, 1045- 1137 (2002)
- Freilich, J.D., Rivera, C.J., Mercy, death, and politics: an analysis of executions and commutations in New York State, 1935- 1963, *American Journal of Criminal Justice*, 24(1), 15-29, (1999)
- Glaeser. E.L., Sacerdote, B., Sheinkman, J.A., Crime and Social Interactions, *Quarterly Journal of Economics*, 507-548 (1996)
- Harris B. V.,Judicial Review, Justiciability and the Prerogative of Mercy, 62(3),*Cambridge Law Journal*, 631 (2003).
- Heise, M, Mercy by the numbers: an empirical analysis of clemency and its structure, *Virginia Law Review*, 89 (2), 239-310 (2003)
- Humbert, W. H., *The Pardoning Power*, Washington, D. C., American Council on Public Affairs, (1941).
- Kwon, Y., Han, S. H., Nam, C., Estimating the costs of political populism: traffic violations pardons in Korea, *Transportation Research Part A*, 46, 1449-1457 (2012).
- Mackuen, M., Political Drama, Economic Conditions and the Dynamics of Presidential Popularity, *American Journal of Political Science*, 27, 165-192 (1983).
- Morris, M., The overlooked relevance of the pardon power, in *Presidential Frontiers: underexplored issues in White House politics*, Barilleaus, R.J., 79 (1998).

Musharraf S. Sentence of Pardon and Rule of Law, AN, 9 Aligarh Law Journal, 1988 at 72-82.

Ruckman Jr., P. S., Executive Clemency in the United States: Origins, Development, and Analysis (1900- 1993), Presidential Studies Quarterly, 27, 251-271, (1997)

Ruckman Jr., P. S., Seasonal Clemency Revisited: An Empirical Analysis, White House Studies, 11, 21- 38, (2011)

Ruckman Jr., P. S., The study of mercy: What political scientists know (and don't know) about the pardon power, U. St. Thomas L. J., 9, 783-731 (2012)

Sarat, A., At the boundaries of Law: Executive clemency, sovereign prerogative, and the dilemma of American Legality, American Quarterly, 57, 611- 618 (2005)

Schanzenbach, M., Yaeger, M. L., Prison Time, Fines and Federal White-Collar Criminals: The Anatomy of a Racial Disparity, The Journal of Criminal Law and Criminology, 96(2), 757- 793 (2006)

Whitford, A. B., Ochs, H. L., The Political Roots of Executive Clemency, American Politics Research, 34, 6, November, 825- 846 (2006)

Williston, S., Does a Pardon Blot out Guilt?, Harvard Law Review, 28(7), May, 647-663, (1915)

No Urgency to Dispose of Afzal's Clemency Petition, Economic Times, June 11, 2008

## **WEBSITES**

[http://ndl.iitkgp.ac.in/document/wJHfXHJS1fSgcbV3XkAL1k10\\_uDjLqYN7nZ\\_SyGbPuTkQT9vNQcqmV8ofNr37rK9cw2IYYapQ2RsM7cTG8h6g](http://ndl.iitkgp.ac.in/document/wJHfXHJS1fSgcbV3XkAL1k10_uDjLqYN7nZ_SyGbPuTkQT9vNQcqmV8ofNr37rK9cw2IYYapQ2RsM7cTG8h6g)<https://www.lawteacher.net/free-law-essays/administrative-law/power-to-pardon-an-analysis-law-essays.php>  
<http://www.indiankanoon.com>;

<https://www.lawctopus.com/academike/power-president-grant-pardon-indian-scenario/><https://en.wikipedia.org/wiki/constitution-of-india>.

<http://scholarlycommons.law.northwestern.edu/cgi/viewcontent.cgi?article=6010&context=jcl><https://www.constitution.us./supremecourt.html>.

<http://www.advocatekhoj.com/blogs/index.php?bid=818515a96137da34755614124&bcmd=VIEW>

[http://shodhganga.inflibnet.ac.in/jspui/bitstream/10603/148889/10/10\\_chapter%203.pdf](http://shodhganga.inflibnet.ac.in/jspui/bitstream/10603/148889/10/10_chapter%203.pdf)  
[www.legalserviceindia.com/constitution/const-india1.html](http://www.legalserviceindia.com/constitution/const-india1.html).

[www.legalmaterials.com](http://www.legalmaterials.com).

[https://nehu.ac.in/public/downloads/Journals/Journal\\_Jul\\_Dec14\\_Art1.pdf](https://nehu.ac.in/public/downloads/Journals/Journal_Jul_Dec14_Art1.pdf)

<https://www.usatoday.com/story/news/politics/2018/06/04/presidential-pardons-explanation-executive-clemency-powers/660381002/>

<https://www.lawxpertsmv.com/single-post/2016/09/04/PARDONING-POWER-OF-PRESIDENT-AND-GOVERNOR-ART72-161>

<https://www.insightsonindia.com/2018/07/06/1explain-the-clemency-powers-of-the-president-under-article-72-discuss-the-clarifications-given-by-supreme-court-regarding-the-clemency-powers-of-the-president250-words/>

\*\*\*

# List of Cases

## A

Armstrong v. United States, 13 Wall. 154 (U. S. 1871)

Ashok Kumar v. Union of India, AIR 1991 SC 1792, 1803-1804: (1991) 3 SCC 498

## B

Balmukund v. King-Emperor, AIR 1915 PC 29: 42 IA 133

Biddle v. Perovich, 274 U.S. 480, 486 (1927)

Brown v. Walker, 161 U.S. 591 (1896)

## C

Com. V. Baldwin, 1 Watts, 54.

Com. V. Lockwood, 109 Mass., 322

Com. V. Moir, 199 Pa. St., 534; Likins' Pet., 37 Super. Ct., 625

Cook v. Freeholders, 26 N.J.L. 326 (1857)

Cuddington v. Wilkins, 80 Eng. Rep. 231 (1615)

## D

Deputy I.G.v.Rajaram, AIR 1960 AP 259 (Para 15): 1960 Cr. LJ 565 (SB)

Diehl v. Rodgers, 169 Pa.St., 328

## E

Epuru Sudhakar v. Govt. of A.P., AIR 2006 SC 3385

Epuru Sudhakar and Anr.v. Govt. of A.P. and Ors. WP (Crl.) No. 284-285/2006

Ex parte Garland, (1873) 18 L.Ed. 366

Ex parte Wells, 59 U.S. (18 How.) 307, 311 (1855)

Ex parte Grossman, 267 U.S. 87, 113 (1925)

## F

Fleming v. Page, 50 U.S. (9 How.) 603, 618(1850)

## H

Hamilton v. Commonwealth, 458 S.W. 2d 166 (Ky. 1970)

## I

Illinois Cent. R.R.Co. v. Bosworth, 133 U.S. 92 (1890)

In re Channugadu, AIR 1954 Mad. 911, 917

## J

James Shewan & Sons v. United States (1924) 64 US Law Ed. 527 at P. 539

Javed Ahmed Abdul Hamid Pawala v. State of Maharashtra, (1986) 2 SCR 8

Jhanda Singh V. State, AIR 1976, Punj. 358 (DB) (para 9)

Jumman Khan v. State of U.P.,(1991) 1 SCC 752

### **K**

Kavalin v. White, 44 F. 2d 49 (10<sup>th</sup> Cir. 1930)

Kehar Singh V. Union of India, AIR 1989 SC 653: (1989) 1 SCC 204

K.M.Nanavati v. State of Bombay, AIR 1961 SC 112: (1961) 1 SCR 487

Knote v. United States, 95 U.S. 149 (1877)

Kudrat-e-Elahi v. Bangladesh, 44DLR (AD) 319

Kuljit Singh v. Lt. Governor of Delhi, AIR 1982 SC 774 (Para 1)

### **M**

Manlove v. State, 153 Ind. 80 (1899)

Mar bury v. Madison, 5 U.S. 137 (1803)

Maru Ram v. Union of India, AIR 1980 SC 2147 : (1981) 1 SCC 107

Mohinder Singh v. State of Punjab, AIR 1976 SC 2299 (Paras 3, 4): 1976 Cr. L.J. 1755

Monepragada Ramchandra Rao v. Revenue Divisional Officer, 1956 Andh WR 1074].

Montgomery v. Cleveland, 134 Miss. 132, 98 So. 111 (1923)

### **N**

Narain Dutt v. State of Punjab, AIR 2011 SC 1216

Narayan Dutt and Othersvs. the State of Punjab and Another (2011) 4 SCC 353

### **O**

Osborn v. United States, 91 U.S. 474 (1875)

### **P**

Pollock v. Bridgeport S.B. Co. (The Laura), 114 U.S. 411 (1885)

Powell v. McCormack, 395 U.S. 486 (1969)

### **R**

R v A, t EWCA Crim 434; [2012] 2 Cr. App R. 8.

R v Foster (Barry), (1985)QB 115; (1984)3 WLR 401

R v Secretary of State for the Home Department, ex parte Bentley (1993) 4 All ER 442

Roberts v. State, 160 N.Y. 217, 222, 54 N.E. 678, 679 (1899)

### **S**

Sarwar Kamal v. State, 64 DLR (2012) 331

Satpal v. State of Haryana, AIR 2000 SC 1702: (2000) 5SCC170  
Shatrughan Chauhan v. Union of India, Writ Petition (Criminal) No. 55 of 2013.  
Searle v. Williams, 80 Eng. Rep. 433 (1618)  
Semmes v. United States, 91 U.S. 21 (1875)  
Sher Singh v. the State of Punjab, (1983) 2 SCR  
Shoib v. Government of Bangladesh, (37 DLR 318)  
Smt. Triveniben V State of Gujarat, AIR 1989 SC 142  
Snodgras v. State, 67 Tex. Cr. R. 615, 150 S.W. 162 (1912)  
State of Haryana v. Jagdish, AIR 2010 SC 1690  
State of Punjab v. Joginder Singh, AIR 1990 SC 1396, 1400: (1990) 2 SCC 661  
State v. Ward, 9 Heisk, 100; Com v. Ahl, 43 Pa. St. 53  
Sunil Batra v. Delhi Administration and Others (1978) 4 SCC 494

**T**

Tara Singh v. Director, AIR 1958 Punj 302  
Thomas v. Sorrell, 89 Eng. Rep. 100 (1673)

**U**

UOI v. V. Sriharan (2016) 7 SCC 1 (para 112)  
United States v. Klein, 80 U.S. (13 Wall.) 128 (1871)  
United States v. Padelford, 76 U.S. (9 Wall.) 531, 543 (1869)  
United States v. Thomasson, 28 F. Cas. 82 (D. Ind. 1869) (No. 16,479)  
U.S. v. Wilson, 7 Peters, 150  
United States v. Wilson, 7 Pet. 150, 160 (U.S. 1833)  
United States v Benz, 282 U.S. 304 (1931)

**V**

Vitale v. Hunter, 206 F. 2d 826 (10<sup>th</sup> Cir. 1953)  
V. Vaitheeswaran v. State of Tamil Nadu, (1983) 2 SCR 348  
United States v. Thomasson, 28 F. Cas. 82 (D. Ind. 1869) (No. 16,479)

**W**

WI Biddle v. Vuco Perovich, 71 L.Ed

\*\*\*



# List of Publications

1. Sandeep Mishra and Dr. Hiren Ch. Nath, “*Judicial Review of the Constitutional Amendment-An Analytical Study [With Special Reference to Indian Constitution]*”, IJRAR.ORG, Vol. 9, Issue 2, June 2022, Pg. No. 206-341, E-ISSN : 2348-1269, P-ISSN : 2349-5138.
2. Sandeep Mishra and Dr. Hiren Ch. Nath, “*Pardoning Powers of the President under the Indian Constitution*”, IJRAR.ORG, Vol. 8, Issue 2, May 2021, Pg. No. 864-883, E-ISSN: 2348-1269, P-ISSN : 2349-5138.

E\*\*\*

**IJRAR.ORG**

**E-ISSN: 2348-1269, P-ISSN: 2349-5138**



**INTERNATIONAL JOURNAL OF RESEARCH AND  
ANALYTICAL REVIEWS (IJRAR) | IJRAR.ORG**

An International Open Access, Peer-reviewed, Refereed Journal

## **JUDICIAL REVIEW OF THE CONSTITUTIONAL AMENDMENT-AN ANALYTICAL STUDY**

[WITH SPECIAL REFERENCE TO INDIAN CONSTITUTION]

**1SANDEEP MISHRA, 2Dr. Hiren Ch. Nath  
1PH.D. SCHOLAR, 2Associate Professor cum Guide  
1ASSAM ROYAL GLOBAL UNIVERSITY,  
2ASSAM ROYAL GLOBAL UNIVERSITY**

### **ABSTRACT**

The fundamental law of the land of any nation is its Constitution. Consequently Constitutional Law is a subject of paramount importance. Every Constitution provide for its 'amendment'. It is made with a view to overcome the difficulties which may encounter in future in the working of the constitution. I felt the need of doing this research work as to sufficiently and clearly understand the basic procedure for bringing any change in the constitution through the concept of constitutional amendment in different countries such as U.S.A., U.K., Australia and Canada with special reference to the Constitution of India.

In dealing with this subject of my research, I have also come across the concept of the "Doctrine of Judicial Review" being used by different constitutional machineries of some of the world constitutions in determining the competency of such constitutional amendments. However there are some constitutions which do not provides for its judicial review. Then how such countries carried out the process to determine the constitutionality of any constitutional amendments undertaken by them? I have tried to explain the answer to the question in a plain manner in my research work in the best possible extent and as per my capability of fair understanding of such subject for which I have researched for.

I crave the indulgence of the readers of any error or imperfection which might have, despite the best possible endeavors', crept in this research work. Any suggestion, correction or improvement of my research work in this work shall be gratefully welcomed.

**Dean / Principal / Head**  
Royal School of Law & Administration  
The Assam Royal Global University  
Bhutan, Nri-37, Guwahati-781035

# PARDONING POWERS OF THE PRESIDENT UNDER THE INDIAN CONSTITUTION

Author: Sandeep Mishra, Research Scholar, RGU

Co-author: Dr. Hiren Ch. Nath, Research Guide, RGU.

## ABSTRACT

*The power to grant a pardon is derived from a constitutional scheme which has been rested by the citizens of a country in the head of the State who appreciates high status and such force lays on the exhortation offered by the official to President. The absence of any gauges or keeps an eye on the activity of the mercy power has not placed the Indian arrangement of justice and equity in an advantageous position. The present changing political atmosphere underscores the requirement for the chief exercise of mercy power. Harsher condemning gauges and open assumption for the death penalty have brought about an expanding number of capital punishment cases finding their way into the forgiveness procedure. The Article 72 gives a constitutional structure and a short outline of the cause and nature of the pardoning power and tries to analyse a few issues deciding the extent of pardoning intensity of the President under the Indian constitution with unique reference to the judicial interpretation of the constitutional power to grant pardon. Further, this paper provides a brief discussion of pardoning powers existing in the United Kingdom, the United States of America, Canada, Russia, and France.*

**Key Words:** Pardon, Commutation, Reprieve, Respite, and Remission.

## Introduction

The pardoning power is an essential component of even the absolute best system of laws in several countries in the world. The power to grant a pardon is the instrument of mercy and the best approach to address those grave treacheries either on their realities or by the unforeseen activity of the criminal laws that basically should be helped. The granting a pardon is a demonstration of dexterity from the executive power that mitigates the discipline requested by the law for the offense and blame of the offender. The absence of any norms or keeps an eye on the activity of the clemency power has not placed the Indian arrangement of equity in an advantageous position the present changing political atmosphere underscores the requirement for the chief exercise of the clemency power, harsher condemning gauges and developing open slant for the death penalty have brought about an expanding number of capital punishment cases finding their way into their clemency procedure. That a person who has committed a crime or has been convicted for an offence is entitled to pardon if he wishes to seek and if the same is granted, it is called an act of clemency, which forgives the wrongdoer and restores the person's civil rights.

## Key Words Explained

It is important at this juncture to understand the meaning of the following key words in connection of pardoning power inclusive in Article 72 of the Indian Constitution. They are defined as under:

**Pardon** – A pardon completely absolves the offender from all sentences and punishment and disqualifications and places him in the same position as if he had never been convicted for the offence.

**Commutation**– It means exchange of one thing for another. To put in simple words, it means to replace the punishment with less severe punishment, for example, for Rigorous imprisonment-simple imprisonment, from death sentence to life imprisonment etc.

Dean / Principal / Head  
Royal School of Law & Administration  
The ASSAM UNIVERSITY  
Betkuchi, NH-37, Guwahati-781035