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Chapter 4

Pardoning Power in India: Interpretations and Limitations

In this Chapter, the researcher mainly focus on the pardoning power of the President of India and the Governor of the states covering different aspects, e.g. the extent of the power, its interpretation given by the judiciary besides making an enquiry about the limitations. The power of pardon, as we know, was historically vested in the British monarch during their rule. A pardon was an act of mercy by which the King absolves someone of any crime, offence, punishment, execution, right, title, debt, or duty under common law. The idea and concept of such power was carried forward to the Indian soil during colonial rule. During the British rule in India, the law of pardon was contained in Section 295 of the Government of India Act, 1935, which was enacted with a view to introduce federalism in India after the Government of India Act, 1919. But it did not limit the power of the Sovereign. There was, however, no provision in the Government of India Act, 1935 corresponding to Article 161 of the Constitution.

The power to grant a pardoning modern India is also 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.

4.1 The Constitutional Approach to Shortening Sentencing

Pardoning power under the Indian constitutional scheme has been occupying a unique place like that of other jurisdictions which aims at shortening sentencing by the head of the state. In a sense, it is a specific sort of reformative measure initiated by the executive heads of the States. It aims at shortening the sentence which in turn may encourage the convicts to get reformed. Because, when the executive pardons, the sentence and judgement of the convict are completely absolved of all penalties, punishments and disqualifications. The authority of pardon arises to avoid unfairness, whether it be from severe, unfair laws o0r from verdicts that lead to injustice; thus it has consistently been recognized that granting the power to pardon to an authority other than the judicial system is necessary.

Sections 54 and 55 of the Indian Penal Code, 1860 also deal with the commutation of punishment. Section 54 allows for the commutation of the death penalty to any other form of punishment; and Section 55 allows for the commutation of a life sentence of 14 years in prison. The ability to to commute a sentence refers to the ability to exchange a sentence or punishment imposed by the judicial system for a lower punishment. In other words, it refers to the ability to decrease or minimize a sentence imposed as a result of a criminal conviction.

The provisions related to shortening sentencing scheme under the Constitution of India are contained in Articles 72 and 161 which deal with the pardoning power of the President and the Governor of the State respectively. The power of pardon provided to the President and the Governor under Articles 72 and 161 can achieve its purpose only when they are exercised with a sense of responsibility. The purpose of Articles 72 and 161 is to provide a human touch to the judicial process.[391] Broadly speaking the object conferring judicial power on the President is to correct possible judicial errors, for, no human system of judicial administration can be free from imperfections.[392]It is an attribute of sovereignty wherever the sovereignty may be to release a convict from a sentence which is mistaken, harsh or disproportionate to the crime.

The constitutional approach towards the short sentencing scheme, hereafter to be called pardoning power, may be discussed under the following heads:

(1) Pardoning Power of the President (Article 72) and the Governor (Article 161).
(2) Comparison between Articles 72 & 161.
(3) Pardoning power subject to judicial review and its limitation, and
(4) Inordinate or unusual delay in Pardoning.

4.2 Pardoning Power of the President of India

Before the Constitution of India came into force; the law of pardon in India was the same as in England since the Sovereign of England was the Sovereign of India. As stated above, the provision corresponding to Article 72 in the Government of India Act, 1935 was Section 295 which read as follows:

1. Where any person has been sentenced to death in a Province, the Governor-General in his discretion shall have all such powers of suspension, remission of 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

[391]J.P. Rai, "*Exercise of Pardoning Power in India: Emerging Challenges*" XII the NEHU Journal 1 (2014).
[392]D. Basu, "*Introduction to the Constitution of India*", Part-II, P. 21 (3rd ed.).

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 powers of any officer of His Majesty's forces to suspend, remit or commute a sentence passed by a court-martial

2 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

There was no provision in the Government of India Act, 1935 corresponding to Article 161 of the Constitution of Independent India. These constitutional provisions were debated in the Constituent Assembly on 29th December, 1948 and 17th September, 1949.[393] The grounds and principles on which these powers should be exercised were not discussed nor debated.[394]

Article 72 of the Constitution of India defines the power of the President to grant pardons etc., and to suspend, remit or commute sentences in certain cases. The Article runs as follows:

1) The President shall have 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.
   a) in all cases where the punishment or sentence is by a Court Martial;
   b) in all cases where the punishment or sentence is for an offence against any law relating to a matter to which the executive power of the union extends;
   c) in all cases where the sentence is a sentence of death.
2) Nothing in sub-clause (a) of clause (1) shall affect the power conferred by law on any officer of the Armed Forces of the Union to suspend, remit or commute a sentence passed by a Court Martial.
3) Nothing in sub-clause (c) of clause (1) shall affect the power to suspend, remit or commute a sentence of death exercisable by the Governor of a State under any law for the time being in force.

[393] Constituent Assembly Debates, Vol. VII, Pages 1118-1120 & Vol. X, page 389.
[394] Framing of India's Constitution: A Study, 2nd ed., Dr. Subhash C. Kashyap, Page D 367-371, Page 397-399.

A *Pardon* completely absolves the offender from all sentences and punishments and disqualifications and places him in the same position as if he had never committed the offence.[395] For this purpose, the term 'Pardon' means an act of mercy, forgiveness, or clemency. The concept of Pardon is an artifact of older times, of an age where an omnipotent monarch possessed the power to punish or remit any punishment.[396] Here, the term "*Commutation"* means substitution of one form of punishment for another of a lighter character, e.g. for rigorous imprisonment – simple imprisonment. *Remission* means reduction of the amount of sentence without changing its character, e.g. a sentence of one year may be remitted to six months. Respite means awarding a lesser punishment on some special grounds, e.g., the pregnancy of a woman offender. *Reprieve* means temporary suspension of death sentence, e.g., pending a proceeding for Pardon or Commutation.[397]In *Epuru Sudhakar v. Govt. of A.P.*,[398] the Court has held that Pardons, reprieves and remissions are manifestation of the exercise of prerogative power and these are not act of grace.

A Pardon cannot be demanded as a matter of right. It not only removes the punishment, but, in contemplation of law, places the offender in the same position as if he had never committed the offence. The effect of a pardon is set out in the following words by Field, J:

"*A Pardon reaches both the punishment prescribed for the offence and the guilt of the offender; and when the pardon is full, it releases the punishment and blots out the existence of the guilt, so that in the eye of law the offender is as innocent as if he had never committed the offence. It granted before conviction, it prevents any of the penalties and disabilities, consequent upon conviction, from attaching; if granted after conviction, it removes the penalties and disabilities, and restores him to all his civil rights; it makes him, as it were, a new man, and gives him a new credit and capacity".*[399]

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[395]Dr. J.N. Pandey, *Constitutional Law of India*, 53rd ed. (2016), p-479.
[396]J.P. Rai, "*Exercise of Pardoning Power in India:Emerging Challenges"* XII the NEHU Journal 1 (2014).
[397]Dr. J.N. Pandey, op.cit., P. 479-480.
[398] AIR 2006 SC 3385.
[399]*Ex parte Garland,* (1873) 18 L.Ed. 366.

The pardoning power may be exercised at any time after the commission of an offence, either before legal proceedings are taken or during their pendency or either before or after conviction.[400]

In India, the granting of pardons is an executive act and not a judicial act, it follows that the exercise of this power would not in any way after the judgment of the court *qua* judgment, and that the exercise of such right would not in any way interfere with the course of justice and that the courts are free to adjudicate upon the guilt or otherwise of the concerned person.[401]

The reason why the Executive is given power to grant pardons and reprieves, etc. is explained by Taft, C.J. in an American case.[402]as follows:

"Executive clemency exists to afford relief from undue harshness or evident mistake in the operation or enforcement of the Criminal Law. The administration of justice by the courts is not necessarily always wise or certainly considerate of circumstances which may properly mitigate guilt. To afford a remedy, it has always been thought essential in popular governments, as well as in monarchies, to vest in some other authority than the courts power to ameliorate or avoid particular criminal judgements. It is a check entrusted to the executive for special cases. To exercise it to the extent of destroying the deterrent effect of judicial punishment would be to pervert it; but whoever is to make it useful must have full discretion to exercise it. Our Constitution confers this discretion on the highest officer in the nation in confidence that he will not abuse it".

Article 72 Corresponds to (i) Article II, S. 2(1) of the Constitution of the United States; (ii) Article 13(6) of the Constitution of Eire, 1937; (iii) Article 17 of the Constitution of the French Republic, 1958. The scope of the power conferred on the President by Article 72 is very extensive. It extends to the whole of India. The power to grant pardon may be exercised either before conviction by Amnesty to the accused or under-trial prisoner or after conviction.[403] This power is practically similar to that in America or Britain. The American President has power to grant reprieves and pardons

[400]In re Channugadu, AIR 1954 Mad. 911, 917.
[401]*Ibid*.
[402]*Ex parte Grossman*, 267 US 87 (1925): 69 L. Ed 527.
[403]In re Channugadu, AIR 1954 Mad. 511.

for offences committed against the United States except in cases of impeachment. In Britain, the Crown enjoys a prerogative to grant a pardon to any criminal; but the prerogative is exercised on ministerial advice. Pardon may in general be granted either before or after conviction, but no pardon is pleadable in bar of an impeachment by the Commons.[404]

In *Balmukund v. King-Emperor*[405] the Judicial Committee said:

The tendering of advice to His Majesty as to the exercise of the prerogative of pardon is a matter of the executive Government, and is outside their lordships' province.

As regards the nature of the power of pardon vested in the president by Article 72, the Apex Court has recently propounded the American, rather than the British view. In Britain, the power is regarded as the royal prerogative of pardon exercised by the Sovereign. It is regarded as an act of grace issuing from the Sovereign. But in the U.S.A., a pardon by the President is regarded not as a private act of grace, but as a part of the constitutional scheme.[406]The Supreme Court of India, in *Kehar Singh v. Union of India*[407].has preferred to adopt the view propounded by HOLMES, J., in the context of India. PATHAK, CJ. Has observed:

"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 occasion arises in accordance with the discretion contemplated by the context."

PATHAK, CJ, also explained the reason for taking this view by saying that to any civilized society, "there can be no attributes more important than the life and personal liberty of its members." In most civilized societies, 'the deprivation of personal liberty and the threat of the deprivation of life by the action of the State' is regarded seriously and therefore, recourse is provided to the judicial organ for its protection. But there is always remaining the possibility of fallibility of human

[404]*Halsbury's Laws of England* (Hailsham, 2nd ed.) P. 477.
[405]AIR 1915 PC 29: 42 IA 133.
[406]*Mr. Justice Holmes, in WI Biddle v. Vuco Perovich,*71 L.Ed. 1161.
[407]AIR 1989 SC 653: (1989) 1 SCC 204.

judgement even in 'the most trained mind', and it has been considered appropriate that in the matter of life and personal liberty, "the protection should be extended by entrusting power further to some high authority to scrutinize the validity of the threatened denial of life or the threatened or continued denial of personal liberty. The power so entrusted is a power belonging to the people and reposed in the highest dignitary of the State."

4.3 Pardoning Power of the Governor

In the Draft Constitution of India, 1948, Article 141 contained the provision of Governor's Pardon power. It stated that "The Governor of a State shall have 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 against any law relating to a matter with respect to which the Legislature of the State has power to make laws". The Draft Article 141 was debated on 1st June, 1949 and 17th October, 1949 concerning Governor's pardoning power. The Draft Article was initially adopted without debate on 1st June, 1949. Subsequently, in the light of debates around other Articles, a member of the drafting Committee Proposed the following amendment: "That in article 141, for the words 'with respect to which the Legislature of the State has power to make laws' the words 'to which the executive power of the State extends' be substituted". The Constituent Assembly accepted the amendment without debate. The amended Draft Article was adopted on 17th October, 1949.

The pardoning power of the Governor of the State is now contained in Article 161 of the Constitution of India. The Article runs as follows:

"The Governor of a State shall have 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 against any low relating to a matter to which the executive power of the State extends". This power of the Governor is very much similar to the power of the President under Article 72. This Article comprehends within its ambit the power of the State Government to remit or commute the sentence of only such convicts who happen to be sentenced within its territory.[408] *The executive*

[408] *Jhanda Singh V. State, AIR 1976, Punj. 358 (DB) (para 9).*

power of the State extends to matters with respect to which the Legislature of the State has power to make lows.[409]

4.4 Distinction between Articles 72 and 161

But there is a difference between the pardoning power of the President under Article 72 and the pardoning power of the Governor of a State under Article 161. Under Article 72, the President's power is wider than that of the Governors of States. The President has exclusive power to grant pardon in cases where the sentence is a death sentence while the Governor cannot grant pardon in case of a death sentence. The President can also pardon punishments of sentences inflicted by Court Martial. But the Governors have no such power. However, in respect of suspension, remission and commutation of sentence of death, both the President and the Governor have concurrent power.

Thus, Articles 72 can be reconciled with Article 161 by limiting the power of the Governor to grant pardons to cases not covered by Article 72. It so read, the President alone has the exclusive power to grant pardons, reprieves, and respites in all cases where the sentence is a sentence of death and both the President and the Governor have concurrent powers in respect of suspension, remission and commutation of a sentence of death. In other matters i.e. in respect of offences against any law relating to a matter to which the executive power of the State extends, the Governor has all the powers enumerated in Article 161 of the Constitution, including the power to grant pardons, reprieves and respites. In short, the power of the Governor to grant pardons, reprieves and respites in all cases where the sentence is not a sentence of death, and to suspend, remit or commute the sentence of any person, is co-extensive with the executive power of the State. It, therefore, follows that the Governor has the power to grant a pardon or remit the sentence of a person who is transported for life.[410]

It is open to the Governor to grant a full pardon at any time even during the pendency of a case in the Supreme Court.[411] It is evident from Article 161 that the

[409]Article 162.
[410]*Monepragada Ramchandra Rao v. Revenue Divisional Officer*, 1956 Andh WR 1074.
[411]*Nanavati v. State of Bombay*, AIR 1961 SC 112 (Para 21).

grant of pardon is not the same thing as the remission of sentence in whole or in part.[412]

The powers conferred under Articles 72 and 161 to grant pardons, suspend, remit or commute sentences, etc., of any convict are not judicial in nature and they are to be exercised by the President or the Governor in exercise of executive functions and that also not in accordance with rules of natural justice. There is no obligation to hear the parties concerned before rejecting or granting a mercy petition.[413] It has been held that during the period an appeal is pending and the matter is *subjudice* in the Supreme Court, the Governor has no right to suspend the sentence under Article 161.[414]

4.5 Clemency Power not unbridled

The power of the Sovereign to grant remission is within its executive domain and this responsibility has been cast upon executive through the constitutional mandate to ensure fulfillment of some public purpose by grant of remission in appropriate cases. This power under Articles 72 and 161 of the Constitution is never intended to be used or utilized by the executive as an unbridled power of reprieve. Power of clemency is to be exercised cautiously and in appropriate cases, which in effect, mitigates the sentence of punishment awarded and which does not in any way, wipe out the conviction. It is a power which the Sovereign exercises against its own judicial mandate. The act of remission of the State does not undo what has been done judicially. The punishment awarded through a judgement is not over-ruled, but the convicts get the benefit of a liberalized policy of State pardon.[415]

4.6 Article 72 and 74: Power to Pardon

Article 74 of the Constitution of India says that there shall be a council of ministers with the Prime Minister at the head to aid and advise the President who 'shall', in the exercise of his functions, act in accordance with such advice. The power to pardon is a part of the constitutional scheme. It is reposed by the people through the Constitution in the Head of the State. It rests on the advice tendered by the Executive

[412] *Deputy I.G.v.Rajaram,* AIR 1960 AP 259 (Para 15): 1960 Cr. LJ 565 (SB).
[413] *Tara Singh v. Director,* AIR 1958 Punj 302.
[414] *K.M.Nanavati v. State of Bombay* AIR 1961 SC 112: (1961) 1 SCR 487.
[415] *State of Haryana v. Jagdish,* AIR 2010 SC 1690 quoted from Dr. J.N. Pandey, *Constitutional Law of India*, 53rd Ed. (2016), P. 480.

to the President who, subject to the provisions of Article 74 (1) must act in accordance with such advice. It is open to the President in the exercise of the power vested in him by Article 72 to scrutinize the evidence on the record of the criminal case and come to a different conclusion from that recorded by the court in regard to the guilt of and sentence imposed on the accused. In doing so, the President does not amend or modify or supersede the judicial record. The President is entitled to go into the merits of the case notwithstanding it has been judicially concluded by the consideration given to it by the Supreme Court. The order of the President cannot be subjected to judicial review on its merits except within the strict limitations as defined in *Maru Ram v. Union of India*[416] In this case, it has been held that in exercising the pardoning power, the object and spirit of Section 433-A of Cr. P.C. must be kept in view. The power to pardon is exercised by the President on the advice of the Councils of the Ministers. Article 74 (2) however, barred courts from inquiring into the advice given by Council of Ministers to the President.

4.7 Jurisdiction of Supreme Court

An application for clemency by way of commutation has been made by the prisoner and it has been forwarded and is under consideration of the President of India. The Supreme Court has no jurisdiction to deal with the petition which is in sasin of the President and has no power to pass any order *interim* or otherwise. The prisoner has, however, the right to move the President for any *interim* orders.[417] Undoubtedly, the President has the power in an appropriate case to commute any sentence imposed by a court into a lesser sentence and as said by the Chief Justice Taft,[418] that the "executive clemency exists to afford relief from undue harshness or evident mistake in the operation or enforcement of the criminal law" and that the administration of justice by the courts is not necessarily or certainly considerate of circumstances which may properly mitigate guilt.[419]

[416](1981) 1 SCC 107.
[417]*Mohinder Singh v. State ofPunjab*, AIR 1976 SC 2299 (Paras 3, 4) : 1976 Cr. L.J. 1755.
[418]James Shewan & Sons v. United States (1924) 64 US Law Ed. 527 at P. 539.
[419]*Kuljit Singh v. Lt. Governor of Delhi*, AIR 1982 SC 774 (Para 1).

In *K.M. Nanavati v. State of Bombay,*[420] the Supreme Court has held that the Governor's power to suspend sentence under Article 161 is subject to the rules made by the Supreme Court under Article 145 for disposal of pending appeals before it. Once the appeal is filed in the Court, the Governor cannot exercise his power of suspension of sentence under Art. 161, and if he does so, his order would be invalid being in conflict with the Supreme Court rules under Art. 143.

It has now been clarified that though the power to pardon is formally vested in the President, he exercises this power, as he exercises any other power, as per Article 74 (1), on the advice of the concern Minister, i.e. the Home Minister. The Supreme Court clarified in *Maru Ram v. Union of India*[421] that it is not open to the President to take an independent decision or to direct release or refuse release of any one of his own choice. "It is fundamental to Westminster system that the cabinet rules and the Queen reigns being too deeply rooted as foundational to our system….". "The President is an abbreviation for the Central Government"[422]

In Sher Singh v. State of Punjab[423] while disposing of a writ petition for the commutation of death sentence into life imprisonment on the ground of inordinate delay, the Court took an opportunity to impress upon the Central and State Governments that the mercy petitions filed under Art. 72 and 161 of the Constitution or under sections 432 and 433 of the Cr. P.C. must be disposed of expeditiously. Chandrachud, C.J. said, "*A self-imposed rule should be followed by the executive authorities vigorously, that every such petition shall be disposed of within a period of three months from the date when it is received. Long delays in the disposal of these petitions are a serious hurdle in the disposition of justice and indeed, such delay tends to shake the confidence of the people in very system of justice".*

In *Devinder Pal Singh v. State NCT of Delhi*,[424] the mercy petition could have been disposed of in 2005, but that was disposed of in 2011. The Court held it cannot exercise the power of review merely on the ground of delay in disposing of the mercy petition. The Court's power of judicial review in such matter is very much limited. The

[420]AIR 1961 SC 112.
[421]AIR 1980 SC 2147 : (1981) 1 SCC 107.
[422]Proof. M.P. Jain, *Indian Constitution Law*, (5th ed.) 2005, P. 167.
[423]AIR 1983 SC 361.
[424]AIR 2013 SC 1975.

Court can neither sit in appeal nor exercise the power of review, but can interfere when the decision is found to be without application of mind to the relevant factors or the same is founded on the extraneous or irrelevant considerations or is vitiated due to *mala fides* or patent arbitrariness.[425]

In *Kehar Singh v. Union of India*,[426] the Supreme Court has denied that there is any right in the condemned person to insist on oral hearing before the President on his petition invoking his powers under Art. 72. The matter lies within the discretion of the President and it is for him to decide how he will deal with the case. The proceeding before the President is of an executive character, and when the petitioner files his petition it is for him to submit with it all the requisite information necessary for the disposal of the petition.[427]

In this case, a five judge Bench of the Supreme Court has examined in detail the scope of the President's pardoning power under Article 72. The petitioner, Kehar Singh was convicted of an offence of murder for assassinating the Prime Minister, Smt. Indira Gandhi and sentenced to death which was confirmed by the High Court and his appeal to the Supreme Court was also dismissed. Thereafter, he presented a petition to the President for the grant of pardon. He prayed that his representatives may be allowed to see the President personally in order to explain his case. The President rejected his petition on the advice of the Union Government without going into the merits of the decision of the Supreme Court confirming the death sentence. The Court held that while exercising his pardoning power it was open to the President to scrutinize the evidence on the record and come to a different conclusion both on the guilt of Kehar Singh and the sentence imposed upon him. In doing so, the President does not amend or modify or supersede the judicial record. The manner of consideration of the petition lies entirely within the discretion of the President. Kehar Singh had no right to be heard by the President. The Court need not spell out specific guidelines for the exercise of power under Article 72. This is so because the power under Article 72 is of the "widest amplitude" and can contemplate a myriad kinds or categories of cases with facts and situations varying from case to case. The President

[425]Dr. J.N. Pandey *Constitutional Law,* 53rd ed. (2016), P. 481.
[426]AIR 1989 SC 653 : (1989) 1 SCC 204.
[427]Prof. M.P. Jain, *Indian Constitutional Law*, 5th ed. (2005), P. 167.

cannot be asked to give reasons for this order. The power of pardon is part of the Constitutional scheme. The order of the President cannot be subjected to judicial review on its merits.

The Supreme Court has also considered the question whether there should be some guidelines for the exercise of power to pardon by the President. In *Maru Ram v. Union of India*.[428] the Court expressed a view in favour of laying down some guidelines for the purpose of exercising power under Article 72 in order to avoid any allegation of arbitrary exercise of power. The Court observed:

"The proper thing to do, if the Government is to keep faith with the founding fathers, is to make rules for its own guidance in the exercise of the pardon power keeping of course, a large residuary power to meet special situations or sudden developments. This will exclude the vice of discrimination such as may exercise where two persons have been convicted and sentenced in the same case for the same degree of guilt, but one is released and the other refused, for such irrelevant reasons as religion, caste, colour or political loyalty."

The matter again cropped up before the Supreme Court in *Kuljeet Singh v. Lt. Governor*.[429] The petitioners, Ranga and Billa, were found guilty of murdering two innocent children and awarded death sentence by the Session Court which was confirmed by the High Court. Their special leave petition under Article 136 against the judgement of the High Court was dismissed by the Supreme Court. Thereafter they presented a mercy petition under Article 72 to the President for the grant of pardon which was rejected by the President without assigning any reasons. In the writ petition, it was argued before the Supreme Court that under Art. 72, President's power is coupled with a duty and that it must be exercised fairly and reasonably. It is said that the Court did not know whether the Government of India has formulated any uniform standard or guidelines by which the exercise of the Constitutional power under Article 72 is intended to be or was in fact governed. The Court opined that in refusing to commute the death sentence to a lesser sentence, the President did not in any manner transgress his discretionary power under Art. 72. The question, therefore, of standards and guidelines for the exercise of the power under Art. 72 remained an open one.

[428]AIR 1980 SC 2147: (1981) 1 SCC 107.
[429]AIR 1982 SC 774.

However, in *Kehar Singh v. Union of India*,[430] the Supreme Court has given a very broad ambit to this power and has also changed its stands on the question of laying down any guidelines. The Court has said that "there is sufficient indication in the terms of Art. 72 and in the history of the power enshrined in that provision as well as existing case-law, and specific guidelines need not be spelled out. *"In fact, the Court has now realized that it may not be possible to lay down any "precise, clearly defined and sufficiently channelized guidelines" as Article 72 has very wide amplitude and contemplates "a myriad kinds and categories of cases with facts and situations varying from case to case, in which the merits and reasons of state may be profoundly assisted by prevailing occasion and passing time."*

4.8 Pardoning Power subject to Judicial Review

A significant question which cropped up several times before the Supreme Court has been whether there can be any judicial review of the exercise of the power of pardon by the President. The Apex Court first took up this question for consideration in *G. Krishna Goud v. State of Andhra Pradesh*[431] in which two persons were sentenced to death for committing murder in implementing their ideology of social justice through terrorist technology. The President refused to commute the death sentence. They moved a writ petition in the High Court challenging the Presidential order and the matter came ultimately before the Supreme Court. It was argued on their behalf that their crime was of political nature which merited different considerations. Rejecting the petition, the Supreme Court described the nature of the power as follows:

"Article 72 designedly and benignantly vests in the highest executive the humane and vast jurisdiction to remit, reprieve, respite, commute and pardon criminals – on whom judicial sentences may have been imposed. Historically, it is a sovereign power; politically, it is a residuary power; humanistically, it is in aid of intangible justice where imponderable factors operate for the well-being of the community, beyond the blinkered court process."

The court also observed that *"all power, however, majestic the dignitary wielding it, shall be exercised in good faith, with intelligent and informed care and*

[430]AIR 1989 SC 653: (1989) 1 SCC 204.
[431](1976) 2 SCR 73.

honestly for the public weal." In the instant case, the Court had not been shown any demonstrable reason or glaring ground to consider the refusal of commutation' as 'motivated by malignity or degraded by abuse of power.'

In *Maru Ram v. Union of India*,[432] the Supreme Court insisted that although the power of pardon is very wide, 'it cannot run riot'. The Court emphasized that no conditional power is to be exercised arbitrarily. Public power vested on a high pedestal has to be exercised justly. *"All public power, including constitutional power shall never be exercisable arbitrarily or mala fide and, ordinarily, guidelines for fair and equal execution are guarantors of the valid play of power"*. The Court observed:

"Article 14 is an expression of the egalitarian spirit of the Constitution and is a clear pointer that arbitrariness is anathema under our system. It necessarily follows that the power to pardon, grant remission and commutation, being of the greatest moment for the liberty of the citizen, cannot be a law unto itself, but must be informed by the finer canons of Constitutionalism."

Thus, it in any case, the power to pardon, commute or remit is exercised on irrational irrelevant, discriminatory or mala *fide* considerations; the court could examine the case and intervene if necessary. There may be grounds, such as, political vendetta or party favouritism which may make the actual exercise of the constitutional power vulnerable. "*The order which is the product of extraneous or mala fide factors will vitiate the exercise' and likewise 'capricious criteria will avoid the exercise'. Thus, the power under Article 72 is not to be exercised on "wholly irrelevant, irrational, discriminatory or mala fide considerations. Only in these rare cases will the Court examine the exercise."*[433]

In *Kehar Singh v. Union of India*,[434] the Supreme Court has accepted the proposition laid down in *Maru Ram* as regards the exercise of pardoning power by the President. The Court has expressed the view that the order of the President cannot be subjected to judicial review on its merits except within the strict limitations defined by the Court in *Maru Ram.* The contradiction between *Maru Ram* and *Kehar Singh* was

[432]AIR 1980 SC 2147: (1981) 1 SCC 107.
[433]Prof. M.P. Jain, *Indian Constitutional Law*, 5th ed. (2005), P. 169.
[434]AIR 1989 SC653 : (1989) 1 SCC 204.

resolved by the Supreme Court in *Ashok Kumar v. Union of India*[435] by saying that what was said in *Maru Ram* was "a mere recommendation and not a *ratio decidendi* having a binding effect." Thus, the President's power is not absolute and completely beyond judicial purview. The Court will interfere only if the power is exercised *mala fide* or in an arbitrary or discriminatory manner.

In *Epuru Sudhakar v. Government of Andhra Pradesh*,[436] the accused was awarded death sentence by the trial court for committing murder of one of his political opponents. The High Court of Andhra Pradesh confirmed the death sentence. The Governor of the State granted him pardon. The Supreme Court quashed the grant of pardon by the Governor as illegal. The Supreme Court has held that the pardoning power of the President under Article 72 and the Governors under Article 161 is subject to judicial review. Pardoning power cannot be exercised on the basis of caste or political reasons. It the pardoning power has been exercised on the ground of political reasons, caste and religious considerations, it would amount to violation of the Constitution and the Court will examine its validity. The Court further held that the orders under Articles 72 and 161 could be challenged on the following grounds:

(1) That the order has been passed without application of mind;

(2) That the order is mala fide;

(3) That the order has been passed on extraneous or wholly irrelevant considerations,

(4) That the relevant materials have been kept out of consideration; and

(5) That the order suffers from arbitrariness.

In *Jumman Khan v. State of U.P.*[437] the petitioner was convicted of committing rape on a 6 years old girl and strangulating her to death and was awarded sentence of death by the Sessions Judge, Agra which was confirmed by the High Court. His special leaves petition to the Supreme Court was also rejected. His petition for pardon was rejected by the Governor in February, 1988. The mercy petition addressed to the President was received by the Ministry of Home Affairs and the same was rejected on October, 1988. It was argued that the mercy petition rejected by the President requires

[435]AIR 1991 SC 1792, 1803-1804 : (1991) 3 SCC 498.
[436]AIR 2006SC 3385.
[437](1991) 1 SCC 752.

reconsideration. It was held that after examining the same carefully, the Court found no ground for interference.

In *Satpal v. State of Haryana*,[438] a BJP leader sentenced to life imprisonment in a murder case was pardoned by the Governor of Haryana. The Supreme Court ruled that the Governor was not properly advised and had exercised his power "*without applying his mind",* and accordingly quashed the clemency order. The Court observed:

"…… the conclusion is irresistible that the Governor had not applied his mind to the material on record and has mechanically passed the order just to allow the prisoner to overcome his conviction and sentence passed by the Court."

Rejecting the plea of the Government that the power of pardon and remission of sentence is executive in nature, the Court stated:

"There cannot be any dispute with the proposition of law that the power of granting pardon under Art. 161 is very wide and does not contain any limitation as to the time on which and the occasion on which and the circumstances in which the said power could be exercised. But the said power being constitutional power conferred on the Governor by the Constitution is amenable to judicial review on certain limited grounds."

The Law Commission of India has also justified the existence of the prerogative of mercy in the executive.[439] The Commission has observed the following:

"There are many matters which may not have been considered by the courts. The hands of the court are tied down by the evidence placed before it. A sentence of death passed by a court after consideration of all the materials placed before it may yet require reconsideration because of: (i) facts not placed before the court; (ii) facts placed before the court but not in the proper manner; (iii) facts discovered after the passing of the sentence; (iv) events which have developed after the passing of the sentence; and (v) other special features. Nor can one codify and select these special features which would be too numerous to lend themselves to codification. For these reasons, we do not recommend any change in the scope of these powers."

[438]AIR 2000 SC 1702 : (2000) 5SCC170.
[439]*Report on Capital Punishment*, 317-18 (1967).

However, the Supreme Court pointed out the following grounds on which the Court could interfere with on order passed under Art. 161 viz. if the Governor exercises the power himself without being advised by the Government, if the Governor transgresses the jurisdiction in exercise of the power under Art. 161; if the Governor has passed the order without application of mind; if the order is *mala fide*; if the Governor has passed the order on some extraneous consideration. Whatever applies to the President under Article 72 equally apply to the power of the Governor under Art. 161. The power under Article 72 or 161 is to be exercised by the Government concerned and not by the President or the Governor on his own. The advice of the appropriate Government binds the President/Governor.[440]

In *Satpal*, the Supreme Court further observed:

"The entire file has been produced before us and we notice the uncanny haste with which the file has been processed and the unusual interest and zeal shown by the authorities in the matter of exercise of power to grant pardon."

In this case, the Supreme Court also ruled that the Governor was not properly advised. He was not made aware of several crucial features of the case going against the accused. In *Narain Dutt v. State of Punjab*,[441]in the order of the Governor of Punjab granting pardon in a case of murder along with other offences – (1) the Governor's order did not contain any reference to the order of conviction and sentence imposed on the accused persons, (2) The Governor's order also did not contain any reference to the appeals pending against the order of conviction and sentence before he could pass the order, (3) There were some observations in the order of the Governor about the guilt or innocence of the accused persons. In connection to all the above points, the Supreme Court held that –

(1) There is limited scope of judicial review on the exercise of power by the Governor under Article 161. It is axiomatic that before the power of the Governor under Article 161 of the Constitution is invoked by any person, the condition precedent is that such person or persons must be convicted of any offence against any law and will be subjected to

[440]Prof. M.P. Jain, *Indian Constitutional Law*, 5th ed. (2005), p. 362.
[441]AIR 2011 SC 1216.

undergo a sentence. The order of the Governor was therefore of no consequence;

(2) Probably all relevant facts were possibly not placed before the Governor;

(3) It is well settled that to decide on innocence or otherwise of the accused person is within the exclusive domain of the Court of law which is essentially a judicial function. A Governor's power of granting pardon is an exercise of executive function and independent of the power of the Court to pronounce on innocence or guilt of the accused. The powers of a court of law in a criminal trial and subsequent right to appeal upto the Supreme Court and that of the President/Governor operate in totally different arenas and the nature of these two powers are totally different from each other. The Governor has exceeded the permissible constitutional limits in exercise of powers.[442]

However, in *State of Punjab v. Joginder Singh*,[443]the Supreme Court has ruled that the power under Article 72 *"is absolute and cannot be fettered by any statutory provision such as Sections 432, 433 and 433-A of the Criminal Procedure Code. This power cannot be altered, modified or interfered with in any manner whatsoever by any statutory provisions or Prison Rules."*

4.9 Process of Granting Pardon in India

The process starts with filing a mercy petition with the President under Article 72 of the Constitution, such a petition is then sent to the Ministry of Home Affairs in the Central Government for consideration. The above-mentioned petition is discussed by the Home Ministry in consultation with the concerned State Government. After the consultation, recommendations are made by the Home Minister and then, the petition is sent back to the President.

The object of pardoning power is to correct possible judicial errors because no human system of judicial administration can be free from imperfections.

[442]Dr. J.N. Pandey, *Constitutional Law of India*, 53rd ed. (2016), p. 563.
[443]AIR 1990 SC 1396, 1400: (1990) 2 SCC 661.

(1) Pardon may substantially help in saving an innocent person from being punished due to miscarriage of justice or in cases of doubtful conviction.

(2) It is always preferable to grant liberty to a guilty offender rather than sentencing an innocent person.

It is to be stated here that the literal interpretation of Article 72 of the Constitution does not impose any obligation on the President to consult and take into consideration the opinion of the Council of Ministers. However, as stated earlier, under Article 74 of the constitution, the President is under obligation to act as per advices rendered by the Council of Ministers, and therefore, while exercising pardoning power, the President is to follow the advices of the Council of Ministers recommended through the Ministry of Home Affairs. The judicial interpretation of the constitutional articles in the case of *Shamsher Singh & Anr V. State of Punjab*[444] also requires "that President should not exercise power to pardon as to his personal satisfaction, but should exercise to the satisfaction of the Council of Ministers on whose aid the President Acts".

4.10 Effects of Pardon Granted

What is the effect of the exercise of the power of pardon by the President on the judicial record of the sentence of the convicted person? Is this effect the same in cases where the sentence is merely remitted or commuted? This question is of far-reaching consequence, particularly in Election disputes, where questions of disqualification from contesting elections on the grounds of earlier convictions have arisen time and again before the Courts.

In *Sarat Chandra Rabha v Khagendra Nath*[445]this question came up before the Supreme Court. The Court to answer the question came up before the Supreme Court. The Court in order to answer the question raised before it regarding the effect of remission of the sentence examined several authorities on the subject and concluded that remission of a sentence did not in any interfere with the order of the Court, it affected only the execution of the sentence passed by the Court and freed the convicted person from his liability to undergo the full term of imprisonment inflicted by the

[444] (1974) 2 SCC 831.
[445] *1961 SCR (2) 133.*

Court, though the order of conviction and sentence passed by the Court still stood as it was. A distinction was drawn between the reduction of a sentence done by an appellate or revisional court and an order of remission by an executive authority. The latter was held to be an executive power that could not interfere with or alter the judicial sentence, and the appellant was therefore held to be rightly disqualified under Section 7(b) of the Representation of the People Act.[446]

The legal effect of a pardon is wholly different from a judicial supersession of the original sentence. This ostensible incongruity is explained by Sutherland J. in *United States v Benz*[447] in these words:

"The judicial power and the executive power over sentences are readily distinguishable. To render judgement is a judicial function. To carry the judgement into effect is an executive function. To cut short a sentence by an act of clemency is an exercise of executive power which abridges the enforcement of the judgement, but does not alter it qua a judgement"[448]

4.11 Repercussions of the Power

Maintaining as a primary concern the different points of interest of this specific provision, it must be said that specific exemptions may warrant a component of review of the activity of intensity which is given as follows:

(a) As to violation of Fundamental Rights: The fundamental rights provided for the citizens of this country given in the Indian Constitution follows that in instances where there is a failure to do this, the aggrieved individual should have some remedy, whereby a violation of his fundamental rights is recognised. The situations where the fundamental rights of an individual may be violated in the course of the President or Governor exercising the power to pardon may be classified into two categories which are as follows:

(1) First, the discretion of the President or Governor may be exercised arbitrarily at the time of decision-making, whether in terms of the procedure employed or the substantive reasons given for accepting or rejecting the mercy petition.

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[446] *J.P.Rai, 2014, "Exercise of Pardoning Power in India: Emerging Challenges", July-Dec., The NEHU Journal, Vol XII, No 2..*

[447] 282 U.S. 304 (1931).

[448] Sutherland J. in *United States v Benz,* 282 U.S. 304 (1931).

(2) Second, in the event that the pardon granted is conditional – that is, the person seeking a pardon must fulfil certain conditions before the pardon becomes effective– and the condition imposed by the President or Governor is a violation of fundamental rights.

(b) As to Self-pardon: In the absence of any well-defined guidelines for the exercise of the pardoning power, the possibility of the President/Governor granting pardon to himself/herself cannot be precluded. Without a doubt, such a circumstance would be uncommon, any individual deserving of holding a situation as significant as the situation of a President ought to be vested with the ability to pardon. Although it is expected that the position of the President and those of Governors of States, being such privileged positions, would be occupied by individuals who do not possess a criminal record, two important facts that require to be noted: first, the Constitution of India does not prescribe a bar on convicted or under-trial individuals contesting the position of President or Governor; and second, neither Article 72 nor Article 161 prescribe a bar on the power of pardon being exercised concerning the person exercising the power. Even though not expected in the conventional course, the chance of such a circumstance emerging can't be prohibited totally, and on such occasions, it would be vital for the legitimacy of the choice of the President or Governor to be reviewed.

4.12 Can Foreigners apply for Presidential Pardon?

This is one important question often raised. For this, we should highlight on the procedure. The procedure for making mercy petitions has been laid down in sub-paragraph VIII of Paragraph A of the "Procedure regarding petitions for mercy in death sentence cases". Petitions for mercy submitted on behalf of a convict under sentence of death shall be dealt with *mutatis mutandis* in the manner provided by these instructions for dealing with a petition from the convict himself.

The petitioner on behalf of a condemned convict shall be informed of the order passed in the case.[449] If the petition is signed by more than one person, it shall be sufficient to inform the first signatory. The convict himself shall also be informed of the submission of any petition on his behalf and of the orders passed thereon."

[449] [Subhash C. Jain, "The Constitution of India – Select Issues & Perceptions", Taxmann Publications Ltd., New Delhi, 2000, at 59].

It seems after going through the aforesaid Paragraph that there is no bar to the foreign nationals making petition for mercy to the President on India on behalf of any of the convicts. Looking to the very nature of the power to grant pardon or clemency, applications or petitions for mercy by foreign nationals will have to be considered on the same footing as those submitted by the Indian citizens. In the light of the above, it can be inferred that there is nothing to bar a foreigner from applying for mercy.

4.13 Exercise of Pardon Powers by Indian Presidents

Various Presidents at different times have used the power conferred by the constitution differently. A total of 4802 mercy petitions were disposed of by the President of India since independence.[450]About one-third of all mercy petitions in Independent India have been commuted to life imprisonment, with a report stating that 3,534 of 5,106 petitions were rejected while 1,572 were considered. Out of the 77 mercy pleas decided by Presidents between 1991 and 2010, 69 were rejected.[451]A cursory glance at the data relating to the exercise of pardon powers by the Presidents of India reveals the inconsistency in the decisions involving mercy petitions.

India's first President, Rajendra Prasad, (1950-1962) had set a healthy convention with regard to the exercise of his powers under Article 72 of the Constitution, dealing with pardon and commutation of sentences, before demitting office in May 1962 as President for the second consecutive term. Conscious of his limited powers, he asserted his moral authority over the executive, persuading it to reconsider its initial advice to reject mercy petitions in several cases. President Prasad was able to put his legal expertise to sound use in cases where the government recommended rejection, but he had concerns about the culpability and role of the petitioner and recommended reconsideration of such petitions. The best example was Parmatma Saran's case. Saran was an educated young employee of the Indian Railways. Infatuated with another woman, Saran took the extreme step of killing his wife in order to become eligible for a second marriage. The trial court sentenced him to death, and the High Court and the Supreme Court confirmed it. When the file of

[450]https://factly.in/different-presidents-different-decisions-the-tale-of-mercy-petitions-in-india/ last accessed on March 12th, 2022 at 12:12 hours.
[451]http://epaperbeta.timesofindia.com/Article.aspx?eid=31808&articlexml=Since-47-30-of-all-mercy-petitionscommuted-10102015021020 last accessed on March 12th, 2022 at 12:45 hours.

Parmatma Saran reached President Prasad from the office of the then Home Minister, Lal Bahadur Shastri, it appeared to be an open-and-shut case. Minister of State for Home, B.N. Datar recommended rejection of Saran's petition on January 2, 1962. Both Shastri and Datar were convinced that the courts had correctly sentenced Saran to death in view of the barbaric offence committed by him. President Prasad too concurred with the view and rejected his mercy petition on January 10, 1962. Thereafter, the execution of Saran was scheduled to take place at the Meerut Central Jail on January 24, 1962.

On January 18, 1962, Shastri's office received a fresh mercy petition from Saran's father-in-law, Pt. Sheel Chand Sharma, praying for the life of Saran especially in the interests of the only son born to Saran and his daughter. Saran's father-in-law, Sharma pointed out that his grandson's future, in the absence of his father, would be quite dark and his schooling and upbringing would virtually be neglected. He believed that Saran, if alive, though in jail, could be expected to make some arrangements to that extent. The Home Minister again received another representation from the 87-year old grandmother of Saran, Ganeshi Devi, who brought to Shastri's attention the fact that her son (Saran's father) had virtually become insane after he learnt the rejection of Saran's mercy petition. These two petitions forced the government to stop Saran's execution and consider the mercy pleas afresh. The Minister of State for Home, B. N. Datar noted in the file: If he (Saran) were to be executed, further and perhaps irreparable tragedies are likely to happen in this family for no fault of its members. The child is only four and a half years old. We might leave him (Saran) to pass his long life behind the prison bars and return to freedom in the fullness of time a really repentant and changed man. Datar further observed: The circumstances that weighed with me most in this respect was the highly humanitarian appeal made by the murdered woman's father himself in the interest of his grandson, the only son of the prisoner and his murdered wife. It is not unlikely that the boy would thereby remain uncared for and perhaps go astray or might meet with an early end, in as much as he is at present only four and a half years old. President Rajendra Prasad, based on this fresh advice from the Home Ministry, commuted Saran's death sentence to life imprisonment on March 30, 1962.[452] The first six Presidents of Independent India received 263 mercy petitions

[452] frontline.thehindu.com retrieved on 23/05/2023 at 1.00pm.

from those who were on death row, of which only one was rejected and the rest commuted to life imprisonment. The only rejection of a mercy petition was by Dr. Rajendra Prasad during the tenure of the first six Presidents from 1950 to 1982. Dr. Prasad commuted the death sentence in 180 of the 181 mercy petitions that he received.[453] Dr. S.Radhakrishnan, (1962-1967) Zakir Hussain (1967-1969) and V.V. Giri (1969-1974) received 57, 22 and 3 mercy petitions respectively and all were commuted to life imprisonment. The fifth and sixth Presidents, Fakhruddin Ali Ahmed (1974-1977) and Neelam Sanjiva Reddy (1977-1982) didn't to deal with any mercy petition during their tenure, i. e. 1974- 1982.

The 7th President, zail singh (1982 – 1987) rejected 30 mercy petitions, allowing just two. The 9th President, Shankar Dayal Sharma (1992 – 1997) had rejected 14 petitions during his five-year tenure. He rejected 70% of the petitions while allowing commutation of the death sentence in the remaining 30%.

Dr. APJ Abdul Kalam (2002- 2007), the 11th President of India, at the end of his five-year term, left behind over two dozen mercy pleas, having decided only two. K R Narayanan failed to decide a single mercy petition during his 1997-2002 terms. R Venkataraman (1987-1992), the 8th President of India rejected 44 mercy pleas, the most by any President.

President Pranab Mukherjee decided on the mercy petitions by 49 convicts, rejecting 42 of them and commuting the death sentence to life imprisonment in the remaining 7. He rejected more than 85% of the mercy petitions disposed by him.

During her 2007-2012 term, Patil, the country's first woman President (12th President on Independent India), accepted the mercy pleas of 30 death row convicts pardoning, among others, Piara Singh, Sarabjit Singh, Gurdev Singh, and Satnam Singh, who killed 17 members of a family at a wedding; Govindasamy, who murdered five relatives in their sleep; and Dharmender Singh and Narendra Yadav, who killed an entire family of five, including a 15year-old girl, whom Yadav had tried to rape, and her 10-year-old brother, whom they burnt alive.[454]

[453] m.timesofindia.com; retrieved on 23/05/2023 at 1.20 pm.

[454]Maneesh Chibbar, 2015, "How the President decides matters of life and death", July, The Indian Express.

Among others pardoned by the President, Patil include Bandu Baburao Tidke from Karnataka, Buntu from Uttar Pradesh and Lalchand alias Laliya Dhoom and Shiv Lal from Rajasthan. Tidke, a swami of Sadashiva Appana Math, Bagalkot, abducted a 16-year old schoolgirl, raped and murdured her. UP's Bantu, on death row since July 2008, was convicted of raping and killing a five-year old girl. Gopi and Mohan (Tamil Nadu) and Molai Ram and Santosh (Madhya Pradesh) had raped and murdered little girls. In fact, almost all the convicts pardoned are guilty of the most blood-curdling crimes.

As stated above, President Pratibha Devi Singh Patil has granted a record 30 pardons in 28 months, 22 of these relate to brutal multiple murders. No president in India's history has used the power to pardon death-row inmates as extensively as President Pratibha Patil. Out of the total pardon given, 23 were during the tenure of Patil, which is 90% of the India's total death sentences pardoned ever, and commuted to life imprisonment. However, another report[455] says that outgoing President Pratibha Patil has approved mercy petitions of as many as 35 convicts, commuting their death sentences to life imprisonment. It has been observed that the President acted on behalf of the government and not out of her own will.

The last pardon given by the President Patil was Sushil Murmu. He was found guilty of sacrificing a nine-year –old boy in Jharkhand for his prosperity. On December 11, 1996, nine-year-old Chirku Besra went missing in Hazaribag, Jharkhand. While his father looked for him, Murmu lured the boy into his home and beheaded him in a ritual 'sacrifice' to Goddess Kali. Later, he stashed the body in a gunny bag, lugged it on his bicycle and threw it into a lake. It was not the first such crime for Murmu. Investigations revealed that he had 'sacrificed' his own brother earlier. Upholding the death penalty in 2004, the Supreme Court noted it to be a "crime against humanity". Murmu was pardoned by the President on February 9, 2012. While ruling on Murmu's sentencing, the Supreme Court has said, "His crime is an illustrative and most exemplary case to be treated as the 'rarest of rare cases' in which death is and should be the rule, with no exception whatever".

[455] deccanherald.com, JUN 24, 2012 retrieved on 22/05/2023 at 3.00pm.

Those whose mercy petitions were rejected included three killers of former prime minister Rajiv Gandhi – Murugan, santhan and Perarivalan; Davinder Pal Singh Bhullar who killed nine people in an attempt to assassinate Congress leader Maninderjit Singh Bitta andMahendra Nath Das of Assam who murdered the then secretary of Guwahati Truck Drivers Association, Harakanta Das. While Patil has shown mercy to mass killers and rapists and killers of children, she has not given the same treatment to political assassins like the killers of former Punjab chief minister Beant Singh or Prime Minister, Rajiv Gandhi.

The 13th President of India, Pranab Mukherjee, during his five years of presidency disposed 34 mercy pleas. He rejected 30 out of 34 petitions (35, considering the case of 1993 Mumbai serial blasts accused Yakub Memon, who pleaded twice for presidential pardon). He was the second President after R. Venkatraman to reject so many pleas. Venkatraman rejected total 45 mercy pleas during his tenure. When President Pranab Mukherjee was serving his tenure, he received 10 pending pleas, one even from K. R. Narayanan's term (1997 -2002). Mukherjee rejected 88% of the mercy petitions he received, and that also included those of Ajmal Kesab and Afzal Guru. Afzal Guru was convicted for a terror attack on Parliament in 2001, a brazen assault in which 12 people were killed when Parliament was in session.

President Ram Nath Kovind, the 14th President of India, has rejected his first mercy petition of a death-row convict who had burned alive seven members of a family, including five children, over a case of buffalo theft. The case pertains to gruesome killing of Vijendra Mahto and six of his family members by Jagat Rai in Raghopur block of Bihar's Vaishali district in 2006.

Mahto had lodged a case of theft of his buffalo in September, 2005 in which Rai, Wazir Rai and Ajay Rai were named as accused. The accused (thereafter convict) were pressuring Mahto to withdraw the case. Rai had set on fire Mahto's house that resulted in the death of latter's wife and five children. Mahto, who had sustained serious injuries then, died after few months. After being convicted for the crime and being awarded the death penalty by the local court, the High Court and the Supreme Court in 2013 too gave their nod for hanging. Rai's mercy plea was then sent to the President's Secretariat. The office of the President had sought the Home Ministry's

views which gave its recommendation on it and based upon the recommendation, the mercy petition was rejected by the President on April 23, 2018.[456] He won't have any pending mercy pleas to consider.

President Droupadi Murmu has rejected the mercy petition of a man convicted for raping and stoning to death a four-year-old girl in Maharashtra in 2008. The President's secretariat had on March 28, 2023 received a recommendation from Union Home Ministry in the matter, "The mercy petition was rejected by the President (on April 10". The decision comes after the Supreme Court dismissed the review petition of Vasanta Sampat Dupare (then 55 years old) in 2017 and upheld the decision to award him the death penalty, and sent him to the gallows. The Apex Court had in 2017 held that "the aggravating circumstances and the barbaric manner, in which the four-year-old was killed, clearly outweigh the mitigating circumstances". It had on November 26, 2014, upheld the trial court's as well as the Bombay High Court's decision of awarding death sentence to Maharashtra resident Dupare in the 2008 rape and murder case. The Apex Court had on July 14, 2016, agreed to examine the plea of Dupare, who had claimed he was not accorded a fair chance to put forth his arguments in the trial court which sentenced him to death. While upholding the death penalty awarded to the convict, the Apex Court had said that the rape of a minor girl was "a monstrous burial of her dignity in darkness". The court had referred to the sequence of events in the case and said that the convict, who was a neighbour, lured the girl, raped her and then battered her to deathusing two heavy stones.

4.14 Summing up

During the tenure of presidency, the President K. R. Narayanan received 10 petitions and disposed of only one in his tenure. A. P. J. abdul Kalam inherited nine petitions with another 16 added in his term, taking the total of 25. He disposed of only two, rejecting one and pardoning the other. President Patil's disposal rate is the highest which is about 200% unlike K. R. Narayanan and Kalam who had a disposal rate of 12.5%. The large scale of presidential pardons, particularly during Patil's tenure is seen to be very surprising. Defending pardons granted, the President said that "the President only takes a decision to commute a death sentence or reject it after she is satisfied by the advice tendered by the government. The President ensures that the

[456] https://economictimes.indiatimes.com; retrieved on 24/05/2023 at 10.45 am.

government has put in certain application of mind to give mitigating and extenuating circumstances of their advice". The president was well aware of the constitutional provisions as she was a lawyer herself. The reason that also provides sufficient grounds for a large scale of presidential pardon is that India has not yet abolished death penalty.

The Law Commission in its 2015 report[457] too noted the influence a President has on deciding mercy petitions, saying, "A perusal of the chart of mercy petitions disposed by Presidents suggests that a death-row convict's fate in matters of life and death may not only depend on the ideology and views of the government of the day, but also on the personal views and belief systems of the President."

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[457] https://lawcommissionofindia.nic.in; retrieved on 03/04/2023.