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FROM CONVICTION TO CLEMENCY: PROCEDURAL DIMENSIONS OF MERCY PETITIONS UNDER THE CRIMINAL AND CONSTITUTIONAL LAW

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Abstract

The conflict between justice and mercy has consistently been one of the primary challenges in criminal jurisprudence. While criminal law focuses on retribution, deterrence, and rehabilitation, constitutional clemency arises as a sovereign right that softens the strictness of law with compassion. In India, these petitions function at the crossroads of statutory procedure and constitutional authority. Although the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS) outlines the procedural framework for mercy petitions and sentence remission, Articles 72 and 161 of the Constitution grant the President and Governors sovereign clemency powers. This paper investigates the procedural aspects of mercy petitions from conviction to final clemency, tracing their statutory development from the Code of Criminal Procedure, 1973 to the BNSS. It also analyzes judicial review in cases such as *Maru Ram v. Union of India*, *Kehar Singh v. Union of India*, *Epuru Sudhakar v. Government of A.P.*, and *Shatrughan Chauhan v. Union of India*. By placing mercy petitions within the context of constitutional theory, criminal jurisprudence, and comparative law, this study contends that clemency, while exceptional, is an essential safeguard against the miscarriage of justice, as long as it is exercised within fair, transparent, and time-bound procedural constraints.

This paper explores the legal foundations, legislative development, and constitutional aspects of mercy petitions in India. Additionally, it places Indian practices in a comparative context,

drawing lessons from legal systems in the United States and the United Kingdom. Ultimately, it contends that mercy petitions are not merely exceptions within criminal law; rather, they are a constitutional imperative—humanizing justice by recognizing the imperfections of legal processes and ensuring that compassion is a fundamental component of the rule of law.

Keywords- Mercy Petition, Clemency, Jurisprudence, Remission.

1. Introduction

The criminal justice system is designed to maintain justice through established legal processes. Nevertheless, the possibility of judicial mistakes requires the existence of mechanisms for correction. Mercy petitions serve as one such mechanism, offering a chance for the executive branch to reevaluate judicial rulings in extraordinary situations. These petitions are especially relevant in cases concerning the death penalty, where the irreversible aspect of the punishment calls for increased scrutiny and empathy. A mercy petition is a formal request made by individuals who are facing death sentences or imprisonment, seeking clemency from the President or Governor, based on the jurisdiction.

Clemency is a widely practiced concept in numerous nations, with India being among them. The process for mercy petitions is established in Articles 72 and 161 of the Indian Constitution, which grant the President and the Governors of the states, respectively, the authority to issue pardons, reprieves, respites, or remissions of punishment. The underlying principle of this provision is to provide the offender with a chance to appeal to a different authority that can evaluate their case from a new perspective. The structure of clemency serves as a crucial judicial safety net, as demonstrated in a significant case from 2012 when a collective of 14 judges from the High Court and Supreme Court formally addressed a letter to the President of India, highlighting miscarriages of capital punishment that occurred in the 1990s, resulting in 15 wrongful death penalty sentences, including the execution of two individuals. A fundamental objective of this mercy petition system is to maintain public confidence in the integrity and impartiality of the criminal justice system.

The Bharatiya Nyaya Sanhita (BNS), 2023, which has supplanted the Indian Penal Code, still mandates capital punishment while introducing more structured guidelines for its

implementation. The Bharatiya Nyaya Suraksha Sanhita (BNSS), 2023, through section 472, establishes the procedural framework for mercy petitions in cases involving the death penalty.¹

2. Constitutional Basis of Clemency in India

The authority of the executive branch of the State to issue pardons is referenced in the Constitution of India in two distinct forms: firstly, the authority of the President to grant pardons as outlined in Article 72 of the Constitution, and secondly, the authority of the Governor to grant pardons as specified in Article 161 of the Constitution. Prior to engaging in a discussion regarding the numerous legal complexities that arise from the exercise of the power to pardon, it is beneficial to examine the essence of this power, as indicated by a straightforward reading of the text of the Constitution of India. The power to pardon encompasses the ability to suspend, remit, and commute sentences. Throughout this paper, the term 'pardon' will be utilized as a general term, which will include these various methods of reducing the sentences imposed by the court.²

Power of President to grant pardons, etc., and to suspend, remit or commute sentences in certain cases

(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 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 force³.

¹Principle of the rarest of rare cases vis-à-vis the Mercy petition in death sentences under Section 472 BNSS, 2023 available at: <https://legalsynk.com/rarest-of-rare-cases-vis-a-vis-mercy-petition/> (last visited on August 20, 2025)

²Parul Kumar, The executive power to pardon: dilemmas of the constitutional Discourse, NUJS L. Rev. 13 (2009), available at: <https://nujslawreview.org/wp-content/uploads/2016/12/parul-kumar.pdf> (last visited on August 21, 2025).

³The Constitution of India, art. 72

The authority granted to the president, however, does not influence the authority granted by any legislation to any officer of the Armed Forces of the Union to suspend, remit, or commute a sentence issued by a court martial. Additionally, it does not affect the power that the governor of the state may exercise under any law currently in effect to suspend, remit, or commute a death sentence.⁴

The legal maxim, “Veniae facilitas incentivum est delinquendi” serves as a warning regarding the use of clemency powers, as it translates to –Facility of pardon is an incentive to crime. Furthermore, it could be considered a grand farce if it is granted indiscriminately, without proper justification, to those who belong to a privileged class of deviants. Therefore, no convict should be regarded as a favoured recipient of clemency.⁵

Clemency power not unbridled—The clemency power is not without limits—the authority of the Sovereign to grant remission resides solely within its jurisdiction, and this duty has been assigned to the executive through a constitutional mandate to ensure the achievement of certain public objectives by granting remission in suitable instances. The powers conferred by Articles 72 and 161 of the constitution are not meant to be exercised by the executive as an unrestricted power of reprieve. The clemency authority must be applied judiciously and only in appropriate circumstances, which effectively reduces the severity of the punishment imposed, without in any manner erasing the conviction.⁶

Judicial Oversight- The Supreme Court in a number of judgments including in the *Shatrughan Chauhan v. Union of India*⁷ held that--

“exercising of power under Articles 72/161 by the President or the Governor is a constitutional obligation and not a mere prerogative.....Right to seek for mercy under Articles 72/161 of the Constitution is a constitutional right and not at the discretion or whims of the executive. Every constitutional duty must be fulfilled with due care and diligence”.

*G. Krishta Goud & J. Bhoomaiah vs State of Andhra Pradesh & Ors*⁸ held that--

“Art. 72 and Art. 161 designedly and benignantly vest in the highest executive the humane and vast jurisdiction to remit, reprieve, respite, commute and pardon criminals on whom judicial

⁴Narinder Kumar, *Constitutional Law of India* 556 (Allahabad Law Agency, **Faridabad**, 12th ed. 2025).

⁵*State of Haryana & Ors v. Jagdish* 2010(2) RLW 1185 SC

⁶JN **Pandey**, *Constitutional Law of India*, 523 (Central Law Agency, Allahabad, **2024**).

⁷(2014) 3 SCC 1; AIR 2014 1376; SCR 2014 (1) 609

⁸1975, AIR ONLINE 1975 SC 2

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”

Distinction between president and governor’s power under Art 72 and 161- A straightforward interpretation of the Constitution of India indicates that the power of pardon conferred upon the President under Article 72 is significantly more extensive than the pardon power granted to the Governor under Article 161. Two aspects of comparison can be derived from the precise language of Articles 72 and 161 in this context: firstly, the President's authority to grant pardons includes the ability to pardon sentences issued by a Court Martial, a power that is not similarly granted to the Governor of any state; and secondly, The President is explicitly given the authority to review all instances in which a death sentence has been imposed.⁹

Article 72	Article 161
The President possesses the power to issue pardons in situations where a sentence or punishment has been determined by a Court Martial.	The authority of the Governor to grant pardons as stipulated in Article 161 does not permit this.
The President utilizes his authority to grant pardons in situations where an individual has breached the laws of the union.	The Governor utilizes his authority to grant pardons in situations where an individual has breached state law.
The President possesses the authority to issue a pardon in situations where the accused has been sentenced to death.	The Governor is not authorized to issue pardons for death sentences. ¹⁰
The President of India possesses a broader range of authority in comparison to the Governor.	The authority of the Governor, conversely, is largely restricted to

⁹Parul Kumar, The executive power to pardon: dilemmas of the constitutional discourse NUJS L. Rev. 13 (2009), available at: <https://nujlawreview.org/wp-content/uploads/2016/12/parul-kumar.pdf> (last visited on August 21, 2025).

¹⁰What Are the Differences in Pardoning Powers of the Indian President (Article 72) and the State Governors (Article 161)? available at: <https://www.writinglaw.com/difference-in-pardoning-powers-of-president-and-governor/>(last visited on August 21, 2025).

violations occurring within the jurisdiction of the state.¹¹

Figure 2.1 Distinction between Article 72 and 161

3. Procedural Framework under the Criminal Law

Section 472(1) of the *Bharatiya Nagarik Suraksha Sanhita (BNSS)* limits the ability to submit mercy petitions to the convict, their legal heir, or a family member. This limitation stands in stark contrast to the existing practice, in which third parties, including NGOs or legal entities, frequently file petitions on behalf of convicts.¹² According to BNSS Section 472(1), individuals convicted of a crime are permitted to submit mercy petitions within thirty days from the date when the Superintendent of the jail-

(i) notifies them of the rejection of their appeal, review, or special leave to appeal by the Supreme Court; or

(ii) informs them of the date when the High Court confirmed the death sentence and the period for filing an appeal or special leave in the Supreme Court has lapsed.¹³

- Individuals convicted of crimes may submit petitions to the Governor and the President in light of appeal dismissals or sentence confirmations.
- In instances involving several convicts, all must submit their petitions within a period of 60 days.

Government's Involvement in Mercy Petitions-

- Upon receiving a mercy petition, the Central Government is required to request the opinions of the State Government and to review the petition alongside the case records.¹⁴
- The Government is to provide recommendations to the President within a period of 60 days.
- In instances where an application is submitted to the relevant Government for the suspension or remission of a sentence, the relevant Government may request the presiding Judge of the Court that issued or confirmed the conviction to express his opinion on whether the application should be approved or denied, along with the reasons for such opinion, and to

¹¹A Comparative Analysis of the Pardoning Powers of the President and the Governor under the Indian Constitution available at: <https://uppcsmagazine.com/a-comparative-analysis-of-the-pardoning-powers-of-the-president-and-the-governor-under-the-indian-constitution/> (last visited on August 21, 2025).

¹²Mercy petitions under *Bharatiya Nyaya Suraksha Sanhita, 2023* available at: <https://thelegallock.com/mercy-petitions-under-the-bharatiya-nagarik-suraksha-sanhita-bnss-2023/> (last visited on August 21, 2025).

¹³The *Bharatiya Nagarik Suraksha Sanhita, 2023* (Act 46 of 2023), s.472 (1)(i),(ii)

¹⁴The *Bharatiya Nagarik Suraksha Sanhita, 2023* (Act 46 of 2023), s. 472(4)

also submit a certified copy of the trial record or any existing record thereof with the opinion statement.

- In cases involving multiple convicts, the petitions shall be resolved by the President collectively in the interest of justice.¹⁵
- Upon receiving the President's order regarding the mercy petition, the Central Government shall, within forty-eight hours, convey this information to the Home Department of the State Government as well as to the Superintendent of the jail or the officer responsible for the jail.¹⁶

Exclusion of Appeals against President's Decision-

- The decisions made by the President regarding mercy petitions are conclusive.¹⁷
- Courts are not permitted to challenge or examine the reasons behind the President's pardons or commutations.¹⁸

Summary of the Process under the Bharatiya Nagarik Suraksha Sanhita (BNSS)

On the date on which the Superintendent of jail informs convict about the dismissal of appeal or high-court confirmation of death sentence

↓ (within 30 days)

Convict or heir/relative → file mercy petition to Governor or President

↓

if initially filed with Governor and governor rejected/disposed then

↓ (within 60 days)

File to President of India

↓

Jail Superintendent ensures all convicts file the mercy petition within 60 days; if not, sends case record + data to Central/State Govt]

↓

Central Government receives petition → seeks State Government comments

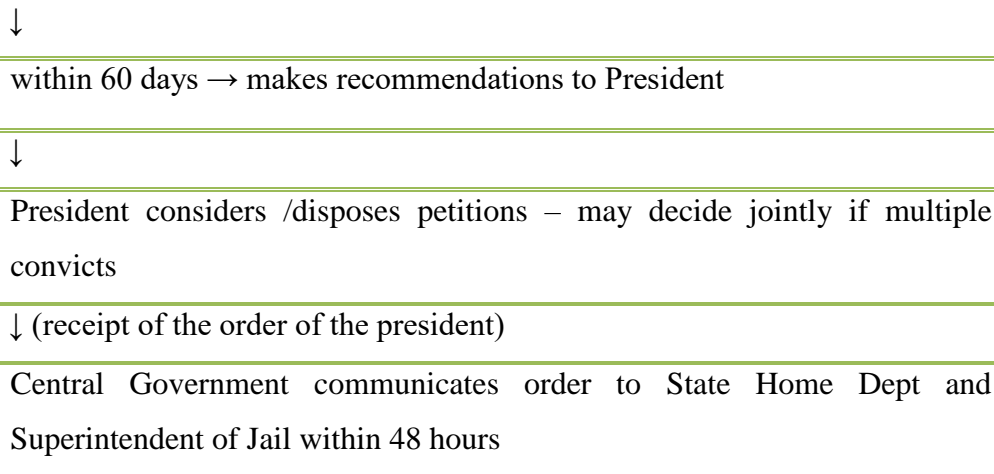
¹⁵The Bhartiya Nagarik Suraksha Sanhita, 2023 (Act 46 of 2023), s. 472 (5)

¹⁶The Bhartiya Nagarik Suraksha Sanhita, 2023 (Act 46 of 2023), s. 472 (6)

¹⁷The Bhartiya Nagarik Suraksha Sanhita, 2023 (Act 46 of 2023), s. 472(7)

¹⁸Mercy petition under BNSS available at:

<https://bprd.nic.in/uploads/pdf/202401261017053512316MercyPetitionunderBNSS.pdf> (last visited on August 21, 2025).



4. Judicial Pronouncements-

The Constitution Bench, however, laid down that the Presidential order under Article 72 could be subjected to judicial review within the strict limitation defined in **Maru Ram v. Union of India**¹⁹. In this case, Constitutional Bench of the Supreme Court had observed that the power of pardon, commutation and release, under Articles 72 and 161, though very wide, could not run riot. The Court said, 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 valid play of power. The Bench emphasized that the authority to pardon, grant remission, and commute sentences, being of utmost significance, cannot exist as an independent law; rather, it must be guided by the more refined principles of constitutionalism.²⁰

Epuru Sudhakar v. Govt. of A.P.²¹. The Court has explicitly stated that a judicial review of a presidential pardon order under Article 72 or a gubernatorial pardon order under Article 161 is permissible, and such orders may be challenged on the following grounds-

- (1) that the order was issued without proper consideration;
- (2) that the order is made in bad faith;
- (3) that the order was issued based on irrelevant or extraneous factors;
- (4) that pertinent materials were excluded from consideration;
- (5) that the orders exhibit arbitrariness.

¹⁹AIR 1980 SC 2147

²⁰*Supra* note 4 at 559

²¹AIR 2006 SC 3385

Guidelines issued by the Supreme Court in the **State of Maharashtra & Ors. v. Pradeep Yashwant Kokade & Anr**²² case:

- An undue, unexplained, and excessive delay in carrying out the death sentence grants the convict the right to petition this Court under Article 32 of the Constitution.
- Extended delays in the resolution of mercy petitions by the Governor or President inflict considerable physical and psychological distress on convicts. In accordance with Article 32 in conjunction with Article 21 of the Constitution, the court must take into account the impact of excessive delay in the handling of clemency petitions by the highest Constitutional authorities.
- Article 21 of the Constitution does not conclude with the announcement of the sentence; it continues through to the execution of that sentence.
- These principles apply in situations where there is a delay from the Sessions Court in issuing the execution warrant. Once the order rejecting mercy petitions is communicated to a convict, the threat of execution cannot be allowed to linger for an excessively long period.
- A convict may seek the jurisdiction of the High Court under Article 226 of the Constitution if there is an excessive and unexplained delay in executing the death sentence following its confirmation.
- There can be no strict rule regarding the duration of delay that can be classified as inordinate. What constitutes inordinate delay must be determined based on the specifics of each case.
- Executives are required to promptly process mercy petitions under Articles 72 or 161 of the Constitution and to send these petitions along with the necessary documents to the relevant constitutional authority without unnecessary delay.²³

The Supreme Court observed that while executing the death sentence, it is mandatory to follow the procedure laid down by the Allahabad High Court in **People's Union for Democratic Rights (PUDR) v. Union of India & Ors.**²⁴

²²2024 INSC 947

²³State of Maharashtra & Ors. vs. Pradeep Yashwant Kokade & Anr available at: <https://www.manupatracademy.com/assets/pdf/legalpost/case-study-state-of-maharashtra-ors-vs-pradeep-yashwant-kokade-anr.pdf> (last visited on August 21, 2025)

²⁴AIR 1982 SC 1473

5. Conclusion-

The establishment of mercy petitions highlights the humane aspect of law, reminding us that justice cannot be limited to strict legalism alone. Although the criminal justice system is based on certainty, proportionality, and the finality of punishment, the authority of clemency serves as a constitutional safety valve against judicial errors, arbitrariness, or excessive severity. Articles 72 and 161 of the Constitution grant the President and Governors the power to intervene when the application of law may overlook human fallibility or situations that require compassion.

Simultaneously, the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS) offers the statutory framework for remission, suspension, and commutation, thereby enhancing the constitutional provisions with procedural clarity.

Judicial rulings have consistently shaped the boundaries of executive discretion in mercy petitions, holding it to the standards of fairness, non-arbitrariness, and reasonableness. However, ongoing issues—such as delays, lack of transparency, and political influences—necessitate immediate reform. Comparative insights from other jurisdictions emphasize that clemency should operate not merely as an act of sovereign grace but as an institutionalized safeguard within the justice system.

Ultimately, the transition from conviction to clemency exemplifies the constitutional equilibrium between the requirements of justice and the necessities of mercy. To maintain the legitimacy of this equilibrium, India must progress towards a structured, transparent, and prompt procedure for adjudicating mercy petitions. Enhancing accountability while upholding compassion will ensure that clemency remains both a constitutional imperative and a moral guide for the criminal justice system .

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