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MERCY PETITION IN DEATH SENTENCES

AUTHORED BY- MANINI KAUR

ABSTRACT

Mercy petitions are a fundamental safeguard against unjust conviction and miscarriage of justice, and provide a mechanism for pardon or sentence modification. This paper examines the importance of mercy petitions in international legal systems. The study examines the human dimension of clemency petitions in humanizing the legal system and reducing the suffering of convicts and their families. However, the investigation revealed a worrying trend of delays and inefficiencies in processing clemency petitions, raising questions about the government's compliance with legal obligations and the ethical treatment of individuals who have been sentenced to death. The paper also cites a decline in the number of clemency petitions filed and approved since the 1970s, which it attributes to legislative changes and important court decisions on the death penalty.

CHAPTER 1

I. INTRODUCTION

The purpose of a mercy petition is to prevent punishment of an innocent person in circumstances of erroneous convictions or miscarriages of justice. The prospect of a pardon in and of itself acts as a deterrent for offenders to conduct well inside the prison, which goes a long way toward resolving the discipline problem. Many countries, including India, the United States, the United Kingdom, and Canada, adhere to the Mercy Petition principle.

Article 72 and Article 161 of the Indian Constitution give the President and the Governors of the several states the authority to pardon. By giving the government the authority to pardon or show mercy to convicts who have been given death sentences, it humanizes the legal system in the nation. They don't have to examine the applications from a legal perspective, unlike legal experts, whose judgments are based only on the evidence at hand and the testimony of witnesses. These two Articles of the Indian Constitution do not provide a deadline for Mercy Pleas. The President and the state governors are not required by these articles to accept every mercy petition. Death sentences can become cruel and dehumanizing if they are not carried out in a timely manner, as recognized by the courts of civilized nations.

Long-lasting misery that alternates between hope and despair, the anguish of uncertainty, and the effects of such suffering on the convict's and his family's physical, mental, and emotional integrity and health ought not to be permitted in civilized countries. Calling the petitions that guilty individuals submit to the President and Governors under Articles 72 and 161 of the Constitution "mercy petitions" is a misnomer. According to the Constitution, these prisoners have a right, and the Presidents and Governors, who are actually the respective governments, have an obligation to give the Petitions careful thought and respond to them as soon as possible. The government appears to be completely unaware of both its legal responsibilities and the human side of the suffering of those on death row, as seen by the excessively lengthy time that these petitions have been pending. It handles them as though they are waiting in line for food rations.

The President of India has decided 4825 mercy pleas since 1948, 3256 of which have been denied. The death penalty was reduced to life in prison in 1569 applications. According to data collated by Bikram Jeet Batra in his book "Court of Last Resort" and information held by the Government, the number of mercy petitions filed and decided by the President of India has decreased significantly over the past forty years

In the first three decades following independence: 1948–1954, 1955–1964, and 1965–1974, more than a thousand mercy requests were granted. There has been a significant decrease in the quantity of mercy pleas filed and granted since 1974. It has gotten so bad that from 1995 to 2006, only nine petitions were resolved. During this time, Dr. A P J Abdul Kalam and Shri K.R. Narayanan were present in Rashtrapathi Bhavan.

Because of the extreme disparity in the numbers, just 6% of all mercy petitions were resolved in the 43 years that followed, while 94% of them were resolved in the first 26 years. Bikram Jeet Batra suggests that the revised CrPC, 1973, which made life imprisonment the standard punishment for murder and the death penalty the exceptional punishment, may have had an impact on the decrease in death sentences overall. He adds that the death penalty was a hotly debated topic at the Supreme Court in the late 1970s and early 1980s, which resulted in the historic Bachan Singh ruling that the death penalty would only be applied in the "rarest of rare" circumstances. Given the sharp decline in both the number of death sentences and the ensuing number of requests for mercy to the President following the 1970s, this seems like a likely explanation.

II. HISTORY

The history of mercy petitions in India is closely intertwined with its legal and constitutional development. A timeline representing history of mercy Petition in India:

1. Pre-Independence Era:

- The idea of asking for mercy in India goes back to when the British ruled.
- The king or queen of Britain or the big boss in India could say yes to forgive someone. They listened to their team's advice

2. Post-Independence:

- When the Indian Constitution was made, the top job of saying yes to forgive, delay, or change punishments was given to the President of India under Article 72, and to the state leaders under Article 161.

3. Landmark Cases and Legal Interpretations:

- **1979:** In *Rajendra Prasad vs. State of Uttar Pradesh*¹, the top court talked about how far the President's power to forgive goes under Article 72.
- **1989:** In *Kehar Singh vs. Union of India*², it was made clear that the President can say no to mercy asks. This was when they said no to someone who helped kill the Prime Minister, Indira Gandhi.
- **2006:** *Epuru Sudhakar & Anr. vs. Govt. of A.P. & Ors*³. touched on waiting too long to answer mercy asks. The top court said taking too long could mean changing the death penalty to a life term.
- **2014:** Cases like *Shatrughan Chauhan & Anr. vs. Union of India*⁴ & Ors. and *Mohd. Arif vs. Registrar, Supreme Court of India*⁵, stressed the need for quick look at mercy pleas and how delays affect them.

4. Public Debate and Controversies:

¹ 1979 AIR 916, 1979 SCR (3) 214

² (1989) 1 SCC 204

³ (2006) 8 SCC 161.

⁴ (2014) 3 SCC 1

⁵ (2014) 9 SCC 737

- In India, mercy pleas often start public debates and disputes, mainly when they involve death penalty cases. Waiting too long to decide on mercy pleas or saying no to them leads to strong public and legal reactions.

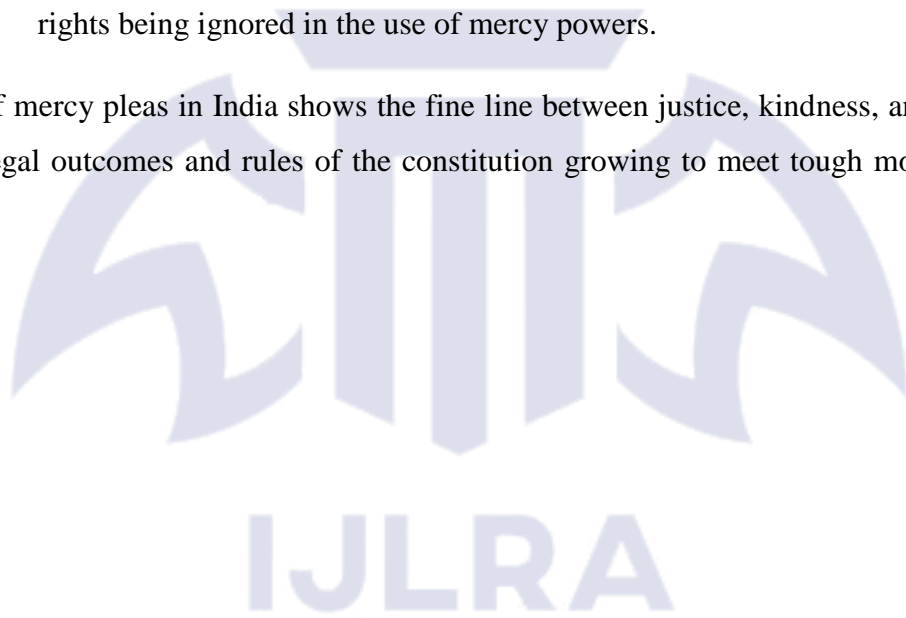
5. Executive Clemency in Practice:

- Over time, Presidents and Governors have used their mercy powers to give pardons, change sentences, allow delays, and forgive in different cases, taking into account things like kindness, justice gone wrong, or steps missed.

6. Judicial Review:

- The courts play an important part in looking at decisions on mercy pleas. They have stepped in when there were claims of unfairness, mistakes in process, or rights being ignored in the use of mercy powers.

The story of mercy pleas in India shows the fine line between justice, kindness, and the rule of law, with legal outcomes and rules of the constitution growing to meet tough moral and legal problems.



CHAPTER 2

I. Constitutional Framework

Articles 72 and 161 of the Constitution of India which empower the President of India and the Governors of States to grant pardon, stay and impose the sentence, form the main legal basis of the national mercy petition system. Here are the sections:

1. **Article 21:** Article 21 of the Constitution of India is fundamental to every individual as it states that "no one shall be deprived of life or liberty except by law". These laws are the basis of law and case law in India. Looking at pleas for mercy is very important. When a person is sentenced to death, the right to life is at stake. When a person files a clemency petition, he or she can apologize to the President or the Governor, citing Article 21. There is a connection between the clemency petition and Article 21:

- Protection of life: Article 21 protects the right to life, which means to live with dignity and not merely to live. When a person submits a mercy petition, they are essentially asking to be spared the death penalty.
- Procedural justice: The due process clause of Article 21 requires that any restriction on the right to life or liberty must follow a fair and impartial legal process. Justice in the determination of the death penalty is achieved through a petition for mercy which gives the condemned party the opportunity to apply for mercy or to show mitigating circumstances
- Humanitarian considerations: The possibility of mental illness, old age or development is among the other humanitarian considerations that can be taken into account by pleading for mercy. Determining whether a person's life should be spared is facilitated by considering mercy petitions as it involves an assessment of the dignity and suitability required by Article 21
- Judicial review: If the mercy petition is rejected, the convict can file an appeal against such decision under Section 21. Judicial review is important as it will help determine whether the decision was reasonable, just and in accordance with the law so that his right to life is fully created.
- Protecting personal liberty: A plea for mercy is usually about protecting someone's life, but it can also change how they are free. With a pardon, a death sentence can be commuted to life imprisonment, meaning privacy.

There are some court cases on death penalty like *Bachan Singh v. State of Punjab*⁶ and *Machi Singh v. State of Punjab*⁷ recognizing the importance of Article 21. These examples have shown that we must apply the death penalty in a manner that follows the rules of Article 21, which states that justice, proportionality and human dignity are important. In short, Article 21 of the Indian Constitution is really important because it protects and respects the right to life and personal liberty, even when people face the most severe punishment.

2. **Article 72: Power of President to grant pardons, etc., and to suspend, remit or commute sentences in certain cases:**

In accordance with Article 72 of the Constitution of India, the President may, at his discretion, pardon, suspend, stay, or commute any sentence or penalty including the release of such convicted person for all offenses from office, suspension, or surrender. In the context of the mercy petitions, Article 72 is construed as follows:

- **Executive clemency:** Article 72 provides that the President may grant pardon, delay, postponement, or set aside punishment of those convicted of offenses against the laws of India. In exercise of this power, the President may intervene based on motives such as possible reintegration, injustice and health and welfare concerns.
- **Commutation of sentence:** The President may suspend, pardon or punish an offender by commuting the sentence imposed under Article 72.
- **Practice and Strategy:** The Office of the Prime Minister generally relies on established priorities and advisory criteria for the application of this jurisdiction. The Ministry of Home Affairs makes recommendations for granting clemency.
- **Judicial Review:** The authority for executive clemency is not absolute, but tangible. Courts monitor the exercise of this power to ensure that it does not violate fundamental rights or act in a discriminatory or unreasonable manner. They are entitled to examine whether the decision of the President was just and reasonable having regard to all relevant factors.
- **Constitutional restrictions:** Article 72 provides that the President can only temporarily pardon or suspend punishment for offenses under Indian law.

It does not extend to the violation of constitution, which is within the amnesty of the Governor as mentioned in Article 161 of the Constitution. Case laws in various cases such as *Kehar*

⁶ (1980) 2 SCC 684

⁷ (1983) 3 SCC 470

*Singh v Union of India*⁸ and *Marooram v Union of India* (1981) provide insights and guidance on the presidential powers under Article 72 and how to exercise them. And establish the importance of highlighting the need for consideration. In summary, Article 72 of the Indian Constitution empowers the President to exercise executive clemency, including pardons, reprieve and commutation in response to clemency petitions. This program promotes compassion and fairness in the criminal justice system.

3. **Article 161: Power of Governor to grant pardons, etc., and to suspend, remit or commute sentences in certain cases:**

According to Article 161 of the Constitution of India, the Governor has the power to pardon, suspend or commute the punishment of persons convicted of offenses under civil law. This power enables the Governor to consider petitions for mercy and he decides to grant mercy. This provision sets the framework for the governor to implement executive clemency in the state. The procedure for filing a mercy petition under Article 161 is as follows:

- Executive clemency: Article 161 empowers the governor to grant amnesty, defer, suspend, or commute sentences for those convicted of federal violations. This power allows the governor to intervene when someone seeks leniency, taking into account factors such as the possibility of resettlement, injustice, or humanitarian concerns.
- Sentence commutation: The governor can commute a convicted person's sentence, which means that a sentence imposed by a court can be suspended, reduced, or modified, such as commuting a death sentence to life imprisonment.
- Action and Strategy: Although the Governor has executive powers under Article 161, their decisions are generally guided by established standards, legal precedents and advisory boards. The state Department of the Interior routinely reviews clemency petitions and makes recommendations to the governor.
- Court Review: Employee clemency may be granted within certain limitations. Courts review the Governor's exercise of this power to ensure that it respects fundamental rights and is not arbitrary or discriminatory. The courts have jurisdiction to determine whether the Governor's decision is based on relevant factors and not motivated by bad faith or malice.
- Constitutional restrictions: Article 161 provides that the Governor has the power to grant pardons or exemptions for offenses falling within the jurisdiction of the executive branch.

⁸ (1989) 1 SCC 204

This power does not extend to offenses governed by federal law or subject to the pardoning power of the President as provided for in Article 72 of the Constitution. Legal precedent has clarified the powers of the Governor under Article 161, as seen in cases like *Epuru Sudhakar & Anr. vs. Govt. of A.P. & Ors.*⁹ and *Maru Ram v. Union of India*¹⁰. This judgment highlights the importance of following due process, avoiding hasty decisions and considering all relevant factors in deciding mercy petitions. Specifically, Article 161 of the Constitution of India empowers the State Governor to take forgiveness, forgiveness and exchange of pleas for mercy. This provision aims to make the criminal justice system more compassionate and fair.

4. **Scope of Power:**

- Articles 72 and 161 confer discretionary powers. This means that decisions are made on the basis of fairness, justice and conscience rather than strict legal rules.
- The President and the Governor can exercise this power at any stage of the legal process, even if a person has been convicted.
- This power applies to all types of crimes, including the most serious.

5. **Considerations for mercy petition:** In deciding a mercy petition, the President and the Governor may take into account various factors such as humanitarian, extenuating circumstances, conduct of prisoners in custody, misconduct, lapses in the legal process, and so on. But the judicial oversight of this jurisdiction is limited to cases of injustice, misconduct or violation of constitutional rights.

6. **Judicial Review:** According to the Constitution of India, the judiciary is responsible for reviewing the laws, decisions and acts of the legislative and executive bodies to ensure that they conform to constitutional principles. This review is called judicial review. It is important for the judiciary to examine the exercise of executive pardon powers by the President or Governor when considering clemency petitions and to ensure fairness and compliance with constitutional norms. Below is a section on how judicial review applies to mercy petitions:

- Mandates of the Constitution: The Constitution of India provides for specific powers of the legislative, executive and judicial departments of government. According to Article 13, any law that violates or is inconsistent with fundamental rights is invalid to the extent of the violation. As guaranteed by Articles 14, 19 and 21, this empowers judges to

⁹ (2006) 8 SCC 161.

¹⁰ (1980) 3 SCC 39

overrule any government law or law that violates fundamental rights such as the right to life and the right to liberty

- Judicial review: Judges can review all actions taken by officials relating to clemency petitions. The courts have jurisdiction to examine whether the decision-making processes were reasonable, fair, and in accordance with the Constitution. This included an assessment of whether relevant factors were considered, whether the process was fair, and whether there was bias or randomness in decision-making
- Grounds of review: There are a number of grounds on which courts may intervene in cases involving mercy petitions, e.g.
 - Violation of Fundamental Rights: Judges can determine whether the denial of clemency violates the right to liberty and life guaranteed in Article 21.
 - Procedural errors: Courts may review decision-making processes to ensure compliance with natural justice and procedural fairness.
 - Deliberate or irrational decision making: Management decisions may also be examined to ensure that they are based on sound reasoning and not influenced by improper motives.
- Judicial Function: Judges play a vital role in protecting constitutional rights and ensuring that the mercy powers of the administration are exercised among its subjects. Courts have the power to overturn decisions deemed illegal, unconstitutional or unconstitutional, and to offer remedies such as commutation of sentences or reconsideration of clemency petitions if they are found to be unfair or rights-violating the main.
- Precedents and case law: Precedents and case law established by court decisions establish guidelines for judicial review in cases involving clemency petitions. Notable examples of such decisions are *Epuru Sudhakar & Anr. vs.. Govt. of A.P. & Ors.*¹¹ and *Shatrughan Chauhan vs. Union of India & Ors.*¹² and the author. Recent events have made it clear that consideration is needed when seeking mercy. Careful assessment of relevant factors is essential to ensure appropriate planning. In conclusion, judicial review plays an important role in protecting individual rights and maintaining the rule of law in the Indian legal system. It ensures that employees' voluntary actions are properly scrutinized and accountable under the Constitution.

¹¹ (2006) 8 SCC 161.

¹² (2014) 3 SCC 1

7. **Preliminary Information and Legal Interpretation:** Important court decisions like *Rajendra Prasad*¹³ v. *Govt. State of Uttar Pradesh* v. *Kehar Singh*¹⁴ . The mercy petition process of the Indian Constitution has been developed by the Union of India. These cases illustrate how judicial review works in these circumstances and highlight the power of the President and Governor to grant clemency. This process creates a delicate balance between the legislative, executive and judicial branches of government to ensure fair, compassionate and fair application of the law

II. INDIAN PENAL CODE, 1860

1. **Section 54:**

The Indian Penal Code (IPC) deals with Section 54 which deals with the "initiation and continuation of the right of physical defence". Although not directly related to a mercy petition, it provides a legal basis for defence, which may have some connection with certain aspects of a mercy petition To explain further:

- Right to self-defence: Section 54 of the IPC defines the circumstances under which a person can invoke the right to self-defence to protect his body or the body of another person from of any problems. This right allows anyone to use reasonable force to prevent an attack.
- Related mercy petitions: The provisions mentioned in IPC Section 54 may apply to persons convicted of offenses arising out of acts of defence. If a person believes that he has been wrongfully convicted in his own defense, he can apply to the President or the Governor for mercy and seek a reduction in his sentence or a pardon depending on the facts of his case specifically
- Self-defense considerations: In reviewing clemency petitions, the president or governor may consider the governing body's ability to determine whether the case arises from a legitimate self-defense .If it is shown that the defendant acted in self-defense or in defense of others, leniency may be warranted.
- Judicial and Administrative Opinion: Section 54 of the Indian Penal Code sets out the legal grounds on which the right of self-defence can be invoked. Judges and executives have the power to interpret and apply this provision, particularly in cases involving clemency petitions. Courts have jurisdiction to examine the facts of the case to determine

¹³ 1979) 3 SCC 646

¹⁴ (1989) 1 SCC 204

whether the use of force was justified under the doctrine of self-defense. The chief of staff takes these findings into account in considering clemency petitions.

- Legal precedents and case law: Though there is no specific precedent directly relating to mercy petitions and IPC Section 54, the concept of immunity and defense of individuals has been extensively debated in various legal contexts such as criminal trials and appeals. Legal principles and relevant case law may be given to treat self-defense as a mitigating factor in a mercy petition.

To summarize, although Section 54 of the IPC is primarily concerned with the right to self-defence, it can be applicable to mercy petitions in cases where persons allege that they have acted in self-defence, and have been tried on a case-by-case basis by interpreting the rules to determine whether these rules can be applied to slow mercy petitions.

2. Section 55

Section 55 of the Indian Penal Code (IPC) deals with the possibility of reduction or postponement of imprisonment sentence. Although not directly dealing with clemency applications, this section provides rules for reducing or postponing sentences, which may affect the disposition of clemency applications unfairly. In the context of clemency applications, section 55 this is the explanation:

- Sentence Commutation or Amnesty: Section 55 allows the government (federal, state, or local) to defer or reduce the imposition of a prison sentence. This provision provides for the suspension or reduction of the sentence imposed on the guilty person.
- Amount of pardon or pardon: Section 55 allows deferment or reduction of sentence on imprisonment. Depending on the case, the government can suspend the sentence in whole or in part.
- Purpose of Section 55: The purpose of Section 55 is to empower the government to maintain and change the prisons of convicted persons. Employee pardons are also allowed in some cases to reduce the severity of penalties.
- Consideration of mercy petitions: Section 55 of the Act does not directly mention these acts, but the government has established rules to seek delay or remission of sentence. Through the mercy petition procedure described in Section 55, prisoners may be granted suspension or pardon.

- Factors to be considered: Factors considered by the government while reviewing mercy petitions or exercising its powers under Section 55 include the nature of offence, treatment of convicts at the time of detention imprisonment, the conditions of any amnesty and humanitarian reasons
- Judicial review: Judicial review ensures that the powers conferred by Section 55 are not exercised in a discriminatory, arbitrary, or unlawful manner. Courts can determine whether the government followed proper procedures and took reasonable considerations into its decisions.

Though Section 55 of the IPC does not specifically mention mercy petitions, it provides a statutory framework for postponement or reduction of imprisonment sentence by the government. Guidelines for executive clemency including requirements, procedures and limitations are elaborated in this section. Mercy pleas allow individuals to ask for their sentences to be suspended or reduced.

III. CRIMINAL PROCEDURE CODE, 1973

1. Section 432:

In India, there is a section of the Code of Criminal Procedure (CrPC), called Section 432, which deals with the power of the government to delay or suspend punishment. Although mercy petitions are not specifically mentioned, a legal basis for drafting adult mercy petitions is provided. When it comes to mercy petitions, Section 432 defines the following:

- Right to suspension or transfer of sentence: The authority concerned (state or federal) has the power to suspend or reduce the sentence of a person convicted under section 432. This power is exclusive only can be used for a variety of reasons including humanitarian concerns, criminality in nature and the conduct of the convicts.
- Right to grant mercy: Executive mercy, such as pardon, delay, stay, or commutation of sentence is a power conferred on the government under Section 432. Generally, a person seeks mercy from the government if he hopes for mercy.
- Factors to be considered: The government considers several factors while deciding whether to grant a mercy petition or exercise its powers under Section 432. These factors include the conduct of the offender in custody, the gravity of the offence, the effect of punishment on the offender's family. Section 432 defines the specific rules when the power of suspension or reduction of sentence is exercised in the consideration of mercy

petitions. This includes giving the public prosecutor or the person making the complaint an opportunity to present their views and discuss them with the presiding judge

- Judicial review: While the choice to suspend or reduce a sentence is optional, the courts may review it. The courts may examine whether the government's decision was within its authority and, based on the relevant facts, whether it violated any fundamental right or legal principle
- Case law and precedent: The Judiciary has scrutinized the application of section 432 powers in different circumstances. The courts have provided guidance on the factors to be considered, the procedures to be followed, and the limits on the government's power to grant clemency. Finally, the power of the government to suspend or reduce a penalty, including grant of clemency to employees through clemency petitions, is governed by Section 432 of the CrPC. This provision sets out the steps and considerations necessary to exercise this power role to ensure fairness and accountability in the clemency process

2. Sections 433 & 433A

The Criminal Code (CrPC) of India includes Sections 433 and 433A which empower the government to reduce the punishment of convicted persons. These sections lay the groundwork for executive clemency, a process that typically reviews clemency applications, although they are not explicitly mentioned. Below is an outline of sections 433 and 433A which deal with clemency applications:

- Right to pardon: The law allows the competent authority (federal or state) to reduce the penalty of the offender as stated in Section 433. Commutation is the act of changing a severe penalty to a more moderate one less severe, such as life sentences instead involving imprisonment or death.
- In terms of Section 433: In certain circumstances, such as when a person is serving life imprisonment or facing the death penalty, Section 433 allows for the commutation of a sentence. This provision gives the government the flexibility to review the sentences of individual convicts and determine whether clemency should be granted.
- Factors to be considered: When the government chooses to exercise its power under Section 433, there are several considerations. These include the nature of the offense committed, the treatment of the convict while in custody, any mitigating circumstances,

compassion obtained on humanitarian grounds and also regards whether the mercy petition of the convicted person given by their representatives at the time of the decision.

- Limitation on power to grant amnesty: Section 433A imposes restrictions on the power of the authorities to grant amnesty. It clearly provides that individuals serving life sentences must serve at least 14 years before they are eligible for consideration for early release.
- Introduction of section 433A: This section was introduced to address concerns relating to early release of prisoners serving life sentences. It seeks to ensure that people convicted of serious crimes serve a substantial portion of their sentence before becoming eligible for parole or clemency
- Impact on mercy petitions: Although sections 433 and 433A do not directly deal with mercy petitions, they do lay the groundwork for the government's right to grant mercy applications that can be made through mercy petitions. Prisoners serving life sentences have the right to seek commutation of sentence under Section 433 through a mercy petition.
- Judicial review: Judicial review ensures that the powers conferred under sections 433 and 433A are legitimate and consistent with fundamental rights and law. Courts can examine whether the government acted reasonably and took reasonable considerations into its decision. To summarize, the legal basis for the right of the government to modify the sentence that can be sought through a mercy petition is contained in Sections 433 and 433A of the CRPC. Although clemency petitions are not explicitly mentioned, section 434 provides a legal basis for employee clemency through which they may be sought. Here is the definition of section 434 from mercy petitions.
- Reasonable Power of Government: Section 434 empowers the State or Federal Government to release, parole, or commute the sentence of a convict if certain agencies like the Delhi Special Police Foundation or other State-affiliated agencies the case has been investigated the offense by Government.
- In terms of Section 434: This provision covers the investigation of cases where selected agencies have committed offences, which may involve serious offenses or offenses under specific laws. This allows the government to review the sentences imposed on convicted individuals to determine whether they should be suspended, transferred or commuted.
- Factors to be considered: While exercising its powers under Section 434, the government may take into account a number of factors, such as the nature and seriousness of the offence, how the convict was treated while in custody , any mitigating circumstances and

humanitarian reasons. A petition for clemency by the offender or their representative may also be considered in the decision-making process.

- Purpose of Section 434: Section 434 is envisaged to empower the concerned Authority to investigate and amend sanctions in cases identified by approved bodies. Using professional leniency assures fair and equitable treatment of convicts investigated by specialized agencies
- Effect of mercy petition: Although not specifically mentioned by section 434, it gives the government the statutory right to apply for remission, pardon or commutation of sentence through mercy petition. Convicts under investigation by approved agencies through mercy petitions may seek suspension, pardon or commutation of sentence in accordance with Section 434
- Judicial review: Judicial review is used to ensure that the powers conferred by Section 434 are not exercised discriminatorily, arbitrarily, or in violation of fundamental rights or legal norms. Courts have jurisdiction to examine whether the government followed due process and made a decision based on relevant factors.

In conclusion, Section 434 of the CrPC provides a statutory basis for the government to apply for clemency, suspend, suspend, or modify a sentence in circumstances identified by particular agencies

3. Section 435:

Section 435 of the Code of Criminal Procedure (CrPC) of India deals with the consultative process between the Advisory Committee and the authorities concerned while considering pardon, prosecution, imposition of sentence or will be forgiven. Section 435 sets out the government's procedure for examining and counting mercy petitions, although it does not specifically mention them. The definition of Section 435 in respect of mercy petition is as follows:

- Advice from the advisory board: Section 435 requires the appropriate government to consult with the advisory board set up for the state concerned before granting amnesty, relaxation, respite, or exemption from punishment. The government usually appoints lawyers, social workers, and other prominent figures to the advisory board.
- Section 435: Under executive clemency, including pardon, status, status, or remission of sentence, the government may exercise its discretionary power to grant clemency. To make a decision, one must consult with an advisory board.

- Introduction: The purpose of the advisory board's consultation is to obtain an impartial, professional assessment of the merits of the transaction. The committee examines relevant records, evidence and petitions before making recommendations to the government taking into account public interest, humanitarian concerns and legal principles.
- Consideration of mercy petitions: Section 435 does not specifically deal with mercy petitions; However, it imposes a procedural obligation on the government to consult with an advisory panel before granting executive clemency. This process generally involves the examination and consideration of clemency petitions filed by prisoners or their legal representatives.
- Advisory Group Recommendations: Although the government does not have to follow the recommendations of the Advisory Group, it has a great influence while taking decisions. Based on its evaluation of the issue and consideration of other relevant factors, the government may decide to accept, reject, or modify the recommendations.
- Judicial review: Judicial review is used to ensure that the consultation process under section 435 is conducted in a fair, transparent and compliant manner. Courts have jurisdiction over whether procedural justice has been followed and whether the government's decision has been supported by relevant factors.

In conclusion, Section 435 of the CRPC is a kind of mechanism that enables the Advisory Board and the concerned Authorities to consult with each other before deciding whether to grant remission, deferment, stay or delay of the sentence. This section provides, although not specifically addresses, the basis for examining and counting clemency petitions as part of the executive clemency process

IV. . President and Governor –

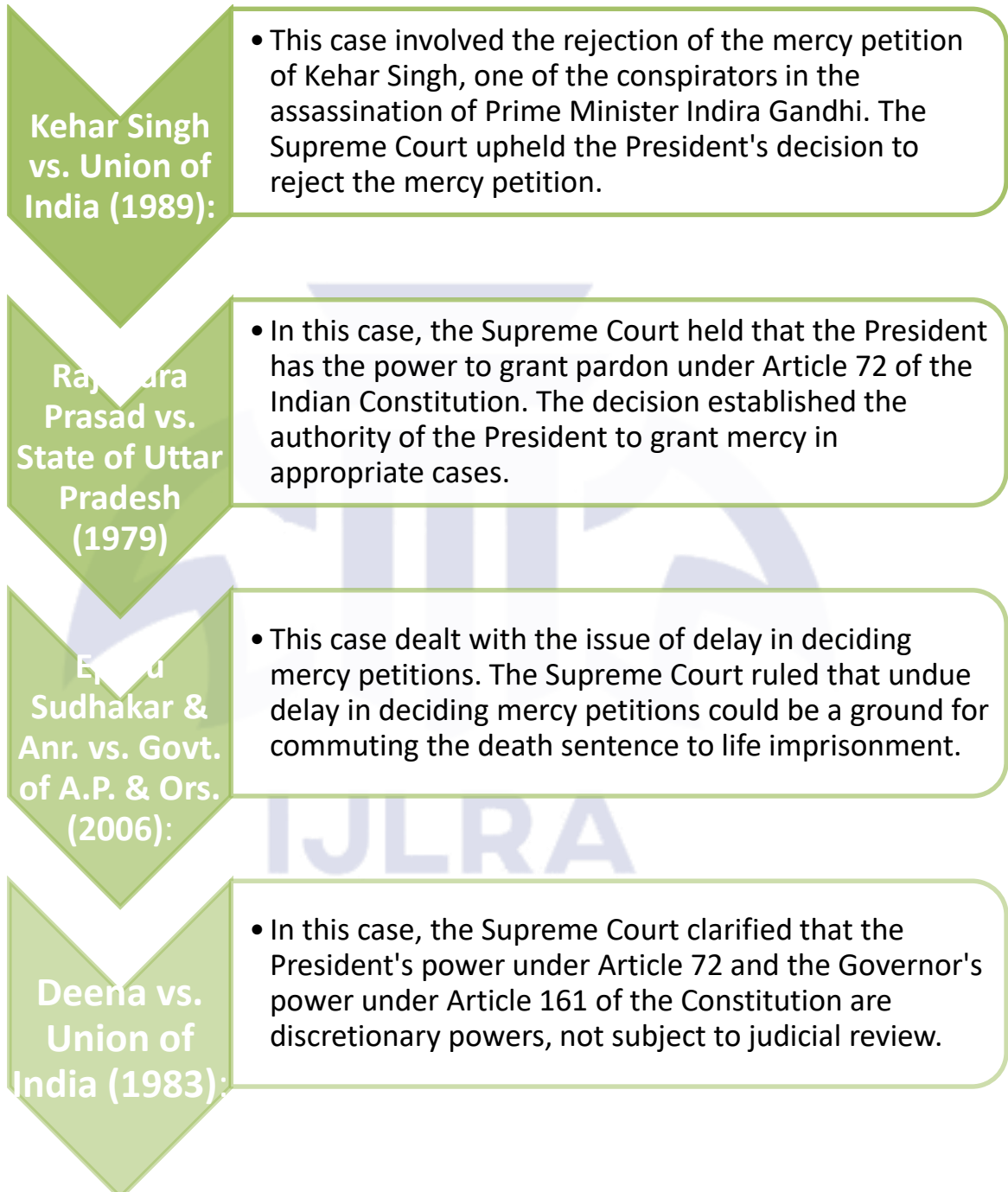
- Difference between governor and presidential pardon powers
 - Death penalty: The governor cannot commute the death penalty, Only the President can do that.
 - Court Martial: In case of a court martial, the President can pardon. However, the governor is not allowed to apologize in court.
 - Authority: The president uses his judicial powers to impose penalties imposed by federal law. When the Governor exercises his judicial powers to impose penalties under laws enacted by the state.
- Amnesty: The president can fully pardon the offender or pardon him and let him live as a regular citizen.

- To lessen: To reduce the severity of punishment. Hard prison as opposed to light prison as an illustration.
- Pardon: a reduction that does not change the content of the sentence. For example, 10 years of hard work compared to 20 years of hard work.
- Delayed: If the guilty person proves his innocence, the sentence is allowed to be delayed, usually the death penalty
- Break: Reduce sentence intensity by considering factors such as age or pregnancy. Note: The court is a military court held by a member of the armed forces accused of violating military law.
- Limitation:
 - cannot pardon someone for contempt of court, impeachment, or violating fundamental rights;
 - they also cannot pardon someone in situations where an appeal is pending before a higher court or where a Supreme Court review petition has been filed;
 - they cannot pardon someone in situations where there is a conflict of interest;
 - they cannot pardon someone in situations where they have firsthand knowledge of the matter;
 - they cannot pardon someone in situations where doing so would interfere with the independence of the judiciary or encroach on judicial power.

IJLRA

CHAPTER 3

1. TIMELINE OF THE CASES WHICH LED TO THE CURRENT SITUATION OF MERCY PETITIONS



**Dhananjoy
Chatterjee vs. State
of West Bengal
(1994)**

- Dhananjoy Chatterjee's mercy petition was rejected by the President. The case raised debates on the issue of executing convicts while their mercy petitions were pending. The Supreme Court upheld the rejection of the mercy petition, leading to the execution of Dhananjoy Chatterjee.

**Santosh Kumar
Satishbhushan
Bariyar vs. State of
Maharashtra (2009)**

- This case addressed the issue of the President's power to pardon and the procedure for considering mercy petitions. The Supreme Court held that it's the duty of the President to apply his mind to the materials before him while considering mercy petitions.

**Shatrughan
Chauhan & Anr. vs.
Union of India &
Ors. (2014)**

- The Supreme Court commuted the death sentences of several convicts on the ground of undue delay in deciding their mercy petitions. This judgment emphasized the importance of expeditious consideration of mercy petitions.

**Mohd. Arif vs.
Registrar, Supreme
Court of India (2014)**

- This case reiterated the principle established in the Shatrughan Chauhan case regarding the effect of delay in deciding mercy petitions. The Supreme Court commuted the death sentences of several convicts due to the delay in deciding their mercy petitions.

2. IMPORTANT CASES

1. NIRBHAYA GANG RAPE CASE¹⁵

After seeing the movie Life of Pi in an off-duty charter bus at Munirka Bus Stand, the victim and her friend were making their way home. The bus driver was among the six other men on board. The bus was scheduled to drive along Dwarka-Palam Road when it abruptly changed course and the men inside closed the doors. When the victim's buddy became suspicious of the men's behavior, he felt obligated to confront the men. The men then viciously beat the victim with a rod, dragged him to the back of the bus, and committed gang rape. When the girl retaliated, one of the young assailants stuck an iron rod in her vagina and removed the majority of her intestines.

The victim and her friend are then abandoned to perish by the side of the road. When the bystander told the police about the situation, they arrived. After the victim and her friend were brought to the Safdarjung Hospital, the medical staff discovered that the victim remained devoid of only 5% of her intestines. At Mt. Elizabeth Hospital in Singapore, on December 29, 2012, the victim lost the ability to withstand her injuries and passed away. Sepsis with multiple organ failure as a result of various injuries was the cause of death. She begged for justice against the six attackers—Ram Singh, Mukesh Singh, Vinay Sharma, Akshay Thakur, Pavan Gupta, and the juvenile—in her final statement.

The Delhi High Court sentenced all four of the prisoners to death on March 13, 2014, based on the State by Reference v. Ram Singh and Ors case. The trial court's decision was supported by the judge's bench, which included Reva Khetrapal and Prathiba Rani. They stated that the crimes perpetrated by all six of the convicts were the most horrible crimes in recorded history. Ram Singh, a prisoner, commits suicide while incarcerated, while the younger prisoner gets released due to his advanced age. Regarding that, it was also decided that an individual's age cannot be used to determine their criminal record. The juvenile system was modified, and the adult age was lowered. For women, it is 16 and for men, 18.

The convict's attorney repeatedly contested the death penalty ruling in several courts at various periods. Numerous petitions were also filed with the Supreme Court and higher courts. Mukesh Singh, a prisoner, even filed a plea with the International Code of Justice. On March 20, 2020, at 5:30 AM, they were hanged in Tihar jail after all of their petitions, both

¹⁵ Mukesh & Anr v. State for NCT of Delhi & Ors. Popularly known as the NIRBHAYA CASE (2017) 6 SCC 1

for mercy and for cure, were denied. **Justice was finally served after seven years.**

After exhausting themselves by submitting numerous petitions to suspend the execution orders of the Nirbhaya case prisoners, they made an appeal for mercy. In this instance, the mercy plea was repeatedly submitted and consistently denied. When one person files a petition for mercy, all other accused parties' lives may be spared. Due to the Mercy Petition's inadequate justification, the courts rejected all four of them when they submitted it.

On January 29, Akshay submitted his initial request for mercy, which was denied on January 31. Then, on March 18, he submitted it once more in the Supreme Court, where it was denied on March 19. Judges R. Banumathi, Ashok Bhushan, and A.S. Bopanna's bench declared that there was no basis for judicial review in this particular case. Following the denial of the mercy petitions submitted by the other three prisoners, one of the prisoners who managed to save his numerous healing requests, Pawan Gupta, petitioned the president for mercy and a change in sentence to life in prison. His plea was denied by the bench led by NV Ramana. And they were hanged following the denial of every compassion request on all grounds.

Mercy petitions, in my opinion, save the lives of a great number of innocent individuals, and as such, our legal system ought to act decisively upon their filing. There are millions of cases where the condemned suffers because the final verdict is delayed; the government ought to give these cases some thought and ought to provide them with justice. As an example, we have heard of a situation where the defendant was incarcerated during his trial before being found not guilty. Therefore, the government and younger attorneys should act to alleviate these people's suffering.

Here, we can draw the conclusion that, despite significant advancements in the Indian legal system and the recognition and use of human judgment, there are still many gaps. Our legal system's operation lacks adequate procedure and is highly dynamic. Therefore, to prevent similar errors and safeguard the welfare of the public, we require a compassion petition.

2. YAKUB MEMON¹⁶

Yakub Memon's legal battle in India was complicated and controversial, especially because of his mercy petition. The story began for its part with the Bombay bombings in 1993, a series of planned terrorist attacks in Mumbai (then known as Bombay), India, Yakub Memon was convicted. These bombings hit several parts of the city, causing massive damage, and hundreds of deaths. Yakub Memon was accused of being a key conspirator in planning and

¹⁶ Yakub Abdul Razak Memon vs State Of Maharashtra Th:Cbi Mumbai (2013) 13 SCC 1

financing the attack. In 2007, Indian courts convicted and sentenced Yakub Memon to death after a lengthy trial. His conviction was supported by evidence such as money transactions and conversations with other conspirators indicating he was part of the bombing conspiracy. As Yaqub Memon's execution date neared after his conviction, his case attracted a lot of attention. His legal team petitioned the President of India for mercy. Yaqub Memon's cooperation with investigative agencies, his lack of direct involvement in the blasts and possible extenuating circumstances related to his role in the conspiracy are among the various reasons for filing the mercy petition. The story sparked a lot of discussion both at home and abroad. Others argued for compassion, citing issues of due process, judicial fairness, and the possibility of rehabilitating Yakub Memon. Others believe his involvement in such a horrific terrorist attack requires death to bring justice, as do many relatives of the victims and some members of the public.

Yakub Memon's mercy petition was eventually rejected by the Indian government, after several appeals and demonstrations with petitions from human rights organizations and well-known personalities, the president of India refused to pardon him, and held many death sentences imposed by the courts. Yakub Memon was hanged in Maharashtra's Nagpur Central Jail on July 30, 2015. Human rights organizations expressed concern over the impartial legal system and the use of the death penalty in India, sparking further controversy and outrage came after his execution. The case of Yakub Memon is being discussed in India, with differing views on whether justice was done or the court proceedings erred because of the death penalty imposed on him. Besides, the case has raised serious concerns about death penalty as applied in Indian law to the system.

3. Kehar Singh vs. Union of India¹⁷

The interpretation and application of Articles 72 and 161 of the Constitution of India relating to the powers of the President and the Governor to grant pardon, deferment, stay, or remission of sentence are laid down in *Kehar Singh v Union of India* case. *Kehar Singh* is one of the suspects in the 1984 assassination of Prime Minister Indira Gandhi. He was convicted under the Terrorist and Disruptive Activities Act (TADA) and other provisions of the Indian Penal Code. *Kehar Singh's* appeal to the Supreme Court and all legal formalities have been exhausted and his mercy petition has been sent to the President of India for review. *Kehar Singh's* mercy petition raised doubts as to whether the death penalty should have been carried

¹⁷ (1989) 1 SCC 204

out in his example. His defense argued that he was merely a co-conspirator and not directly involved in the murder. They also said his poor health and advanced age should be taken into account when deciding whether to grant a pardon. The power of the President under Article 72 was clarified by the Supreme Court of India in its landmark judgment in *Kehar Singh v. India. Union of India* (1989). The court said the president's powers to grant pardons, censures, respites or pardons were restricted. The Prime Minister must follow the advice of the Council of Ministers, and the President cannot decide to grant clemency on frivolous or frivolous grounds.

The judgment re-established the concept of judicial review of presidential decisions in cases involving clemency petitions. The decision of the President is final and unchallenged on its merits, although it is subject to judicial review for procedural reasons such as bad faith or failure to exercise due process. The *Kehar Singh* case provides important guidelines on the criteria for seeking executive clemency and the role of judges in examining clemency petitions. It emphasized that judges should consider natural law and equity when deciding mercy petitions, and that the right to pardon was a constitutional power subject to review. *Kehar Singh* was assassinated in January 1989 after the Indian president refused to accept his request for clemency. Overall, the *Kehar Singh* case has had a lasting impact on the judicial system governing mercy petitioners in India, assuring that the rights and constitutional principles of the accused are taken into consideration is duly considered when determining mercy.

4. Rajendra Prasad vs. State of Uttar Pradesh¹⁸

A notable case on the power of the Governor of India to pardon, remit, stay, or commute a sentence under Article 161 of the Constitution of India is *Rajendra Prasad v. India. State of Uttar Pradesh*. *Rajendra Prasad* was convicted of murdering his wife and five children and sentenced to death. The Governor of Uttar Pradesh reviewed the mercy petition of *Rajendra Prasad* after completing all the legal procedures including appeal to the Supreme Court. *Rajendra Prasad* pleaded for mercy in his mercy plea citing mental health, rehabilitation and humanitarian considerations. He said his state of mind at the time of the offense must be taken into account when determining whether he should be granted mercy. The Supreme Court of India in *Rajendra Prasad v. India. State of Uttar Pradesh* (1979). The court considered necessary Article 161 of the Constitution of India which empowers the Governor to grant

¹⁸ 1979) 3 SCC 646

pardon, pardon, relaxation or remission of punishment The Supreme Court emphasized that the powers of the Governor under Article 161 are discretionary and not limited by strict rules or guidelines. In deciding whether mercy should be granted, the Governor is empowered to consider all relevant circumstances such as feasibility of rehabilitation, public interest and humanitarian reasons

The court found that mental health was a relevant consideration in the compassionate pleas. According to its decision, the mental illness of the convicts at the time of the crime or if it arose later could be grounds for reducing their death sentence to life imprisonment The Supreme Court found no error in the exercise of discretion by the Governor in rejecting the mercy petition in Rajendra Prasad's case and upheld the decision of the Governor. Though the Governor took up the matter, including Rajendra Prasad's state of mind, he could not find sufficient reason to see mercy. The Rajendra Prasad case had laid down important guidelines regarding the power of the Governor to grant pardon under Article 161 of the Constitution of India. This ability to maintain discretion, recognizing mental illness as a legitimate consideration in clemency petitions, has laid the foundation for the implementation of presidential clemency in India

5. Epuru Sudhakar & Anr. vs. Govt. of A.P. & Ors¹⁹

A landmark case in India on the exercise of executive clemency and the power of the Governor to grant pardon as per Article 161 of the Constitution of India is Epuru Sudhakar & Anr. vs. Govt. of A.P. & Ors.

- History: A family murder in Andhra Pradesh led to the conviction and execution of Epuru Sudhakar and another person. After exhausting all available legal avenues, including an appeal to the Supreme Court, they submitted a mercy petition to the Governor of Andhra Pradesh seeking commutation of their death sentences to life imprisonment.
- Mercy petition: Epurusudhakar and another convict pleaded for mercy in their mercy petition citing various reasons such as their youth when they committed the offence, better treatment in prison and right to rehabilitation. It was argued that in view of these circumstances, the Governor should intervene to have their death sentence commuted.
- Supreme Court judgment: The matter finally came before the Supreme Court of India, which in 2006 decided Epuru Sudhakar & Anr. vs. Govt. of A.P. & Ors. The Supreme

¹⁹ (2006) 8 SCC 161.

Court affirmed Article 161 of the Constitution of India which empowers the Governor to grant pardon, pardon, relaxation or remission of punishment

- Governor's View: The Supreme Court reaffirmed that the power of the Governor under Article 161 is discretionary and not limited by strict rules. In deciding whether mercy should be granted, the Governor is empowered to consider all relevant circumstances such as feasibility of rehabilitation, public interest and humanitarian reasons
- Youth as land: The appellants in this case committed the offense when they were minors. The Supreme Court recognized the age of youth at the time of offense as a relevant consideration for their mercy petitions. The Court emphasized the importance of the concept of disciplinary justice and the need to focus on rehabilitative capacity, especially in dealing with juvenile offenders.
- Verdict: The Supreme Court upheld the Governor's choice to commute the death sentence of Eperu Sudhakar and another convict to life imprisonment. The Court ruled that the Governor had considered all the relevant circumstances and applied the principles of restorative justice and humanitarian considerations appropriately in deciding to grant clemency.
- Impact: The Eperu Sudhakar case set an important legal precedent for the exercise of Governor's powers and executive mercy under Article 161 of the Constitution of India. It emphasized the subjective nature of this jurisdiction, and emphasized the importance of considering rehabilitation and humanitarian considerations when considering clemency petitions, particularly in the case of juvenile offenders in the process of emphasizing.

6. Dhananjay Chatterjee vs. State of West Bengal²⁰

In a landmark Indian case, Dhananjay Chatterjee v. State of West Bengal, a security guard convicted of raping and murdering a teenage girl Hetal Parekh in Kolkata in 1990 has died. The case raised important legal and ethical issues about India's mercy petition system and the death penalty.

- History: In 1991, Dhananjay Chatterjee was convicted and sentenced to death for the rape and murder of Hetal Parekh, who was just a teenager at the time. The story attracted a lot of media attention and sparked discussion on the morality and effectiveness of the death penalty.

²⁰ (1994) 2 SCC 220

- Legal action: After exhausting all possible legal avenues, including an appeal to the Supreme Court of India, Dhananjay Chatterjee's mercy petition was sent to the President of India for consideration. His plea for mercy raised such issues as poor training, no previous criminal record, and alleged errors in investigation and conviction
- Supreme Court Appeals: The Supreme Court of India considered the case of Dhananjay Chatterjee several times during the hearing. The Supreme Court confirmed his murder and sentenced him, finding that there was sufficient evidence to prove his guilt beyond a reasonable doubt.
- Rejection of mercy petition: Despite protests from human rights organizations and some well-known personalities, Dhananjay Chatterjee's mercy petition was finally rejected by the President of India. His refusal to ask for mercy led to his execution
- Execution: On August 15, 2004, Dhananjay Chatterjee was sentenced to death in Alipur Central Jail in Kolkata. His execution has reignited the death penalty debate in India, with some saying it deters others from committing heinous crimes and others condemning the practice as wrong and cruel
- Property and Influence: The case of Dhananjay Chatterjee v. Govt. State of West Bengal has highlighted the complexities and controversies surrounding the death penalty and the treatment of mercy petitions by the Indian legal system. It has cast doubt on the effectiveness of the death penalty as a deterrent, the impartiality of the legal system and the place of mercy in the administration of justice. There are often conflicting views in India on the propriety of Dhananjay Chatterjee's death sentence and the broader implications of the case for the criminal justice system

7. Santosh Kumar Satishbhushan Bariyar vs. State of Maharashtra²¹

In case, Santosh Kumar Satish Bhushan Bariyar v. India. State of Maharashtra, is noteworthy as it deals with death penalty and the procedure for approval of mercy petitions. Here is the full summary:

- History: Santosh Kumar Satish Bhushan Bariyar was convicted of involvement in the 2006 train explosion in Mumbai, which caused extensive damage and death. He was sentenced to death by a trial court in Maharashtra.

²¹ (2009) 6 SCC 498

- Legal issues: The Santosh Kumar Satish Bhushan Bariar case progressed to a mercy petition after exhausting all available legal avenues including appeals in higher courts. He appealed to the President of India for mercy and asked him to commute the death penalty to life imprisonment.
- Mercy petition: Santosh Kumar Satish Bhushan Bariar may have raised several issues in his mercy petition, such as any extenuating circumstances, his conduct while in custody, and perhaps any lapses he committed during the court proceedings or the investigation. Supreme Court intervened eventually the Supreme Court of India heard the case. While the specifics of the Supreme Court's involvement in this particular case are uncertain, it is important to remember that the Court routinely reviews cases involving the death penalty, ensuring due process and fairness.
- Decision: The main decision on the mercy petition of Santosh Kumar Satish Bhushan Bariar is not readily available to the general public. However, the President of India has the final say on whether to grant amnesty or uphold the death penalty, after considering several factors.
- Execution or Commutation: The fate of Santosh Kumar Satishbhushan Bariar would have been commuted to execution or death penalty to life imprisonment depending on the outcome of the mercy petition.
- Legacy and Impact: Santosh Kumar The Satish Bhushan Bariar case highlights the challenges and ethical dilemmas associated with the use of the death penalty, as are many other cases related to the death penalty in India. It emphasizes the value of a fair trial, a thorough investigative process, and the compassion of the executive branch in the administration of justice.

Overall, the case of Santosh Kumar Satish Bhushan Bariar adds to the larger discussion on the death penalty and clemency petitions in India, although the specifics of the outcome of the case are uncertain.

8. Shatrughan Chauhan & Anr. vs. Union of India & Ors.²²

In an earlier case, Shatrughan Chauhan & Anr. vs. Union of India & Ors. It addresses the problem of delayed mercy petitions and how it affects death row inmates. Here is the full summary:

²² (2014) 3 SCC 1

- History: In Uttar Pradesh, Shatrughan Chauhan and another were sentenced to death after being convicted by a jury. They submitted a mercy petition to the President of India to commute their death sentences to life imprisonment after exhausting all other legal avenues including an appeal to the Supreme Court
- Mercy petition and delay: Shatrughan Chauhan and another convicted party sought mercy in their mercy petitions citing procedural errors and mitigating circumstances in their trial. But for years their pleas for mercy were rejected, and they were executed.
- Preliminary hearing by the Supreme Court: The matter finally went to the Supreme Court of India. The Supreme Court examined the effect of delay in disposing of mercy petitions in case of death row inmates in Shatrughan Chauhan & Anr. vs. Union of India and Ors. (2014)
- Violation of rights: According to the Supreme Court, the delayed decision-making process on mercy petitions violated the fundamental rights of death row prisoners under Article 21 of the Constitution of India, especially the right to residence under and gain the freedom. The court emphasized that undue delay in decision-making is unconstitutional and that the President is obliged to examine clemency petitions immediately.
- Guidelines for mercy petitions: To ensure speedy disposal, the Supreme Court has laid down rules for processing mercy petitions. The court also directed the government to put in place a mechanism for immediate scrutiny of mercy applications and keep death row inmates informed about the progress of their petitions
- Compensation for delay: The Supreme Court has also ruled that death row inmates whose mercy petitions have been delayed must be compensated for mental distress and anxiety caused by uncertain outcomes of the result of the.
- Influence: Shatrughan Chauhan and Ann. vs. Union of India & Ors. It has had a profound impact on the administration of justice in India, especially when it comes to death penalty and mercy petitions. It emphasized the importance of prompt disposal of mercy petitions to create the rights of constitutional rights a to protect prisoners sentenced to death and to avoid unnecessary suffering

Overall, the case highlighted the need for policy reforms to address the backlog in the mercy petition process and ensure equity and justice in India with the death penalty will be used in the process.

9. [Mohd. Afzal Guru vs. State of Delhi](#)

In the historic Indian case of Mohd. Afzal Guru v. State of Delhi, the focus is on Mohd. Afzal Guru's execution due to his involvement in the 2001 Parliament attack case. This is a thorough synopsis:

- History: For his part in the December 2001 attack on the Indian Parliament in which many people were killed, Mohd. Afzal Guru was convicted. It was also accused of facilitating the militants' entry into India and providing systematic support for the attacks.
- Legal information: Mohd. Afzal Guru's case progressed to a mercy petition after the trial court convicted him and subsequent appeals, including one in the Supreme Court of India. He petitioned the President of India to grant him mercy, sought to have his death sentence commuted to life imprisonment.
- Mercy petition: Mohd. Afzal Guru majority raised several issues in his mercy petition, such as possible mitigating circumstances, cooperation in the investigation and apparent error in the court proceedings which his supporters asserted that it would be just and morally just to commute his sentence to life imprisonment.
- Supreme Court Intervention: The Supreme Court of India intervened in this case as well. It should be remembered that the Supreme Court routinely reviews cases involving the death penalty, ensuring due process and fairness in the judicial process, although the specifics of the Court's involvement in this particular case cannot be ascertained.
- Decision: The President of India eventually Mohd. Afzal Guru's appeal for mercy, despite appeals from human rights organizations and many well-known personalities. His refusal to ask for mercy led to his execution.
- Killed: On February 9, 2013, Mohd. Afzal Guru was hanged in Delhi's Tihar Jail. His execution revived the death penalty debate in India. Some said it was preventing terrorism, while others questioned the integrity of the trial and condemned the flawed process.
- Assets and Influence: India still has Mohd. Afzal Guru's murder and the case's wider ramifications for the country's criminal justice system. It highlights the difficulties and ethical dilemmas that accompany the application of the death penalty, particularly for crimes related to terrorism.

CHAPTER 4

NEW PROVISIONS UNDER THE BHARATIYA NAGARIK SURAKSHA SANHITA 2023

Although trying to expedite the process for mercy petitions might be beneficial, Cl. The Bharatiya Nagarik Suraksha Sanhita 2023 is in conflict with the mercy jurisprudence that has been created by judges over time. It so seems to have a negative impact on a convicted person's fundamental right to beg for mercy.

1. Context

The President and the Governor, respectively, are granted broad authority by Art. 72 and Art. 161 of the Constitution to pardon, reprieve, respite, or remit punishment, or to suspend, remit, or commute the sentence of any individual found guilty of any crime. The highest state dignitaries are bestowed with these powers, which function independently of judicial authority. The judicial record is unaffected by their exercise.

The President and the Governor also have extremely broad powers; they can investigate any matter relating to the prisoner's life or circumstances outside of the case files. Furthermore, statutes cannot limit these powers. They are important because they allow convicted individuals to make a plea for mercy, which is generally the last resort for those who have been given an execution sentence.

2. Limitation on the Authorization of Mercy Petitions

It seems that only the convict or those connected to them have the ability to file a mercy petition (Cl.473(1), "convict under the sentence of death or his legal heir or any other relative"). As of right now, there isn't any such limitation.

It is common for death row convicts to lose contact with their families. In such situations, under The Bharatiya Nagarik Suraksha Sanhita 2023, there would be no other option except for the death row convicts to file the petition themselves. The majority of death row convicts are extremely poor; their lack of education and other vulnerabilities results in their inability to understand and meaningfully exercise their legal rights; this inability may be made worse by the emotional distress that comes with knowing that they are about to be executed.

Crucially, a great number of death row inmates have mental health disorders, and many of them have intellectual disabilities, which may prevent them from submitting a mercy plea or instructing attorneys to do so on their behalf. Therefore, The Bharatiya Nagarik Suraksha Sanhita 2023 ignores these facts by prohibiting third persons from submitting mercy petitions,

which is likely to have a detrimental effect on the meaningful exercise of this privilege.

3. Limitation on the Amount of Compassion Requests

Cl.473 (1) "If he has not already submitted a petition for mercy" is how The Bharatiya Nagarik Suraksha Sanhita (Bnss)2023 puts it. This would suggest that the convicted party is only allowed to file one mercy petition—that is, one before the Governor and one before the President.

In the event that circumstances change, the Court now recognizes the ability to file several mercy petitions before the same authority. For example, a convict may file a second mercy petition based on a new ground if they become mentally ill after filing the first one. Limiting the number of acceptable petitions to one would deny a convicted person the chance to present such later discoveries for review. Such a privilege would be particularly necessary under The Bharatiya Nagarik Suraksha Sanhita 2023, which only allows convicted individuals or their families to file the petition—and only within the strict, time-limited window that is covered below. This makes it more likely that the petitions will be hastily filed and incomplete.

4. Introduction of timelines

Cl. 473 specifies a number of deadlines. First, Cl.473(1) sets a thirty-day deadline for submitting mercy petitions to the Governor or the President, if one has not already been filed. This deadline begins on the date the Superintendent of Jail notifies the prisoner of either: (a) the Supreme Court's rejection of their special leave petition, or (b) the date the High Court confirms the prisoner's death sentence and the deadline for filing an appeal or a special leave petition in the Supreme Court has passed. Second, according to Cl.473(2), the offender has sixty days from the date of refusal to submit a petition to the President after first presenting it to the Governor, who may reject it.

Subclause (4) mandates that the Central Government consult the State Government in order for the President to act in accordance with the Council of Ministers' advice. The Central Government has sixty days from the date of receipt of these to submit recommendations to the President. Third, Cl. 473(6) mandates that the Home Department of the State government, the Superintendent of the Jail, or an officer in charge of the Jail, be notified within 48 hours of the President's decision about the mercy petition by the Central Government.

It should be noted that the Supreme Court has been cautious about setting strict deadlines for the President and Governor to hear requests for compassion, even though an unjustifiable executive delay is a legitimate supervening cause for the lowering of a death sentence. Cl. 473 does not set any such deadlines for the Governor or the President in accordance with this

body of precedent.

- a) Problems with the thirty-day period under Cl. 473.1 for petition submission
While efficiency may be the goal of the Bharatiya Nagarik Suraksha Sanhita 2023 method, the imposition of strict deadlines is a major source of trouble as it essentially prevents the prisoner from submitting a thorough petition. At now, the Supreme Court has ruled that convicted individuals must be given a "reasonable" amount of time to submit a petition for mercy.

Under Cl.473(1), The Bharatiya Nagarik Suraksha Sanhita 2023 establishes a thirty-day deadline for the submission of mercy petitions; nevertheless, this may not provide enough time for the prisoners or their relatives to gather all the required paperwork and draft the petition. For example, issues like as solitary incarceration and mental illness following a conviction are also significant in mercy petitions, aside from case records. It could take some time to obtain the paperwork proving this, particularly from the prison administration after submitting numerous applications. Furthermore, it's crucial to get legal counsel because mercy petitions opposing executions are only submitted as a last resort. It takes time to find and hire a reasonable attorney, especially considering the convict's probably low socioeconomic background.

Most jails only allow visits for a few minutes at a time, through a metal barrier, so speaking with and training attorneys usually takes a lot of time.

- b) Problems with the deadline for the President to receive the Mercy Petition under Cl. 473-2

The reason behind the thirty-day limit for The Bharatiya Nagarik Suraksha Sanhita 2023 applications submitted to the Governor and the sixty-day deadline for applications submitted to the President is not apparent. In any case, Cl. 473(2) specifies that the sixty-day window for submitting a petition to the President will open on the day the Governor rejects or discards the mercy petition, even though Cl. 473(1) specifies that the thirty-day window will start after the prisoner is informed about the pertinent event as specified.

Therefore, the later time for submitting a petition for compassion to the President does not begin on the day the prisoner receives the information. Furthermore, there is no subclause requiring the Governor to notify the offending convict—or even the Superintendent of Jail—of his refusal right away. Cl.473(6), which only applies to rejections by the President, offers a 48-hour window for notifying others of a rejection, including the Superintendent. This oversight is important because it may lead to a scenario

in which the convict's petition is denied by the governor, but they are not notified of the decision for sixty days, which leaves them with no time to petition the president.

c) Effect on ability to avail other available Judicial Remedies

According to the deadlines outlined in Cl. 473, it appears that prisoners may be coerced into submitting a mercy plea before they have had a chance to pursue all available legal options. Currently, the matter is brought to the High Court for confirmation under s. 366 CrPC after the Sessions Court imposed a death sentence. The Supreme Court may hear an appeal if the High Court upholds the sentence. In all death penalty cases, the Supreme Court regularly considers these appeals based on their merits. Convicted parties may still submit a review petition even if their request for special leave is denied.

Curative petitions are an uncommon remedy that the Supreme Court has carved out to further narrow any scope of error; these can be filed on limited grounds to prevent abuse of authority or miscarriage of justice. Regarding mercy petitions, the Supreme Court has emphasized time and time again the value of review petitions and mandated that prisoners be allowed to file review petitions prior to being forced to file a mercy petition.

Therefore, Cl. 473 deviates from current legal precedent and essentially compels prisoners to file mercy petitions when they are entitled to file review and curative petitions instead. Convicts, for example, will have thirty days following the Supreme Court's dismissal of their appeal to file both a review petition (which has a thirty-day time limit) and a mercy petition (under Cl.473(1)). Although courts may allow for the filing of review and curative petitions to be delayed, the concurrent time limits may still negatively impact the convicts' ability to effectively pursue either remedy. Moreover, failing to file the mercy petition within the allotted time frame may result in the forfeiture of this right.

5. Impact on cases involving Multiple Accused

Cl.473(3) mandates that in situations involving multiple guilty parties, if one convict wishes to file a mercy petition, the other co-accused parties must do the same within sixty days. If additional co-accused do not file a similar petition, the jail's superintendent must send the names, addresses, case file copy, and "all other details of the case" to the federal government or state government for review in addition to the convict's petition for mercy. According to subclause (5), the President would decide on all mercy applications in cases involving several convicts jointly. There isn't a comparable clause for the Governor.

Convicts can submit their unique justifications by filing a mercy petition; it is extremely uncommon that two people found guilty in the same case will enter the identical plea. The

President and the Governor may also take into account a convict's socioeconomic background, past medical records, any ailments they may have had, past jail behavior, etc., in addition to the case record, in order to make an informed decision. For every prisoner, there will be a unique set of these customized documents. But this is undermined by Cl.473(3), which allows the Superintendent to simply provide the co-accused's name, address, and case files. This would exclude important details on their personal situation, making it impossible for their right to ask for forgiveness to be meaningfully realized.

Importantly, if the Superintendent's mailing of details is interpreted as the submission of a mercy plea, the condemned might not be allowed to file another mercy petition before the same authority, even in spite of this serious error.

6. Judicial Review Restriction

According to Cl. 473(7), an appeal against the President's order issued in accordance with Art. 72 of the Constitution is not permitted. It also states that no court shall inquire into "any question as to the arriving of the decision by the President." It is not immediately evident why this section addresses only the President's decision and leaves the Governor out. Regardless, the initial portion of this subclause seems to restate the current stance.

It is established law that appeals against decisions made by the President or the Governor cannot be filed in any court because to the extraordinary nature of their compassion powers, and that they are not required to provide justification for their decisions. There is limited judicial review of the President's or the Governor's decision, and courts can only become involved to stop a fundamental rights infringement.

The second portion of Cl.473(7) seems to go against judicial decisions and may be in violation of a convicted person's fundamental rights. "Any question as to arriving at the decision" is a fairly broad statement. Within its scope, it can address inquiries about procedural aspects of decision-making, like the length of time required to reach a conclusion and whether pertinent information was overlooked.

Currently, judicial review of the order made by the President or the Governor is allowed primarily on the grounds of fundamental rights violations and restricted procedural features of the decision-making process. Writ Petitions under Article 226 or Article 32 of the Constitution may also be filed. According to the Supreme Court's ruling, judicial review may be permitted in the following situations: (i) when the order is made without due process; (ii) when it is made dishonestly; (iii) when it is made based only on superfluous or irrelevant factors; (iv) when pertinent materials were excluded from consideration; or (v) when the order

is made arbitrarily.

Courts have expanded their scope of inquiry to include "supervening circumstances," which violate the convict's fundamental rights and require a reduction in the death sentence. Examples of such supervening circumstances include insanity, solitary confinement, or excessive and unexplained delay in the decision-making process regarding the mercy petition. It is crucial to remember that this limited power of judicial review of the courts cannot be taken away by Cl.473(7) The Bharatiya Nagarik Suraksha Sanhita 2023, even if it so chooses. The judiciary's exercise of these powers with regard to the President's mercy decision is rooted in Art.32 of the Constitution, which cannot be restricted by a statute.

CONCLUSION

In conclusion, an examination of mercy petitions in the context of the Indian legal system reveals both the critical importance of this mechanism and the procedural difficulties it faces : the governors had the power to grant pardons, which happen to people animal nature of the country emphasize regulatory framework.

However, despite the good intentions behind clemency petitions, their effectiveness is often hindered by procedural inefficiencies and delays. The huge backlog of pending applications and long waiting lists for individuals on death row raise serious concerns about the government's compliance with its legal obligations and the ethical treatment of those awaiting clemency of the s Furthermore, the declining number of clemency petitions filed and approved in recent decades must be carefully considered. While this trend was undoubtedly aided by legislative changes and major court decisions, stronger standards such as the "rare" doctrine established in the Bachan Singh case²³, which also highlights a profound shift in public attitudes toward the death penalty and justice.

Given these challenges, it is imperative that policymakers, lawyers and community stakeholders engage in meaningful dialogue to address the shortcomings of the clemency petition process. Reforms aimed at simplifying procedures, providing transparency and speeding up decisions must be prioritized to ensure that clemency petitions serve their intended purpose if justice is served it is appropriate and compassionate to deal with it. Additionally, efforts to raise public awareness and conversation about clemency petitions are essential to generate more informed and engaged citizens. By shedding light on the complexities and implications of this area of the legal system, we can collectively advocate for reforms that uphold the principles of justice,

²³ (1980) 2 SCC 684

dignity and human rights for all people, regardless of their status

In conclusion, while mercy petitions remain an integral part of India's legal landscape, their full potential can only be achieved through concerted efforts to address systemic challenges and uphold basic standards of fairness and compassion. As we strive towards a just and humane society, effectively implementing mercy petitions stands as evidence of our commitment to democratic principles, the rule of law and respect for human dignity

