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**THE FINAL PLEA**  
**“Mercy Petition in Death Sentence Cases”**  
**(Section-472 of Bharatiya Nagarik Suraksha Sanhita, 2023)<sup>1</sup>**

AUTHORED BY - SRINIBAS PRAHARAJ

**1. INTRODUCTION**

Mercy petitions emerge as a last resort for individuals on death row who are facing the ultimate penalty. The plea of mercy becomes a pivotal point for a death penalty convict at the end because of humanitarian considerations. At its very core, this piece of writing will try to unravel the present layers of legislation and judicial precedents that underscore the mercy petition framework, shedding light on the evolution of new proposed procedures that will govern this exceptional plea for clemency.

Section 472 of the “Bharatiya Nagarik Suraksha Sanhita, 2023” (BNSS, 2023) tells about a completely new provision named as “Mercy Petition in Death Sentence Cases” in Chapter XXXIV named “Execution, Suspension, Remission and Commutation of Sentences”.<sup>2</sup> Currently the country of India has no legal procedure with respect to mercy petitions or plea for clemency except the Constitutional safeguard under Article 72 (Pardoning Power of the President).<sup>3</sup> “Limited guidance is available, like guidelines released by the Ministry of Home Affairs, some of the landmark judicial pronouncements, and jail manuals of different states where the procedure varies from state to state.”<sup>4</sup> This paper discusses that Section 472 of the BNSS, 2023 will bring, along with their possible implications. The wording of this provision attempts to simplify and streamline the legal process for plea of mercy, however its language conflicts with the judicial body of mercy jurisprudence that has grown over time by our judicial institutions. It so seems to have a negative impact on a convicted person's fundamental right to beg for mercy.

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<sup>2</sup>[https://prsindia.org/files/bills\\_acts/bills\\_parliament/2023/Bharatiya\\_Nagarik\\_Suraksha\\_Sanhita\\_2023.pdf](https://prsindia.org/files/bills_acts/bills_parliament/2023/Bharatiya_Nagarik_Suraksha_Sanhita_2023.pdf)

<sup>3</sup> Constitution of India, 1950- <https://legislative.gov.in/constitution-of-india/>

<sup>4</sup> Ministry of Home Affairs, Government of India, ‘Guidelines for Safeguarding the Interest of the Death Row Convicts’, 4 February 2014, No. VII-17013/1/2014-PR.

This comparative research exploration elucidates the meticulous steps will be involved in initiating, documenting, applying for, and submitting these pleas. This analytical treatise delves into present practices with proposed legal provisions to underscore the intricate balance between the demands of justice and the potential for mercy.

## **2. MEANING**

A formal plea for clemency or leniency, usually sent to a governor or head of state, is known as a mercy petition. It asks for a decrease in the severity of the punishment meted out to a person who has been found guilty of a crime. That formal plea for mercy or clemency for a person guilty of a crime is known as a mercy petition. It is made to a higher authority, such as the President, Governor, or Head of State, and is frequently motivated by humanitarian concerns, the need for a fair trial, or concerns about rehabilitation and justice. The pardon for the death penalty can be given by way of the filing of a mercy petition with the head of the state. The theory behind the power of pardon is that<sup>5</sup> “every civilized country recognizes, and has therefore provided for, the pardoning power to be exercised as an act of grace and humanity in proper cases. Without such a power of clemency, to be exercised by some department or functionary of a government, a country would be most imperfect and deficient in its political morality and in that attribute of Deity whose judgments are always tempered with mercy.”<sup>6</sup> Public interest and morality are the cornerstones of the mercy plea. The justification for its application is the public welfare, economic considerations, reformation, and rehabilitation goals, which constitute the legitimate goals of all forms of punishment.

## **3. PRESENT LEGAL FRAMEWORK**

Till now India has no statutory provisions which is guiding the mercy petition. But in our Constitution there is one Article which tell about the pardoning power in case of death penalty. Article 72 provides the President’s pardoning power of the punishment of any convicted person of any offence or offences. This Article says, “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.” The power is an executive action. The President acts on the advice of the council of ministers<sup>7</sup> and report from the Home Ministry. The power of

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<sup>5</sup> <https://articles.manupatra.com/article-details/Pardoning-power-of-President>

<sup>6</sup> *Epuru Sudhakar & Anr. v. Govt. of A.P. & Ors.*, (2006) 8 SCC 161.

<sup>7</sup> *State v. Prem Raj*, (2003) 7 SCC 121.

giving mercy by the President to a person convicted of death penalty is absolute and cannot be challenged under any statutory laws. Article 161 of the Constitution give the power to the Governor of any State. There are no legal procedures or regulatory framework which deals with the mercy petitions. There are few judicial pronouncements and Home Ministry's guidelines<sup>8</sup>, which are followed to dispose of those petitions. The execution of the same is done by jail manuals of different States. In *Epuru Sudhakar v. Govt. of A.P.*,<sup>9</sup> the Honourable Supreme Court held, "The orders under Article 72 could be challenged on the following grounds;

- a) That the order has been passed without application of mind;
- b) That the order is mala fide;
- c) That the order has been passed on extraneous or wholly irrelevant considerations;
- d) That relevant materials have been kept out of consideration;
- e) That the order suffers from arbitrariness."

Some of the landmark judicial decisions the Article 72 is made subjected to judicial review. "The question as to whether the case is appropriate for the exercise of power conferred by this Article depends upon the facts and circumstances of each particular case."<sup>10</sup> The Apex Court has no jurisdiction when application is pending<sup>11</sup> and the convicted person cannot exercise judicial review to appeal only on the ground of undue delay in disposing of mercy petition.<sup>12</sup> Yet there are no standardize process to deal with smooth disposal of the clemency for the death row persons. Even the current "Code of Criminal Procedure, 1973" has no specific Sections to deal with these petitions. Sometimes there are conflicting situations arise between the executive orders and the judicial decisions. "The delay in the execution of the petition can be a ground for the commutation of the death penalty to protect the life, liberty and dignity of the convicted person."<sup>13</sup> In general the problems facing by the current framework are in short as follows;

- a) Delay in decision making.
- b) Inconsistent orders of the participating institutions.
- c) Lack of transparency which leads to violation of basic human rights.

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<sup>8</sup> Ministry of Home Affairs, India, 'Guidelines for Safeguarding the Interest of the Death Row Convicts'.

<sup>9</sup> AIR 2006 SC 3385.

<sup>10</sup> *Kuljeet Singh v. Union of India*, (1983) 3 SCC 324.

<sup>11</sup> *Mohinder v. State*, AIR 1976 SC 2299.

<sup>12</sup> *Devinder Pal Singh v. State of NCT of Delhi*, AIR 2013 SC 1975.

<sup>13</sup> *Shatrughan Chauhan & Anr. v. Union of India and Ors.*, (2014) 3 SCC 1.

- d) Political influence.
- e) Public pressure.
- f) Media trial.
- g) No standardize legal procedure.

#### **4. THE PROPOSED REFORM**

Chapter XXXIV of the “Bharatiya Nagarik Suraksha Sanhita, 2023” is about “Execution, Suspension, Remission and Commutation of Sentences”. To address the above mentioned problems and make a provision regarding that Section 472 of the proposed sanhita newly added, which delves with “Mercy Petition in death sentence cases”. There are many things added in the provisions and it contains seven sub-sections.

“The mercy petitions are to be filed before the President of India under Article 72 or the Governor of the State under Article 161 of our Constitution. The convicted person, who is on the death row, or his legal heir or any relative can file the mercy petition. It should be filed within thirty days after the date on which the Superintendent of Jail informs of his dismissal of appeal or special leave application, or date of confirmation of the sentence of death by the High Court and the time has expired to file an appeal or special leave in the Supreme Court.”<sup>14</sup> The request for mercy must be submitted to the President within sixty days after the Governor rejects or disposes of the petition.<sup>15</sup> In case there are more than one convict in a single case, the Superintendent of the Jail or officer in charge of the Jail shall ensure that every convict also makes the mercy petition within a period of sixty days from the date on which any one of them apply. If such petitions are not received by them from the other convicts then Superintendent of the Jail shall send the names, addresses, copy of the record of the case and all other details of the case along with the mercy petition of the applicant to the concerned Government.<sup>16</sup> Upon receiving of the mercy petition, the Central Government seeks the inputs of the State Government and obtain case records from Superintendent of the Jail. of the same, the Government will promptly forward it to the President within sixty days of its receipt.<sup>17</sup>

Sub-section (5) of Section 472 provides “the President may, consider, decide and dispose of the

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<sup>14</sup> Bharatiya Nagarik Suraksha Sanhita, 2023, Section 472, sub-section (1).

<sup>15</sup> Bharatiya Nagarik Suraksha Sanhita, 2023, Section 472, sub-section (2).

<sup>16</sup> Bharatiya Nagarik Suraksha Sanhita, 2023, Section 472, sub-section (3).

<sup>17</sup> Bharatiya Nagarik Suraksha Sanhita, 2023, Section 472, sub-section (4).

mercy petition. In case there are more than one convict in a case, the petitions shall be decided by the President together in the interests of justice.”<sup>18</sup> Following that, the Central Government will, within forty-eight hours, relay this information to the Home Department of the State Government and the Superintendent of the Jail or the officer in charge of the Jail upon receiving the President's decision on the mercy petition.<sup>19</sup>

The last sub-section of this Section prohibits the Court's power of judicial review and the convicted person's right to appeal. In the language of the provision, “No appeal shall lie in any Court against the order of the President made under Article 72 or Governor made under Article 161 of the Constitution and it shall be final, and any question as to the arriving of the decision by the President shall not be enquired into in any Court.”<sup>20</sup> It totally curtails the power of the Court to review the mercy petition on any grounds and simultaneously it overrides the judicial pronouncements of our Apex Court. It also does not mention the time period to dispose of the mercy petition by the President of our country.

Somehow, the proposed reform is criticized for not addressing the ongoing defections in dealing with the mercy petitions. “The critiques are

- i. It strictly provides there can be no appeal of the order of President issued under Article 72 and of Governor issued under Article 161 of our Constitution.
- ii. Total exclusion of judicial review of mercy petitions in any case on any grounds. The judicial review, which is considered as one of the features of basic structure doctrine,<sup>21</sup> is totally sidelined in the proposed Act.
- iii. No check and transparency in case of any mala fide orders.
- iv. Again no time period mention to decide and dispose of the mercy plea by the President. The time period within which the mercy petition to be decide by the President is not mentioned. Now the delay to dispose of the mercy plea problem will be remain the same.
- v. No period is mentioned between the rejection of petition and execution of death penalty.
- vi. The sub-section (5) of Section 472 provides the President ‘may’ consider, decide and dispose of the mercy petition, not ‘shall’ consider, decide and dispose of that mercy petition.

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<sup>18</sup> Bharatiya Nagarik Suraksha Sanhita, 2023, Section 472, sub-section (5).

<sup>19</sup> Bharatiya Nagarik Suraksha Sanhita, 2023, Section 472, sub-section (6).

<sup>20</sup> Bharatiya Nagarik Suraksha Sanhita, 2023, Section 472, sub-section (7).

<sup>21</sup> *Indira Nehru Gandhi v. Raj Narain*, 1975 SCC (2) 159.

- vii. No changes proposed on the execution part of the petition in case of rejection of the mercy plea.”

## 5. CONCLUSION

In conclusion, the inclusion of Section 472 in the BNSS, 2023, addressing mercy petitions in death sentence cases, marks a pivotal moment in our legal framework. This provision underscores the humane dimensions of justice and provides a mechanism for reconsideration when the ultimate penalty is at stake. The final plea, as enshrined in this legislation, acknowledges the fallibility of human judgment and the irreversible nature of capital punishment.

This legislative stride reflects a commitment to a legal system that values the sanctity of life and the importance of due process. In embracing this final plea mechanism, we affirm our commitment to a legal system that not only punishes wrongdoing but also upholds the fundamental values of compassion, fairness, and respect for life. At the end, “in attempting to streamline and standardize the procedure applicable to mercy petitions, the language of Section 472 of the BNSS, 2023 runs contrary to the mercy jurisprudence judicially developed over the years. As a result, it appears to adversely affect a convict’s constitutional right to file mercy petitions.”<sup>22</sup> If the problems are properly addressed and necessary changes will be made, then it will become a complete and standard legal provision for the plea of mercy.

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<sup>22</sup> <https://p39ablog.com/2023/11/criminal-law-bills-2023-decoded-20-mercy-petitions/>