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# **MERCY PETITIONS IN INDIA VS PRESIDENTIAL CLEMENCY IN THE USA: A COMPARATIVE STUDY**

AUTHORED BY - MEGHA CHHILLAR  
LLM, SRM University, Sonipat

## **ABSTRACT**

The power of executive clemency represents one of the most significant intersections between law, morality, and state authority. It functions as a corrective mechanism within the criminal justice system, allowing for relief against judicial errors, humanitarian considerations, and evolving societal values. This paper undertakes a comparative analysis of mercy petitions in India and presidential clemency in the United States, examining their constitutional foundations, scope, procedures, and judicial oversight.

In India, clemency powers are vested in the President and Governors under Articles 72 and 161 of the Constitution, operating within a framework influenced by executive advice and subject to limited judicial review. In contrast, the United States Constitution under Article II grants the President broad and largely unfettered clemency powers, reflecting a more discretionary and politically insulated model.

The study critically evaluates the procedural delays, transparency concerns, and potential misuse of clemency powers in both jurisdictions, particularly in death penalty cases. It further analyses landmark judicial pronouncements that have shaped the contours of these powers. The paper argues that while both systems aim to balance justice with mercy, they diverge significantly in accountability mechanisms and procedural safeguards.

The research concludes by suggesting reforms to enhance transparency, reduce delays, and ensure that clemency serves its intended purpose as a tool of justice rather than arbitrariness.

## **KEYWORDS:**

Clemency, Mercy Petition, Presidential Pardon, Judicial Review, Death Penalty, Comparative Law

## 1. INTRODUCTION

### 1.1 Background and Concept of Clemency

Clemency, often described as an act of grace, is an executive power that allows the mitigation or setting aside of punishment imposed by courts of law. It is rooted in the recognition that the justice system, despite its structured procedures, is not infallible. Clemency thus acts as a humanitarian safeguard against miscarriage of justice, excessive punishment, or changed circumstances.

Historically, the concept of clemency traces its origins to monarchical systems where sovereigns exercised absolute discretion to pardon offenders. In modern constitutional democracies, this prerogative has been retained in a regulated form, reflecting a balance between rule of law and compassionate governance<sup>1</sup>.

In India, the power of mercy petitions is constitutionally enshrined and operates within a framework influenced by the advice of the Council of Ministers<sup>2</sup>. In the United States, the President exercises clemency powers independently under the Constitution, with minimal external constraints<sup>3</sup>. This divergence forms the core basis of comparative analysis in this study.

### 1.2 Research Problem

Despite being a crucial safeguard, the exercise of clemency powers has often been criticized for arbitrariness, political influence, and lack of transparency. In India, inordinate delays in deciding mercy petitions have raised serious constitutional concerns, particularly in death penalty cases. Conversely, in the United States, the broad and largely unchecked nature of presidential clemency has led to allegations of misuse and favoritism.

This raises critical questions:

- Whether clemency powers are exercised in a fair and consistent manner?
- To what extent judicial review can or should intervene?
- Whether existing frameworks adequately balance discretion with accountability?

### 1.3 Objectives of the Study

The primary objectives of this research are:

- To examine the constitutional and legal framework governing clemency in India and

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<sup>1</sup> Daniel T. Kobil, "The Evolving Role of Clemency in Capital Cases," (2009) 44 Texas Tech Law Review 1.

<sup>2</sup> Constitution of India, arts. 72 & 161; Maru Ram v. Union of India, (1981) 1 SCC 107.

<sup>3</sup> U.S. Constitution, art. II, Section 2; Ex parte Garland, 71 U.S. (4 Wall.) 333 (1866).

the United States.

- To analyse the scope, nature, and limitations of clemency powers in both jurisdictions.
- To evaluate the role of judicial review in regulating executive discretion.
- To undertake a comparative analysis highlighting key similarities and differences.
- To suggest reforms for ensuring transparency, efficiency, and fairness.

#### **1.4 Scope and Limitations**

This study is confined to a doctrinal and comparative analysis of clemency powers in India and the United States. It primarily relies on constitutional provisions, judicial decisions, and secondary sources such as scholarly writings and reports.

The research does not include empirical data or interviews and is limited by the availability of publicly accessible information, particularly regarding internal executive decision-making processes.

## **2. LITERATURE REVIEW**

The concept of executive clemency has attracted considerable scholarly attention across jurisdictions, particularly in the context of its relationship with the rule of law, separation of powers, and human rights<sup>4</sup>. The existing literature reveals both theoretical justifications and practical concerns surrounding the exercise of clemency powers in India and the United States.<sup>5</sup> Early scholarly works such as William F. Duker's "The President's Power to Pardon: A Constitutional History" (1977) provide a foundational understanding of the origins and scope of presidential clemency in the United States. Duker traces the power to English royal prerogatives and argues that the framers of the U.S. Constitution intentionally vested broad and largely unchecked clemency powers in the President to ensure flexibility in exceptional cases<sup>6</sup>. Similarly, Austin Sarat and Nasser Hussain, in their edited volume "Forgiveness, Mercy, and Clemency" (2007), explore the philosophical and socio-legal dimensions of clemency, emphasizing its role as a moral counterbalance to rigid legal systems.

In the Indian context, scholars such as H.M. Seervai in "Constitutional Law of India" have examined Articles 72 and 161 as essential components of constitutional governance, highlighting that these powers are not personal to the President or Governor but must be

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<sup>4</sup> Daniel T. Kobil, *The Evolving Role of Clemency in Capital Cases*, 44 *Tex. L. Rev.* 102 (1991).

<sup>5</sup> *B. P. Singhal v. Union of India*, (2010) 6 SCC 331 (India).

<sup>6</sup> U.S. Constitution art. II, Section 2, Clause 1.

exercised on the aid and advice of the Council of Ministers<sup>7</sup>. Seervai critically notes that while clemency is intended as a safeguard, its effectiveness is often undermined by bureaucratic delays and lack of transparency.

Further, M.P. Jain, in “Indian Constitutional Law”, provides a doctrinal analysis of clemency powers, particularly emphasizing the evolution of judicial review in this domain. Jain discusses how Indian courts have gradually expanded the scope of review to include grounds such as mala fide intent, arbitrariness, and non-application of mind, thereby ensuring that executive discretion does not become absolute.

Several journal articles have critically examined the functioning of clemency powers in both jurisdictions. For instance, an article by Kathleen Dean Moore, titled “Pardons: Justice, Mercy, and the Public Interest” (published in *Ethics*, 1989), argues that clemency must be guided by principles of fairness and public welfare rather than political considerations. Moore emphasizes that unchecked discretion risks undermining public confidence in the justice system.

In contrast, Rachel E. Barkow, in her influential article “The Ascent of the Administrative State and the Demise of Mercy” (*Harvard Law Review*, 2008), critiques the declining use of clemency in the United States and attributes it to increased bureaucratization and political risk aversion<sup>8</sup>. Barkow argues that although the constitutional power remains broad, its practical utility has diminished over time.

Empirical and policy-oriented studies have also contributed significantly to this field. Reports by organizations such as Amnesty International and Human Rights Watch have consistently highlighted concerns regarding delays and inconsistencies in the disposal of mercy petitions, particularly in death penalty cases<sup>9</sup>. Amnesty International’s reports on India have pointed out that prolonged delays in deciding mercy petitions can amount to cruel, inhuman, and degrading treatment, raising serious constitutional and human rights issues<sup>10</sup>.

In the Indian judicial context, academic commentary on landmark cases has further enriched

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<sup>7</sup> H.M. Seervai, *Constitutional Law of India* (4th ed.).

<sup>8</sup> Rachel E. Barkow, *The Ascent of the Administrative State and the Demise of Mercy*, 121 *Harvard Law Review* 1332 (2008).

<sup>9</sup> Amnesty International, *Annual Report: Death Penalty Developments*.

<sup>10</sup> Amnesty International, *India: Delay in Mercy Petitions and Human Rights Concerns*.

the discourse. Analyses of decisions such as *Maru Ram v. Union of India* and *Shatrughan Chauhan v. Union of India* have been widely discussed in legal journals, emphasizing the judiciary's role in balancing executive discretion with constitutional safeguards. Scholars have noted that the Indian approach reflects a "limited but meaningful" judicial review, ensuring that clemency decisions are not immune from scrutiny.

Comparatively, literature on the United States highlights a starkly different approach. Scholars such as Daniel T. Kobil, in "The Quality of Mercy Strained: Wresting the Pardoning Power from the King" (*Texas Law Review*, 1991), argue that the absence of judicial review over presidential clemency creates a system that is highly discretionary and susceptible to political misuse. Kobil advocates for procedural reforms, including advisory boards and transparency measures, to enhance accountability.

Additionally, studies focusing on high-profile clemency decisions in the United States have revealed patterns of politicization. Academic discussions surrounding controversial pardons, such as those granted during the administrations of various Presidents, suggest that clemency is often influenced by political considerations rather than purely legal or humanitarian grounds. Despite the substantial body of literature, certain gaps remain. First, much of the existing research tends to focus on individual jurisdictions rather than adopting a comparative perspective.<sup>11</sup> While Indian scholarship emphasizes procedural delays and judicial intervention, American literature predominantly critiques the lack of constraints on executive discretion. A comprehensive comparative analysis that systematically examines both systems in relation to each other remains relatively limited.

Second, there is insufficient integration of human rights perspectives within doctrinal analyses. Although reports by international organizations highlight the implications of clemency in death penalty cases, these insights are not always adequately incorporated into mainstream legal scholarship.

Third, there is a lack of recent empirical data assessing the effectiveness and consistency of clemency decisions, particularly in India, where opacity in executive processes poses a significant challenge<sup>12</sup>.

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<sup>11</sup> Vikramaditya Khanna, *Clemency and the Rule of Law in Comparative Perspective*, 2001.

<sup>12</sup> Law Commission of India, Report No. 262: *The Death Penalty in India* (2015).

In light of these gaps, the present study seeks to contribute to the existing body of knowledge by providing a structured comparative analysis of mercy petitions in India and presidential clemency in the United States. It aims to bridge the divide between doctrinal, comparative, and human rights perspectives, thereby offering a more holistic understanding of the subject<sup>13</sup>.

### 3. RESEARCH METHODOLOGY

This research adopts a doctrinal and comparative methodology to examine the framework and functioning of executive clemency in India and the United States. The study is primarily based on the analysis of constitutional provisions, statutory materials, and judicial decisions, supplemented by scholarly writings and institutional reports.

The doctrinal approach involves a detailed examination of legal texts, including Articles 72 and 161 of the Constitution of India and Article II, Section 2 of the Constitution of the United States. Landmark judicial pronouncements from both jurisdictions have been analysed to understand the evolution, scope, and limitations of clemency powers, particularly with respect to judicial review and procedural safeguards.

In addition to primary legal sources, the research relies on secondary sources such as academic books, peer-reviewed journal articles, law commission reports, and publications by international organizations. These sources have been used to critically assess existing interpretations and identify gaps in the current legal framework.

A comparative method has been employed to systematically evaluate similarities and differences between the two jurisdictions. This includes an analysis of structural frameworks, procedural mechanisms, and accountability standards governing clemency powers. The comparative approach enables a deeper understanding of how different constitutional philosophies influence the exercise of executive discretion.

The research is qualitative in nature and does not involve empirical data collection. It is limited by the lack of transparency in executive decision-making processes, particularly in India, where detailed records of clemency decisions are not always publicly accessible.

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<sup>13</sup> Andrew Novak, *Comparative Perspectives on Clemency and the Death Penalty*, 2014.

Despite these limitations, the methodology is designed to provide a coherent and critical analysis of clemency powers, contributing to a broader understanding of their role in contemporary legal systems.

## 4. CONSTITUTIONAL AND LEGAL FRAMEWORK

The power of executive clemency in both India and the United States is constitutionally entrenched, reflecting its significance as a safeguard within the criminal justice system<sup>14</sup>. However, the scope, structure, and exercise of this power differ substantially between the two jurisdictions.

### 4.1 Clemency Powers in India

In India, the power to grant clemency is vested in the President and the Governors under Articles 72 and 161 of the Constitution, respectively<sup>15</sup>. Article 72 empowers the President to grant pardons, reprieves, respites, remissions, or commutations in cases involving court-martial, offences against Union laws, and, most significantly, death sentences. Similarly, Article 161 confers analogous powers upon the Governor with respect to offences under State laws.

These powers are not exercised independently but are subject to the aid and advice of the Council of Ministers, as clarified by judicial interpretation. Thus, the President or Governor acts as a formal authority, while the real decision-making lies with the executive government. This reflects the parliamentary form of governance adopted in India<sup>16</sup>.

The Indian framework also allows for limited judicial review of clemency decisions. Courts have held that while the merits of the decision cannot be questioned, the process is subject to scrutiny on grounds such as arbitrariness, mala fide intent, irrelevant considerations, or undue delay. This ensures that executive discretion is not exercised in an unfettered manner.

### 4.2 Clemency Powers in the United States

In contrast, the United States Constitution, under Article II, Section 2, grants the President the power to “grant reprieves and pardons for offences against the United States, except in cases of impeachment.”<sup>17</sup> This power is considered one of the broadest executive authorities, largely

<sup>14</sup> V.N. Shukla’s Constitution of India.

<sup>15</sup> INDIA CONSTITUTION. arts. 72, 161.

<sup>16</sup> Shamsher Singh v. State of Punjab, (1974) 2 SCC 831.

<sup>17</sup> U.S. Constitution. arts. II, Section 2, Clause 1.

free from legislative or judicial control.

Unlike India, the U.S. President exercises clemency independently, without being bound by the advice of any council. Although the Department of Justice, through the Office of the Pardon Attorney, provides recommendations, these are not binding on the President.

The scope of presidential clemency in the United States is expansive, covering full pardons, commutations, remissions of fines, and reprieves. Importantly, the U.S. Supreme Court has consistently held that this power is not subject to judicial review, except in cases involving procedural irregularities of a fundamental nature.

## 5. NATURE AND SCOPE OF CLEMENCY POWERS

The power of clemency encompasses various forms of relief that mitigate or nullify the consequences of a criminal conviction. While both India and the United States recognize similar categories of clemency, the scope and application of these powers differ in practice<sup>18</sup>.

### 5.1 Types of Clemency

Clemency is not a singular concept but includes multiple forms of relief:

- Pardon: Completely absolves the offender from all legal consequences of the offence, restoring civil rights and nullifying the conviction.
- Commutation: Substitutes a lesser punishment for a harsher one, such as converting a death sentence into life imprisonment.
- Remission: Reduces the duration of the sentence without changing its nature<sup>19</sup>.
- Respite: Grants a lesser sentence on special grounds such as pregnancy, age, or health conditions.
- Reprieve: Temporarily suspends the execution of a sentence, particularly in capital punishment cases, to allow time for further consideration.

In India, all these forms are explicitly recognized under constitutional provisions. In the United States, while similar forms exist, the terminology is less formally categorized, with “pardon” and “commutation” being the most commonly used.

### 5.2 Scope of Clemency Powers in India

The scope of clemency in India is broad but not absolute. It extends to a wide range of offences,

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<sup>18</sup> Daniel T. Kobil, *The Quality of Mercy Strained*, 69 *Texas Law Review* 569 (1991).

<sup>19</sup> K.D. Gaur, *Criminal Law: Cases and Materials*.

including those involving death sentences, and serves as a crucial safeguard against judicial errors and harsh punishments. However, its exercise is structured within a constitutional framework that requires adherence to executive advice and permits limited judicial scrutiny<sup>20</sup>. Importantly, the Indian judiciary has emphasized that clemency is not a matter of privilege but a constitutional duty aimed at ensuring justice. The scope is therefore influenced by considerations such as fairness, humanitarian grounds, and procedural propriety<sup>21</sup>.

### **5.3 Scope of Clemency Powers in the United States**

In contrast, the clemency power of the U.S. President is expansive and largely discretionary. It applies to all federal offences and can be exercised at any stage—before conviction, during trial, or after sentencing. This flexibility underscores the President’s role as the ultimate authority in granting relief from criminal liability<sup>22</sup>.

The absence of binding procedural constraints or judicial review significantly enhances the scope of this power. However, this breadth has also raised concerns regarding potential misuse and lack of accountability.

## **6. PROCEDURE AND PRACTICE**

The procedure governing the exercise of clemency powers plays a crucial role in determining their effectiveness, transparency, and fairness. While both India and the United States provide institutional mechanisms for processing clemency petitions, their operational frameworks differ significantly.

### **6.1 Procedure in India**

In India, a mercy petition is typically filed by or on behalf of a convict after the exhaustion of all judicial remedies, including appeals, review, and curative petitions. The petition is submitted to the President under Article 72 or to the Governor under Article 161, depending on the nature of the offence.

The process involves multiple administrative stages. The petition is first examined by the Ministry of Home Affairs, which seeks inputs from the concerned State Government, prison authorities, and other relevant agencies. Based on these inputs, the Ministry formulates a

<sup>20</sup> Maru Ram v. Union of India, (1980) 1 SCC 107.

<sup>21</sup> Epuru Sudhakar v. Govt of A.P., (2006) 8 SCC 161.

<sup>22</sup> Ex parte Garland, 71 U.S. (4 Wall.) 333 (1866).

recommendation, which is then forwarded to the President<sup>23</sup>.

Importantly, the President acts on the aid and advice of the Council of Ministers, making the process largely executive-driven. However, the absence of a fixed timeline often results in inordinate delays, particularly in death penalty cases. Such delays have been a major point of criticism and have, in some cases, led courts to intervene on humanitarian grounds<sup>24</sup>.

## 6.2 Procedure in the United States

In the United States, clemency petitions are generally processed through the Office of the Pardon Attorney, functioning under the Department of Justice. Applicants are required to submit a formal petition detailing the grounds for seeking relief, along with supporting documentation.

The Pardon Attorney reviews the application, conducts necessary investigations, and provides a recommendation to the President. However, this recommendation is advisory in nature and not binding. The President retains complete discretion to accept, reject, or bypass the recommendation altogether<sup>25</sup>.

Unlike India, there is no constitutional requirement for consultation with other executive bodies, and the process is relatively centralized. However, delays and backlogs have also been reported, often due to administrative inefficiencies and the discretionary nature of the system.

## 6.3 Role of Executive Authorities

In both jurisdictions, the executive plays a dominant role in the clemency process. In India, this role is institutionalized through the Council of Ministers and bureaucratic channels, ensuring a degree of collective decision-making. In contrast, the U.S. model places ultimate authority in the hands of the President, with minimal procedural constraints.

# 7. JUDICIAL REVIEW AND CASE LAWS

The extent to which clemency powers are subject to judicial review remains one of the most contested aspects of executive authority<sup>26</sup>. While both India and the United States recognize clemency as an executive function, their judicial approaches differ significantly in scope and intensity.

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<sup>23</sup> Ministry of Home Affairs, Procedure for Mercy Petitions.

<sup>24</sup> Shatrughan Chauhan v. Union of India, (2014) 3 SCC 1.

<sup>25</sup> Ohio Adult Parole Authority v. Woodard, 523 U.S. 272 (1998).

<sup>26</sup> H.M. Seervai, Constitutional Law of India.

## 7.1 Judicial Review in India

In India, the judiciary has consistently maintained that although clemency powers under Articles 72 and 161 are executive in nature, they are not immune from judicial review. However, such review is limited to examining the decision-making process rather than the merits of the decision.

In [Maru Ram v. Union of India](#), the Supreme Court held that the power of pardon must be exercised on the aid and advice of the Council of Ministers and is subject to constitutional limitations. The Court emphasized that this power cannot be exercised arbitrarily or in an unfettered manner.<sup>27</sup>

Subsequently, in [Kehar Singh v. Union of India](#), the Court clarified that while the President can examine the merits of a case while deciding a mercy petition, the judiciary cannot sit in appeal over such decisions. However, it reaffirmed that judicial review is permissible on limited grounds<sup>28</sup>.

A significant expansion of judicial scrutiny occurred in [Epuru Sudhakar v. Government of Andhra Pradesh](#), where the Court held that clemency decisions can be challenged on grounds such as mala fide intent, arbitrariness, non-application of mind, or consideration of irrelevant factors<sup>29</sup>.

Further, in [Shatrughan Chauhan v. Union of India](#), the Supreme Court recognized undue delay in deciding mercy petitions as a valid ground for commutation of death sentences, thereby integrating human rights considerations into the clemency framework.

## 7.2 Judicial Position in the United States

In contrast, the United States adopts a far more restrictive approach. The clemency power of the President under Article II is regarded as plenary and largely beyond judicial scrutiny<sup>30</sup>.

In [Ex parte Garland](#), the U.S. Supreme Court held that the presidential pardon power is unlimited, except in cases of impeachment, and extends to all federal offences at any stage of proceedings.

Similarly, in [Schick v. Reed](#), the Court reaffirmed that the pardoning power flows directly from the Constitution and cannot be modified, abridged, or controlled by Congress or the judiciary<sup>31</sup>. The courts in the United States have consistently refrained from reviewing the substance or

<sup>27</sup> Maru Ram v. Union of India, (1981) 1 SCC 107.

<sup>28</sup> Kehar Singh v. Union of India, (1989) 1 SCC 204.

<sup>29</sup> Epuru Sudhakar v. Government of Andhra Pradesh, (2006) 8 SCC 161.

<sup>30</sup> U.S. Constitution art. II, Section 2, Clause 1.

<sup>31</sup> Schick v. Reed, 419 U.S. 256 (1974).

procedure of clemency decisions, treating them as political questions beyond judicial competence. As a result, there are virtually no judicially enforceable standards governing the exercise of this power.

## 8. CLEMENCY IN DEATH PENALTY CASES

The exercise of clemency assumes heightened significance in cases involving the death penalty, where it operates as the final safeguard against irreversible miscarriage of justice. In both India and the United States, clemency serves as a crucial mechanism to introduce considerations of mercy, fairness, and humanity into an otherwise rigid legal framework.

### 8.1 Indian Perspective

In India, mercy petitions in death penalty cases are an integral part of the constitutional scheme. The Supreme Court has consistently recognized that the power under Article 72 is not merely procedural but serves as a substantive safeguard against arbitrary or excessive punishment<sup>32</sup>. Judicial intervention has played a significant role in shaping this area. In [Shatrughan Chauhan v. Union of India](#), the Court held that undue delay in the disposal of mercy petitions violates the fundamental rights of the convict under Article 21 and can be a valid ground for commutation of a death sentence to life imprisonment. The judgment emphasized that prolonged mental agony caused by delay amounts to cruel and inhuman treatment. Similarly, in [Triveniben v. State of Gujarat](#), the Court acknowledged that delay in execution must be considered as a relevant factor, reinforcing the humanitarian dimension of clemency<sup>33</sup>. The Indian approach thus integrates constitutional morality and human rights considerations, ensuring that clemency is not treated as a mere formality but as a meaningful review mechanism.

### 8.2 U.S. Perspective

In the United States, clemency also plays a vital role in death penalty cases, particularly as a “fail-safe” mechanism within the criminal justice system. The U.S. Supreme Court in [Herrera v. Collins](#) described executive clemency as the “historic remedy for preventing miscarriages of justice,” especially in cases where judicial remedies have been exhausted<sup>34</sup>. However, unlike India, the U.S. system does not impose constitutional obligations regarding

<sup>32</sup> INDIA CONSTITUTION art. 72; see also *Kehar Singh v. Union of India*, (1989) 1 SCC 204.

<sup>33</sup> *Triveniben v. State of Gujarat*, (1989) 1 SCC 678.

<sup>34</sup> *Herrera v. Collins*, 506 U.S. 390 (1993).

the manner or timing of clemency decisions. The process remains largely discretionary, and there are no enforceable standards requiring consideration of factors such as delay, mental health, or humanitarian concerns.

While some state-level practices incorporate procedural safeguards, at the federal level, the absence of judicial oversight means that clemency in capital cases is often influenced by political, social, and administrative factors, rather than consistent legal principles<sup>35</sup>.

### 8.3 Human Rights Perspective

From a human rights standpoint, clemency in death penalty cases is closely linked with the global movement towards the abolition or restriction of capital punishment. International bodies such as [Amnesty International](#) have emphasized that delays, lack of transparency, and arbitrary decision-making in clemency processes may amount to violations of fundamental human rights<sup>36</sup>.

India's approach, particularly through judicial recognition of delay and mental suffering, aligns more closely with evolving human rights standards. In contrast, the U.S. model, while constitutionally robust, has been criticized for insufficient procedural safeguards and lack of accountability.

## 9. COMPARATIVE ANALYSIS

A comparative analysis of mercy petitions in India and presidential clemency in the United States reveals significant differences in constitutional philosophy, procedural structure, and accountability mechanisms. While both systems recognize clemency as an essential corrective tool within the criminal justice framework, their operational dynamics reflect distinct approaches to balancing executive discretion with the rule of law.

### 9.1 Structural Differences

The most fundamental distinction lies in the constitutional structure governing clemency powers. In India, the power is vested in the President and Governors but is exercised on the aid and advice of the Council of Ministers, reflecting the parliamentary system of governance. This ensures that clemency decisions are not personal but institutional in nature.

In contrast, the U.S. Constitution vests clemency powers directly in the President, who

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<sup>35</sup> Ohio Adult Parole Auth v. Woodard, 523 U.S. 272 (1998).

<sup>36</sup> Amnesty International, Death Sentences and Executions Report (latest ed.); Human Rights Watch, World Report (latest ed.).

exercises them independently and personally. There is no constitutional requirement for consultation or adherence to advisory opinions, making the power highly centralized.

## 9.2 Procedural Differences

The procedural frameworks in both jurisdictions further highlight their divergence. India follows a multi-layered administrative process, involving the Ministry of Home Affairs, State authorities, and executive deliberation<sup>37</sup>. While this structure aims to ensure thorough consideration, it often leads to significant delays and lack of transparency.

On the other hand, the United States employs a relatively streamlined process through the Office of the Pardon Attorney<sup>38</sup>. However, the President is not bound by this process and may grant clemency outside formal channels. While this allows flexibility and speed, it also creates the possibility of inconsistent and discretionary outcomes.

## 9.3 Scope and Nature of Powers

Although both systems recognize similar forms of clemency, their scope differs in terms of control and limitations. In India, the exercise of clemency is constrained by constitutional principles and is subject to limited judicial review, ensuring that decisions are not arbitrary or mala fide.

In contrast, the U.S. President enjoys plenary powers that are largely immune from judicial scrutiny. This broad scope allows the President to grant clemency at any stage of proceedings, even before conviction, thereby emphasizing executive autonomy over institutional checks.

## 9.4 Accountability and Transparency

Accountability mechanisms represent another key point of divergence. India's system, though criticized for delays, provides a degree of accountability through judicial review and executive processes<sup>39</sup>. Courts have intervened in cases of undue delay and arbitrariness, thereby reinforcing constitutional safeguards.

Conversely, the U.S. model lacks formal mechanisms of accountability. The absence of judicial review and minimal procedural constraints result in limited transparency, with decisions often influenced by political or personal considerations<sup>40</sup>.

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<sup>37</sup> Ministry of Home Affairs, Government of India, Guidelines on Mercy Petitions (2014).

<sup>38</sup> U.S. Department of Justice, Office of the pardon Attorney, Clemency Process Overview.

<sup>39</sup> Shatrughan Chauhan v. Union of India, (2014) 3 SCC 1 (India).

<sup>40</sup> U.S. Department of Justice, Office of the Pardon Attorney, Clemency Process Overview.

## 10. CRITICAL ANALYSIS AND FINDINGS

The comparative study of clemency powers in India and the United States reveals that while both systems aim to incorporate mercy within the criminal justice framework, their effectiveness is shaped by structural and procedural limitations.

One of the primary findings is that clemency, though conceived as a safeguard against injustice, often suffers from operational inefficiencies. In India, the most persistent issue is inordinate delay in the disposal of mercy petitions. The absence of a prescribed timeline leads to prolonged uncertainty for convicts, particularly in death penalty cases, where such delays have been judicially recognized as a violation of fundamental rights<sup>41</sup>. This undermines the humanitarian purpose of clemency and raises concerns regarding administrative accountability.

At the same time, India's system demonstrates a significant strength in the form of judicial oversight. The judiciary's willingness to review clemency decisions on limited grounds ensures that executive discretion is not exercised arbitrarily<sup>42</sup>. This reflects a commitment to constitutionalism and the protection of individual rights. However, this also creates a paradox: while judicial intervention corrects executive lapses, it indirectly highlights the inadequacy of the executive process itself.

In contrast, the United States presents an almost opposite model. The clemency power is expansive and efficient in theory, allowing the President to act swiftly and decisively. However, the lack of procedural safeguards and judicial review results in a system that is highly discretionary and potentially susceptible to misuse. The absence of transparency further aggravates this issue, as clemency decisions may be influenced by political considerations, personal affiliations, or public pressure<sup>43</sup>.

Another key finding is the inconsistency in the application of clemency powers in both jurisdictions. In India, similar cases may experience vastly different outcomes due to bureaucratic delays or variations in executive decision-making. In the United States, the inconsistency arises from the personalized nature of presidential discretion, leading to unpredictable and sometimes controversial outcomes.

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<sup>41</sup> *Triveniben v. State of Gujarat*, (1989) 1 SCC 678 (India).

<sup>42</sup> *Kehar Singh v. Union of India*, (1989) 1 SCC 204 (India).

<sup>43</sup> Rachel E. Barkow, *The Politics of Forgiveness: Reconceptualizing Clemency*, 21 *Federal Sentencing Reporter* 153 (2009).

From a broader perspective, the study highlights a fundamental tension between law and mercy. While law demands certainty, consistency, and objectivity, clemency inherently involves discretion, compassion, and subjective judgment. The challenge lies in balancing these competing considerations without compromising either justice or humanity<sup>44</sup>.

The analysis also indicates that neither system fully achieves this balance. India's framework, though constitutionally sound, is weakened by procedural inefficiency and lack of transparency. The U.S. model, while structurally simple and flexible, lacks adequate checks to prevent arbitrariness<sup>45</sup>.

Thus, the findings suggest that an ideal clemency system must combine procedural clarity, accountability, and limited judicial oversight, while preserving the essential element of executive discretion. Both India and the United States, in their current forms, fall short of this ideal, albeit in different ways.

## 11. SUGGESTIONS AND REFORMS

The comparative analysis of clemency systems in India and the United States highlights the need for reforms aimed at enhancing transparency, accountability, and efficiency, while preserving the essential element of executive discretion.

### 11.1 Reforms in the Indian Framework

The foremost requirement in India is the introduction of a clear procedural timeline for the disposal of mercy petitions. Inordinate delays not only defeat the purpose of clemency but also raise serious constitutional concerns, particularly under the right to life and dignity<sup>46</sup>. Establishing statutory or executive guidelines prescribing reasonable time limits would significantly improve efficiency.

Further, there is a need to enhance transparency in decision-making. At present, clemency decisions are often opaque, with limited disclosure of reasons. Providing brief, reasoned orders—without compromising executive privilege—would strengthen public confidence and reduce perceptions of arbitrariness<sup>47</sup>.

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<sup>44</sup> Daniel T. Kobil, *The Quality of Mercy Strained: Wresting the Pardoning Power from the King*, 69 *Texas Law Review* 569 (1991).

<sup>45</sup> U.S. Constitution art. II, Section 2, Clause 1; *United States v. Klein*, 80 U.S. (13 Wall.) 128 (1871).

<sup>46</sup> *India Constitution art. 21; Shatrughan Chauhan v. Union of India*, (2014) 3 SCC 1 (India).

<sup>47</sup> *Epuru Sudhakar v. Government of Andhra Pradesh*, (2006) 8 SCC 161 (India).

Another important reform is the creation of an independent advisory board comprising legal experts, human rights specialists, and administrative officials. Such a body can assist the executive in evaluating mercy petitions objectively, thereby reducing bureaucratic delays and ensuring consistency in decisions.

### **11.2 Reforms in the United States**

In the United States, the primary concern lies in the lack of accountability and procedural safeguards. While the President's clemency power is constitutionally broad, introducing structured guidelines for its exercise would help prevent arbitrary or politically motivated decisions<sup>48</sup>.

Strengthening the role of the Office of the Pardon Attorney is another crucial step. Making its recommendations more transparent and ensuring that they are given due weight can enhance fairness and consistency in the clemency process.

Additionally, although judicial review of clemency decisions may not be feasible within the existing constitutional framework, limited oversight mechanisms—such as congressional reporting or public disclosure requirements—can improve transparency without undermining executive authority<sup>49</sup>.

### **11.3 Common Reforms and Broader Considerations**

Both jurisdictions would benefit from adopting a more human rights-oriented approach, particularly in death penalty cases. Factors such as mental health, prolonged incarceration, and post-conviction rehabilitation should be systematically considered while deciding clemency petitions<sup>50</sup>.

Moreover, there is a need to ensure uniformity and consistency in the exercise of clemency powers. Developing guiding principles or standardized criteria can help achieve this objective while still allowing room for discretion.

## **12. CONCLUSION**

The power of executive clemency represents a vital intersection between law and mercy, serving as a constitutional safeguard against the rigidity and fallibility of the criminal justice system<sup>51</sup>. This comparative study of mercy petitions in India and presidential clemency in the

<sup>48</sup> U.S. Constitution art. II, Section 2, Clause 1; *Schick v. Reed*, 419 U.S. 256 (1974).

<sup>49</sup> Rachel E. Barkow, *Clemency and the Unitary Executive*, 90 N.Y. University Law Review 802 (2015).

<sup>50</sup> *Shatrughan Chauhan v. Union of India*, (2014) 3 SCC 1 (India).

<sup>51</sup> Kathleen Dean Moore, *Pardons: Justice, Mercy, and the Public Interest* 3-5 (1989).

United States demonstrates that while both jurisdictions recognize the necessity of such a power, they differ fundamentally in its structure, scope, and execution.

India's model reflects a system of regulated discretion, where clemency is exercised within a constitutional framework that incorporates executive accountability and limited judicial review. This approach ensures that the power is not entirely arbitrary; however, it is significantly undermined by procedural delays and lack of transparency. The humanitarian objective of clemency is often compromised when decisions are deferred for prolonged periods. In contrast, the United States adopts a model of broad executive autonomy, granting the President expansive clemency powers with minimal institutional constraints. While this allows for flexibility and decisiveness, it raises serious concerns regarding accountability, consistency, and potential misuse.

The analysis reveals that neither system achieves a perfect balance between discretion and control. India struggles with inefficiency despite having safeguards, whereas the United States prioritizes efficiency at the cost of oversight.

Ultimately, the legitimacy of clemency powers depends on their ability to function as instruments of justice rather than arbitrariness. A balanced approach—combining procedural clarity, transparency, accountability, and limited oversight—is essential to ensure that clemency fulfills its intended role as a humane and corrective mechanism within the legal system.

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