

**A STUDY ON PARDONING POWER OF PRESIDENT WITH SPECIAL  
REFERENCE TO RAJIV GANDHI ASSASSINATION CASE:**

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**ABSTRACT**

The power to pardon is a constitutional scheme which has been reposed by the people in the head of the state who enjoys high status and such power rests on the advice tendered by the executive to president .the lack of any standards or checks on the exercise of the clemency power has not stood the Indian system of justice in good stead .today's changing political climate underscores the need for principal exercise of the clemency power.harsher sentencing standards and public sentiment in favour of capital punishment have resulted in an increasing number of death penalty cases finding their way into the clemency process .The article provides constitutional framework and a brief overview of the origin and nature of the pardoning power and seeks to examine several issues determining the scope of pardoning power of the president under the indian constitution with special reference to the pending cases

**KEYWORDS:** Constitutional scheme, political scheme, Indian system of justice, clemency power.

## INTRODUCTION

The pardoning power is an indispensable element of even the most perfect system of laws .the pardon is the instrument of mercy and the way to correct those grave injustices either on their facts or by unanticipated operation of the criminal laws that simply must be remedied .pardon is an act of grace from the governing power that mitigates the punishment demanded by the law for the offence and guilt of the offender .the lack of any standards or checks on the exercise of the clemency power has not stood the Indian system of justice in good stead today's changing political climate underscores the need for principal exercise of the clemency power, harsher sentencing standards and growing public sentiment in favour of capital punishment have resulted in an increasing number of death penalty cases finding their way into their clemency process . Some books such as Janak Raj,2005 in the book *Death Penalty* ;Pratiyogita Darpan,2007;Sujit Choudhry,2016 in the page 323 in the book *THE HANDBOOK OF INDIAN CONSTITUTION*; Abbas et al in the page 246,2011;M.V.Pylee ;2004 in the page 234 in his book *CONSTITUTIONAL GOVERNMENT IN INDIA*; Ram Lal Anand ,in the page 489,volume 1 in the book *ALL INDIA CRIMINAL DIGEST*; Anirban Kashab ,in the page 230 , 1993 , in the book *GOVERNOR'S ROLE IN INDIAN CONSTITUTION*; Andrew Novak,2015;Krishna Deo ,2009,*TEXTBOOK ON INDIAN PENAL CODE,PAGE 109*,Jeffrey Crouch,2009,*THE PRESIDENTIAL PARDON POWER*; Janak Raj,2005,*DEATH PENALTY*; Abbas et al ,*INDIAN GOVERNMENT AND POLITICS* ,Janak Raj,page 152,2003,*Commission and Omissions in the Administration of Justice*;Kishore Sharma,2015, *INTRODUCTION TO THE CONSTITUTION OF INDIA*;Lill Scherdin ,2016,*Capital Punishment a Hazard to a Sustainable Criminal Justice System* ,2016;Surya Deva,2013,*CONFRONTING CAPITAL PUNISHMENT IN ASIA*;DR.KP.Agarwal,2016,page 423,*A ROLE MODEL OF URBAN INDIA* ;Used Prakash,page 513;G.Ramachandra Reddy,2007, *THE CHALLENGES IN INDIAN DEMOCRACY* explains about the pardoning power. The aim of this Research paper is to know about the Pardoning power of the president with special reference to Rajiv Gandhi Assassination case.

### RESEARCH METHODOLOGY:

The study is based on doctrinal research .the sources collected in the study are secondary sources .they are collected from materials like journal, books, website, article, etc...

**HYPOTHESIS:****ALTERNATIVE HYPOTHESIS:**

There is a significant changes in the pardoning power of the president with reference to rajiv Gandhi assassination case.

**NULL HYPOTHESIS:**

There is no significant changes in the pardoning power of the president with reference to rajiv Gandhi assassination case

**HISTORICAL GENESIS OF THE CONCEPT OF PARDON:**

Historically, the institution of clemency seems to have had more to do with power than justice. Justice Holmes accurately characterized the earliest pardons as private acts of grace from an individual happening to possess power. The ancient Greeks used a form of clemency, but that power rested with the people rather than with the sovereign. Before a person could obtain clemency under Greek process they need a petition supported by at least 6000 people in a secret poll. Because of the difficulty in getting the required support for such a petition, clemency was not often granted. The ancient Greeks made frequent use of amnesty, where for example, in 403 B.C., there was a general amnesty for all citizens who had participated in the Athenian civil war.

In the ancient Rome, the clemency power was often used for political reasons rather than justice or mercy. The executive would pardon a person to enhance his own popularity or to appease the people. A well-known example of this is the biblical story in which Pontius Pilate pardoned Barabbas rather than Jesus. Another ancient practice similar to the power of pardon existed in ancient Rome, where instead of executing an entire army of transgressors, the Romans would execute every tenth condemned, roop member. Nevertheless the possible analogies that may be drawn to the above mentioned ancient practices of pardoning accused individuals, the concept of pardon has enshrined in the Indian constitution can most realistically be said to be derived from the British tradition of granting mercy. Granting mercy has historically been the personal prerogative of the crown, exercised by the monarch on the basis of advice from the secretary of state for the home department. This practice is based on the understanding that the sovereign possesses the divine right and hence, can exercise this prerogative on the ground of divine benevolence while under the British system

the monarch is the head of the state, under the Indian constitution, it is the president who is deemed to be the head of the state, which would explain the reason why the power to grant pardon has been vested in him, along with the governors of states, who act in a manner similar to the president at the level of the states.

#### **PARDONING POWER IN UK AND USA:**

To understand the concept of presidents' pardon power in India it is important to look at the pardoning power in England and also in the United States of America. At common law, the pardon was an act of mercy whereby the king 'forgave any crime, offense, punishment, execution, right, title, debt, or duty.' This power was absolute, unfettered and not subject to any judicial scrutiny. There is no time specified to grant pardon, it can be done before conviction as well as after it. The crown also has the power to grant reprieve as well, it may just temporarily suspend the execution of the sentence; or may remit the whole or part of the penalty. However, it could hardly survive in its unrestrained nature in the democratic systems of the state. Over a period of time, it became diluted in the U.K to a limited extent through the exercise of judicial scrutiny. At present in U.K, the constitutional monarch exercises the power on the advice of the home secretary. The home secretary's decision can in some situations be challenged by judicial review. Article 2, section 2 of the United States Constitution provides, in pertinent part, the president shall have the power to grant reprieves and pardons for offenses against the United States, except in cases of impeachment. The framers drafted the clause in its present form to make clear that it was only to extend offenses against the United States did not extend to impeachments. The United States Supreme Court has clarified on more than one occasion that the term 'pardon' should be given to it in England. The history of the executive pardoning power shows consistent reliance on English practices.

#### **PARDONING POWER IN INDIA:**

##### **PRE- CONSTITUTIONAL SCHEME:**

Before the constitution of India came into force, the law of pardon in India was the same as in England since the sovereign of England was the sovereign of India. From 1935 onwards the law of pardon was contained in section 295 of the Government of India Act which did not limit the power of the sovereign. The result was that when the constitution came into force, the exercise of the king's prerogative was plenary and unfettered and exercisable as hitherto.

**CONSTITUTIONAL SCHEME:**

In india, the power to pardon is a part of constitutional scheme

1.where any person has been sentenced to death in a province ,the governor-general in council immediately before the commencement of part 3 of this act ,but save as aforesaid no authority in India outside a province shall have any power to suspend, remit, or commute the sentence of any person convicted in the province .provided that nothing in this subsection affects any power of any officer of his majesty's forces to suspend, remit commute a sentence passed by a court-martial .

2.Nothing in this act shall derogate from the right of his majesty 's, or of the governor-general, if any such right is delegated to him by his majesty, to grant pardons, reprieves, respites or remissions of punishment.there was no provision in the government of India act 1935 corresponding to article 161 of the constitution.

Article 72 of the constitution gives that the president shall have the power to grant pardon, reprieve, respite or remission of punishment and to suspend, remit or commute the sentence of any a person convicted of an offence in .a case tried by court-martial .a case relating to law to which the executive power of union extends. The sentence awarded is of death.

**RAJIV GANDHI ASSASSINATION CASE:**

Rajiv Gandhi was campaigning for the upcoming elections in southern states of india . on 21st may , after successfully campaigning in visakhapatnam , his next stop was sriperumbudur,tamil nadu .above two hours after arriving madras now chennai,rajiv Gandhi was driven by motorcad in a white ambassador car to sriperumbudur, stopping along the gate at a few other election campaigning venues .when he reached a campaign rally in sriperumbudur , he got out of his car and began to walk towards the dais where he would deliver a speech .along the way , he was garlanded by many good wishes, congress party workers, and school children. At 22 :21 the assassin , dhanu , approached and greeted him . she then bent down to touch his feet and detonated and RDX explosive-laden belt tucked below her dress .gandhi's assassin and 14 others were killed in the explosion that followed .the assassination was caught on film by a local photographer whose camera and film was found at the site through the photographer also died in that blast. as per the supreme court

judgment, by judge k.T.Thomas, the killing was carried out due to personal animosity of the LTTE chief Prabhakaran towards Rajiv Gandhi .additionally, the Rajiv Gandhi had antagonized other Tamil militant organizations like PLOTE for reversing the military coup in the Maldives back in 1998. the judgment further cites the death of Thileepan in a hunger strike and the suicide by a twelve LTTE cards in a vessel in 1987. the judgement while convicting the accused , 4 of them to death and others to varies jail terms and states that absolutely no evidence existed that any one of the conspirators ever desired the any Indian other than Rajiv Gandhi, though several people were killed .judge Wadhwa further states there is nothing on record to show that the intention to Rajiv Gandhi was to overawe the government. hence it was held that it was not a terrorist act under TADA act judge THOMAS further states that conspiracy was hatched in stages commencing from 1987 and that it spanned several years. the special investigation team of India's premier special investigation agency CBI was not able to pinpoint when the decision to kill Rajiv Gandhi was taken.

#### **FINDINGS AND SUGGESTION:**

One month after the brutal assassination of former prime minister Rajiv Gandhi, the crack special investigation team (SIT) has managed to edge considerably closer to unraveling the complex plot behind the shocking crime that stunned the nation. The exhaustive investigation process and interrogation of key suspects picked up so far have established that the plot to kill Rajiv Gandhi was first hatched in October 1990 deep in the jungles of Jaffna. The motive is now understood to have been related to the political tremors then emanating from New Delhi. The then prime minister V.P. Singh was battling for survival following a threat by the BJP to withdraw support to his minority National Front government.

Across the Palk Straits, in the forest hideouts of Jaffna in north-eastern Sri Lanka, the LTTE leadership met for a crucial assessment of the situation. The meeting decided that the chances of Congress(I) president Rajiv Gandhi returning to power were now almost certain. For the extremist organization struggling for Tamil Eelam, this meant a possible re-induction of the IPKF in Sri Lanka and a certain crackdown on the elaborate LTTE network established in Tamil Nadu.

#### **CONCLUSION:**

The pardoning power of executive is very significant as it corrects the errors of judiciary .it e, imitates the effect of conviction without addressing the defendant's guilt or innocence .the process of granting pardon is simpler but because of the lethargy of the government and political considerations, disposal of mercy petitions is delayed .therefore

,there is an urgent need to make amendment in law of pardoning to make sure that clemency petitions are disposed quickly .there should be a fixed time limit for deciding on clemency pleas .there should be a time frame within which the executive should be asked to decide over cases in order to prevent undue trauma to the applicant and his family members and back logging of the cases .the clemency power can be refined to operate as a principled means of correcting some of the flaws extant in our penal system.there should be establishing an independent commission with the requisite expertise which is directed to focus on justice enhancing reasons for remitting punishment.regarding the judicial debate, pardoning power should not be absolute as well as judiciary should not interfere too much in exercise of power. as judicial review is a basic structure of our constitution, pardoning power should be subjected to limited judicial review. if this power is exercised properly and not misused by the executive, it will certainly prove useful to remove flaws of the judiciary.

**REFERENCE:**

Assassination in India; Rajiv Gandhi is assassinated in bombing at campaign stop; India puts off rest of voting[1]

1."1991: Bomb kills India's former leader Rajiv Gandhi". BBC News. 1991-05-21. Archived from the original on 27 July 2008. Retrieved 2008-08-05.

2. J. Cooper, Kenneth (29 Nov 1997). "Leader Of India Falls From Power". [www.sun-sentinel.com](http://www.sun-sentinel.com). Retrieved 3 Aug 2014.

3." TN to release all Rajiv convicts". Retrieved 19 Feb 2014.

4."Assassination in India; Rajiv Gandhi is assassinated in bombing at campaign stop", by Barbara Crossette, The New York Times, May 22, 1991. Neena Gopal of the Gulf News of Dubai was also in the car, in the back seat with Chandrashekhar and a local party official. "A Chance To Be Near The People New Campaigning Style Put Gandhi In Crowds" by Barbara Crossette, New York Times, May 22, 1991, via Orlando Sentinel. Retrieved 2010-07-19.

5.Patel, Tejas. "Rajiv assassination mystery unsolved". Article. NDTV.com. Retrieved 21 May 2011.

6.Patel, Tejas. "Rajiv assassination mystery unsolved". Article. Asian Tribune. Retrieved 21 May 2011.

7.Assassination of Rajiv Gandhi — Shashi Ahluwalia, Meenakshi Ahluwalia. Google Books. Retrieved 2013-01-19.

8. "Assassination of Rajiv Gandhi and its aftermath". Knowledge Hub. 1991-05-21. Retrieved 2013-01-19.
9. Subramanian, T.S. "A mystery solved". www.frontline.in. Frontline. Retrieved 10 Aug 2014.
10. a b Keerthana, R (21 Mar 2014). "Rajiv's death – a revisit". The Hindu. Retrieved 10 Aug 2014.
11. <http://cbi.nic.in/dop/judgements/thomas.pdf>
12. "Out of the TADA net". The Hindu. Chennai, India.
13. a b "Death Reference Case No. (@ D.NO.1151 OF 1998)" (PDF). Cbi.nic.in. Retrieved 2014-08-03.
14. "Rajiv Gandhi assassination case: tracing the trial - IBNLive". Iblive.in.com. Retrieved 2014-08-03.
15. "Rajiv Gandhi assassination Timeline". Dailypioneer.com. 2014-02-20. Retrieved 2014-08-03.
16. Bhavna Vij & Swati Chaturvedi (1998-01-30). "Legal luminaries divided on death verdict in Rajiv assassination case". The Indian Express. Retrieved 2013-08-30.
17. India: The Prevention of Terrorism Bill. Past abuses revisited | Amnesty International Archived December 3, 2006, at the Wayback Machine.
18. "Human Rights Bulletin on Srfati Lanka". Derechos.org. Retrieved 2014-08-03.
19. <https://web.archive.org/web/20070122000734/http://cbi.nic.in/Judgements/wadwa.htm>. Archived from the original on January 22, 2007. Retrieved August 22, 2007. Missing or empty |title= (help)
20. "I regret Rajiv Gandhi's assassination: Nalini". The Times of India. PTI. 2008-08-03. Retrieved 2013-08-30.
21. "My sins washed away, says Nalini Sriharan". DNA India. IANS. 2008-04-16. Retrieved 2013-08-30.
22. "Nalini meets hubby on death row". The Times of India. TNN. 2011-09-11. Retrieved 2013-08-30.
23. "Rajiv Gandhi assassin Nalini Sriharan not to be freed". India Today. 2010-03-29. Retrieved 2013-08-30.
24. "Rajiv Gandhi's assassin Nalini gets back 'A' class jail facilities". The Times of India. TNN. 2012-03-16. Retrieved 2013-08-30.



25. Dr.Lakshmi T and Rajeshkumar S , March 2018. “In Vitro Evaluation of Anticariogenic Activity of Acacia Catechu against Selected Microbes”, International Research Journal of Multidisciplinary Science & Technology, Volume No. 3 , Issue No. 3, P.No 20-25.

26. Trishala A , Lakshmi T and Rajeshkumar S, April 2018.“ Physicochemical profile of Acacia catechu bark extract –An In vitro study”, International Research Journal of Multidisciplinary Science & Technology, Volume No. 3 , Issue No. 4, P.No 26-30.

