

PARDONING POWERS OF THE PRESIDENT

¹ Kaviya.A , ² Asha Sundaram

¹ Saveetha School Of Law, Saveetha Institute of Medical and Technical Sciences, Saveetha University, Chennai , Tamil nadu , India.

² Principal,, Saveetha School Of Law, Saveetha Institute of Medical and Technical Sciences, Saveetha University, Chennai, Tamil nadu , India.

¹kaviya.ashokan11@gmail.com, ²asha.sundaram.ssl@saveetha.com

ABSTRACT:

The ability to exculpate is a protected plan which has been rested by the general population in the leader of the State who appreciates high status and such power lays on the guidance offered by the Executive to President. The absence of any guidelines or keeps an eye on the activity of the pardon control has not stood the Indian arrangement of equity in great stead. The present changing political atmosphere underscores the requirement for principled exercise of the pardon control. Harsher condemning measures and developing open feeling for the death penalty have brought about an expanding number of capital punishment cases finding their way into the leniency procedure. As legal survey is a fundamental structure of our Constitution, absolving force ought to be subjected to restricted legal audit. On the off chance that this power is practiced legitimately and not abused by official, it will unquestionably demonstrate valuable to expel the blemishes of the legal. The article gives sacred structure and a concise outline of the root and nature of absolving force and looks to analyse a few issues deciding the extent of the acquitting energy of the President under the Indian Constitution.

KEYWORDS: power, constitutional, executive, penalty cases, constitutional framework.

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. (Yoon, Leem, and Kim 2018) Pardon is an act of grace from the governing power that mitigates the punishment demanded by the law for the offence and restores the rights and privileges lost on account of the offence. (Yaniv 2017b) It is also an act of justice, supported by a public policy. It is granted by a head of the State, such as a Monarch or President, or by a competent Church authority. It affects both the punishment prescribed for the offence and the guilt of the offender. The power of pardon remains unbridled with wide discretion provided to the executive. (Yaniv 2017b, [c] 2017) Moreover, from times immemorial the power of pardon has not so much been an act of grace as a tool of monetary and political aggrandisement. From the outset, the pardon was abused for personal gain. 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. (Yaniv 2017a) Today's changing political climate underscores the need for principled 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 the clemency process.

AIM:

1. To study the pardoning power of the president.
2. To study the fundamental structure regarding pardoning power of president.

METHODOLOGY:-

The research is followed descriptive, narrative methodologies for the Study on pardoning powers of the president.

DESCRIPTIVE METHOD: A descriptive approach to research is called as the foundation for research. The research is referred more descriptive information from books, articles, journals to gain more knowledge for the Study on pardoning powers of the president.

NARRATIVE APPROACH: Narrative inquiry uses field text such as stories, journals, field notes, conversation, interview and life experience as units of analysis to research.

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 characterised the earliest pardons as private act 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 the Greek process they needed a petition supported by at least 6,000 people in a secret poll². (Yaniv 2017a; “CHAPTER 1. Constitutional Frameworks and Constitutional Law,” n.d.) Because of the difficulty in getting the required support for such a petition, clemency was not often granted. The Ancient Greeks made more frequent use of amnesty where, for example, in 403 B.C. there was a general amnesty for all the citizens who had participated in the Athenian Civil War. In Ancient Rome, the clemency power was often used for political reasons rather than justice or mercy. (Manuel José Cepeda, Cepeda, and David 2017) 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 Pontious Pilate pardoned Barabbas rather than Jesus. 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 (Luzbetak 1991) 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. (Luzbetak 1991; “Introduction to Textual History of the Bible, Vol. 1: The Hebrew Bible,” n.d.)

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 2956 of the Government of India Act which did not limit the power of the Sovereign. (Yaniv 2017b)

POST CONSTITUTIONAL SCHEME

Having respect to the dialect utilized as a part of Article 72 and 161 of the Indian Constitution, the designers of the Indian Constitution proposed to give on the President and the Governors, inside their individual circles, a similar energy of exculpate both in the nature and impact, as is delighted in by the Sovereign in Great Britain and the President in the United States. (Yoon, Leem, and Kim 2018) Consequently, in India additionally the acquitting force can be practiced previously, amid or after trial⁷. An exculpate might be full, constrained or contingent. (I) A full absolve wipes out the offense according to law and repeals the sentence and also the conviction, and liberates the indicted individual from serving any uncompleted term of detainment or from paying any unpaid fine⁸. (ii) An acquit is restrictive where it doesn't end up agent until the point when the grantee has played out some predetermined demonstration, or where it has turned out to be void when some predefined occasion happens. (Yoon, Leem, and Kim 2018; Yaniv 2017c)

Article 72 of the Constitution gives that the President might have the ability to concede pardon, relief, break or reduction of discipline and to suspend, dispatch or commute¹³ the sentence of any individual indicted an offense in ;

(a) a case attempted by court military (Yaniv 2017a)

(b) a case identifying with a law to which the official energy of the Union expands.

(c) The sentence granted is of death.

By the goodness of these articles the President can give exculpate yet the materialistic certainty is that whether such power is an outright one on the grounds that "Might" in statement (1) of the Article is equivocal. Aside from it was additionally held that this energy of exculpate might be practiced by the President and Governor on the counsel of Council of Ministers. (Yaniv 2017a; Manuel José Cepeda, Cepeda, and David 2017)

OBJECT OF PARDONING POWER:

The object of pardoning power is to correct possible judicial errors, for no system of judicial administration can be free from imperfections. It is an attribute of sovereignty wherever the sovereignty may be to release a convict from a sentence which is mistaken, harsh or disproportionate to the crime. To cure such a situation this power has been granted to an independent organ of the Government free from any sort of restraints. 'Fiat justitia per eat mundus' - which means let justice be done even if the world shall perish would have remained a maxim only in absence of pardoning power being vested in the executive. 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. ("CHAPTER 1. Constitutional Frameworks and Constitutional Law," n.d.)The pardoning power is founded on consideration of public good and is to be exercised on the ground of public welfare, which is the legitimate object of all punishments, will be as well promoted by a suspension as by an execution of the sentences.(Rechel et al. 2018)

REASON FOR GRANTING PARDON:-

Acquit may considerably help in sparing a guiltless individual from being rebuffed because of unnatural birth cycle of equity or in instances of far fetched conviction. The expectation of being absolved itself fills in as a motivating force for the convict to keep out of mischief in the jail establishment and consequently, helps significantly in comprehending the issue of jail teach. It is constantly desirable over allow freedom to a liable wrongdoer as opposed to condemning a pure individual. The protest of absolving power is to redress conceivable legal mistakes, for no human arrangement of legal organisation can be free from blemishes. (National Academies of Sciences, Engineering, and Medicine et al. 2018)

ENERGY OF PARDONING IN VARIOUS COUNTRIES:-

The advanced routine with regards to exonerating discover its inception in the British framework in which it was a Royal Prerogative of the King to pardon. It additionally discovers say in the code of Hammurabi, a progression of decrees that were created in Babylon almost 4,000 years prior. Amid the medieval period, exculpate was widely utilised as a technique for decreasing congestion in jails amid war, political revolt and so on. In present day majority rule nations, the ability to concede acquit or pardon is vested in their official heads. (National Academies of Sciences, Engineering, and Medicine et al. 2018; van der Eyden 1971)The American Constitution enables the President to give respites or exculpates for offences against the USA, with the exception of if there should be an occurrence of indictment. In any case, this power is accessible just if there should be an occurrence of infringement of Federal law and exculpate on account of infringement of a State law needs to originate from the Governor of the State concerned. In UK, the Constitutional ruler can exculpate or demonstrate leniency to a conviction on pastoral exhortation. In Canada, pardons are considered by the National Parole Board under the Criminal Records Act.In India, the ability to give absolve is presented upon the President of India and the Governors of States under Articles 72 and 161 of the Constitution of India.

Acquit as a method of relieving the sentence of the charged has dependably been a dubious issue for quite a while. The individuals who dismiss acquit as a viable measure of relieving conditions contend that the ability to absolve is frequently abused by the official. There is a probability that the convict may obtain his discharge from jail by applying undue effect on the official expert. To stay away from these defects, in the vast majority of the nations, there is an arrangement for legal survey of the exculpate allowed in case of reason for acquit being discovered unsuitable. (National Academies of Sciences, Engineering, and Medicine et al. 2018; van der Eyden 1971; Nordahl 2014)

ACQUITTING POWER UNDER JUDICIAL REVIEW:

There has dependably been a level headed discussion in the matter of whether the energy of the official to exculpate ought to be subjected to legal survey or not. Preeminent Court in a catena of cases has set out the law identifying with legal survey of absolving power.

In *Maru Ram v Union of India*, the Constitutional Bench of Supreme Court held that the power under Article 72 is to be practiced on the guidance of the Central Government and not by the President all alone, and that the counsel of the Government ties the leader of the Republic. (Tarulevicz 2017)

In *Dhananjay Chatterjee moniker Dhana v State of West Bengal*, the Supreme Court emphasized its before remain in *Maru Ram's* case and stated: "The power under Articles 72 and 161 of the Constitution can be practiced by the Central and State Governments, not by the President or Governor all alone. The guidance of the suitable Government ties the Head of the state." The Supreme Court in *Ranga Billa* case was by and by called upon to choose the nature and ambit of the acquitting energy of the President of India under Article 72 of the Constitution. For this situation, capital punishment of one of the appellants was affirmed by the Supreme Court. His kindness request of was likewise dismissed by the President. At that point, the appealing party documented a writ request of in the Supreme Court testing the watchfulness of the President to give absolve on the ground that no reasons were given for dismissal of his benevolence appeal. The court expelled the request of and watched that the expression "absolve" itself implies that it is totally an optional cure and allow or dismissal of it require not to be contemplate. (Gallahue 2016) Preeminent Court indeed in *Kehar Singh v Union of India* repeated its before stand and held that the give of absolve by the President is a demonstration of elegance and, in this manner, can't be guaranteed as an issue of right. The

power exercisable by the President being only of authoritative nature, isn't justiciable. In *Swaran Singh v State of U.P.*, the Governor of U.P. had allowed reduction of life sentence granted to the Minister of the State Legislature of Assembly indicted for the offence of murder. The Supreme Court prohibited the Governor's request and said that the reality of the matter is that it has no energy to touch the request go by the Governor under Article 161, however in the event that such power has been practiced self-assertively, mala fide or in total carelessness of the "better guns of constitutionalism", such request can't get endorsement of law and in such cases, "the legal hand must be extended to it." (Bozeman 2004) The Court held the request of Governor self-assertive and, subsequently, should have been prohibited. In the early instance of *K.M. Nanavati v State of Bombay*], Governor conceded respite under Article 161 which was held illegal as it was conversely with the Supreme Court decisions under Article 145. In a point of interest judgment *Epuru Sudhakar and Anr versus Govt. Of A.P. and Ors*, it was held by the Supreme Court that it is a well-set rule that a restricted legal audit of activity of pardon powers is accessible to the Supreme Court and High Courts. Conceding of pardon by the President or Governor can be tested on the accompanying grounds:

- The request has been passed without use of psyche.
- The request is mala fide.
- The request has been passed on incidental or completely unessential contemplations.
- Relevant material has been kept out of thought.
- The request experiences assertion.

Presently, it is a very much settled rule that power under Articles 72 and 161 is liable to legal audit.

LEGAL REMEDIES:

1. Record an audit Petition at Supreme Court of India, from there on
2. Record a Curative Petition headed by five senior most Judges of Supreme Court of India.

ACQUITTING POWER OF PRESIDENT AND GOVERNOR:

Energy of acquit under Article 73 and 161 by the Constitution is not quite the same as legal power as the representative or the President can allow exculpate or diminish the sentence of the court regardless of whether a base is endorsed."Henceforth, there is most likely that the President or senator can concede absolve/diminish the sentence. For instance, on account of Commander Nanavati who was held blameworthy of murder, the representative gave him

acquit in spite of the fact that the base sentence for kill is life sentence. (Weintraub and Kumar 1997)

SACRED PROVISIONS:-

ABSOLVING POWER OF PRESIDENT OF INDIA: ARTICLE 72:

- (1) The President might have the ability to allow pardons, respites, reprieves or reductions of discipline or to suspend, transmit or drive the sentence of any individual indicted any offence
- a) in all situations where the discipline or sentence is by a Court Martial;
 - b) in all situations where the discipline or sentence is for an offence against any law identifying with an issue to which the official energy of the Union broadens;
 - c) in all situations where the sentence is a sentence of death.

In this way, Article 72 engages the President to give pardons and so forth and to suspend, dispatch or drive sentences in specific cases. (Weintraub and Kumar 1997; Heath 2013)

ABSOLVING POWER OF GOVERNOR: UNDER ARTICLE 161:

Energy of Governor to concede pardons, and so on, and to suspend, transmit or drive sentences in specific cases The Governor of a State might have the ability to allow pardons, respites, rests or reductions of discipline or to suspend, dispatch or drive the sentence of any individual indicted any offence against any law identifying with an issue to which the official energy of the State expands.

The Article manages the energy of the Governor to give pardons, and so forth, and to suspend, transmit or drive sentences in specific cases. The Governor of a State should have the ability to allow pardons, respites, breaks or reductions of discipline or to suspend, transmit or drive the sentence of any individual indicted any offence against any law identifying with an issue to which the official energy of the State expands. Subsequently, this Article enables the Governors of States to concede absolve, respites, reprieves or reductions of discipline or suspend, dispatch or drive the sentence of a man indicted an offence against a law identifying with an issue to which the official forces of the State expands. (Heath 2001)

CONTRAST BETWEEN PARDONING POWERS OF PRESIDENT AND GOVERNOR:

The extent of the exculpatory energy of the President under Article 72 is more extensive than the acquitting energy of the Governor under Article 161. The power contrasts in the accompanying two ways:

The energy of the President to concede exculpate reaches out in situations where the discipline or sentence is by a Court Martial yet Article 161 does not give any such energy to the Governor.

The President can concede absolve in all situations where the sentence given is sentence of death however exculpating energy of Governor does not reach out to capital punishment cases. (Schneider 2011)

I. STATUTE OF GRANTING PARDON:-

The reasoning fundamental the absolve control is that that "each socialized nation perceives and has, consequently accommodated the acquitting energy to be practiced as a demonstration of elegance and humankind in legitimate cases, without such an energy of leniency to be practiced by some office or functionary of government, a nation would be most flawed and insufficient in its political profound quality and in that characteristic of god whose judgments are constantly messed with kindness."

The exonerating power is established on thought of open great and is to be practiced on the ground of open welfare, which is the honest to goodness question of all disciplines, will be too advanced by a suspension as by an execution of the sentences.

In like manner speech, to exonerate intends to excuse a man of his offence. The term 'absolve' has been characterised as a demonstration of effortlessness, continuing from the power endowed with the execution of the law, which exempts the person on whom it is offered to, from the discipline the law incurs for a wrongdoing he has conferred. It influences both the discipline endorsed for the offence and the blame of the guilty party.

As it were, concede of acquit wipes off the blame of denounced and conveys him to the first position of honesty as though he had never dedicated the offence for which he was charged. Under Indian law, the President of India and the Governors of States have been enabled to give pardons, respites, reprieves or reductions of discipline or to suspend, transmit or drive the sentence. The law overseeing stipend of exculpate is contained in Articles 72 and 161 of the Constitution.

EXECUTIVE POWER TO PARDON AND JUDICIAL REVIEW :

Nevertheless, the Supreme Court has been of the consistent view that the executive orders under Article 72/161 should be subject to limited judicial review based on the rationale that the power under Article 72/161 is per se above judicial review but the manner of exercise of power is certainly subject to judicial review. The nature and scope of the power of pardon and the extent of judicial review over such power has come up for consideration in a catena

of cases and in *Kehar Singh v. Union of India* it was said that the order of the President cannot be subjected to judicial review on its merits except within the strict limitations defined in *Maru Ram's case*. Looking at these cases, the Court did not actually call for judicial intervention. (Ventriss 1989; Orgambídez and Almeida 2018)

However, in *Swaran Singh v. State of U.P* the Supreme Court invalidated the remission of sentence by the Governor because some material facts were not brought to the knowledge of the Governor. If such power was exercised arbitrarily, malafide or in absolute disregard of the finer canons of the constitutionalism, the by-product order cannot get the approval of law and in such cases, the judicial hand must be stretched to it." (Ventriss 1989)

In *Jagdish v. state of Madhya Pradesh* court held that the power of the President and Governor to grant pardon etc. under Articles 72 and 161, though couched in imperative terms has nevertheless to be exercised on the advice of the executive authority. In this background it is the government, which in effect exercises that power. (Boobbyer 1893)

CONCLUSION:

The pardoning power of Executive is very significant as it corrects the errors of judiciary. Therefore, there is an urgent need to make amendments 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 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 review debate, pardoning power should not be absolute as well as Judiciary should not interfere too much in exercise of this 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 executive, it will certainly prove useful to remove the flaws of the judiciary.

RECOMMENDATIONS:

With respect to legal survey discuss, exonerating force ought not be supreme and Judiciary ought not meddle excessively in exercise of this power. As legal audit is an essential structure of our Constitution, exculpating force ought to be subjected to constrained legal survey. In

the event that this power is practiced appropriately and not abused by official, it will absolutely demonstrate helpful to expel the blemishes of the legal.

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