

ROLE OF MERCY PETITION UNDER CONSTITUTIONAL AND HUMAN RIGHTS

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ABSTRACT

The idea of Mercy Petition is followed in many countries like the United States of America, the United Kingdom, Canada, and India. The hope of being pardoned one day compels the prisoner to behave within the norms and discipline of prison institutions. Everyone has the basic right to live. It is also mentioned as a fundamental right mentioned under Article 21 of the Indian Constitution.

Mercy Petition plays an important role in saving the life of a convict who has been awarded the death or capital punishment under the court and from the miscarriage of justice. There are many times where the court has pronounced a judgment that led to the grave violation of human rights and in the miscarriage of justice or in doubtful conviction.

It is the basic right of the convict to seek mercy from the republican head of the State i.e., from the president to grant him mercy and to reduce the gravity of his punishment.

Keyword: petition, article, human, right, legal, constitution, petition, plea

1. LEGAL PROVISIONS RELATED TO MERCY PETITION

The underlying philosophy of the mechanism attached to mercy petition is that every socialized or civilized citizen recognizes the act of pardoning or the act of forgiving as gracious and full of humanity. Even in ancient Vedic and Hindu culture, the act of forgiveness is a noble act and a person who forgives others is held in high esteem.

The legitimate objective or the purpose of serving punishment is for public welfare and the primary object of pardoning the convict is for the public good. Therefore, the pardoning power is exercised in law on the grounds of public welfare and good.

Mercy petition or executive clemency is exercised in several parts of the world. Below are the briefly discussed legal provisions related to mercy petitions around the world and in India.

Mercy plea, pardons, and all communications for acts of mercy to and from the state executive, which is the President of India and governors of states in India's case. It is the most common route opted by prisoners on death row or convicted for an offense with a death penalty as means to convert the said death penalty into life imprisonment. The reasons for having such a provision are beyond the scope of rule of law and are perceived as based on humanitarian grounds, but there is always a logical side to such concepts. The article shall endeavour

to establish the applicability and legal provisions concerning petitions in India and deal with the theories behind it.

2. CONSTITUTIONAL PROVISIONS

In a humane approach to law, mercy plea is enshrined as a matter of recourse available to convicts. It is not to be confused with the rights of convicts (which shall be discussed further) and obligation on the executive as is made clear by the Constitution that it is not a right but rather a matter of grace. The executives in India i.e., the President and the Governors exercise their powers under Article 72 and Article 162 of the Indian Constitution respectively to pardon sentences.

Article 72

Article 72 of the Indian Constitution enshrines the President of India with powers of pardon, reprieves, respites, and/or remissions of sentences or punishments of convicted persons of offenses due to which the said person underwent a court-martial, judicial trial for an offense against the law relating to which the executive holds power over and in cases where having gone through the trial, the person is convicted to death sentence/capital punishment.

Article 162

Article 161 of the Indian Constitution provides for the Governors of various states to exercise their power to commute, pardon, remit or suspend punishments in particular cases. This power is again susceptible to limitations. Like Article 72 of the Indian Constitution, Article 161 is restricted as it is exercisable only over offenses against any law about matters that the state's executive has power over.

3. PROVISIONAL HISTORY

These provisions of the constitution were however interpreted differently by courts in the past. In a drastic event, the supreme court of India in the case of Maru Ram v. Union of India held that the power presented by the constitution to the executives of the state should not be exercised by them alone, and hence the powers must be exercised by the state and the central government with the advice given by the appropriate government binding the executive citing cases of Gopal Vinayak Godse v. State of Maharashtra & Ors. And Sarat Chandra Rabha and Ors. V. Khagendra Nath & Ors., the apex court cemented this precedent.

The apex court reversed the balance of power and restored these powers back to the executive in the case of Kehar Singh and Anr. Etc v. Union of India and Anr. The court in this particular case held that this power belongs to the people and must be exercised by the highest dignitary of the state and that the constitution of India further cements the head of the state as the one enjoying the high status. Although the president must be in conformity with the council of ministers as per the Constitution, the judgment restored a balance.

4. ARBITRARY PARDON AND DELAY IN PETITION

The supreme court of India in Swaran Singh v. State of UP has eloquently stated that clemency powers are not out of the jurisdiction of courts and shall be liable for Judicial Review. This means that exercise of such power by the president cannot be against the spirit of the constitution.

While the apex court has condemned the very fact that deciding mercy pleas for convicts takes up a large part of the proceedings and must be regulated on multiple occasions, the SC has in cases of inordinate delay of mercy petitions, the court may commute the death sentence to life imprisonment. The apex court in the same judgment changed the dynamic of mercy plea stating that it is in fact a fundamental right under Article 21 of the constitution for the convict to appeal for mercy while the act of mercy

in itself is not a right but subject to appeal and approval by the president.

5. A MATTER OF PLEA

These articles provide an inclusive approach by stating that the executive not only has pardon powers but also to reduce sentences, temporary suspension of sentences and awarding lighter punishment. But the power of Pardon is special as it provides a real reason for convicts to reform and hope for a pardon on good behaviour.

It is necessary as there might be cases of insanity or mental illness undetectable due to technological constraints that might later be revealed which prompted the convicted person to act in the way they did. In such cases, at least on humanitarian grounds, a person must be able to plead for a lesser sentence for the want of better.

Despite these provisions, it is necessary to understand that it is not just a matter of good behaviour but a matter of the last exercise of legal remedy available to a convict on death row. Once a decision against a person is pronounced, there is one last legal remedy available that essentially renders the judgment altered in theory but not practically as the judgment holds and is valid even if pardoned.

Mercy plea is a matter that while under the purview of the judiciary surpasses its bounds and limitation and hence is treated as such. It is for this reason that these remedies are not a matter of right but rather a matter of appeal which in turn is guaranteed.

This is best represented in the Shatrughan Chauhan case wherein the convicts, who assassinated the then Prime Minister Rajiv Gandhi were denied mercy plea for 11 years and the inordinate delay prompted the courts to grant a commutation of the sentence. Hence while pleas are not a matter of right, they very well come – under judicial purview.

In *Dhananjay Chatterjee alias Dhana v State of West Bengal, 1994* case the Supreme Court has said that "The power under Articles 72 and 161 of the Constitution can be exercised by the Central and State Governments, not by the President or Governor on their own".

The advice of the appropriate Government binds the Head of the state.

Difference between the pardoning power of President and Governor

- **Death sentence:** President can pardon the death sentence, but the Governor has no power to pardon the death sentence.
- **Court-martial:** The President can pardon in case of Court-martial. But the Governor cannot pardon in the court-martial.
- **Jurisdiction:** President exercises his judicial powers for the punishment which is given under the law made by the Union. Whereas the Governor exercises his judicial powers for the punishment which is given under the law made by the State.

Is the delaying of Mercy Petition a violation of Human Rights?

This death penalty, the mercy petition, power to pardon, court reviews are interlinked with each other and these act as the stages between life and death. Unnecessary delay in approval or rejection of the mercy petition and intentionally procrastinating it can inflict serious mental health problems in convicts. This can mentally torture them. In the major landmark case of Mohd. Afzal Guru v. State of Delhi, In this case, the court said that there has to be 14 days gap between the communication of rejection of mercy petition to the convict and his family members and actual execution of the death penalty.

When the delay in approving or rejecting the mercy petition is unexplainable, unreasonable, and exorbitant. It is the duty of the court to step in and should decide the reasonable time to dispose of the mercy petition. It has already been said by the court that whether a person is given the death penalty for terrorist charges or for any other charges, there should not be any distinction by the court in disposing of their mercy petitions. It was also said that it is the duty and responsibility of the jail superintendent to inform about the rejection of the mercy petition of the convict to his family members so that they can make their plans and arrangements for travelling.

Every constitutional duty must be fulfilled with due care and diligence. Constitutional rights such as Article 14 and Article 21 of the Constitution are violated due to unnecessary delay of mercy petition and lack of proper procedure and system that deals with disposing of mercy petitions.

The Supreme Court in Maru Ram v. Union of India said that constitutional powers and all public powers should not be exercised in an arbitrary manner and in a mala fide manner. There should be some proper restrictions and

proper guidelines regarding that. The Apex court in Maneka Gandhi v. Union of India said that fair procedure is required and it's the natural demand of Article 21 of the Indian Constitution. There should not be any arbitrary exercise of powers. It is clear evidence that a lack of procedure and laws related to disposing of mercy petitions stand in contravention with the provisions enshrined in Article 21 and are clear violations of Human rights.

The government is totally ignorant of the pain and suffering of death row convicts or it intentionally chooses to avoid it. They behave in a very reckless manner and in a very ignorant way.

Mercy petitions are crucial because I do believe that living is the most beautiful thing and talking of executing the death penalty in a current scenario where most of the countries have already put a clear abolition and prohibition on the death penalty is totally justified. No human deserves such torture despite the fact that he is a criminal and everyone should be given one chance to redeem himself and to repent his wrong deeds.

It acts as both boon and bane because the power of pardon is not a new concept it has already been there in most of the spiritual texts and in bygone laws but when it comes to execution of the power of pardon we are clearly failing and lacking proper strategies and laws.

Appropriate and specific laws and provisions are required to reduce the agony and suffering that are being caused by the exorbitant delay of the mercy petitions in the current scenario.

6. CONCLUSION

In my opinion, without diving much deeper into the current scenario. I feel the mercy petition should have some restricted conditions and time limits. Mercy petition acts as a double-edged sword which can be both boon or bane depending on the situation and circumstances. Unnecessary hurdles and delays in approving the mercy petition can cause severe discomfort to both the convicts and the victims. This can unintentionally delay justice and victims can never get access to proper and unbiased justice. This will further intensify the victim's pain and suffering. We need a proper limitation period and proper policies to restrict the unnecessary delay in filing and granting mercy petition for proper facilitation and smooth functioning of the Indian judiciary.

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