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## **CLEMENCY POWER OF UNION AND STATE EXECUTIVE**

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### **ABSTRACT:**

Clemency is known to be an act of grace which is based on the approach of forgiveness and justice considered to be fair, though it's not a proper right it is much like pardon since it is an act of grace sparing someone from getting punished. The project will further discuss the power of the President which told to be the most sweeping power further explaining with the help of case laws. It will also talk about the object and related terms of clemency with stating its nature. It will also talk about the power of Governor and followed by differentiating the powers of both Governor and President. Further explaining it being the subject to judicial review with the help of case laws.

### **INTRODUCTION**

Clemency is considered to be an act of grace. It is based totally on the policy of fairness, justice, and forgiveness. It isn't a proper right however instead a pleasure, and one who is granted clemency does not have the crime disremembered, as in amnesty but is forgiven and handled extra compassionately for the criminal act. Clemency is much like pardon since it's miles an act of grace exempting someone from punishment. Commutation of a culprit's sentence, however, is the diminishing of the punishment primarily based on the offender's very own correct demeanor next to his conviction.

### **CLEMENCY POWER OF PRESIDENT**

The clemency power is one of the most sweeping powers that the President has. The Constitutional prearrangement for pardoning in India is on the models shadowed in U.K and U.S.A. Several developed and developing nations have endowed this power on the executive and extended on the subjects. The Indian constitution provides a unique system of checks balances which ensures that no authority whether it be the executive, legislature, and judiciary cannot misuse their power. The clemency power is a judicial function of the clemency. With the virtue of the constitution, the executive is provided

with the special power to provide a pardon to offenders. The executive is invested in some legislative and judicial functions. In the same way, the legislature has been invested with executive and judicial functions and the judiciary has also executive and legislative functions. The executive has been enabled with the judicial power to grant pardon to the offenders. The object of conferring such power in the hands of the executive authorities is to make a constitutional check to correct the judicial error and further, it extends the relief from excessive severity or a deceptive error in the administration of justice. The Indian constitution under Article 72 and 161 enshrines the pardoning power on the President and the Governor. In a democracy, every statutory authority needs accountability.

The President and the Governor of a state, being executive authorities must be accountable for exercising their pardoning power. President is vested with power to grant pardons, reprieves, respites or remissions of penalty or to suspend, remit or commute the verdict of any person sentenced of any offense under Article 72.

1. By court-martial
2. An offense against any law relating to any rely on to which the executive power of the union extends
3. In all instances in which the sentence is of death.

In *Maru Ram V. Union of India*<sup>1</sup> it has been held that in exerting the pardon power the object and the spirit of Section 433-A of Cr.P.C. must be kept in view.

In *Kuljeet Singh V. Lt. Governor of Delhi*,<sup>2</sup> an important question relating to scope of Article 72 came for consideration before the Supreme Court. The petitioner's Ranga and Billa were found guilty of murdering two innocent children and awarded death sentence by the session court which was confirmed by the high court. The court held that by ruling that the exercise of the president's power under Article 72 will be examined on the facts and circumstances of each case the court has reserved the power of judicial review even on a substance that has been vested by the constitution solely in the executive. This would make the use of the mercy power a matter for further litigation as it has been demonstrated in the present case.

### **OBJECT OF CLEMENCY POWER AND RELATED TERMS**

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

<sup>2</sup>Kuljeet Singh v. Lt. Governor of Delhi, AIR(1982) SC 774

The object of deliberating the judicial power to the president is to correct the possible judicial errors, for no judicial administration which is man-made can be free from imperfections. A pardon completely absolves the offender from all sentences and punishments and disqualifications and places him in the same position as if he had never committed the crime. Communication means exchange of one thing for another. Here it means the substitution of one form of punishment with another of a lighter character, e.g., for rigorous punishment – simple imprisonment. Remission means a reduction of the extent of a sentence without altering its character. Respite means awarding a smaller punishment on some exceptional grounds. E.g. the pregnancy of a woman wrongdoer. Reprieve means temporary postponement of the death sentence, e.g., pending a proceeding for pardon or communication.

### **NATURE OF CLEMENCY POWER**

Clemency is an act of grace and therefore it cannot be demanded as a matter of right. The effect of a pardon is that it not only removes the punishment but in the eyes of law place to the offender in the same positions as if he had never committed the offense. The executive can work out the pardoning power at any time after the commission of wrongdoing either before legal proceedings are booked or during their tendency or either or after the conviction.

In *Kehar Singh V. Union of India*,<sup>3</sup> a five-judge bench has examined the scope of clemency power of president under Article 72 of the Indian Constitution. The petitioner, Kehar Singh, was imprisoned for an offense of murder for assassinating the Prime Minister Smt. Indira Gandhi and sentenced to death which was confirmed by the High Court and his appeal to the Supreme Court was also dismissed. Thereafter, he presented a petition to the President for the grant of the pardon. He prayed that his representatives may be permitted to see the president personally to elucidate his case. The president rejected his petition on the advice of the Union Government without going into the merits of the decision of the Supreme Court confirming the death sentence.

The court held that while exercising his pardoning power it was open to the President to scrutinize the evidence on record and come to a different conclusion both on the guiltiness of Kehar Singh and the sentence levied upon him. In doing so the president does not revise or modify or supersede the judicial record. The petitioner had no right to be heard by the president. The court need not spell out specific guidelines for the exercise of power under

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<sup>3</sup>Kehar Singh v. Union of India, AIR (1989) SC 653

Article 72 as the power under this article is of the "widest amplitude," and can contemplate myriad kinds and categories of cases with facts and situations varying from case to case. The order of the president cannot be imperiled to judicial review on its virtue. Accordingly, it was held that the president must ponder the matter afresh following the law laid down in the present case.

In ***Devender Pal Singh V. State of NCT Delhi***<sup>4</sup> it was held- It is neither a count of grace nor a count number of privilege but is a critical constitutional duty to be discharged by way of the best government preserving given the reflections of the bigger public interest and properly-being of the humans. The president or the governor is a prerequisite to act on the advice of the council of ministers which has the objectively place the case of the offender with a clear indication about the nature and degree of the crime committed, its impact on the society, and all incriminating an extenuating condition. The president of the governor, as the case may be, has to take a final decision. He/she cannot overturn the final verdict of the court but inappropriate case after scanning of the record of the case, from his/her independent opinion whether the case is made out for grant of pardon, reprieve, etc. the decision is to be taken by taking cognizance of the relevant facts which have been considered by the court for an award of the death penalty. While exercising this power not to entertain the mercy petition cannot be exercised arbitrarily or unreasonably.

### **CLEMENCY POWER OF GOVERNOR**

As per Article 161, the governor is conferred with clemency power and to grant pardons, reprieves, respites or remissions of punishment or to append, omit or commute the sentence of any person sentenced of any offense against any law relating to stuff to which the executive power of the state spreads. The executive power of the state extends to a matter concerning which the legislature of the state has control to make laws (Article 162).

In ***K.M.Nanavati V. State of Bombay***<sup>5</sup> the petitioner was convicted of murder and sentenced to imprisonment of life by the Bombay High Court. At the time of the verdict of the high court, the petitioner was in naval supervision. Soon after the judgment was pronounced by the high court the petitioner made an application for leave to appeal to the Supreme Court. On the same day, the governor issued a direction under Article 161 suspending the sentence subject to this that the alleged shall remain in the naval jail custody till the discarding of his

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<sup>4</sup>Devender Pal Singh v. State of N.C.T Delhi, AIR (2013) SC 1975

<sup>5</sup>K.M.Nanavati v. State of Bombay, AIR (1961) SC 112



appeal by the Supreme Court. The warrant issued for the arrest of the suspect was returned unserved. The question involved was: should that accused surrender to his sentence as required by rules of the Supreme Court under O.XXI, R5, or should remain in naval custody according to the mandate made by the governor under Article 161. The court held that the power to suspend a sentence by the governor under Article 161 was subject to the rules made by the Supreme Court concerning the cases which were pending before it in appeal. The power of the governor to suspend the sentence of a convict was bad in so much as it came in conflict with the rule of the Supreme Court which required the petitioner to surrender himself to his sentence. It is on the governor's discretion to grant a full pardon at any time and during the pendency of the case in the Supreme Court. When the Apex court is seized of the case the governor has cannot exercise his such power. After the filing of such a petition and till the judicial process is over the power of the governor cannot be exercised.

### **DIFFERENCE BETWEEN CLEMENCY POWER OF PRESIDENT AND GOVERNOR**

There is a difference between the clemency power of the president and governor. Under article 72 the president's power is wider than the governor's power.

Firstly, the president has exclusive power to give pardon in cases where there is a death sentence while the governor cannot pardon in a case of death sentence

Secondly, the president can pardon penalties of sentences imposed by a court-martial. The governor has no such power. In admission of suspension, remission, and commutation of the sentence of death both have contemporaneous.

### **CLEMENCY POWER-SUBJECT TO JUDICIAL REVIEW**

In *Epuru Sudhakar V. Government of Andhra Pradesh*<sup>6</sup> the Apex court clearly lays down that the Judicial review covers the power of President and Governor to grant mercy.. Clemency power cannot be exercised based on caste or political reasons. If the clemency power has been exercised on grounds of political reasons, caste and religious consideration it would amount to a violation of the constitution and the court will examine its validity.

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<sup>6</sup>Epuru Sudhakar v. Government of Andhra Pradesh, AIR (2006) SC 3385

In *Jumman Khan V. State Of Uttar Pradesh*<sup>7</sup> the petitioner was convicted of committing rape on 6 years old girl and strangulating her to death and was awarded sentence of death by the session's judge, Agra which was confirmed by the High Court. His special leave petition to the Supreme Court was also disallowed. His petition for pardon was rejected by the governor in February, 1988. The mercy – petition addressed to the president was received by the ministry of home affairs and the same was disallowed in October, 1988. It has contended that the mercy petition rejected by the president requires reconsideration. It was held that after examining the same care the court found the ground of interference.

In *Narain Dutt V. State of Punjab*<sup>8</sup>, in the order of the governor of Punjab granted the pardon in a case of murder along with other offenses-

1. The governor's order did not contain any allusion to the order of persuasion and verdict imposed on the accused persons: - The Supreme Court set aside the order of the governor and remanded it for reevaluation. Regarding this Supreme Court held- there is a limited scope of judicial review on the exercise of power by the governor under Article 161.
2. The governor's order also did not comprehend any reference to the appeals pending in contradiction of the order of conviction and sentence before he could pass the order: - the Apex court held that probably all relevant facts were possibly not placed before the governor.
3. There were some remarks in the command of the governor's about the guilt or innocence of the accused persons.- the court held that, the court within its exclusive domain of the court of law which is fundamentally a judicial function. The powers of a court of law in a criminal trial and next right to enchantment up to the splendid court and that of the president/governor perform on absolutely different grounds and the character of these powers are various from each different. The governor has surpassed the permissible constitutional limits in the exercise of powers.

#### **Article 72 And 161 Of Indian Constitution and Section 433-A of Cr.P.C.**

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<sup>7</sup>Jumman Khan v. State Of Uttar Pradesh, AIR (1991) 1 SCC 752

<sup>8</sup>Narain Dutt v. State of Punjab, AIR (2011) SC 1216.

The power of the constitutional establishments under Article 72 and 161 of the Indian constitution are sacrosanct but the authority under section 433-A of Cr.P.C. can judicially be dealt with. The power under Article 72 and 161 of the Indian constitution are amenable to judicial view in a limited sense yet the court cannot exercise such power. The statutory power under Section 433-A can be abridged when the court is of the well-thought-out opinion that the fact situation deserves a verdict of incarceration which be for a secure term so that power of remission is not exercised.

### **THE LEGAL SOURCES OF THE PARDONING POWER**

In the functioning of the criminal justice system, clemency has an important role in the context of prerogative the basic requirements of the pardoning power are closely always found in the State's Constitution. The main departures are from basic or supplementary laws that take the place of a Constitution. Great Britain also relies on the royal prerogative, a renowned feature of her unwritten Constitution, and this same prerogative as delegated also obtains in certain jurisdictions of the British Commonwealth such as Bangladesh, India, Pakistan, South Africa, and Sri Lanka but not in Canada. It is also reflected in the United States, but not in the Commonwealth nations and this pardoning system has been based on the system of the British. It should also be observed in countries with a federal structure. Basic provisions may be found both at the federal level and within the Constitutions of the individual provinces or the States. The jurisdiction of the federal pardoning authority does not necessarily co-exist with the jurisdiction of federal Courts and laws as in the United States. For example, in India, the President may alter the death penalty even where State laws are involved. *The recommending authorities for clemency power are the Ministry of Home Affairs under Article 74 and 63 with the aid and advice of the Council of Ministers. Types of pardon available to offenders are Pardon, reprieves, respite, remit, suspend and commute judicial scrutiny will be available only When there is non-application of mind' malafide and extraneous consideration.*

### **RIGHT TO LIFE AND PERSONAL LIBERTY**

The purpose of the criminal justice machine is to shield the innocent and punish the responsible. The inherent right to life and personal liberty is guaranteed under Article 21 of the Constitution of India, which mandates that no individual shall be deprived of his life and personal liberty besides in line with the system set up by way of regulation. Those rights can

be covered through the judiciary through numerous provisions of the constitution. But the hazard of committing error even with the aid of the devoted judges is plain.

This will cause a miscarriage of justice. Our constitution makers allows defending the innocent, even after hard all the remedies made to be had beneath law thru judiciary, had designed a scheme to provide an avenue to set right the errors that could have erupted whilst the problem turned into dealt through the judiciary. To allow this power which is within the nature of judicial is conferred on the executive heads. The energy so entrusted with the government is in judicial nature that is reposed by using the humans thru the constitution. Moreover, the criminal justice gadget additionally needs the pardoning power as an extrajudicial. Article 72 and 161 designedly and benignantly vests inside the maximum executive the humane and considerable jurisdiction to remit, reprieve, respite, shuttle, and pardon criminals on whom judicial sentences can also have been imposed.

Traditionally, its miles a sovereign power; politically, it's far a residuary power; humanistically, it's miles in aid of imperceptible justice wherein unquantifiable elements function for the well-being of the network, past the blinkered courtroom procedure.

#### **REFERENCE**

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