



Pardoning power: Presidential pardon under judicial review

Meenu Kumari

Assistant Professor, B.S. Anangpuria Institute of Law, Faridabad, Haryana, India

Abstract

The Constitution has given both the President and the Governor the authority to grant pardons, sometimes known as mercy or clemency. The ability to pardon is increasingly important to every nation's executive function. But because of its harmful previous use, this authority is frequently a source of discussion and criticism everywhere. Pardon is defined as "a decision taken by the government to absolve the crimes of a convict and free him/her from the prison sentence."

There wouldn't be a need for pardoning authority if laws were believed to be enforced fairly in every scenario, but this is an ideal arrangement that is not always possible. The pardoning power's nature—whether it is unlimited or subject to judicial review—has been a subject of ongoing discussion. This article discusses the need for judicial examination of the pardoning authority in the current situation. The article is finished with a few recommendations that can be used to address the issue of the misuse of the pardoning power.

Keywords: presidential pardon, constitution, governor the authority, crimes

Introduction

A pardon is an act of clemency, mercy, and forgiveness. The idea of a pardon dates to a time when an omnipotent king had the authority to impose punishment or commute it.

It evolved into a representation of a king who possessed godlike powers and was in charge of his subjects' life and death.

Pardon is defined as "a decision taken by the government to absolve the crimes of a convict and free him/her from the prison sentence. All past records are treated as if they never occurred."

Article 72

Article "72 says that the President shall have the power to grant pardons, reprieves, remit or remissions of punishment or to suspend, remit or commute the sentence of any person convicted of any offence.

- in all cases where the punishment or sentence by a court martial;
- in all cases where the punishment or sentence for an offence against any law relating to a matter to which the executive power of the Union extends;
- in all cases where the sentence is a sentence of death."

Under Article 161, the Governor in India too has pardoning powers.

Justice Fields explaining the nature and effect of a pardon said "A pardon reaches both the punishment prescribed for the offence and the guilt of the offender; and when the pardon is full, it releases the punishment and blots out of existence the guilt, so that in the eyes of law, the offender is as innocent as if he had never committed the offence."

The custom of pardoning was commonplace all across the world and its roots may be found in Ancient Athens culture, where the *adeia* custom allowed for a democratic pardon for those who were able to win the support of 6000 persons in a vote conducted in secret. Although the source of his clemency power was not an administrative privilege, it is not difficult to draw parallels between the ancient idea of

adeia and the modern practice of pardoning, which takes into account things like the public's perception of the person seeking pardon.

History

The Romans of antiquity used the idea of clemency. Gaining political advantage is the main goal. Clemency was a tool that the Romans used to keep the crowds of soldiers and citizens under control. By selecting every tenth army troop of rebels, for instance, the Romans were able to instill discipline and fear in the remaining soldiers.

When it came to forgiveness, India's viewpoint was considerably different from Athens' and Rome's. In India, the King was regarded as the head of the State, and he had complete control over a person's life. He could execute a person or pardon him, but some members of society, such as Brahmin offenders and elderly people, were exempt from the death penalty.

The British monarch was given the ability to show mercy during their time in office. In the common law system, the king's use of the pardon authority is seen as an act of kindness that absolves any criminal. Therefore, it is true to say that the ability to show kindness to the people is not a simple idea.

Since the royal of England was also the sovereign of India prior to the Constitution's implementation, the laws governing pardons in both countries were identical. Section 295 of the Government of India Act, which was in effect from 1935 onwards and did not place any restrictions on the Sovereign's authority, contained the law of pardon. As a result, the King's prerogative was fully vested, unrestricted, and exercisable as before the Constitution entered into existence.

Types of the president's pardoning powers

1. Pardon When the President pardons a criminal, all sentences, punishments, and disqualifications against the convict are fully wiped away.
2. Respite When the President exercises the pardoning authority of "Respite," he decides to substitute a lighter

sentence for the one that would have been imposed on the offender originally. For instance, the President may exercise this authority due to a unique circumstance, such as a prisoner's physical impairment or a woman offender's pregnancy.

3. **Reprieve** When the President exercises his pardoning authority to "Reprieve," he temporarily halts the execution of a punishment, notably a death sentence. He gives the offender time to look for a new job by doing this.
4. **Remit** When the President uses the pardoning option of Remit, he shortens the sentence's duration while maintaining its overall meaning. For instance, a sentence of strict incarceration for two years may be reduced to strict incarceration for one year, but the incarceration is still strict.
5. **Commutation** refers to the replacement of the specified punishment with a less severe one. Simple imprisonment may be substituted for harsh imprisonment.

India's process for issuing pardons

- According to Article 72 of the Constitution, the procedure begins with the submission of a mercy petition to the President.
- The Ministry of Home Affairs in the Central Government is then notified of such a petition for review.
- The Home Ministry discusses the aforementioned petition with the relevant State Government in collaboration.
- The Home Minister makes recommendations following the consultation, and the petition is then forwarded back to the President.

Presidential pardon under judicial review

The pardoning power's nature—whether it is unlimited or subject to judicial review—has been a subject of ongoing discussion. Through numerous judgements, the Supreme Court has provided it with varied interpretations. The Supreme Court has repeatedly deemed the pardoning power to be arbitrary in nature and established a number of rules for it.

Case of Epuru Sudhakar v. Government of Andhra Pradesh
The Supreme Court and High Courts have the ability to conduct a limited judicial review of the use of mercy powers, which is a well-established norm. The following reasons can be used to challenge the President's or Governor's clemency decision:

Without using their heads, the decision was made.

- The order is dishonest.
- The decision was made based on unrelated or entirely unrelated factors.
- Relevant information was not considered.

In *Maru Ram v Union of India* case (1980), the constitutional bench of the Supreme Court of India held that "the power under Article 72 is to be exercised on the advice of the Central Government and not by the President on his own at his discretion. And that the advice of the Government is binding on him."

On the other hand, it has been noted that the President's decision to pardon someone on the Council of Ministers' recommendation is not without its own set of problems. According to attorneys like Thakur, the guilty parties' plea

in this case could never have been accepted because Kehar Singh killed Prime Minister and Congress leader Smt. Indira Gandhi and the Congress was then in power at the Centre. Additionally, a coalition administration cannot address this issue because the council cannot give the President a free and unbiased opinion due to conflicting party interests. This results in additional problems and, in the view of many academics, strengthens the case for judicial scrutiny of the President's power to pardon.

In the case of *Kuljeet Singh v. Lt. Governor of Delhi*, the Court reached the conclusion that the use of the pardoning power stated in Article 72 would be judged on the circumstances and would retain the right to judicial review on a matter that has been specifically reserved for the Executive by the Constitution.

The court cannot use its review authority solely because the mercy petition was handled slowly. The Court's judicial review authority in this case is highly constrained. Only when it can be proven that the decision was made without considering all of the pertinent circumstances or taking irrelevant factors into account, or where it is determined to have been made in bad faith or with an arbitrary use of power, can the Court review it.

The President has denied Akshay's request for mercy in the *Nirbhaya* Case. His request was previously turned down. Additionally, 30 pardons were awarded by President Pratibha Patil until 2012. Many times, the President has granted the requests of the accused, but there have also been instances where this has not happened.

The governor of Tamil Nadu, Banwarilal Purohit, has informed the Supreme Court that a decision will be made regarding AG Perarivalan's request for clemency. AG Perarivalan is now serving a life sentence for the murder of former Prime Minister Rajiv Gandhi.

The Governor has the petition on hold as of December 30, 2015. Citing the Governor's lack of action in addressing his request for mercy made in accordance with Article 161 of the Constitution, Perarivalan has turned to the Supreme Court for guidance.

Sonia Gandhi, Rajiv Gandhi's widow and the president of the Congress at the time, submitted a petition for forgiveness on behalf of Nalini's daughter in 2000. She urged the life in prison alternative to the death penalty.

2014 saw the Supreme Court convert the death penalty to a life sentence. Priyanka Gandhi, Rajiv Gandhi's daughter, told Nalini she had forgiven her father's killer when they met in 2008 while she was still incarcerated.

However, the bench made it clear that the ruling was only based on "whether the Governor could have referred the Council of Ministers of Tamil Nadu's decision to grant early remission to Perarivalan to the President for his consideration."

K M Nataraj, an additional solicitor general, asserted that Perarivalan was convicted in accordance with the Indian Penal Code (IPC), a national statute, and that only the President has the authority to reduce, suspend, or cancel a sentence. The three-judge SC panel objected to this, noting that if it were the case, then all remissions granted by governors up to this point would be unlawful. Justice L. Nageswara Rao served as the bench's senior judge.

In *Satpal v State of Haryana* the Supreme Court quashed an order of "the Governor pardoning a person convicted of murder on the ground that the Governor had not been advised properly with all the relevant materials. The Court

spelt out specifically the considerations that need to be taken account of while exercising the power of pardon, namely, the period of sentence in fact undergone by the said convict as well as his conduct and behaviour while he underwent the sentence.” The Court held “not being aware of such material facts would tend to make an order of granting pardon arbitrary and irrational.”

Conclusion & suggestions

The Executive's ability to pardon is particularly important since it allows the Judiciary to repair its mistakes. Without addressing the defendant's guilt or innocence, it reverses the effects of the conviction. Although the procedure for granting a pardon is simpler, the government's laziness and political factors cause the processing of mercy applications to be delayed. Therefore, it is important to change the pardoning statute to ensure that clemency requests are speedily resolved. A limited amount of judicial review should be applied to the pardoning power because it is a fundamental component of our Constitution. If the president uses this power wisely and not unjustly, it will surely aid in addressing the flaws in the judicial system. Below are some ideas for enhancing pardon authority:

- A set period of time should be allocated for deciding on clemency requests.
- The executive branch should not abuse the authority of judicial review; it should be used appropriately.
- It is important to use objective standards for granting pardons.
- People should be informed of India's clemency-related constitutional and statutory requirements.

References

1. www.legalserviceindia.com › legal › article-5052
2. nehu.ac.in
3. blog.ipleaders.in
4. ijlljs.in › wp-content › uploads
5. www.legalbites.in › [analysis-judicial-review](#)
6. indianexpress.com