WWW.IJRPR.COM

International Journal of Research Publication and Reviews

Journal homepage: www.ijrpr.com ISSN 2582-7421

Pardoning Power of President in India: An Analytical Study

Devanshi Joshi

Amity Institute of Advanced Legal Studies

INTRODUCTION

An act of mercy, forgiveness, clemency is known as pardon. It is being followed by the ancient times where the king or the monarch has the power to punish or remit the offender. Later it symbolizes the power of a king who had a control over life and death of his subjects. Thus, the link between punishment and pardoning was balanced by the laws for specifying every circumstance. Pardoning of power can be possessed whenever either before judicial procedure or during the pendency or even after the conviction. Now and then, judges enforce laws that are best according to their knowledge but are not just, even the proceeding sometimes delay to secure justice. Therefore, to remove such inadequacy pardoning of power is granted to the president so that justice can be prevailed and there is no unjust in the society and people can hamper their faith on the president as vesting the power in a power other than the legal executive has forever been valued.[1]

The death sentence has always been a contentious issue because it is the harshest punishment a State can impose. Although many nations have banned the death sentence, there is no universal agreement on whether it is legal. Yet nations like India still uphold and apply the capital punishment. The defendability of capital punishment has been a successive objective of legal difficulties in India. No person "will be denied of his life or individual freedom besides as per a methodology laid out by regulation," as indicated by Article 21 of the Indian Constitution. As indicated by Article 14, everybody has the option to balance under the steady gaze of the law and equivalent insurance under the law, which ensures that nobody will face unfair treatment or discrimination. Therefore, it seems sense that the Article 14 equal protection requirement applies to the judicial procedure during punishment[2]. The conclusion of sentencing arbitrary decisions may go against the equivalent assurance condition of Article 14 and may likewise be infringing upon the fair treatment commitment. It is in any case evident in such manner that the issue of capital punishment contains an emotional part and the adjudicators' personal preferences have a major role in the court's decision to confirm a death sentence or commute it. This issue is crucial to determining whether the death sentence is constitutional in India.

Since it was initially enacted into the Indian Penal code, the use of capital punishment as a discipline has been at the discretion of the court. The Code of Criminal Procedure required justifications to be recorded up until 1955 if a capital offence did not result in the death penalty. But after the new Code of Criminal System was embraced in 1973, the courts had to document the "special reasons" behind their decision to execute someone. This, too, failed to dispel the concerns that there is subjectivity involved in deciding whether to execute someone, giving rise to various lawsuits contesting the defendability of capital punishment.

State of Uttar Pradesh v. Jagmohan Singh3, maintained capital punishment's lawfulness. It was contended that capital punishment was unlawful in light of the fact that no system was determined for forcing capital punishment and the CrPC's methodology was restricted to finding responsibility alone. The court decided that the choice to sentence somebody to death is made as per the legitimate cycle and noticed that the appointed authority decides if to condemn somebody to death or life in jail based on current realities and conditions that were introduced at preliminary, as well as the idea of the offense. The seat decided collectively that capital punishment doesn't abuse Articles 14, 19, and 21. Afterward, in an alternate occasion, it was underscored that capital punishment is infringement of passages 14, 19, and 21 and to cause capital punishment, an extraordinary support for doing so ought to be noted for the situation; and capital punishment should just be applied on phenomenal events.

[1] Available at http://elearning.vtu.ac.in/P3/CIP71/7.pdf, Seervai, H. M., Constitutional Law of India, Universal Law Publishing Co. Pvt. Ltd., p.2004, Available at http://elearning.vtu.ac.in/P3/CIP71/7.pdf (visited on April 14, 2023).

[2] R. Nida and R. L. Spiro, The President as His Own Judge and Jury: A Legal Analysis of the President's Self-Pardon Power, 52 O KLA . L. R EV . 197 (1999).

[3] 1973 AIR 947.

***Bachan Singh v. State of Punjab*[4] *and Machhi Singh v. State of Punjab*[5]**are the two most important instances that address when capital punishment ought to be applied. In the former, the Supreme Court reversed its prior ruling in Rajendra Prasad and held that the death sentence is an appropriate substitute to the death penalty for murder and does not, therefore, disregard Articles 14, 19, and 21 of the Indian Constitution. For this situation, the 'most extraordinary of uncommon cases' hypothesis was created, and it was concluded that capital punishment ought to just be applied in those circumstances. The last option case summed up the previous and laid out the wide boundaries of the remarkable conditions under which capital punishment ought to be forced, taking thought of the idea of the wrongdoing, the crook's occasions, and all of the relieving and exasperating elements.[6]

The 'rarest of rare' notion that resulted is used as a standard for imposing the death penalty. In Bachan Singh, the court perceived that each case is novel and ought to be settled in view of its own realities and conditions. The Court declined to order the sorts of circumstances that would warrant the passing discipline hence too. Furthermore, judges were told to conclude whether a case is the most uncommon of the interesting while at the same time remembering legal standards created from an examination of points of reference about the kinds of exasperating as well as mitigating elements. Thus, Bachan Singh recognised the two components of sentence that should be both unique and moral. The absolute irrevocability of the punishment is at the heart of this theory, which is why the courts designed it to be one of the strictest and most persuasive standards in the lawof crimes. The Indian Constitution first regulated the death penalty once the "rarest of rare" rule came into existence[7].

The judges' discretion in applying this doctrine, however, was not clearly defined, therefore the application of the death penalty cannot be done objectively. As a result, the criminal justice system is unable to handle all crimes equitably since judges' preferences lead to an imbalance in sentence. Such a flawed sentencing system would be unconstitutionally arbitrary since it would treat similarly situated convicts differently, denying those found guilty of comparable offences equal protection under the right to life. These worries have been raised again and again whenever the Supreme Court has brought up the inconsistent way the "rarest or rare" criterion is applied. The High Court has recognized that the erratic and shameful utilization of capital punishment has changed "principled condemning" into "judge-driven condemning" based on the "individual inclination of the adjudicators comprising the seat." Furthermore, different courts have given their own interpretations to the "rarest of rare" doctrine, and this divergence in approach may constitute a constitutional flaw due to evident arbitrariness on the part of the court.[8]

However, if given a death sentence, a condemned is always entitled to appeal to the executive, who can commute the sentence through the relevant government and offer a pardon through the President or Governor. The activity of chief powers to concede exculpations and recompenses, be that as it may, has the power and moral defense to go beyond regulation since the substitution abilities of the public authority, the President, or Lead representatives are not compelled by the proof permitted under the steady gaze of courts. And although the president awards commutations according to an unknown criterion, the judiciary follows the "rarest of rare" approach. Thus, appeals to the executive are susceptible to bias. The shortfall of a sane and legitimate defense for leniency has likewise drawn the consideration of the High Court. President Hussain and President Giri drove all capital punishment petitions that they chose, while President Ahmed and President Reddy needed to managed no benevolence petitions during their terms in office. President Rajendra Prasad drove the death sentences in 180 out of the 181 tolerance petitions that he picked, excusing only one. President Radhakrishnan likewise traveled all capital punishment petitions that he dominated.[9]

President Hussain and President Giri drove all capital punishment petitions that they chose, while President Ahmed and President Reddy needed to managed no benevolence petitions during their terms in office. President Rajendra Prasad drove the death sentences in 180 out of the 181 mercy petitions that he picked, excusing only one. President Radhakrishnan likewise ventured all passing sentence petitions that he ruled. President Sharma turned down all of the mercy petitions presented to him, President Narayanan failed to act on any of the mercy petitions presented to him, President Abdul Kalam actedjust two times during his residency, prompting in one dissatisfaction and one recompense, and President Pratibha Patil all through her Administration excused five of the eight leniency petitions presented to her[10]. It clear that the President's ideology and opinions have a significant impact on the outcome of a death row inmate's mercy request. Additionally, in addition to the possibility of arbitrary death sentences and the lack of knowledge on presidential decisions, other factors have sparked debate about the death penalty in the nation.One of them is the exorbitantly long wait for the death penalty to be carried out. It has a degrading and brutalising effect on the spirit of the condemned as he is being subjected to more than the basic extinguishment of life. Convicts on death row live under the spectre of death while waiting for the outcome of mercy pleas.This horrific and dehumanising feature of the death row phenomena must be addressed[11].

The uncertaintysurrounding death punishment is also brought on by the likelihood of errors and the irreversibility of the sentence. It has horrifyingly and frequently come true to the worry that an innocent life could be taken by an irreparable punishment like death. There is always a chance that an unavoidable mistake will result in unjust punishment with a flawed sentencing system.According to the evolving idea of justice, an accused person is deemed innocent unless and unless proven guilty, furthermore, that evidence should be indisputable without question

---

[4] (1982) 3 SCC 24.

[5] 1983 Scr (3) 413.

[6] Sir Leon Radzinowicz and Marvin E. Wolfgang (eds.), Crime and Justice, 3 (2020).

[7]Bendre (1943) as quoted in Justice Dr. M. Ramajois, Raja Dharma with Lessons on Raja Need, 328 (2011).

[8]Supra note 2.

[9]Anil Kumar, Criminology: Principles & Concepts, 100 (2021).

The effectiveness of the death penalty as a general deterrent accounts for a large portion of its popularity. The goal of deterrence is to stop people from doing crimes by utilizing the anxiety toward discipline. The prevention hypothesis makes the suspicion that all individuals are rational people and that they will only do a crime if they believe that the benefit they will obtain from it will outweigh the suffering they will endure as a result of it.

The idea that there is no greater penalty than death and that the more severe the punishment, the more effective it will be as a deterrent. The effectiveness of capital punishment as a type of discouragement has not yet been observationally demonstrated. The use of capital punishment and the resulting rate of crime are correlated in this way[12].

The worth of capital punishment as an overall impediment is a major factor in its support. By instilling a sense of punishment-related fear in people, deterrence aims to stop criminal behavior. According to the deterrence theory, all people are rational beings who will only engage in criminal activity if they believe that the benefits of doing so outweighthe negative consequences[13]. There is no greater punishment than death, and this is supported by the idea that the harsher the punishment, the greater the deterrent effect.The death penalty's effectiveness as a deterrent has not yet been supported by any observational information. The utilization of capital punishment and the rate of crime thatfollowed is correlated in this way. There is currently no international law that eliminates the penalty of death, but there has been an upsurge towards abolition over the years with fewer and fewer countries still using it. The reasons for this trend are numerous and include: capital punishment is as yet utilized in most of nations all over the planet; it is still a deterrent to crime; it is a deterrent to crime in general; it is a deterrent to crime in particular; it is a deterrent to crime in general.[14]

1948 saw the reception of the General Statement of Basic liberties (UDHR). Each individual is ensured the right to life, opportunity, and security under Article 3 of the UDHR. At the point when the Worldwide Agreement on Common and Political Freedoms (ICCPR) was embraced in 1966, capital punishment was not referenced by anystretch of the imagination. From that point forward, capital punishment and its consequences for the right to life have been the topic of the conversation. Article 6 of the ICCPR is the main settlement arrangement connecting with capital punishment at the worldwide level. Article 6 offers fundamental defends that supports who actually force capital punishment should comply with and ties down the right to life. It is obvious from this Article's arrangements that extreme restrictions are put on the use of capital punishment. These imperatives comprise of, however are not restricted to, one side to get an equivalent preliminary prior to getting capital punishment, the prerequisite that unquestionably the gravest of offenses be rebuffed with capital punishment, the prohibition on applying capital punishment retroactively, the restriction on applyingcapital punishment in situations where other ICCPR-ensured freedoms have been disregarded, the option to demand pardoning or nullification of a capital punishment, and a composed approval.[15]

The UN Common liberties Board of trustees originally carefully described the situation in the general comment in 1982. In ICCPR's Article 6 , that's what the board clarified, despite the fact that capital punishment was not unequivocally needed by this arrangement, its disposal was liked. Moreover, this assortment proclaimed that it respect any step towards nullification to be "progress in the happiness regarding the right to life" and said that capital punishment ought to just be utilized as a "excellent measure".[16] The panel went on by emphasizing critical procedural protections, to such an extent that capital punishment ought to just be applied in similarity with the law now active and that everybody has the option to a fair preliminary and the idea of trustworthiness. In 1984, the Unified Countries Financial and Social Gathering added to the arrangements of Article 6 of the ICCPR by authorizing the discipline, which coordinates part expresses that poor person nullified capital punishment to carry out these precautionary measures toguarantee the defending of the freedoms of the people who are confronting capital punishment. The previously mentioned shields express that an individual defying capital punishment is given all certifications to guarantee a fair preliminary, that the individual confronting capital punishment is completely educated regarding the cases if he neglects to fathom the language utilized in court, that the nations that are individuals whereupon capital punishment is executed just use it for the most serious of violations, and that their extension doesn't broaden other than conscious offenses with lethal or other profoundly serious repercussions[17].

The another alternative protocol to the ICCPR was adopted by the UN General Assembly following the ICCPR 1989 Protocol . One of the many protocols to human rights agreements that prohibit the death sentence was this one. where it is said that nothing will take place.The sovereignty of the parties to the protocol's States41. States parties to this procedure concurred that it might be acceptable to take up a global agreement to eliminate the death penalty, maintaining in mind Article 3 of the UDHR and Article 6 of the ICCPR. They do so because they believe that doing so will improve the standard of living and advance the advancement of the rule of law.

[12]Cyndi Banks, Criminal Justice Ethics: Theory and Practice, 135 (2019).

[15]Oppenhimer on " Rationale of Punishment " as quoted in Dr. N.V. Paranjape, Criminology and Penology, 1 (2022).

[16]Dr. S.S. Srivastava, Criminology, Penology & Victimology, 1 (2012).

[17]Krishna Pal Malik, Penology: Sentencing Process & Treatment of Offenders, 1 (2021).

Additionally, through an array of decisions passed by the United Nations General Assembly over the years, specifically in 2007, 2008, 2010, 2012, 2014, 2016, 2018, and finally in 2020, attempt to impose an interruption upon the use of the death sentence. The General Assembly urged Member States to uphold global laws that shield the rights of people confronting the death penalty, to make pertinent information about capital punishment effectively open, to progressively lessen the accessibility of capital punishment, to initiate an immediate halt on hangings with an eventual objective of eradicating the death penalty, and to call on countries that have already done so to maintain their commitment to this goal. The number of States that have voted in favour of these proposals has increased from 104 in 2007 to 123 in 2020.[18]

Consequently, Article 72 is a course of action in the Constitution of India that empowers the Head of India to yield pardons, reprieves, breaks, or decreases of discipline or to suspend, dispatch or drive the sentence of any individual arraigned for any offense. This arrangement depends on the rule of leader pardon, which is a power vested in the head of state or government to grant mercy to individuals who have been convicted of crimes.[19]

The power to grant pardons under Article 72 is discretionary and can be exercised by the President only after receiving a recommendation from the Association Board of Pastors. The Board of Pastors is expected to consider each application for exculpation and make its suggestion to the President in view of the benefits of the case, including the idea of the offense, the personality of the wrongdoer, and any extenuating circumstances.

The purpose of granting pardons is to provide relief to individuals who may have been wrongfully convicted or who have demonstrated good conduct during their time in prison. Pardons can also be granted for humanitarian reasons, such as in cases where the offender is suffering from a serious illness or where the punishment imposed is excessively harsh.

In addition to pardons, Article 72 also empowers the President to grant other forms of executive clemency. Reprieves, for example, involve a temporary suspension of the sentence, which can be granted to allow time for further legal action or to provide relief in cases of extreme hardship. Respite, on the other hand, involves a reduction in the severity of the punishment, while remission refers to a reduction in the length of the sentence.

The power to grant pardons and other forms of executive clemency is a crucial aspect of the criminal justice system. It provides a mechanism for correcting miscarriages of justice and ensuring that punishments are commensurate with the crimes committed. However, the exercise of this power must be carefully balanced with the need to maintain law and order and to guarantee that a fair consequence is given.

All things considered, Article 72 of the Constitution of India is a critical plan that enables the President to surrender pardons, breaks, respites, or decreases of discipline to individuals convicted of crimes. This power is discretionary and is based on the principle of executive clemency. While it can be an important tool for correcting miscarriages of justice and providing relief to those who have been wrongfully convicted, it should be practiced cautiously and as per the standards of equityand law and order.20

DISCLOSURE OF RESEARCH PROBLEM-

The mechanism for applying the death punishment is not flawless. The judges' unrestrainedauthority is the most obvious structural flaw in death sentences. Although the courts have established rules for determining whether to put someone to death, the judges are the onlyones who may decide how to apply these regulations, and their decisions are subject to their own preferences. As a result, comparable cases would be decided arbitrarily and convicts in similar circumstances would be treated accordingly. Additionally, the likelihood of errors that are as permanent as death sentences, excessive delays in executions that cause prisoners to languish in jail, and executive prejudice in pardons and commutations are all consequences of the death penalty. The Indian system of capital punishment is one that is rife with subjective and arbitraryness, and it should not be treatedlightly. Judges who exercise their judicial discretion in implementing the "rarest of rare" theory run the risk of rendering arbitrary decisions that negatively impact capital convicts'rights to equityand to life.[21]

Article 72 is an arrangement in the Constitution of India that concedes the force of exculpation to the Leader of India. This power is considered to be one of the most significant executive powers in the Indian Constitution, as it allows the President to allow pardon to people who have been indicted for wrongdoings. A critical analysis of Article 72 would require an examination of the constitutional, legal, and ethical implications of this power. Some possible points of analysis are:

1. Constitutional implications: The force of exculpation conceded to the President under Article 72 is a huge deviation from the standards of partition of abilities and law and order. The power is generally optional and isn't dependent upon legal survey, which means that the President can grant clemency to anyone for any reason, even if the person has been convicted by a court of law. This raises questions about the role of the President in the constitutional scheme and the limits of executive power.

[18]" The Nature of Crime ", available at http://www.hsc.csu.edu.au/legal_ siiidies/structure/crime /4076/nature_crime.htm accessed on March 20, 2023.

[19]Prof. (Dr.) Syed Mohammad Afzal Qadri, Ahmad Siddiqite 's Criminology & Penology, 1 (2022).

[20]*Ibid*.

2. Legal implications: The power of pardon under Article 72 is subject to certain restrictions and conditions, such as the requirement that the President consult with the government

Overall, a critical analysis of Article 72 would need to take into account its constitutional, legal, and ethical implications, as well as its effect on the working of the Indian democracy and law and order. While the force of exoneration is an important safeguard against the miscarriage of justice, it must be used judiciously and with due regard for the principles of justice, fairness, and transparency.[23]

Conclusion-

The High Court contends that while the President Lead representative actually have the power to exculpate and drive sentences, Segment 433-An of the Criminal Method Code doesn't go against Articles 72 and 161 of the Constitution. The court observes that the terms "Governor" and "President" are only acronyms for the State and Central governments, respectively. The court further argues that the provision 433-A does not contravene Article 14 of the Constitution since it is neither discriminatory or unreasonable and is instead a social law designed to shield society from harm and stop hazardous criminals from committing crimes again. The court observes that in order to serve as a deterrent, penalties must be strong enough, and a term that is excessive in comparison to the offence is deeply offensive to the values of a society that is civilised. Additionally, the court argues that Section 433-A is legitimate despite lacking legislative authority under the Lists. Finally, because Section 433-A is not in breach of the prohibition against double jeopardy, the court dismisses the claim that it violates Article 20(1) of the Constitution. The court affirms the lawfulness and legitimateness of Criminal Technique Code Segment 433

[21]Abhishek, " Presidential Pardon & Judicial Review" available at http://www.legalserviceindia.com/article/n49-Presidential-Pardon.html accessed on April 01, 2023.