



Mercy Petition

For Prelims: [President](#), [Mercy Petition](#), [Article 72](#), [Article 161](#), [Judicial Review](#), [Supreme Court \(SC\)](#), Pardoning Power, Death Penalty, [Law Commission](#), [Fundamental Right](#), [Article 21](#), Commutation, Reprieve, Remission, Respite, [Indian Judiciary](#)

For Mains: Issue of Mercy Petition

[Source: IE](#)

Why in News?

Recently, the [President of India](#) has denied the [mercy petition](#) of a Pakistani national sentenced to death for the 2000 Red Fort terrorist attack.

What is Mercy Petition?

▪ About:

- A mercy petition is a **formal request** made by someone who has been sentenced to **death or imprisonment** seeking mercy from the President or the Governor, as the case may be.
- The idea of Mercy Petition is followed in many countries like the United States of America, the United Kingdom, Canada, and India.
- Everyone has the basic [right to live](#). It is also mentioned as a [fundamental right](#) mentioned under [Article 21](#) of the **Indian Constitution**.

▪ Philosophy behind:

The philosophy behind the pardoning powers in India is rooted in the recognition that no judicial system is infallible and the need for a mechanism to rectify potential judicial errors.

- **Rectification of Judicial Errors:** This safeguard acts as a **corrective measure** against potential miscarriages of justice.
 - For example, in 2012, 14 judges from the Supreme Court and High Courts, in separate letters to the President of India, highlighted cases from the 1990s where courts had wrongfully awarded capital punishment to 15 individuals, two of whom were subsequently executed.
- **Maintaining Public Trust:** One of the core objectives of the pardoning power is to uphold and maintain the trust of the common man in the criminal justice system.

▪ Constitutional Framework:

- As per the Constitutional framework in India, a mercy petition to the President is the last **constitutional resort** a convict can take when he is sentenced by a **court of law**. A convict can present a mercy petition to the President of India under [Article 72](#) of the Constitution of India.
- Similarly, the power to grant pardon is conferred upon the [Governors of States](#) under [Article 161](#) of the Constitution of India.

Article 72	Article 161
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- The President shall have the **power to grant pardons, reprieves, respites 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 is by a [Court Martial](#)
- In all cases where the punishment or sentence is 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

- It provides that the **Governor** of a State shall have the power to **grant pardons, reprieves, respites or remissions** of punishment or to suspend, remit or commute the sentence of any person convicted of any offence against any law relating to a matter to which the executive power of the State extends.
- The SC in 2021 held that the Governor of a State can pardon prisoners, including death row ones, even before they have served a minimum 14 years of prison sentence.

▪ **Process of making a Mercy Petition:**

- There is **no statutory written procedure** for dealing with mercy petitions, but in practice, after extinguishing all the reliefs in the court of law, either the **convict in person or his relative** on his behalf may submit a written petition to the President.
- The petitions are received by the President's secretariat on behalf of the President, which is then **forwarded to the Ministry of Home Affairs** for their comments and recommendations.

▪ **Grounds for filing Mercy Petition:**

- The mercy or clemency is granted on the grounds based on his **health, physical or mental fitness**, and his family's financial conditions considering if he is the only sole earner of bread or butter or not.
 - The Supreme Court in cases such as *Shatrughna Chauhan vs Union of India* (2014) held that Right to seek for mercy under Article 72/161 of the Constitution is a constitutional right and not at the discretion or whims of the executive.

▪ **Judicial Review:**

- SC in several cases such as **Maruram vs Uoi, Epuru Sudhakar vs State of Andhra Pradesh, and Kehar Singh vs Uoi** has stated that judicial review of the exercise of pardoning power is possible but on the limited ground.
- The court has stated the following provision for [judicial review](#) of clemency power:
 - Powers have been exercised without application of mind
 - Exercised with Malafide intentions
 - Relevant material was kept out of consideration

What are some of the Important Judgments Related to Mercy Petition?

- [Bachan Singh v. State of Punjab](#): In 1980, the Supreme Court upheld the constitutionality of the death penalty, but established important guardrails. "Judges", the court said, "should never be bloodthirsty", and the death penalty should not be awarded "save in the rarest of rare cases when the alternative option is unquestionably foreclosed", and all possible mitigating circumstances have been considered.
 - The court has reaffirmed the "rarest of rare" standard in several decisions since then.
- [Maru Ram v. Union of India \(1981\)](#): The SC held that the power to grant pardon under Article 72 is to be exercised on the advice of the Council of ministers.
- [Kehar Singh v. Union of India \(1989\)](#): The SC had examined the scope of the President's pardoning power under Article 72 in detail.
 - In the Kehar Singh case, the court stated that the convict does not have the right to an oral hearing to mercy petition.
- **Shatrughan Chauhan v. State of U.P. (2014)**: In this judgement the SC held that inordinate delays in deciding mercy petitions can lead courts to commute death sentences.

- **Law Commission Report:** The Report of the 262nd [Law Commission](#) published in 2015 recommended the “absolute abolition” of the death penalty “for all crimes other than terrorism-related offences and waging war”.

What are the Different Types of Pardoning Power?

Type of Pardoning	Description	Example
Power		
Pardon	Completely absolves the convict of the crime, erasing the conviction and all associated penalties.	The President grants a pardon to a person wrongly convicted of treason.
Commutation	Substitutes a harsher punishment with a lighter one.	The President commutes a death sentence to life imprisonment.
Remission	Reduces the period of the sentence without changing its nature.	The Governor remits one year from a two-year sentence of rigorous imprisonment.
Reprieve	Temporarily postpones the execution of a sentence, usually for a short period.	The President grants a reprieve to a condemned prisoner to allow time for the filing of a mercy petition.
Respite	Similar to reprieve, but for a longer period and often for medical reasons.	The Governor grants a respite to a terminally ill prisoner to allow them to spend their final days at home.

// **Table 30.3** Comparing Pardoning Powers of President and Governor

President	Governor
1. He can pardon, reprieve, respite, remit, suspend or commute the	1. He can pardon, reprieve, respite, remit, suspend or

punishment or sentence of any person convicted of any offence against a Central law.

commute the punishment or sentence of any person convicted of any offence against a state law.

2. He can pardon, reprieve, respite, remit, suspend or commute a death sentence. He is the only authority to pardon a death sentence.

2. He cannot pardon a death sentence. Even if a state law prescribes for death sentence, the power to grant pardon lies with the President and not the governor. But, the governor can suspend, remit or commute a death sentence.

3. He can grant pardon, reprieve, respite, suspension, remission or commutation in respect to punishment or sentence by a court-martial (military court).

3. He does not possess any such power.

What do the Laws of other Countries Provide?

- **USA:** The **Constitution of America** gives the President the similar powers to grant reprieves or pardon for offences under Federal law, except in cases of impeachment. However, in cases of violation of state law, the power has been given to the concerned Governor of the state.
- **UK:** In the UK, the Constitutional **monarch can pardon** or reprieve for offences on ministerial advice.
- **Canada:** The National Parole Board under the **Criminal Records Act** is authorized to grant such reliefs.

Conclusion

- The way forward lies in **striking a balance**. Measures promoting transparency, such as **clear guidelines** for considering petitions and a **defined timeframe** for decisions, could enhance public trust. Additionally, ensuring **legal representation** for mercy petition applicants would strengthen the process.
- Ultimately, the mercy petition system serves a vital purpose in the Indian justice system. By acknowledging its strengths and addressing its shortcomings, India can ensure a **more humane** and **effective application** of this extraordinary power..

Drishti Mains Question:

Q. Discuss the significance and challenges associated with the exercise of mercy petitions by the President of India in the context of capital punishment

UPSC Civil Services Examination, Previous Year Question

Prelims:

Q. Which of the following are the discretionary powers given to the Governor of a State?

(2014)

1. Sending a report to the President of India for imposing the President's rule
2. Appointing the Ministers
3. Reserving certain bills passed by the State Legislature for consideration of the President of India
4. Making the rules to conduct the business of the State Government

Select the correct answer using the code given below:

- (a)** 1 and 2 only
- (b)** 1 and 3 only
- (c)** 2, 3 and 4 only
- (d)** 1, 2, 3 and 4

Ans: (b)

Mains

Q. Discuss the essential conditions for exercise of the legislative powers by the Governor. Discuss the legality of re-promulgation of ordinances by the Governor without placing them before the Legislature. **(2022)**

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