



Mercy Petition

For Prelims: [Mercy Petition](#), [Supreme Court](#), [Article 21](#), Article 72, Article 161, [Pardoning Powers](#).

For Mains: Mercy Petition.

Why in News?

In a recent ruling, the [Supreme Court \(SC\)](#) has declined to direct the government to commute the death penalty of Balwant Singh Rajoana, instead, it has allowed the government to decide on the [Mercy Petition](#) when necessary.

- Balwant Singh Rajoana was convicted for the assassination of former Punjab Chief Minister Beant Singh in 1995.
- The petitioner argued that since the state and the Union of India **have not been able to decide on the mercy petition**, which is pending for more than 10 years, the death penalty **should be commuted to life imprisonment**.

What is the Court's Observation?

- The court cited the Home Ministry's conclusion that a decision on the mercy petition now would compromise national security.
- The court has observed that it is not up to the court to "**delve**" to the Ministry's decision to **defer a decision** on the clemency plea.
- The court said that the Ministry's call to postpone its decision on the mercy petition actually amounted to declining the plea for the time being.

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.
- **Constitutional Framework:**
 - As per the Constitutional framework in India, **mercy petition to the President is the last constitutional resort a convict can take** when he is sentenced by the 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:**

- 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 offense:
 - 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.
- **Article 161:**
 - 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 act of mercy is **not the right of the prisoner**. He cannot claim it.
 - The mercy or clemency is **granted on the grounds based on his health, physical or mental fitness**, his family financial conditions as he is the only sole earner of bread or butter or not.
- **Judicial Review:**
 - In the case of ***Epuru Sudhakar & Anr. v. Government of Andhra Pradesh (2006)*** the SC held that the clemency power of the President and Governor under Article 72 and Article 161 is **subject to judicial review**.
 - The court laid down certain grounds on which clemency power can be claimed by **the petitioner for judicial review**:
 - If the order is passed without any application of mind.
 - If the order passed is malafide.
 - If the order passed on completely irrelevant considerations.
 - If the order suffers from arbitrariness.

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

- **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**.
- **Dhananjay Chatterjee State of West Bengal (1994):** The SC 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**."
- **Kehar Singh v. Union of India (1989):** The SC had examined the scope of the President's pardoning power under Article 72 in detail.
 - The SC held that the exercise of the pardoning power vested in him under Article 72, could "scrutinize the evidence on the record of the criminal case and come to a different conclusion from that recorded by the Court in regard to guilt of and sentence imposed on the accused."

What are some of the Keywords Related to Pardoning Power?

- **Pardon:** The president can totally absolve/acquit the person for the offence and let him go free like a normal citizen.
- **Commute:** To reduce the type of punishment into a less harsh one. For example Rigorous imprisonment to simple imprisonment.

- **Remission:** To reduce the punishment without changing the nature of the punishment. For example 20 years rigorous imprisonment to 10 years rigorous imprisonment.
- **Reprieve:** A delay is allowed in the execution of a sentence, usually a death sentence for a guilty person to prove his innocence.
- **Respite:** Reduce the degree of punishment looking at specific grounds like pregnancy, old age etc.

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

- 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. There is a **need for a proper limitation period and proper policies to restrict the unnecessary delay in filing and granting mercy petitions** for proper facilitation and smooth functioning of the Indian judiciary.

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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