I

Introduction

A person who commits an offence deserves to be penalised accordingly. It is necessary for the maintenance of the law and order in the society. But at the same time it is also true that prevention is always better than cure. The offenders are also human beings and they may also become good and useful citizens. *Balmiki*[1] is the major example of the same. Therefore it is necessary to find out some mechanism for the conversion of these offenders into normal human beings.

To achieve this goal pardon may play a great role. Public purpose will be better served by providing one more opportunity to an offender to rehabilitate himself in the society like a normal human being. The proper use of pardon may do miracles in the field of rehabilitation of offenders. But the improper use of the same will definitely create chaos in the society. Therefore this power to grant pardon shall be exercised with great care and caution.

The power to grant clemency, to remit punishment and pardon offences, is ancient and recognised today in almost every nation. As a

1. Valmiki is the author of the epic story, *Ramayan*. But before he was a best selling author, he was a thief and, as legend has it, a very good one. Once, as he was about to steal a gold pot from the home of a yogi, the yogi appeared. The yogi did not stop Valmiki from taking the gold pot. But on his way home, Valmiki realised his sin. It was the turning point of his life. Now a days he is known as one of the biggest saints of our country.

matter of fact pardon is a mysterious alien presence that hovers outside the legal system. It is capable of undoing years of criminal investigation and prosecution at the stroke of a pen, but it is of questionable present-day relevance even for criminal law practitioners. Pardon is like a lightning strike or a winning lottery ticket, associated with end-of-term scandals and holiday gift-giving. It is also been called as capricious, unaccountable, inaccessible to ordinary people, easily corrupted, and regarded with deep suspicion by politicians and the public alike. To the extent that scholars think about it, pardon is regarded as a constitutional anomaly, not part of the checks-and-balance package, a remnant of tribal kingship tucked into the Constitutions of almost all civilised countries that has no respectable role in a democracy. One of pardon's few friends in the academy has called it "a living fossil" as well.

1. Statement of Research Problem:

The power to grant pardon is an extraordinary power. It is extra ordinary because it can undo the efforts done for years by the judiciary and the prosecution for punishing the offender. This power is ancient and recognised today in almost every nation. It is generally vested in the executive head of the country by the Constitution concerned.

Pardon is the forgiveness of a crime and the penalty associated with it. It is granted by a sovereign power, such as a monarch or chief of the state. The term pardon has been used by the researcher in this study in general sense that includes each and every act of clemency such as a pure pardon that completely exonerates a convict from all consequences of the crime committed by him, a reprieve that can stay the execution of sentence for a temporary period of time such as till the pendency of mercy petition, a respite that may postpone the punishment of a criminal on some special grounds such as pregnancy, insanity etc. or a commutation of sentence that can replace a sentence into a less sever sentence e.g. death sentence commuted to life imprisonment or rigorous imprisonment of the

offender is commuted to simple imprisonment. It also includes a remission of a sentence that is basically a premature release of the convict from the prison e.g. if a person has been punished for 5 years imprisonment he may be released from the prison earlier if remission is granted to him.

The executive head of a State enjoys all types of pardon mentioned herein above. This power basically originated from the family itself where the head of the family was having power to forgive the family member if he committed any wrong against the wishes of the family. Later with the development of the society the King started the use of this power. Initially it was exercised for the purification of the offender. Under the Hindu law it was termed as *Prayaschita* (expiation). This *Prayaschita* or expiation is the oldest method of corrective measures for criminals. In the beginning it was exercised by the sinner himself. The *Vedas* contains so many measures for *Prayaschita*. Austerity, sacrifices, fasting and gifts were the main or principle measures. These methods remained in force even after the emergence of statehood. Thereafter the observation of this *Prayaschita* did not remain the subject matter of the sweet will of the wrongdoer only but the sovereign or a *Parishad* also imposed *Prayaschita* for the purpose of the purification of the wrongdoer.

Therefore it is clear that the power to grant pardon had been exercised by the King himself for the betterment of the person concerned. With the passage of the time the law was codified. Before the era of codification of law the power to grant pardon was being exercised as a corrective measure. The basic purpose or objective remained same throughout this period of time. Such powers of mercy were also exercised in India by the Mughal Emperors and rulers.

It is not only India where this power to grant pardon has been recognised. Almost all civilised countries make use of some forms of pardon power to give flexibility to the administration of justice in criminal cases. In England this power historically is vested in the crown. It is one of

the prerogatives which have been recognised since time immemorial as being vested in the sovereign. Whether the sovereign happened to be an absolute monarch or a popular republic or a constitutional king or queen, sovereignty has always been associated with the source of power - the power to appoint or dismiss public servants, the power to declare war and conclude peace, the power to legislate and the power to adjudicate upon all kinds of disputes. The King, using the term in a most comprehensive sense, had been the symbol of the sovereignty of the State from whom emanate all power, authority and jurisdictions. As kingship was supposed to be of divine origin, an absolute king had no difficulty in proclaiming and enforcing his divine right to govern, which includes the right to rule, to administer and to dispense justice.

Just like England, in the United States, the power to grant pardon has been conferred on the head of the State i.e. the President. Although here the provision is contained in the Constitution but this power has been conferred upon the President on the norms and conventions that remained in existence in the soil of United Kingdom. As a matter of fact it has been accepted by the Supreme Court of United States that by choosing to repose the clemency power in the chief executive alone, the framers of the Constitution of United States aligned themselves with a vision of the power that was decidedly British in nature. The basic reason for adopting the same pattern is quite obvious that United States was colonized by Great Britain and after independence it adopted so many existing customs, usages or the laws. Just like United States, in India when the Constitution was framed the Constitutional Fathers were well aware of the position of the pardoning power in these two countries and they adopted the same pattern that was applicable in these two countries.

There are different philosophies underlying the pardoning power. The main philosophy as per the American Jurisprudence 2d, is that every civilized country recognizes, and has therefore provided for, the pardoning

power to be exercised as an act of grace and humanity in proper cases. Without such a power of clemency, to be exercised by some department or functionary of a government, a country would be most imperfect and deficient in its political morality, and in that attribute of Deity whose judgments are always tempered with mercy.

However, in another rationale felicitously enunciated by the celebrated *Justice Holmes*, of American Supreme Court, a pardon is not a private act of grace from an individual happening to possess power, rather it is a power of the constitutional scheme which when granted, is the determination of the ultimate authority that the public welfare will be better served by inflicting less than what the judgment fixed. These observations of Justice *Holmes* have also been approved by different benches of Judges of the Supreme Court of India.

Keeping in mind the same rationale of public welfare *Justin Miller* one of the great jurists, called it as 'crime treatment' and imposed the duty of treatment on the authorities. He believes that in the field of crime treatment the persons who are charged with the custody and control of persons convicted of crime occupy much the same position as do the pathologists in the field of treatment of disease.

The other exposition known as classic exposition of the law relating to pardon is to be found in the judgment of Justice *Taft* of the Supreme Court of America. According to him the executive clemency exists to afford relief from undue harshness or evident mistake in the operation or the enforcement of the criminal law. The administration of justice by the courts is not necessarily always wise or certainly considerate of circumstances which may properly mitigate guilt. To afford a remedy, it has always been thought essential in popular governments, as well as in monarchies, to vest in some other authority than the courts power to ameliorate or avoid particular criminal judgments. It is a check entrusted to the executive for special cases.

The legal effect of a pardon is wholly different from a judicial suppression of the original sentence. The partial effect of the Presidential act is to remove the stigma of guilt from the accused or to remit the sentence imposed on him. The other effect is that 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 the existence of guilt, so in the eyes of the law the offender is as innocent as if he had never committed the offence. If granted before conviction, it prevents any of the penalties and disabilities, consequent upon conviction, from attaching if granted after conviction, it removes the penalties and disabilities, and restores him to all his civil rights; it makes him, as it were, a new man and gives him a new credit and capacity.

Not always but occasionally it has been felt right to commute the sentence on the ground that it would do more harm than good to carry out the sentence. The reason for the àrousal of such feelings is that pardoning power is founded on considerations of the public good, and is to be fair, which is the legitimate object of all punishments and will be well promoted by a suspension of an execution of the sentence. It may also be used to correct injustice, if discovered facts convince the official or board invested with the power that there was no guilt or that other mistakes were made in the operation enforcement of the criminal law.

So far as the position of pardoning power in India is concerned the power to grant pardon is contained in so many different legislations. These legislations confer the power to grant pardon on different authorities. The very first legislation containing power to grant pardon is the Constitution of India. Article 72 of the Constitution confers this power on the President of India whereas the Article 161 of the Constitution confers this power on the Governors of the concerned states. In fact the provision corresponding to Article 72 was also present in the Government of India Act, 1935. That means that the framers of Indian Constitution were well aware of the

English Institution, the powers of the English King and the exercise of their power both by the Governor General and the Governors of British India and its provinces. At the same time they were also familiar with the American Constitution. It is because of this reason that the Apex Court of India while dealing with the cases of pardon takes into consideration the position of the law of pardon in these two countries.

The Article 72 of the Constitution confers the power on the President of India to grant pardon, reprieve, respite, remission or commute sentence of any person convicted of any offence in all cases where the sentence is by a court martial or where a sentence is for an offence under a central law or where the sentence is a sentence of death. The Governors can also exercise the same power but only in cases of offences falling under the state laws.

In addition to these above constitutional provisions the other statutes that contain the power to grant pardon are the Criminal Procedure Code, 1973 that provides for the exercise of power by the Courts and the appropriate government, the Indian Penal Code and the Prison Act that confer this power on the appropriate government. The Probation of Offenders Act also contains this power and it empowers the Court to exercise this power in certain specific cases. Beside these the power to grant pardon can also be exercised under as many as five legislations relating to the Armed forces. These legislations empower the central government and some officers to exercise the power to grant pardon.

The power to grant pardon conferred by these different statutes on the executives other than the Court is based on the same principle on which the constitutional power to grant pardon can be exercised. But the objective behind conferring the power to grant pardon on the Court is different. In cases of pardon to an accomplice the court aims at punishing the main criminals in a case with the help of such accomplice. But in case

of release of offender on probation, the court keeps an eye on the same objectives of rehabilitation of the offender.

In India, since broad powers have been conferred on different authorities by different statutes therefore it is necessary that these powers shall not be misused or abused. These powers shall be exercised fairly. There shall be some definite guidelines for the exercise of these powers. In case of absence of specific guidelines framed by the legislature for the exercise of this power it will simply be an administrative discretion of the executives and therefore the misuse of the same will be inevitable. In such a case it will be the duty of the judiciary to prevent the misuse of this precious power.

Although for centuries, the prominence of administrative discretion had created a jurisprudence of non-interference by the judiciary in the exercise of such discretion but no constitutional power can be permitted to be vulgarised by arbitrary decisions based on personal or political vanity of men in authority. Hence with the acknowledgement of human dignity and the importance of human rights, the interference by the judiciary in the exercise of administrative discretion increased and it opened new horizons for judicial review.

Thus on the basis of the above discussions it is evident that basic objective or purpose of the power to grant pardon generally remained the purification of the sinner but presently it is called to be the rehabilitation of the offender. Although initially it was known and recognised as an act of grace but with the passage of time the Courts termed it to be a part of constitutional scheme that is to be used only for the public welfare. The other object of this power is to correct a possible judicial error. It is also useful for protection from unjust or harsh law. Thus it can be said that the power to grant pardon can be exercised by the head of the state for rehabilitation of the offender keeping in mind the public welfare and to provide relief from judicial error or harsh laws.

But despite these noble causes this power remained a matter of controversy because of the misuse and abuse of this power for political or other wrongful purposes. The history of United States is full of the examples of misuse of this power. In United States this power has been exercised to provide relief to rich, politically influential persons and the terrorists as well.

In India this power is contained in so many different statutes. Under these legislations this power has been conferred on different authorities who may exercise this power at different point of time. In other words the government possesses this power under so many different laws. A convict may approach for pardon under so many laws one by one. For example an offender may first of all become an approver in a case and can avoid the punishment. For this he will have to confess the commission of crime. But if he fails to get a pardon still he may also receive an order of release on probation from the court of law. His confessional statement may prove his repentance. He may also approach the Governor/President for pardon under the Constitution of India. In cases of death sentence a person may also approach the President if he fails to get relief from the Governor. Such offenders may also get a relief under the Code of Criminal Procedure or the Indian Penal code that confers a power to grant remission and commutation of sentence on the appropriate government which is either the central or the state government.

After approaching the concerned authorities under all of these above mentioned laws if such a person fails to obtain a relief then he can approach judiciary for pardon on the ground of delay in execution of sentence. In fact the Supreme Court of our countries in couple of cases commuted the death sentences only on the ground of delay. Therefore it is quite easy for a criminal to avoid punishment by causing delay. This delay can never be termed illegal as it is the law of the land itself that provides so many platforms to a criminal to get relief. It is basically a weapon in the

hands of the criminal and the Government that may be used for the benefit of the criminal only.

Moreover the question that arises over here is that whether such a power is required in cases where the judiciary had already applied its brain. For example in India whenever a criminal is sentenced to death by the Court of law he always likes to file a mercy petition before the Governor or the President of India, whatsoever the case may be. As far as the death sentence is concerned, the courts in our country generally avoid ordering this punishment. It is only the rarest of rare case where the court pronounces the death sentence. Since the death sentence is rare in our country therefore the question arises whether the executive shall interfere with the judgment delivered by the honorable courts. In every case where a death sentence is awarded it takes ten to fifteen years for final disposal of the matter and thereafter the power is given to the executives to decide whether the criminal is to be hanged or not. Although this question of hanging the culprit is to be decided by the President or the Governor as the case may be. But as a matter of fact these executives are to decide the fate of the criminal only on the advice of the concerned council of ministers. This advice is always binding.

This binding nature of advice passes the power in the hands of the council of ministers. This council of ministers is nothing but a bunch of politicians who will decide the fate of the criminal. In other words it is the ruling party that enjoys the power to grant pardon. Therefore the misuse or abuse of the power cannot be ruled out. Our system puts the politicians above the judiciary. The politicians are known to politicize each and every matter according to their own whishes. In such a situation how the pardoning power can remain untouched.

The other problem is the pendency of the mercy petitions. In each and every case it takes years for the disposal of the mercy petitions. No specific time limit has been fixed for the disposal of the mercy petitions.

This delay is always in favour of the convict. Moreover keeping a convict inside the prison is quite costly as well. As per "*Hindustan Times*" newspaper, dated May 25, 2011, ₹ 10.87 crore has been spent on guarding 26/11 terror convict terrorist *Ajmal Kasab*. This bill is only for a period of one and a half year. Thus the delay in disposal of mercy petitions will bleed our country.

Moreover a convicted person may approach the Government under the Constitution time and again. There is no limit or bar on the filling of mercy petition one after another. There are cases where after the rejection of the mercy petition by the President the fresh mercy petitions were filed and entertained as well. Even today there is one live example of the same. As per "*The Tribnue*" dated May 30, 2011, Himachal Edition, different politicians (including the present Chief Minister of Punjab *Sh. Prakash S. Badal* and the former Chief Minister Capt. *Amrinder Singh*), villagers and the human rights activists are preparing to approach the President for review of the earlier decision of President in *Devenderpal Bhullar's case*.

In fact *Bhullar* has been held guilty of triggering a blast near the office of the Indian Youth Congress in Delhi in 1993, killing nine persons and injuring the then Indian Youth Congress president *Maninderjit Singh Bitta*. *Bhullar*, was awarded the death sentence by a Delhi trial court in 2001. Subsequently, the sentence was upheld by the Delhi High Court and later confirmed by the Supreme Court. His mercy petition was rejected by the President. But now so many persons are approaching the President for review of the earlier decision on the mercy petition.

As mentioned earlier that there is no bar on presenting the mercy petitions after the first petition has been rejected. The principle of *res-judicata* is not applicable to such petitions. There will be no surprise if the government will decide to entertain the fresh petitions in *Bhullar's case*. Now the question that arises over here is that who will be responsible for delay in the execution of the sentence.

Such type of delay simply helps the convicts only. If we really want to avoid the cases like *Kandhar Incident* then it is necessary to dispose of the mercy petitions expeditiously.

It is not the end but there is one more problem. The Constitution of India does not prescribe for any guidelines for the exercise of this power. This power is of great importance as it can undo simply with one stroke, the work done by judiciary for so many years for punishing the criminal. Therefore in absence of such guidelines and the exercise of this power by the politicians it is not easy to rule out the misuse or abuse of this power.

Therefore the researcher is willing to find out that do we really need to have this power? Since the separation of power is the cardinal principle of law, now the question is whether the exercise of pardoning power is an interference with judiciary? The researcher is interested to know that whether this act is executive or judicial? What shall be the object and scope of this power? What shall be the parameter for the exercise of this power? Whether the President or governor shall exercise this power only on the aid and advice of the council of ministers? Should there be any time limit for disposal of a mercy petition? Whether there are some more authorities who can exercise the similar power? Above all whether this power is necessary in a democratic country like India? Last but not the least whether the court is empowered to exercise the power of judicial review in the exercise of power of pardon.

Keeping in view the above mentioned questions the researcher has conducted a study regarding the use and abuse of the pardoning power and tried to find out the extent and scope of this power.

2. Objectives of the study:

Keeping in view the nature of the research problem the present study focuses on the following objectives:

A. To find out the nature, scope and the extent of the pardoning power under the Constitution of India.

B. To find out whether the exercise of pardoning power by the President or Governor under the Constitution of India is an executive function or a judicial function.

C. To know whether the pardoning power of President or Governor is a discretionary power or private act of grace or they are bound to exercise this power in accordance with the cardinal principle of law, in public goodness.

D. To know the fact that whether an opportunity of being heard is necessary to be given to the applicant when the case is pleaded before the President or Governor.

E. To gain knowledge whether the opportunity to avail executive clemency before the President or Governor is available on a routine basis to ordinary individuals or it is rare and its beneficiaries are extraordinary.

F. To be acquainted with the ascertained procedure required to be adopted for presenting the case before the President or Governor.

G. To find out whether the power of pardon can be exercised for political consideration by the President or Governor.

H. To explore different considerations which act as guidelines for the purpose of exercise of this pardoning power.

I. To find out the appropriate stage for the exercise of this power.

J. To know the fact whether the convict who has been granted pardon can refuse the pardon so granted.

K. To explore the scope of judicial review and demarcate the limits within which the court may exercise the power of judicial review.

L. To know the nature and extent of the pardoning power under other statutes.

M. To evolve uniform guiding principles so that the President exercise pardoning power uniformly to impart justice and bring a balance with individual interest and the public welfare.

3. Hypotheses:

On the basis of the foregoing discussion, the following Hypothesis related to the present study have been formulated:

A. The exercise of pardoning power by the executives amounts to interference in judicial function.

B. There exist no proper guidelines/procedure for the exercise of pardoning power which may result in abuse of these powers by the executives.

C. There exists no rationale behind conferring the pardoning power to different authorities under different enactments. If so whether a single uniform body in India is required to regulate the exercise of this power.

D. Pardoning powers are necessary to protect the individuals from undue harshness in the operation or enforcement of the criminal laws by the judiciary.

E. There is possibility of misuse of pardoning power by the ruling political party.

4. Research questions:

A. What is the nature, scope and extent of the pardoning power under the Constitution of India?

B. Whether the power to grant pardon is an executive or judicial function?

C. Whether the President and Governor have absolute discretion in the exercise of power or they are bound by the aid and advice of the Council of Ministers?

D. Whether some guidelines are framed for the exercise of this power and if not then whether some guidelines shall be framed by the government or the court itself shall frame some guidelines?

E. Whether there is some time limit fixed for the disposal of the mercy petition?

F. What is the appropriate stage to exercise the Constitutional power to grant pardon?

G. Whether the Court is empowered to exercise the power of judicial review in such cases? If yes, what shall be the extent of judicial review?

H. Whether the court shall examine the decision of the President on merit? If yes, on what grounds?

I. Whether the Court can interfere in a matter which is pending for disposal before the President or the Governor?

J. Whether a personal hearing before the President is available to the condemned offender?

K. Whether the President can examine the evidence and other record of the courts?

L. What is the procedure of presenting the case before the President and how the mercy petitions are dealt with?

M. Whether the pardoning power can be used for political considerations?

N. What is the nature scope and extent of the pardoning power under other statutes?

O. Whether uniform guiding principles shall be evolved for the exercise of the pardoning power in India?

5. Research Methodology:

The present study has two aspects viz. theoretical and partially empirical. The researcher used the multi – pronged approach to collect as much relevant information as possible through different sources. The material to pursue the present study includes literature that was available in various libraries of the different countries. For this purpose, the researcher put honest efforts to have access to the reports of Indian law commission, Constituent Assembly Debates Reports, books of reputed authors, articles, newspapers, research papers, leading cases decided in

India, and abroad, legislative enactments, debates, reviews etc. available. The researcher also put utmost efforts to collect material through informal sittings with eminent jurists, judges, legislators, bureaucrats, lawyers and law teachers. The empirical study is based on the material collected under the right to information from different offices/departments of Government. The data so collected/generated has been subjected to critical analysis and put on different tables at appropriate places in Chapter – V so as to attach more truthfulness to our findings. Since the present study is mostly doctrinal in approach, not purely based on empiricism, the main focus of the researcher was on comprehensive collection of research material through secondary source. The data and information so collected has been analysed in the light of the needs of the society and the judicial interpretation given by various courts. All of these efforts enabled the researcher to conduct and complete the present study in satisfactory spirit.

6. Review of Literature:

The research questions raised above do not have ready answer. The present study, therefore, is aimed at exploring these questions in depth with special reforms in the field of pardoning power in India. In order to understand above raised questions properly, it would be appropriate to review the existing literature pertaining to our research problem under study. But there seems to be no substantial research work on the topic. The researcher found only one book on the topic under study. To the best of the knowledge of the researcher, there is not even a single research except this book conducted on this topic. Although a few research articles have definitely been written and published. The book and a few research articles have been reviewed by the researcher hereunder:

A. *Presidential Power of Pardon on Death penalty* (2006). By Janak Raj Jai (Regency Publication, 20/36-G, Old Market, West Patel Nagar, New Delhi).

The book under review is divided into eight parts and contains a prologue in the form of a letter which the author wrote to the

President of India *Dr. A.P.J. Abdul Kalam* who having read a book Death penalty written by the author, had called him and raised some queries. In his letter to the President, the author has tried to through light on some important problems and has attempted to unravel some elusive riddles which have perplexed and plagued the minds of judges, jurists and penologists alike. He points out that the judges are inconsistent while applying the principle of 'rarest of rare cases'.

The main focus of the author remained on the death penalty only. He opined that life imprisonment is more adequate than the capital punishment. He quoted views of prison officials, penologists and criminologists to show that the death, as a penalty is not deterrent. Imprisonment for life is equally or rather more deterrent. Ten to twelve years in jail is a terrific punishment and is sufficient for mental and moral metamorphosis of a human being. The author has also suggested different ways and means of reforming an offender in a prison and has also highlighted healthy practices in prisons of England and the United States.

The author has quoted various authorities and jurists without properly mentioning the sources. If proper citations were given, not only that the work would have become more authentic but also its utility to researchers and other readers who would be interested in further study and research in the subject, would be greatly enhanced.

The author is an ardent protagonist of abolition of capital punishment in India and the book is a passionate plea for it. But till it is abolished by suitable legislative measure, the author forcefully argues that the President should act under Article 72 of the constitution in every case of capital punishment, to make the provision meaningful, purposeful and benign.

B. *Sentence of Pardon and Rule of Law*, S. Musharraf Ali, 9 Aligarh Law Journal, 1988 at 72-82.

This article that has been divided into three parts wherein the author discussed the position of law of pardon in England, United States and India. The author raised a few important questions regarding the scope of the pardoning power of the President and the Governor. But while dealing with these questions he relied on the High Court judgments only despite the fact that there were so many precious Supreme Court on this topic. In absence of such judgment the study seems to be less authentic or appropriate or insufficient.

C. *Presidential Power of Pardon and the Constitution*, by R.C. Chhangani, Journal of Constitutional and Parliamentary Studies, Jan-Dec, 1989.

The author of this article divided the article under review into seven parts. This article is general in nature wherein the author kept his focus on the pardoning power of the executive head of a country and refrained himself from going into the depth of this power. The author quoted a few cases of United States and United Kingdom but forgot to quote even a single case of his own country i.e. India. This article had been published in the year 1989 and till this time the our Supreme Court delivered so many landmark judgments in the field of pardoning power e.g. *K.M. Nanawati* v. *State of Bombay*, AIR 1961 SC 112, *Maru Ram* v. *Union of India*, AIR 1980 SC 2147 and *Kuljeet Singh* v. *Lt. Governor of Delhi*, AIR 1982 SC 774 etc. It appears as if the author is having more faith in foreign judgments only. Last but not the least the author failed to comment on the necessity of pardoning power and to put some suggestions for the betterment of the institute of pardoning power.

D. *Mercy Petitions and their Disposal*, by Sri Vedula Jagannadha Rao (1989) 1 Andhra Law Times 27-29.

This article under review has been divided into five parts despite the fact that it has been completed in just three pages. This

work of the author is aimed at the scrutiny of pardoning power of the President and the Governor. But the author failed to do so because without looking into the spirit of the Article 72 and the Article 161 of the Constitution of India and the Sections 432 to 435 of the Code of Criminal Procedure, 1973 and by studying just two cases on the pardoning power it practically not possible to achieve this goal. Moreover the author neither used the method of footnoting nor did he quote the judgments properly. But this does not mean that this article is of no use. In the end the author certainly gave two important suggestions.

E. *Pardoning Power-Need for a fresh Look*, By K. N. Chandransekharan Pillai, Vol. 24:1&2 The Academy Law Review 2000, at 225-238.

This work of the author seems to be a great attempt to advise for having a fresh look at the pardoning power. The entire article is basically a study of leading cases decided by the Supreme Court of India in the field of pardoning power under the Constitution of India. The only thing which is lacking in this article is that the author put only one suggestion. It could have been better to give a few specific suggestions at the end of the article.

F. *The Pardon Power of the Sovereign under Indian Constitution* by Gaurav Gupta, (2004) II Srinagar Law Journal 857-866.

This is good work done by the author of this article especially at such a young age when he was a student of LL.B. He mainly focused on the Constitutional power to grant pardon. He also discussed the position of pardoning power in England and United States of America. But he failed to go into the depth of the constitutional provisions and to discuss a few landmark judgment of our Supreme Court e.g. *Kehar Singh* v. *Union of India*, (1989) 1 SCC 204, *Madhu Mehta* v. *Union of India*, (1989) 3 SCR 774 etc.

The major mistake of the author is that he did not use the method of footnoting. The absence of the same makes the study unreliable. Although he has quoted various authorities and jurists but he did not properly mention the sources.

G. *Power of Review and Clemency*, by Padamaja Krovvidi, (2007) 1 Andhra Law Times 23-30.

This article under review has been divided into six parts. The main focus of the author remained on the exercise of constitutional power of pardon in cases of death sentences. Although the author tried his level best to study the a few judgments of Supreme Court but it appears that he gave a bare reading to these judgments and failed to find out the gist of these judgments. The researcher attempted to work on the extent of judicial review but failed to do so in toto.

H. *Judicial Review of Pardon: Is it Activism?*, by Kartikey Mahajan and Sindhu Vasudev, AIR 2008 Jour 91-95.

In this study the emphasis has been put on the judicial review of pardoning power. This study has been divided into five parts. Although a good attempt have been made to study the scope of judicial review of pardoning power but it seems to be incomplete because no attempt has been made to compare the position of Indian law with that of England and America in order to make the study rich.

I. *The Power to Pardon Death Sentences- Questioning the Vitality of the law*, by Erina Chattergee, 2008 Cri. L.J. 258 Jour.

In this study the author emphasised on the pardoning power of President of India in cases of the death sentences only. The author did attempt to define the meaning, effect and judicial review of pardoning power with the help of a few precious judgment of our

Supreme Court, but forgot to go through the latest judgment in *Epuru Sudhakar* v. *Government of Andhra Pradesh*, AIR 2006 SC 3385.

J. *Executive Clemency in the United States: Origins, Development and Analysis(1900-1993)*, by P.S. Ruckman, Jr. {Presidential Studies quarterly, Vol. - 27, 1997, at 1 -32}.

The entire study has been divided by the author in five parts wherein he discussed origin, historical and legal development of clemency in England and the United States. The author also presented summary statics on the exercise of clemency in seventeen administrations (from *William McKinley* to *George Bush*).

As mentioned earlier that there is only one book available on the topic under study, but a few articles/research papers have certainly been written by a few researchers. So far as the book is concerned its author mainly concentrated on the death sentence and did not study the law of pardon under the Constitution or any other law. Whereas the article/research papers are concerned these articles are also not sufficient or complete study on the very wide topic of pardon. As a matter of fact it is not practically possible to cover such a big topic in a few pages. Therefore the researcher opted to study the entire law of pardon covering its meaning, nature, scope, its development in India, England, United States and the procedural aspects of this power and the judicial review thereof.

7. Scheme of Presentation of Study:

This work aims at a comprehensive, critical and in depth study of constitutional and statutory provisions relating to pardoning power in India. These provisions have been analysed in the light of numerous judicial pronouncements of the Supreme Court and various High Courts in India. For the proper analysis of Indian law, significant cases decided by the English and American courts have also been noted. An attempt has been made in this work to point out the lacunae in the constitutional and

statutory provisions and judicial pronouncements and suggestions have been given to amend the law to introduce transparency and fairness in the field of pardoning power. Chapter - I titled as "Introduction" throws light in brief on the entire study and also highlights the objectives of the study, research questions, proposed hypotheses and review of literature on the problem under study. Chapter - II is titled as "Genetical outlines of the Pardoning Power". In this chapter the meaning, nature, objective of pardoning power has been discussed. It also contains the historical development of pardoning power in England, United States and India. Chapter - III which is titled as "Pardoning Power under the Constitution of India" contains the law of pardon under the Indian Constitution. In this chapter the researcher discussed the nature of the order that can be passed by the President or the Governor and how this power can be exercised by these two authorities. An attempt has also been made to find out the nature, extent and effect of this power. Chapter - IV titled "Legislative Provisions Regarding Pardoning Power of Some other Authorities" contains the law of pardoning power under other Legislations. In this chapter the law of pardon contained in as many as nine different statutes has been discussed. The Chapter - V titled "Procedural Aspects of the Exercise of Pardoning Powers" contains the procedure for the exercise of pardoning power by different authorities under all statutes dealing with the pardoning powers. In this chapter the researcher, in order to evaluate the exercise of pardoning power by the President, scrutinised the various cases obtained under the Right to Information Act, 2005 by the researcher from the Ministry of Home Affairs, Government of India, wherein the President exercised or refused to exercise the pardoning power conferred on him by Article 72 of the Constitution of India. The Chapter - VI titled "Judicial Response to Pardoning Power" contains the judicial approach to the pardoning power of all authorities having the power to grant pardon. In this chapter the researcher scrutinised all cases pertaining to pardoning

power decided by the Supreme Court of India till date. The last chapter i.e. Chapter - VII contains the conclusion of whole study and a few suggestions have also been incorporated in order to amend the law relating to pardoning power.