

16.12.20

Relevance of Pardoning Power

- Section 354(3) of CrPc 1973, provides that it is required for the judges to state the reasons based on which any sentence is awarded against any party. Special reasons are also required to be prescribed for awarding death sentence. Before Independence under Section 367(5) of CrPc 1898 it is required for the court & judges to prescribe those reasons where death penalty has not been awarded while ~~death~~ death penalty could be

a punishable punishment.

It should be noted that the subject matter of special reasons has not been clarified by the law & still judge centric approach prevails in our constitutionally mediated criminal justice system to award any sentence including death to any party. Subsequently, there should be an option in our Criminal Justice system by which required remedy could be provided by those institutions which are not the part of Judicial system.

- Human fallibility argument always remain rational in our constitutionally mediated justice system. Misinterpretation of law, Miscarriage of Justice & Fabrication of facts could take place in any time in Judicial Procedure. It should be noted that in 2012, 14 Judges of Eminence sent a reference to President of India appealing for the commute of 18 convicts which

are erroneously sentenced by court of law.

- In Bachan Singh case 1980, Supreme Court propounded the doctrine of Rarest of Rare & observed that sufficient weightage should be given to the mitigating circumstances pertaining to criminals along with the aggravating circumstances related to crime.

In the same case court also held that some compelling standards should be evolved to define these circumstances & to clarify the doctrine of Rarest of Rare. It should be noted that no such standard had been evolved by court of law till date. Subsequently, till date the whole approach to award different types of sentences is judge centric.

- In the global Constitutional landscape new definition on grounds like Cruelty, proportionality, reasonableness, heinous crime etc. were evolved by different Judicial systems. Such types of expedition for the transformation of prevailing practices of sentences has not been developed by Indian Judicial system. Law Commission of India in its 226th Report of 2015-2016 also criticised the working of Judiciary.

The exercise of Pardoning Power or Executive Clemency remains relevant to maintain Bilateral Diplomatic ties in an aggravating circumstances to maintain equilibrium in society & to curtail different types of unrest or upheav which could take place by the exercise of this power. In no. of instances, this power has been used by Executive to delay an Emerging Controversial Public Matter/Issue.

The power of Executive clemency as a part of Constitutional Scheme have its substantial relevance in our organic parliamentary Democracy. Supreme Court also restrict the arbitrary use of this power by the mechanism of Judicial Review. This power is also consistent with the Principle of Separation of Power adopted in Indian Parliamentary system with the purpose to protect the civil & political rights of citizens & to ensure that legal assistance should be provided in the form of clemency when Judicial doors are closed.

Emergency Power

The provisions of Emergency are codified in part XVIII of the Constitution. The constitutional framework of Indian Polity ensures the need of Emergency provisions to maintain peace & tranquility in the whole country or any part of it thereof. External Aggression, emergence of disruptive forces & widespread violation in the wake of partition demonstrated the imperative necessity to make provisions like Emergency. The legal instrument of Emergency is authorised to transform the basic components & values of Indian Polity like Division of Power, Principle of Cooperative Federalism, Devolution of Administrative & financial resources & federal balance between Union & States.

Provisions of Emergency :-

(Ref. Laxmikant)

Impact of Emergency :- (Ref. Laxmikant)

After 1978

Before 1978

Art 352

- ① Grounds → War
Armed Rebellion
External Aggression

War
External Aggression
Internal Disturbances

- ② Written Recommendation of Cabinet is required

• only P.M. can recommend.

- ③ Approval of Emergency is done by each house separately with special majority within one month & emergency continues for 6 months & after every 6 months periodic approval is needed.

• Approval within 2 months with simple majority.
Emergency continues for indefinite period.

Lok Sabha
& Rajya Sabha

Revocation :-

➤ • by a Subsequent Proclamation

- 1) If 1/10 of members of L.S. propose for special sitting to revoke Emergency. Within 14 days it meets.

• only ^{by} Presidential Proclamation ~~is there~~ Emergency could be revoked.

No Role of Lok Sabha

So,

Revocation of Emergency

Subsequent
proclamation

Motion passed
by Lok Sabha
with simple
majority.

• No Role of
Rajya Sabha.