CLEMENCY POWER OF EXECUTIVES- A CRITICAL ANALYSIS

by

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ABSTRACT

The authority of pardoning gives place to the power of discretion. Exercise of this power must be done with appropriate regard for the principles of natural justice and the rule of law. No regulations or norms have been established in this regard, however, as of this writing. This void contributes to arbitrariness by making the choice contentious, which in turn leads to arbitrariness. This deficiency in the exercise of forgiveness authority not only sows the seeds of doubt, but it also renders the prospect of justification very remote.

The purpose of the research endeavor was to examine the authority given on the President or the Governor under Articles 72 and 161 of the Constitution of India, 1950, and how that power is used by him or her. A second part of the study looked at the role of the court in the exercise of the pardoning authority, as well as the issue of delays in the processing of mercy petitions. The researcher went on to discuss the existing framework for the exercise of pardoning authority as well as the flaws in the current legal and policy framework.

CLEMENCY AT A GLANCE

A power of pardon seems to be absolutely necessary under the most frequent administration of the law by human tribunals; otherwise, men would be subjected to the vindictiveness of accusers, the inaccuracy of evidence, and the fallibility of jurors and judges, among other things. Furthermore, even if the law is breached, the offender may be put in such circumstances that he will be pardoned to a significant extent, and possibly entirely, in terms of moral and general justice, even if he is not absolved in terms of the literal letter of the law.[1]

Every civilised culture recognises and has consequently allowed for the use of the pardoning authority as an act of grace and compassion in suitable instances, as a gesture of goodwill and humanity. This authority is also an act of justice, and it is backed up by sound public policy. But it cannot be seen as a privilege in this context. It is just as much a part of one's official responsibilities as any other act. It is vested in the Authority not only for the benefit of the offender, but also for the welfare of the general public, who may legitimately demand on the convict's fulfilment of that obligation if he is to be given clemency or release on parole.[2]

The word "pardon" is often used in a general sense to represent the authority granted to the head of state to give mercy in certain circumstances. Subcategories of pardon include complete pardon, conditional pardon, commute of sentences, remission of fines, and relief from prison. However, it is possible that it solely pertains to certain groups in some cases. In this way, the United States Constitution of India (1950) only speaks of pardons and reprieves, the one of which includes the other subcategories and the second of which does not.[3]

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[1] Joseph Story, Commentaries on the Constitution ofIndia, 1950, § 770, 547 (1833)

[2] Criminal Appeal No. 566 of 2010, paras 32, 40 available at http://indiankanoon.Org/doc/914230/ accessed on October 22, 2021.

[3] "Amnesty and Pardon - Clemency Powers in the Twentieth Century" available at the http://law.jrank.org/pages/507/Amnesty-Pardon-Clemency-powers-m-lwentiethcentury.html accessed on October 22, 2021.

Pardons have traditionally served three major purposes: to correct a miscarriage of justice, to eliminate the stigma of a conviction (and the restrictions that come with it), and to reduce the severity of a punishment. All three aims are normally attained by the grant of a complete pardon; the other two are frequently used to reduce the severity of a punishment or to avoid it altogether.[4]

In addition to being recognised in Articles 72 and 161 of the Indian Constitution of 1950, pardoning powers are also recognised in all civilised nations, including the United States. Judges must uphold the rules, whatever they may be, and make decisions based on the best information available to them; but, the laws are not always fair, and the lights are not always bright, as learned Seervai has remarked. In addition, judicial processes are not always sufficient to ensure the administration of justice. Historically, the power of pardoning has existed to avert injustice, whether from harsh, unjust laws or from judgements that result in injustice; as a consequence, the importance of placing Fiat power in an authority other than the court has been recognised throughout history.[5]

Article 72 of the Constitution of India, 1950, is concerned with a very old but creatively reinterpreted principle of a sovereign's prerogative to adjudicate capital crime against the backdrop of its circumstances, not in a legalistic but in a civilisational manner, rather than in a legalistic but in a civilisational manner. The sovereign, who is now our elected President, the First Citizen of India, has an opportunity to consider a crime perpetrated against another citizen, which has invited the ultimate punishment, the legal taking away of one's right to life, to determine whether that punishment, for which there is no greater punishment, is justified, deserved, fair, just, and, above all, free of any error in judgement by those who have been tasked with judging it. To put it another way, the authority to pardon is not about punishing people, but rather about redeeming them.[6]

[4] Ibid

[5] Ex. p. Grossman (1924) 267 U.S. 87, 121, 69 L.ed. 527, 535, as quoted in H. M. Seervai, Constitutional Law ofIndia: A Critical Commentary, Vol. 2, 1756 (1984).

[6] Gopalkrishna Gandhi, “The power to pardon” available at http://www.thehindu.com/opinion/lead/the-power-to-pardon/article4627717.ece accessed on October 21,2021.

The legal maxim "Veniae facilita's incentivum est delinquendi" (Veniae facilita's incentivum est delinquendi) is a caveat to the use of clemency powers, since it literally translates as "Veniae facilita's incentivum est delinquendi" (Veniae facilita's incentivum est delinquendi). It means "Venia In addition, if it is provided randomly and without any rationale to "privileged class deviants," it may turn out to be a "great farce." As a result, no felon should be singled out as a "favoured beneficiary" of pardon.

Since the possibility of committing crimes and the ability to punish those who do so have been known to human cultures, including our own, the practise of sentencing individuals to death has been practised. However, even millennia after the death penalty was established as a part of our penal and punitive consciousnesses, the Supreme Court's definitional ruling in 1980, which stated that the death penalty should only be awarded in "the rarest of rare cases," triggered the finer fibres of the human brain.

The state must meet the dual objectives of safeguarding society from criminals and rehabilitating those who have committed crimes. Specifically, the Remission policy represents the process of altering a person who, under certain conditions, has engaged in criminal conduct and is forced to undergo rehabilitation. The purpose of the punishment is primarily to reform and prevent the behaviour of the offender. "Guilty must pay for his crime," as the fundamental concept of punishment states, should not be stretched to the point where punishment becomes too harsh.

It is necessary to assess the situation in light of the current reformative idea of punishment in place today. In this case, the notion of "Savage Justice" is not to be used in any way. It is necessary to approach sentence softening methods from a more humanitarian and societally orientated perspective. Punishment should not be considered as a goal in itself, but rather as a means to achieve an aim. The goal of punishment should not be to exact revenge, but rather to reform and rehabilitate the offender instead. More specifically, the relevance of the circumstances of the crime and the state of mind of the prisoner at the time of the offence are important considerations to take into consideration.[7]

[7] Paras Diwan, Indian Constitutional Law, 298 (1994).

In all civilised nations, the president has the authority to pardon anyone who have been charged or convicted of a crime. There are a variety of reasons why power exists. It is sometimes used to prevent injustice from occurring, whether as a consequence of severe or unfair legislation or as a result of judicial decisions that are unjust in their outcome. It is sometimes used as a means of expediency by the executive branch. A sentence's implementation is likely to result in violence, revolt or revolution; thus, the executive may decide that it is more prudent not to expose the State to such danger and pardon the convict or delay the sentence's enforcement until a more appropriate time.

There will always be a need for pardoning since no human being is flawless and there is always the chance of making a mistake. Judges are no exception to this rule and they, too, may make mistakes while imposing penalty or sentence on the accused. In order to remedy such a scenario, this authority has been delegated to an independent government entity that is not subject to any restrictions of any kind. 'Fiat justitia pereat mundus,' which translates as "let justice be done even though the world perishes," would have remained a maxim only in the absence of the executive's ability to pardon criminals. A nation would be most flawed and lacking in its political morality and in that attribute of God whose judgements are always tempered with pity if it did not have such a power of clemency, which would be exercised by some department or functionary of the government.

In addition to the lengthy legal procedure in the nation, after the courts have reached a final verdict in these rarest of rare situations of cruelty, it is the president's secretariat that takes a long time to make a decision on these cases. In accordance with Article 72 of the Constitution of India, 1950, mercy petitions are submitted before the president by or on behalf of condemned inmates, and they are transmitted to the Ministry of Home Affairs for consideration. These petitions are reviewed by the ministry, which consults with the respective state governments on their merits. Following consultation with the relevant state governments, the files are sent to the president with the appropriate recommendation from the home minister. However, while the ministry itself takes years to respond to these mercy pleas, the president's secretariat has become something of a dumping ground for them all.

Each and every day, the number of mercy requests sent to the President's office grows, increasing the load on the President's office as time goes on. The executive's choices have been questioned for a variety of reasons, including the length of time it takes to reach a conclusion and the haste with which it does it. Without a doubt, the pardon plays an important part in the Indian criminal justice system; yet, there is a significant amount of delay and abuse in the processing of pardoning petitions, which hinders the achievement of the criminal justice system's objectives in India. When a person pleads for mercy after all avenues of justice have been closed to him, how can a judiciary turn a blind eye to the previous judgments against him that it has granted right from the lower courts? If the president grants pardon on moral and humanitarian grounds, whether or not judicial review is conducted, how can a judiciary turn a blind eye to the previous judgments that it has granted right from the lower courts against the pleader? It has been made more or less evident that the pardon would be revoked and that the court would return to its original ruling. When the court is given the opportunity to assess a pardon, it should not be guided just by legal considerations, but should also consider moral standards.[8]

The purpose of the research endeavour was to examine the authority given on the President or the Governor under Articles 72 and 161 of the Constitution of India, 1950, and how that power is used by him or her. A second part of the study looked at the role of the court in the exercise of the pardoning authority, as well as the issue of delays in the processing of mercy petitions. The researcher went on to discuss the existing framework for the exercise of pardoning authority as well as the flaws in the current legal and policy framework.

CLEMENCY POWER AND JUDICIARY IN INDIA, US AND UK

CLEMENCY POWER IN ENGLAND

From the beginning of time, this power has been exercised in England, and it has always been seen to be an essential characteristic of royal authority.

[8] Abhishek, "Presidential Pardon & Judicial Review" available at http://www.legalserviceindia.com/article/n49-Presidential-Pardon.html accessed on October 21,2021.

In England, the authority to grant mercy is held by the monarchy. In today's world, exercising the Royal Prerogative is difficult; the monarch cannot act on his or her own conscience; instead, he must rely on the assistance and advice of the council of ministers, which consists of the Secretary of State for England and Wales, the first minister of Scotland, and the secretary for Northern Ireland, among others. In the event that a member of the Armed Forces is convicted, the Secretary of State for Defences will advise the British government.

The pardoning power can be succinctly outlined as:

1. Release of prisoner unconditionally with full restoration of civil rights;
2. Release of prisoner conditionally without restoration of civil rights;
3. Restoring the rights after the expiration of the sentence.

Generally speaking, in England, the pardoning authority may be applied at any time after the commission of an offence, whether before or during the pendency of judicial procedures, and whether or not the offender has been convicted. In general, pardons may be granted either before or after conviction, but no pardon is pleadable in the event of impeachment by the House of Commons.

A pardon might be either unconditional or conditional. It is conditional if it does not become active until the grantee does a specific defined act or refrains from doing a specific specified act

Although the clemency authority was formerly an absolute power in the hands of the monarch to pardon a person for a crime committed by the individual, the power has since been transferred to the courts and the Sovereign's ministers and is now in the hands of both. Once a pardon has been issued, it is impossible to reverse the decision. However, there are certain restrictions on the use of the discretionary power to pardon, and no legislative authority has the authority to prohibit or control the use of the right to pardon.

IMPACT OF JUDICIARY ON CLEMENCY POWER IN UK

GCHQ is a case where a person in service sought judicial review of a prerogative that was challenged on the grounds of unfairness. The House of Lords confirmed that judicial review can be sought on the nature of government power, but that certain things, such as foreign policy and national security defences, mercy, honours, dissolution of parliament, and appointees to government positions, are not subject to judicial review; these include appointees to government positions.

As a result, the authority to pardon, reprieve, and provide other relief is no longer considered a sovereign prerogative, and these prerogatives are subject to judicial examination to a certain degree.

CLEMENCY POWER IN THE UNITED STATES OF AMERICA

In the United States, the power of mercy is granted in Article II, section 2 of the constitution.

Specifically, according to the constitution, "...he shall have the authority to give reprieves and pardons for offences against the United States, save in the case of impeachment."

The president's pardon power extends to all offences against the United States, with the exception of impeachment proceedings, and includes the authority to remit fines,

penalties, and forfeitures, with the exception of money covered into the Treasury or given to an informant, among other things. A person's ability to pardon may be both absolute and conditional at the same time. It has long been considered that the power of pardon extends to the pardoning of specified groups or communities, and that this authority is normally used via the announcement of a General Amnesty. For example, George Washington granted global amnesty in 1795, and Theodore Roosevelt granted general amnesty to Aguinaldo's adherents in the vicinity of the year 1902.

It is widely believed that neither Congress nor the courts can breach or take away the President's power to pardon under the present conception of clemency authority in the United States. If there are any constraints to the authority to pardon, they may be found in the Constitution, which states in article II that it cannot be utilised in the event of impeachment. If there are no limitations, they can be found elsewhere in the Constitution.

IMPACT OF JUDICIARY ON PARDONING POWER IN THE US

In the case of United States v. Wilson, the court underlined that the ability to issue pardons is an act of grace, and the court's justification for this was the resemblance between the procedures for giving pardons in the United States and the United Kingdom. Later, in the case of Biddle v. Perovich, the Supreme Court reversed its position and concluded that a pardon is not a private act of grace from a person who holds that authority, but rather is a part of the constitutional framework as outlined in the Constitution.

Among the most important cases on pardon authority is Ex parte Garland, in which the act of Congress was challenged, in which they established a requirement to practise in federal court: "the individual must take an oath affirming that he has never willingly used weapons against the United States..." Garland had been awarded a full pardon by President Johnson earlier that day. In this case, the court had to decide whether Garland was permitted to practise law in the federal courts notwithstanding the act of Congress just cited and after receiving a presidential pardon. The court expressed its opinion on the kind and type of pardons that are typically granted.

In the event that a pardon is granted, it applies to both the sentence specified for the crime as well as the guilt of the offender:

1. “When the pardon is full, then it releases the offender from all guilt and makes him innocent in the eye of law.
2. When the pardon is granted before conviction, it precludes the person from all the penalties and disabilities.
3. If the pardon is granted after conviction, it removes all the penalties and disabilities, and restores all his civil rights; it will make him a new man, and gives him a new credit and capacity in the society.”

As a result, the pardoning authority of the president has now arisen as a constitutional convention that is solely conferred on the president, and the president is not compelled to consult with anybody before using this power. However, the same ability to exercise authority depending on the merits of the case places the burden of proof on the president's shoulders.

CLEMENCY POWER IN INDIA

The power of mercy or pardoning is contemplated in Article 72 for the head of state, and the Governor is given with a similar authority under Article 161.

Although this authority does not operate on the precise principles of law and law interpretation, it does deal with issues that are often foreign and irrelevant to legal adjudication, such as morality, ethics, the public good and policy concerns. When it comes to the use of mercy powers, these are the fundamental principles to be followed.

In most cases, the executive authority of clemency is used after the criminal prosecution and sentence procedure have been concluded. Using these clemency powers, the President and Governor are authorised to review the case file and, if they determine that the record does not support the judicial verdict, they may overrule it; alternatively, if they agree with the court, they may make corrections that are beyond the scope of the court's jurisdiction. The president and the governor, on the advice and with the assistance of the council of ministers, will make the final decision in this instance, which is the most essential element..

The Madras High Court ruled in the matter of Re Maddela Yera Channugadu & others v. State that the pardon authority extends across the whole country. Granting amnesty to an accused person or a prisoner awaiting trial is a kind of pardon that may be utilised either before or after a person is found guilty. In this particular instance, the court relied on the similarities between the wordings of the United States Constitution and the Constitution of India as the basis for its conclusion. However, it might be claimed that in reaching the aforementioned judgments, the Courts have failed to consider the fundamental principles of constitutional interpretation.

IMPACT OF JUDICIARY ON CLEMENCY POWER

The basic development served by the judiciary in the context of Article 72 and 161 is allowing judicial review.

In the case of *Manu Ram v. Union of India*, the court stated that the power of pardon shall never be exercised arbitrarily, or *malafide*.

In the case of *Kehar Singh v. Union of India*, the court stated that the area of presidential power under Article 72 falls squarely within the judicial domain and can be examined by the court by way of judicial review.

The Supreme Court also laid down certain grounds which can be claimed by the petitioner for judicial review of the Clemency Power:

1. "The order passed without application of mind;
2. The order is mala fide;
3. The order is passed on wholly irrelevant consideration;
4. The order suffers from arbitrariness."

The recent landmark judgement of the Supreme Court in Shatrughan Chauhan v. Union of India, in which a petition was filed by a convict whose mercy petition was rejected and no reason for the undue delay was given, results in a violation of Article 21 of the Constitution because there was no explanation for the undue delay.

The Supreme Court ruled that in situations where there has been an unexplained delay of 6 to 12 years, the death sentence must be changed to life imprisonment, according to the court.

In its decision, the Supreme Court listed numerous factors, such as mental trauma, lack of legal representation, and the age of the convict, among others, that could be used to challenge an order of clemency. The court also noted that these powers are vested in the highest dignitaries, namely the President or the Governor of a State, as the case may be, and that there are no limitations specified in either of the two Articles, and that they may grant remission as an act of grace.

So, India, the court has now established the fundamental grounds on which a judicial review of a clemency decision may be brought, and these reasons have weakened the clemency authority of the president, who is now more influenced by the rule of law than by the discretion of authorities.

PROBLEMS WITH THE FEDERAL CLEMENCY PROCESS

Currently, the majority of substantive complaints of the federal criminal justice system are directed at the punitive character of federal criminal legislation that have been on the books for more than four decades.[9] The anti-drug laws are particularly despised by the public. Statutes that link the duration of an offender's sentence to the quantity of a restricted drug he sold or had may result in sentences that last for decades, or even for the rest of his or her life.[10] Because of these laws, along with an aggressive U.S. Department of Justice stance toward drug law enforcement, the number of federal inmates has increased dramatically, earning the term "mass incarceration" for the phenomenon. Therefore, efforts to convince Congress to relax the strict enforcement of those drug

[9] See, e.g., Paul J. Larkin, Jr., Public Choice Theory and Overcriminalization, 36 HARV. J.L. & PUB. POL'Y 715, 724–29 (2013).

[10] The Anti-Drug Abuse Act of 1986, Pub. L. No. 99-570, 100 Stat. 3207 (1986) (codified at 21 U.S.C. § 841 (2006)) (amended 2010 & 2018), became law during after the emergence of "crack" cocaine in the nation's inner cities. The law imposed a mandatory minimum penalty on the distribution of crack, and the amount that triggered that penalty was 100 times less than the predicate amount of powdered cocaine. See, e.g., Larkin, Crack Cocaine, supra note 38, at 241–42.

prohibitions have so far failed miserably.[11] As a result, advocates for criminal justice reform have sought relief through the clemency process. They have found only limited success.[12] Clemency petitions were reviewed and sent to President Barack Obama in April 2014 after he authorised the Justice Department to create the Clemency Initiative to assess commutation applications and refer cases to him when an excessively lengthy sentence was unjustified.

It is this office's responsibility to receive and examine each clemency petition, as well as to gather all of the relevant files in the case, do any extra investigation that may be required, and make a recommendation to the President on whether or not to grant the applicant reprieve. All clemency proposals are sent via the Justice Department to the Office of the White House Counsel, which conducts an impartial examination of each petition. When a suggestion is approved by the White House Counsel, it is sent to the President's desk for final approval. Although that approach is a logical mechanism for controlling the document flow, it provides the Justice Department an unnecessary amount of control over the result of the case. The difficulty is that every clemency candidate was

[11] In 2010, Congress passed the Fair Sentencing Act of 2010, Pub. L. No. 111-220, 124 Stat. 2372. That law amended the Anti-Drug Abuse Act of 1986 and reduced the 100:1 crack to cocaine ratio to 18:1, but the statute did not apply retroactively. President Obama used his clemency power in an attempt to reduce the sentences of the offenders left stranded by the prospective-only 2010 law. See Larkin, Revitalizing Clemency, supra note 38, at 886–87. Congress finally made the Fair Sentencing Act of 2010 retroactive by passing the First Step Act of 2018, Pub. L. No. 115-391, 132 Stat. 519 (2018). For an excellent discussion of the process that lead to the enactment of the 2018 law, see Shon Hopwood, The Effort to Reform the Federal Criminal Justice System, 128 YALE L.J. FORUM 791 (2019).

[12] Then-President Barack Obama directed the Justice Department to establish the Clemency Initiative in April 2014 to review commutation applications and forward cases to him where an unduly long sentence was unjust. Barack Obama, Commentary, The President's Role in Advancing Criminal Justice Reform, 130 HARV. L. REV. 811, 835–38 (2017). Before he left office, Obama commuted the sentences of more than 1,700 prisoners. Some commutation recipients left prison immediately, and others remain incarcerated under a shortened term. For descriptions of that initiative, see OFF. OF THE INSPECTOR GEN'L, U.S. DEP'T OF JUSTICE, REVIEW OF THE DEPARTMENT'S CLEMENCY INITIATIVE (Aug. 2018); U.S. SENT'G COMM'N, AN ANALYSIS OF THE IMPLEMENTATION OF THE CLEMENCY INITIATIVE 2014 (Sept. 2017). Though well intentioned, President Obama went about the process in the wrong way by trying to consider commutation petitions on a retail basis rather than by granting drug offenders a broad, amnesty-like commutation. See Paul J. Larkin, Jr., "A Day Late and a Dollar Short": President Obama's Clemency Initiative 2014, 16 GEO. J.L. & PUB. POL'Y 147 (2018) [hereinafter Larkin, A Day Late]; Paul J. Larkin, Jr., Delegating Clemency, 29 FED. SENT'G REP. 267 (2017) [hereinafter Larkin, Delegating Clemency]; Margaret Colgate Love, Evaluating Obama's Clemency Legacy: An Assessment, 29 FED. SENT'G REP. 271 (2017). President Donald Trump discontinued the Clemency Initiative, and he has commuted few drug offenders' sentences. See, e.g., Off. of the Pardon Att'y, U.S. Dep't of Justice, Commutations Granted by President Donald Trump (2017-Present), https://www.justice.gov/pardon/commutations-granted-president-donald-trump-2017-present.

successfully prosecuted by the Justice Department.[13] Since the Carter Administration, when Griffin Bell served as attorney general, the Pardon Attorney has reported to the deputy attorney general rather than directly to the attorney general of the United States.

CONCLUSION

The concept of pardon is founded on the premise that the administration of justice by the courts is not always in the best interests of the public. The purpose of the pardon is to repair a court mistake. The President of India and the Governors of the States have this authority under the Indian Constitution. Since ancient times, people have acknowledged the power of pardon. In terms of power use, there isn't much of a difference between the two. When it was first used, it was also used by the head of state, and it is still used by the head of state today, regardless of whether or not the head of state is a king or monarch.

The President and the Governor have the authority to pardon anyone under Articles 72 and 161 of the Constitution of India, 1950. Since constitutional heads of state and government are bound by the advise of their respective Cabinets, real decisions are not taken in India by the Governor or President, but by the State and Central administrations, according to the country's constitutional framework.

The Supreme Court of India in the case of Marti Ram v. Union of India,[14] has held that the executive should frame guidelines for their own use of power of pardon, but afterwards in the case of Kehar Singh v. Union of India & Ors.[15] f the Supreme Court held that there are sufficient guidelines in the Articles and there is no need of framing guidelines.

[13] As head of the Department of Justice, the Attorney General is responsible for supervising all criminal and civil litigation involving one of the department's divisions or the 93 U.S. Attorney's Offices. See 28 U.S.C. §§ 501, 503 (2018) (placing in the attorney general all authority to conduct or supervise all litigation in which the federal government has an interest); id. at §§ 506-507A (2018) (authorizing the President to appoint a deputy attorney general, an associate attorney general, and 13 assistant attorneys general); id. at § 5641 (authorizing the President to appoint a U.S. Attorney for each of the 93 judicial districts).

[14] (1981) 1 SCR 1196 p. 1249: AIR 1980 SC 2147 at 2174-2175.

[15] Kehar Singh v. Union ofIndia, AIR 1989 SC 657, para 7.

Recently in the case of Shcitrughan Chauhan v. Union of India,[16] the Supreme Court has framed certain guidelines which are beneficial for the early disposal of mercy petitions.[17]

It is more than a moral obligation to show pity to convicted criminals; it is a constitutional obligation. Human life is undoubtedly the most valuable gift that nature has given us, a gift that many people refer to as the Almighty. Because of this, it is claimed that if you are unable to give life, you do not have the authority to remove it. There are many people who feel that the death penalty should not be applied regardless of the nature and severity of the crime.

The job of punishing offenders has been acknowledged by all civilised countries for millennia. Although contemporary societies are evolving, the perspective of criminologists to punishment has also undergone a significant shift as a result of these changes.

President Abdul Kalam (2002-2007) was responsible for carrying on the legacy of pardoning authority left by his predecessor, and he inherited eight mercy petition cases as a result of this. In November 2003, he got his first appeal, which came from Indian Home Minister Ram Vilas Paswan. The President received four further petitions in April and May 2004, which were submitted in the last days of the NDA's mandate. All five of these petitions received recommendations to deny them, and all five were held on hold. As a result, Kalam did not take any action on the (now) 13 mercy petition cases that were sitting in his office till the conclusion of the NDA government's term in mid-2004.

[16] Writ Petition (Criminal) No. 55 of 2013 Available at http://judis.nic.in/supremecourt/imgsI.aspx?filename=41163 accessed on October 21. 2021

[17] For details see chapter 5, “National Aspect of Power of Pardoning”