

The Act<sup>21</sup>, punishable the act of abetting a terrorist but does not spell out the requisite intent.

Finally, the National Human Rights Commission, which opposed the now defunct Criminal Law Amendment Bill, has yet to see a copy of the Ordinance. The Commission also maintains that existing laws are sufficient to fight the threat of terrorism.

In light of the problems outlined above we recommend that you:

Establish a Civilian Review Board or Civilian Ombudsman Committee comprising Judges and lawyers to monitor police stations and ensure that 1996 Supreme Court guidelines on treatment of persons in custody, as established in *D.K. Basu v. State of West Bengal*, are strictly enforced.

### PARDONING POWER OF PRESIDENT OF INDIA

By

—M. BHASKARA RAJASEKHAR, LL.M.,  
Advocate  
Karimnagar, A.P.

The Constitution of India has explained, The Union under Part-V of the Constitution<sup>1</sup>, and the Parliament Part VI<sup>2</sup>, among this provisions of the Constitution, the pardoning power of the President is the most important judicial power<sup>3</sup>.

Article 52 of the Constitution says about 'the President of India' as 'there shall be a President of India' and the executive powers of the Union shall be vested in the President and shall be exercised by him or through officers subordinate to him in accordance with this Constitution<sup>4</sup>. The executive powers of the President as explained by the Court as follows:

Executive power must be exercised in accordance with the Constitution including in particular, the provisions of Article 14<sup>5</sup>.

Under Article 72 of the Constitution<sup>6</sup>, President has 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

#### 1. By Court Martial;

21. Section 3(3) makes

1. Article 52 to 78.

2. Article 79 to 122.

3. Article 72 of the Constitution

4. Article 53(i)

5. *Rao v. Indira*, AIR 1971 SC 1002

6. Power of President to grant pardon, etc., and to suspend, remit or commute sentences in certain cases

2. An offence against any law relating to a matter to which the executive power of the Union extends; or
3. In all cases in where the sentence is a sentence of death.

#### *The Purpose of Judicial Power of President*

The object of conferring the "judicial" power on the President is to correct possible judicial errors<sup>7</sup>, no human system of judicial administration can be free from imperfections<sup>8</sup>.

#### *The Effect of Pardon*

A pardon completely absolves the offender from all sentences and punishments and disqualifications and places him in the same position as if he had never committed the offence<sup>9</sup>. Commutation means exchange of one thing for another. For the purpose of the Article 72. Commutation means substitution of one form of punishment for another of a lighter character, e.g., for rigorous imprisonment to simple imprisonment. Remission means reduction of the amount of sentence without changing its character, e.g., a sentence of one year may be remitted to six months. Respite means awarding a lesser punishment on some special grounds, e.g., the pregnancy of a

7. Dr. J.N. Pandey, Constitutional Law of India, CLA, and 42nd Ed

8. *Basu* – Introduction to the Constitution of India, Part II, P.21(3rd Ed)

9. (Ibid)

woman offender. Reprieve means temporary suspension of death sentence, *e.g.*, pending a proceeding for pardon or commutation.

### ***Judiciary on Pardon Power of the President***

The effect of a series of decisions of the Supreme Court and some High Courts summarized as under:

In *Nanavati's case* (*Nanavathi v. State of Bombay*, AIR 1961 SC 112), the Supreme Court held that in view of the language of Articles 72 and 161, which was similar to that used in Section 295 (2) of the Government of India Act, 1935<sup>10</sup>, and also similar to that used in Article 2, Section 2 of the American Constitution; the President and the Governors, in India had the same powers of pardon both in its nature and effect, as is enjoyed by the King in Great Britain and the President in the United States of America. Therefore, in India also the pardoning power can be exercised before, during, or after trial.

In the case *Maru Ram v. Union of India*<sup>11</sup>, it has been held that in exercising the pardoning power the object and the spirit of Section 433-A of Cr.P.C.<sup>12</sup> Must be kept in view. The power to pardon is exercised by the President on the advice of the Council of the Ministers.

In *Kuljeet Singh v. Lt. Governor of Delhi*<sup>13</sup>, an important question came for consideration of the Supreme Court regarding the scope of the pardoning powers of the President under Article 72(1). The petitioners were found guilty of murdering two innocent children and awarded death sentence by the Session Court which was confirmed by the High Court was dismissed by the Supreme Court. Thereafter they presented a mercy petition under Article 72 to the President for the grant of pardon which was rejected by the President without assigning any reasons. The petitioners contended that the power of the President under Article 72 to grant pardon

*etc.*, especially in case of a death sentence is a power coupled with a duty that which must be exercised fairly and reasonably. The Court said that the Court did not know whether the Government of India has formulated any uniform standard or guidelines by which the exercise of the constitutional power under Article 72 is intended to be, or was in fact guided. By a general stay order the Court stayed the execution of all those convicts whose mercy petitions against the death sentences were rejected by the President of India. However, the Court vacated the general stay order and it ordered the execution of the petitioners *i.e.* *Billa* and *Ranga* on the ground that this was not the appropriate case in which the question of laying down the guidelines would arise. Declaring that the exercise of the President's power to commute the death sentence would have to be examined case to case, the Court held that even the most liberal use of this power could not have persuaded the President to impose anything less a sentence of death in the present case and more so in view of the considerations mentioned by the Court in its judgment while confirming the death sentence on *Ranga* and *Billa*. By ruling that the exercise of the President's power under Article 72 will be examined on the facts and circumstances of each case the Court has retained the power of judicial review even on a matter which has been vested by the Constitution solely in the Executive. This would make the exercise of the pardoning power a matter for further litigation as it has been demonstrated in the present case.

In *Sher Singh v. State of Punjab*, AIR 1983 SC 361 while disposing of a writ petition for the commutation of death sentence into life imprisonment on the ground of inordinate delay the Court took an opportunity to impress upon the Central and State Governments that the mercy petitions filed under Articles 72 and 161 of the Constitution or under Sections 432 and 433 of the Cr.P.C. must be disposed of expeditiously otherwise, long delay in the disposal of these petitions are a serious hurdle in the disposition of justice and indeed, such delay tend to shake the confidence of the people in very system of justice".

10. Sheervai, Constitutional Law of India 1766, (3rd Ed.)

11. (1981) 1 SCC 107

12. Provided that in cases referred to in Section 433-A, such period of detention shall be set off against the period of fourteen years referred of in that section.

13. AIR 1982 SC 774

### *The Scope of the President's Pardonning Power*

A five-Judge Bench of the Supreme Court<sup>14</sup>, has examined in detail the scope of the President's pardoning power under Article 72. The facts of the case was like this the petitioner, *Kebar Singh*, was convicted of an offence of murder for assassinating the P.M. Smt. *Indira Gandhi* and sentenced to death which was confirmed by the High Court and his appeal to the Supreme Court was also dismissed. Thereafter, he presented a petition to the President for the grant of pardon. He prayed that his representatives may be allowed to see the President personally in order to explain his case. The President rejected his petition on the advice of the Union Government without going into the merits of the decision of the Supreme Court confirming the death sentence. The Court held that while exercising his pardoning power it was open to the President to scrutinize the evidence on the record and come to a different conclusion both on the guilt of *Kebar Singh* and the sentence imposed upon him. In doing so, the President does not amend or modify or supersede the judicial record. The judicial record remains intact. *Kebar Singh* had no right to be heard by the President. The manner of consideration of the petition lies entirely within the discretion of the President. The Court need not spell out specific guidelines for the exercise of power under Article 72 this is so because the power under Article 72 is of the "widest amplitude" and can contemplate a myriad kinds and categories of cases with facts and situations varying from case to case. "The President cannot be asked to give reasons for this order". The power of pardon is part of the Constitutional Scheme. The order of the President cannot be subjected to judicial review on its merits.

In *Jumman Khan's* case<sup>15</sup>, the petitioner was convicted of committing rape on a 6 years old girl and strangulating her to death awarded sentence of death by the Sessions Judge. This was confirmed by the High Court. His special leave petition to the Supreme Court was also rejected. His petition for pardon

was rejected by the Governor on Feb, 1988. The mercy petition addressed to the President was received by the Ministry of Home Affairs and the same was rejected. It was argued that the mercy petition rejected by the President require reconsideration. It was held that after examining the same carefully the Court found no ground for interference. By virtue of the various cases on the pardoning power of the President the power, it is very clear that the President can exercise the power of pardoning power in accordance to the Constitution and no interference can be permitted by anybody from any authority, after examination of the various cases on the President's pardoning power the words of Sir *John. Anderson* is relevant to quote here, in his evidence before the Royal Commission on Capital Punishment in England<sup>16</sup>, pointed out that it would be extremely difficult to give, in a short statement, "an adequate impression of the cumulative considerations which the Home Secretary has to take into account, the Indian Judiciary also emphasized on the same manner few important rulings on President's pardoning power as under:

- \* The exercise of the power by the President under Article 72 of the Constitution is primarily a matter for his discretion and the Court would not interfere with his actual decision on the merits
- \* The President is not bound to hear a petition for mercy before he rejects the petition
- \* The Courts exercise a very limited power of judicial review, to ensure that the President consider all relevant materials before coming to his decision
- \* The Constitution of India is silent as to the manner in which the Presidential power of mercy is to be exercised
- \* The truth of the matter is that law is made for man. Justice is much more than mere codes and precedents. There are occasions when justice and humanity demand that mercy be shown in the matter of sentence.

14. In *Kebar Singh v. Union of India*, AIR 1989 SC 653

15. *Jumman Khan v. State of U.P.*, (1991) 1 SCC 752

16. (1949-53)