

The Role of Clemency Powers under Articles 72 and 161: Executive Discretion in Capital Punishment Cases

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Abstract

The power of clemency granted under Articles 72 and 161 of the Indian Constitution serves as a vital check on judicial fallibility and as an embodiment of the state's commitment to justice tempered with mercy. These constitutional provisions empower the President and Governors to grant pardon, reprieve, respite, or remission in capital punishment cases. However, the exercise of these powers has often raised questions of executive arbitrariness, political influence, and lack of transparency. This paper critically analyzes the scope, limitations, and judicial scrutiny of clemency powers in India, especially in the context of death penalty cases. It also explores the evolving jurisprudence surrounding delay, procedural lapses, and the balance between executive mercy and judicial oversight.

Keywords: Clemency, Death Penalty, President, Governor, Article 72, Article 161, Judicial Review, Mercy Petition, Constitutional Law, Capital Punishment

1. Introduction

The power of clemency, enshrined under Articles 72 and 161 of the Indian Constitution, represents a vital constitutional safeguard that allows the President and Governors, respectively, to intervene in the execution of judicial sentences, including capital punishment. Rooted in the principles of mercy, justice, and humanitarianism, these provisions grant the executive branch a discretionary authority to remit, suspend, commute, or pardon sentences, thus serving as a corrective tool in the hands of the state to mitigate potential miscarriages of justice. While the judiciary is bound by the rigors of law, the executive's clemency power is intended to temper the rigidity of legal formalism with compassion, equity, and considerations beyond the strict letter of the law. This authority assumes particular significance in capital punishment cases, where the irreversible nature of the death sentence necessitates an additional layer of scrutiny and moral judgment. Clemency not only offers a final hope for the condemned but also acts as a reflection of the state's moral and ethical stance toward the value of human life. However, the exercise of these powers is not without controversy, as it raises critical questions about transparency, consistency, and the scope of executive discretion. The interplay between judicial review and executive mercy in such cases has led to a complex jurisprudence, balancing constitutional authority with the imperatives of justice, human rights, and the evolving global discourse on the death penalty. Thus, understanding the role of clemency powers under Articles 72 and 161 is essential for analyzing the broader framework of criminal justice in India, particularly in its approach to capital punishment.

The ability of the sovereign power to balance justice with compassion is reflected in the ancient notion of pardon, which is essentially an act of pity, forgiveness, or clemency. Symbolic of their divine-like control over life and death, this power was traditionally an intrinsic attribute of absolute kings. A basis for clemency was laid early on in the Code of Hammurabi, which acknowledged mitigating circumstances and the need to restrict revenge, in addition to prescribing harsh punishments[1]. In order to rectify judicial or legal injustices, the authority to pardon could be used at any stage of the legal process, including pre-trial, trial, and post-conviction phases. "Judges must enforce laws, whatever they may be, and decide according to their best lights; but laws are not always just, and those lights not always luminous." This passage perfectly encapsulates the heart of the matter, as stated by Seervai. He expands by saying that the justice system can fall short on occasion, necessitating some authority outside of the court system.[2] Various countries have provided judicial interpretations regarding the nature of the authority to pardon. Justice Oliver Wendell Holmes of the United States Supreme Court stressed in the case of *Biddle v. Perovich* that pardons are now an essential component

of the constitutional framework, rather than an isolated gesture of kindness. The decision of the ultimate authority that less punishment is desirable for the public interest is reflected in this. Justice Fields similarly clarified in *Ex parte Garland* that a full pardon does double duty by erasing the offender's guilt and the punishment. When a person receives a pardon, the law treats them as if the crime never happened.[3] Executive clemency is in place to soften the harshness of the criminal justice system or to fix mistakes in its functioning, as Chief Justice Taft eloquently stated in the landmark case of *Ex parte Philip Grossman*. He conceded that, despite their legal accuracy, court rulings can miss the mitigating factors in certain cases. As a result, the judiciary does not have the ability to grant mercy in order to maintain justice and rectify obvious injustices.[4],[5].

Pardons, respites, remissions, and commutations are granted by the President and Governors of India under Articles 72 and 161 of the Constitution, which are based on this idea. These articles demonstrate a constitutional dedication to respect for human dignity and a recognition of the limitations of the legal system. In the case of *Kehar Singh v. Union of India*, the highest court in India acknowledged that even the most well-intentioned individuals can make mistakes. As a result, clemency powers provide an important means of redress by enabling a higher constitutional body to assess consequences that could endanger life or liberty.[6] This view was further solidified when the court confirmed in the famous *Kuljeet Singh v. Lt. Governor of Delhi* (often called the *Ranga-Billa Case*) that the power of mercy must be assessed in light of the specific facts and circumstances of every case. The President has the authority to commute or remit sentences under Article 72, but he must use his discretion carefully, particularly in capital cases where the outcome can have a life-or-death impact. [7] The judiciary has maintained its position that incarceration for reasons other than those of essential necessity is detrimental. Not only is it socially and economically costly to keep someone in prison for longer than necessary, but it also hinders their rehabilitation. Judgmental dicta has noted that such severe punishments border on cruelty and run counter to the ever-changing norms of justice and respect for human dignity.[8] Because the death sentence is the most severe type of punishment that the state can impose, clemency is an essential protection in these circumstances. The state's capacity to take into account feelings of compassion, regret, and changing social standards is evident in its ultimate choice. This isn't just a humanitarian gesture; it's a constitutional safeguard against a cruel and unyielding criminal justice system. In view of the growing international and national interest in capital punishment, the clemency powers of the executive branch, when exercised in an open and equitable manner, support the principles of justice, equity, and constitutional morality [9],[10].

2. Constitutional Framework of Clemency

The clemency powers provided under Articles 72 and 161 of the Indian Constitution form an essential part of the constitutional scheme, enabling a crucial balance between the judiciary's rigidity and the executive's compassion. Article 72 confers upon the President of India the power to grant pardons, reprieves, respites, or remissions of punishment in specific cases. These include: (i) cases where the punishment or sentence is by a court-martial, (ii) cases involving offences against laws made under the Union's legislative competence, and (iii) cases where the sentence is one of death. This makes Article 72 particularly significant in capital punishment matters, as it provides a final opportunity for mercy, even after all judicial remedies have been exhausted [11]. Similarly, Article 161 vests the Governor of a state with parallel powers to grant clemency in cases involving offences against laws falling within the jurisdiction of the state legislature. While these powers are framed as discretionary and executive in nature, they are not unfettered. In a series of landmark decisions, the Supreme Court of India has held that the exercise of these powers is amenable to judicial review in instances where the decision is arbitrary, discriminatory, guided by mala fide intentions, or results in the violation of fundamental rights under Part III of the Constitution [12].

For instance, in *Epuru Sudhakar v. Government of Andhra Pradesh* (2006), the Supreme Court clarified that although clemency is an executive function, its misuse can be challenged in courts on limited grounds such as non-application of mind, arbitrariness, or extraneous considerations [11]. This interpretation ensures that the mercy powers are exercised within a constitutional framework of accountability and are not abused for political or personal motives. Thus, Articles 72 and 161 serve as vital constitutional mechanisms that not only reinforce the principle of humane justice but also ensure that the executive's discretion is checked by judicial oversight, reinforcing the doctrine of separation of powers [12].

3. Objectives of Clemency Powers in Death Penalty Cases

1. To correct judicial errors.
2. To temper justice with mercy.
3. To respond to humanitarian concerns (e.g., prolonged incarceration).
4. To protect against irreversible miscarriage of justice.

4. Judicial Interpretation and Limitations

The constitutional provisions under Articles 72 and 161 grant the President and the Governors wide-ranging powers of clemency, yet the exercise of these powers is not absolute or immune from judicial scrutiny. Over the decades, the Supreme Court of India has articulated a robust framework through which it interprets and limits the application of these clemency powers. This judicial oversight ensures that executive discretion aligns with constitutional morality, principles of fairness, and the rule of law.

The landmark judgment in **Maru Ram v. Union of India (1980)** marked a significant constitutional milestone in delineating the contours of executive clemency under Article 72 of the Indian Constitution. Decided by a Constitution Bench of the Supreme Court, the case addressed the crucial question of whether the President or the Governor could exercise the power of pardon independently, or whether they were bound by the aid and advice of the Council of Ministers, as stipulated under Article 74(1). The Court, upholding the foundational principle of parliamentary democracy, unequivocally held that the clemency powers under Articles 72 and 161 are not personal prerogatives of the executive head but are to be exercised strictly on the aid and advice of the duly elected Council of Ministers. This interpretation reinforced the doctrine of collective responsibility, ensuring that such powers are exercised through accountable, democratic institutions rather than unregulated personal discretion. Justice V.R. Krishna Iyer, delivering one of the most cited opinions in the case, articulated a progressive and constitutionalist vision of clemency. He emphasized that the power of pardon is not an arbitrary or unfettered act of grace, as was the case under British colonial rule, but a constitutional function that must be guided by reason, relevance, and public accountability. He explicitly rejected the outdated notion of the clemency power as a "royal prerogative," stating that India's republican Constitution does not confer any kingly privileges upon the President or the Governors. Rather, these powers are part of a modern constitutional framework where mercy must be rational, just, and transparent, subject to constitutional limitations and principles of good governance. The Court further underscored that while the power of pardon is an essential part of the justice system, especially in correcting judicial errors or addressing extraordinary humanitarian concerns, it cannot be exercised in violation of constitutional values, such as equality before law and protection against arbitrariness. The judgment thus set the groundwork for judicial review of executive clemency, asserting that while courts may not interfere with the merits of the decision, they can scrutinize the process to ensure that no mala fide intentions, irrelevant considerations, or extraneous influences taint the exercise of such powers [13].

The Supreme Court's judgment in **Kehar Singh v. Union of India (1989)** provided a nuanced and authoritative interpretation of the President's powers under Article 72, particularly in the context of post-conviction mercy petitions. While reaffirming the constitutional framework

established earlier in *Maru Ram v. Union of India* (1980)—that the President must act on the aid and advice of the Council of Ministers—the Court in *Kehar Singh* went further to clarify the substantive scope and nature of executive clemency in a democratic constitutional order[14]. The Court held that although the judicial process may have run its full course, including appeals, reviews, and curative petitions, the President retains the constitutional authority to examine the merits of the case independently, from a broader and more holistic perspective. This includes the power to reappraise facts, consider new evidence, or evaluate circumstances that may have emerged after the conclusion of judicial proceedings. However, the Court emphasized that this power is not unbridled or absolute—it is embedded within a constitutional framework that requires it to be exercised with due regard to fairness, reason, and legality. Importantly, the Court recognized the distinct but complementary role of executive mercy vis-à-vis judicial verdicts. While the judiciary is bound by the strict application of law and evidentiary procedures, the executive clemency power allows for the infusion of compassion, equity, and humanitarian values into the justice system. It enables the state to account for factors that lie outside the purview of formal judicial inquiry, such as social reintegration, mental health, terminal illness, public sentiment, political stability, or diplomatic considerations, especially in sensitive or high-profile cases. Nevertheless, the Court warned that such discretion cannot be exercised arbitrarily, capriciously, or with mala fide intent. The exercise of clemency must still conform to the basic constitutional guarantees, particularly those under Articles 14 and 21, ensuring non-discrimination, transparency, and protection from inhuman or degrading treatment. The judgment thus served as a reminder that executive mercy is not a parallel or superior process, but a constitutionally recognized, supplementary remedy that must respect the values of democratic accountability and procedural fairness.

The Supreme Court's ruling in ***Epuru Sudhakar v. Government of Andhra Pradesh (2006)*** marked a significant jurisprudential shift in the evolution of clemency law in India by affirming the justiciability of executive clemency powers under Articles 72 and 161. For the first time in explicit terms, the Court clarified that although the power to grant pardons, reprieves, respites, or remissions is constitutionally vested in the President and the Governors, its exercise is not immune from judicial scrutiny when it violates constitutional principles. This decision advanced the constitutional doctrine that no authority, including the highest constitutional functionaries, can act beyond the bounds of the Constitution, especially where fundamental rights such as Article 14 (equality before the law) are at stake. The Court held that judicial review of clemency decisions, though narrow in scope, is permissible where there is manifest arbitrariness, discrimination, irrelevant considerations, non-application of mind, mala fide intention, or extraneous political influence. By invoking the doctrine of *Wednesbury unreasonableness*—a principle derived from English administrative law—the Court laid down that if a clemency decision is so unreasonable that no reasonable authority would have taken it, the judiciary is constitutionally empowered to invalidate it. Furthermore, the application of Article 14 in this context ensured that clemency powers, though discretionary, must still be exercised fairly, uniformly, and non-arbitrarily, maintaining consistency in constitutional governance. The facts of the case revolved around the remission of sentence granted to a convict with strong political connections, raising legitimate concerns about political favoritism and subversion of judicial decisions. The Supreme Court was categorical in asserting that clemency cannot serve as a mechanism to bypass judicial finality or reward political allegiance. The decision underscored the Court's vigilance in preserving the separation of powers, warning that excessive or unchecked use of pardon powers by the executive could undermine the authority of the judiciary, distort the principles of natural justice, and erode public confidence in the rule of law. The significance of *Epuru Sudhakar* lies in its robust reaffirmation of the Constitution's supremacy over executive discretion. While upholding the need for clemency as a compassionate tool in exceptional circumstances, the Court rightly positioned it within a

constitutional matrix of accountability and transparency. It transformed clemency from being perceived as a non-reviewable act of sovereign grace to a reviewable public function bound by constitutional reason and fairness. This case thus became a crucial precedent for later decisions—such as *Shatrughan Chauhan v. Union of India*—where the Court continued to demand procedural propriety and moral integrity in the exercise of mercy powers. In essence, *Epuru Sudhakar* set a clear constitutional standard: while the executive retains the power to grant mercy, it cannot do so in a manner that violates the basic structure principles of justice, equality, and reasonableness. This judgment effectively closed the door on arbitrary political clemency, reinforcing that even mercy must flow from constitutional values—not from favoritism, caprice, or convenience.

The decision in ***Shatrughan Chauhan v. Union of India (2014)*** stands as a watershed moment in the evolution of clemency jurisprudence in India, firmly entrenching judicial review as a constitutional check on the executive's exercise of mercy powers. Building upon the principles articulated in *Maru Ram*, *Kehar Singh*, and *Epuru Sudhakar*, the Supreme Court in this case significantly expanded the scope of review by focusing not on the merits of the conviction but on the procedure and delays involved in the execution of mercy petitions. The Court commuted the death sentences of 15 convicts, holding that the inordinate and unexplained delays—in some cases extending beyond 10 to 12 years—amounted to cruel, inhuman, and degrading treatment, thereby violating Article 21 of the Constitution. Crucially, the Court held that timeliness and procedural fairness are not auxiliary but integral components of the clemency process. A mercy petition, especially when filed by a death row convict, is not merely a plea for forgiveness but a constitutionally protected remedy that must be treated with urgency, sensitivity, and humanity. The mental torment and psychological distress inflicted on prisoners waiting indefinitely under the shadow of death, often in solitary confinement, were recognized as forms of punishment more severe than the original sentence itself. This recognition marked a vital shift in the Indian judiciary's understanding of punishment—from a focus solely on retributive justice to one that includes the mental and emotional consequences of executive delay. The judgment also clarified that delays alone—even when not accompanied by mala fide intent—can justify commutation from death to life imprisonment, regardless of the original gravity of the offence. This principle is of immense constitutional significance. It affirms that the administrative failure of the state to act within a reasonable time frame cannot be allowed to result in disproportionate or excessive punishment. The Court's insistence that mercy petitions must be disposed of in a fair, consistent, and time-bound manner represents an effort to constitutionalize the clemency process, aligning it with fundamental rights and international human rights norms, including Article 7 of the ICCPR, which prohibits torture and cruel or degrading treatment. Moreover, in *Shatrughan Chauhan*, the Court issued binding procedural guidelines, requiring that death row inmates be informed of the rejection of their mercy petitions in writing, be given reasonable time to mentally prepare, access legal aid, and interact with family prior to execution. These guidelines not only humanize the final stages of the criminal justice process but also embed accountability into an area of law traditionally governed by executive discretion. Collectively, this and the preceding judgments—*Maru Ram*, *Kehar Singh*, and *Epuru Sudhakar*—reiterate that while executive clemency is a vital constitutional tool, it cannot operate above or outside the framework of constitutional principles. The judiciary's proactive stance ensures that mercy is not misused as a shield for political expediency or administrative negligence, but remains a principled instrument of justice. These rulings uphold the democratic ethos that all power must be exercised within the bounds of legality, fundamental rights, and human dignity, thereby preserving the integrity of both individual rights and institutional accountability.

5. Delay and Human Rights Concerns

The prolonged and often unjustified delay in the disposal of mercy petitions under Articles 72

and 161 of the Indian Constitution has transformed what was once a solemn and compassionate constitutional safeguard into a deeply troubling constitutional and human rights issue. This delay, particularly in the context of capital punishment, raises profound concerns regarding the protection and realization of Article 21, which guarantees the right to life and personal liberty. Over time, the Supreme Court of India has expansively interpreted this right to encompass not only protection against arbitrary deprivation of life but also the right to fair, humane, and timely procedural safeguards—especially where the irreversible nature of the death penalty is involved. In this evolved constitutional context, mercy petition delays are not procedural inconveniences but violations that inflict disproportionate psychological and emotional suffering on the convict. Such delays often span several years, subjecting prisoners to extended periods of mental agony, hopelessness, and fear, amounting to an additional, uncodified form of punishment that far exceeds the intent of the judicial sentence.

The landmark judgment of *Shatrughan Chauhan v. Union of India* (2014) firmly established the jurisprudence that unexplained, excessive delays in deciding mercy petitions constitute cruel, inhuman, and degrading treatment, thereby infringing upon the foundational rights protected by Article 21. The Court held that once the judicial process ends and a mercy petition is filed, any delay on the part of the executive must be viewed through a humanitarian and constitutional lens. The judgment highlighted that the mental trauma experienced by death row convicts awaiting the finality of their fate can cause irreparable harm—transforming the penal system into a machinery of torture. Critically, the Court emphasized that such delay alone, irrespective of the nature of the original offence or the legality of the conviction, is a valid constitutional ground for commutation of the death sentence to life imprisonment. This marks a pivotal shift in clemency jurisprudence, acknowledging that mental anguish, not just physical suffering, can be constitutionally impermissible and must be factored into the execution of penal policy. Adding empirical weight to the Court's reasoning, studies and reports from credible sources such as the National Crime Records Bureau (NCRB) and Amnesty International expose the disturbing regularity of such delays. Amnesty's 2021 report underscored that numerous mercy petitions in India remain pending for over 10 to 12 years, with delays stemming from bureaucratic red tape, lack of coordination between ministries, absence of a statutory timeline, and political unwillingness—particularly in high-profile or sensitive cases. These are not isolated administrative lapses; they reveal a deeper malaise—systemic inertia and executive apathy—that allows life-altering decisions to be postponed indefinitely. Meanwhile, prisoners exist in a suspended state, where each day is overshadowed by fear, rumors of execution, and deteriorating mental health. Multiple documented cases reveal that death row prisoners subjected to prolonged uncertainty often suffer from acute psychiatric disorders including schizophrenia, clinical depression, delusional paranoia, and suicidal ideation, reflecting a gross and preventable violation of their dignity.

In response to these concerns, the Supreme Court in *Shatrughan Chauhan* issued clear procedural safeguards intended to humanize the process. These include mandatory communication of clemency decisions to the prisoner, the provision of adequate time before execution to mentally prepare or seek further legal remedies, the right to legal assistance, and the opportunity to meet with family members. These measures are not mere procedural niceties but affirm the fundamental belief that even a person condemned to die must not be stripped of basic human dignity and constitutional protections. They signify a movement away from the harshness of retributive justice toward a reformatory and morally conscious justice system, resonating with international human rights standards such as Article 7 of the International Covenant on Civil and Political Rights (ICCPR). However, despite judicial activism and well-articulated constitutional principles, the executive machinery has often failed to operationalize these safeguards. The continued lack of codified rules, clear deadlines, and a centralized clemency tracking mechanism contributes to the erosion of clemency as a meaningful remedy.

Without systemic reform, the clemency process risks becoming a theatre of cruelty, wherein mercy becomes arbitrary, and delays serve as an unspoken form of psychological punishment. In this scenario, clemency—rather than serving as a compassionate constitutional recourse—mutates into an instrument of institutional violence, cloaked in silence and administrative indifference.

Therefore, the issue of delay in mercy petitions represents not just a challenge to procedural justice but a deep contradiction between the ideals of a humane constitutional democracy and the realities of a lethargic, opaque executive process. It casts a long shadow over the credibility of capital punishment, particularly when justice is not only denied but indefinitely deferred. The Indian judiciary, through landmark rulings, has made commendable strides in establishing the legal framework for humane treatment. Yet, until these principles are internalized and implemented by the executive, and unless the clemency process is restructured with transparency, urgency, and compassion, the promise of Article 21 will remain unfulfilled for the most vulnerable segment of prisoners—those awaiting death not just by hanging, but by the slow erosion of their humanity.

6. Criticism of Executive Clemency Practice

While executive clemency is constitutionally embedded as a vital humanitarian safeguard—intended to prevent miscarriage of justice and to offer relief in exceptional cases—its practice in India has come under intense judicial, academic, and public scrutiny. The very powers that are supposed to uphold mercy, fairness, and constitutional morality are frequently marred by arbitrariness, political manipulation, procedural delays, and a lack of transparency, raising grave concerns about the integrity of this exceptional legal remedy. The criticisms, as elaborated below, illustrate how the absence of accountability and standardization in exercising clemency powers has weakened public confidence in this constitutional institution.

1. Arbitrariness and Opacity in Decision-Making

One of the most troubling aspects of executive clemency is the absence of transparency in how decisions are made. The President under Article 72 and the Governor under Article 161 exercise clemency based on the aid and advice of the Council of Ministers, but are not constitutionally required to record or disclose reasons for their decisions. This non-requirement creates a veil of secrecy that undermines the legitimacy of such life-altering decisions. In *Epuru Sudhakar v. Government of Andhra Pradesh* (2006), the Supreme Court clarified that clemency powers are not immune from judicial review and can be challenged on grounds of arbitrariness, mala fides, or irrelevant considerations. However, despite this precedent, there remains no enforceable obligation for the executive to disclose reasoning or apply consistent standards across cases. This results in a scenario where two convicts with similar backgrounds and offenses may receive entirely different treatment, violating Article 14 (Right to Equality) of the Constitution. The opacity also disables effective public scrutiny and judicial assessment, rendering the process vulnerable to subjective bias and misuse.

2. Political Motivations in Granting or Denying Pardons

Executive clemency, intended as a non-partisan humanitarian relief, has often been weaponized for political advantage, especially in sensitive or high-profile cases. Pardons or remissions have been granted or withheld based not on objective considerations, but on electoral compulsions, caste alignments, religious factors, or political affiliations of the convict. This was particularly evident in cases where remission orders were passed just before elections or in situations involving politically connected individuals, raising legitimate concerns about motivated clemency. Such actions contradict the neutral and apolitical spirit of executive mercy, making it appear as a tool of patronage rather than a safeguard of justice. This undermines both public trust in the fairness of the executive and the moral force of the constitutional framework, especially when decisions are taken under pressure or to appease vote banks rather than uphold the principles of justice and equity.

3. Lack of Standard Guidelines or Time Limits

Another major flaw is the absence of codified procedures or statutory timelines for processing mercy petitions. Unlike judicial procedures, which are bound by the Code of Criminal Procedure and judicial timelines, clemency powers operate in a legal vacuum, giving the executive unfettered discretion. This discretionary nature often results in unreasonable and unpredictable delays, creating a state of limbo for the convict and their families. The landmark judgment in *Shatrughan Chauhan v. Union of India* (2014) recognized that inordinate delay in deciding mercy petitions can amount to cruel, inhuman, and degrading treatment and thus be a ground for commutation of the death sentence under Article 21. Despite such directions, no uniform framework has been implemented. The lack of binding guidelines further means that subjectivity dominates decision-making, with little to no rationale provided for accepting or rejecting clemency pleas. As a result, mercy becomes more of a lottery than a legal entitlement, leaving individuals at the mercy of political will rather than structured compassion.

4. Neglect of Humanitarian Grounds in Some Rejections

Clemency is fundamentally rooted in humanitarian principles—intended to reflect compassion for prisoners who are terminally ill, mentally incapacitated, victims of prolonged incarceration, or demonstrably reformed. However, many rejections of mercy petitions show little regard for these critical considerations. Cases have emerged where convicts suffering from severe mental illness, post-traumatic disorders, or terminal diseases were denied clemency without any explanation or regard for medical and psychological evaluations. This undermines the constitutional mandate of Article 21, which guarantees the right to life with dignity, even for prisoners. Ignoring such human conditions not only breaches international human rights norms (such as the UN Human Rights Committee’s guidelines against inhuman treatment) but also contradicts India’s constitutional commitment to reformative justice. Furthermore, overlooking clear evidence of reform, remorse, or rehabilitation—which should ideally weigh heavily in favor of mercy—reduces the clemency process to a mechanical or politically motivated formality.

5. Delays That Defeat the Purpose of Mercy

The most severe and widely documented criticism concerns delays that often extend to several years—in some cases more than a decade—before a final decision is taken on mercy petitions. Such delays defeat the entire purpose of clemency, which is to offer timely relief from the psychological trauma of impending execution. In *Devender Pal Singh Bhullar v. State of NCT of Delhi* (2013) and *Daya Singh v. Union of India* (1991), the Supreme Court addressed how prolonged incarceration under the shadow of death constitutes mental torture. Data from Amnesty International and the National Crime Records Bureau (NCRB) indicate that multiple death row inmates have had their petitions pending for over 8–12 years, often without updates or reasons for delay. Such neglect not only violates the right to speedy justice but also diminishes any rehabilitative or redemptive possibility for the convict. In practice, these delays render the constitutional provision meaningless, turning mercy into cruelty, and violating both domestic and international human rights standards.

7. Comparative Jurisprudence

Aspect	United States	United Kingdom	European Union (EU)
Legal Basis	Article II, Section 2 of the U.S. Constitution (Presidential clemency); State constitutions (Governor)	Royal Prerogative of Mercy, exercised by the Monarch on advice of Ministers	Varies by country; influenced by European Convention on Human Rights (ECHR) and EU Charter
Authority Exercising Clemency	President (federal crimes), Governors (state crimes)	The Sovereign (King/Queen) on the advice of Secretary of State for Justice	Heads of State/Government (e.g., President or Monarch), but role is symbolic due to abolition of death penalty

Scope of Clemency Powers	Full pardons, commutations, reprieves, amnesties	Limited to pardons and sentence reductions	Largely symbolic; no death penalty to commute; applies only to exceptional cases (e.g., miscarriages of justice)
Transparency and Process	Fairly transparent; federal process includes public petitions, DOJ review; state processes vary	Process not public but accountable through Ministerial responsibility	Varies by country; generally transparent and subject to human rights scrutiny
Judicial Review	Limited judicial review; clemency considered a political question	Courts generally do not intervene; decision seen as executive discretion	Subject to legal and human rights norms; most countries do not allow judicial review unless rights are breached
Use in Capital Punishment	Active in states where death penalty exists (e.g., Texas, Florida); federal executions resumed in 2020	Capital punishment abolished in 1965; clemency applies to other serious crimes	Death penalty abolished in all EU states; clemency not used for capital crimes
Recent Trends	Used sporadically; sometimes politically controversial (e.g., Trump's pardons)	Rarely used; often in humanitarian or historical miscarriage cases	Mostly ceremonial or rare humanitarian cases (e.g., posthumous pardons)
Abolition of Death Penalty	Exists in 24 U.S. states and federal level (as of 2024)	Abolished completely in 1965 (murder); 1998 (all crimes)	Abolished in all EU member states; mandatory for EU membership under Protocol 13 of ECHR
Role of Human Rights Norms	Evolving; subject to criticism from human rights groups over racial bias and arbitrariness	Influenced by ECHR and domestic rights principles	Strong influence of ECHR and EU Charter of Fundamental Rights; clemency rarely contradicts rights norms
Significance Today	Remains a vital yet contentious aspect of criminal justice	Symbolic and rarely invoked but retains historical significance	Symbolic; emphasis is on rehabilitation and rights-compliant justice, not clemency mechanisms

8. Suggestions and Reforms

1. Codified Guidelines for Mercy Petitions

To eliminate arbitrariness and ensure fairness, a formal legal framework should be established that outlines the criteria for granting clemency. These should include:

- Humanitarian grounds (age, gender, terminal illness, disabilities)
- Health conditions (physical and mental illnesses)
- Evidence of rehabilitation (behavioral reform, prison conduct)
- Family circumstances (dependents, single caregivers)
- Codification would bring uniformity across cases and limit political discretion, ensuring that mercy is grounded in justice, not favoritism.

2. Time-Bound Disposal of Mercy Petitions

Delays extending over 5 to 10 years defeat the very purpose of mercy and have been deemed violative of Article 21 (Right to Life and Dignity). A statutory time frame (e.g., 6 months) for processing mercy petitions is essential.

This would:

- Prevent mental agony and psychological trauma.
- Align with the Supreme Court's ruling in *Shatrughan Chauhan v. Union of India* (2014), which held that inordinate delay is a valid ground for commuting death sentences.
- Promote administrative efficiency and humane justice.

3. Transparency and Publication of Reasons

Currently, reasons for granting or rejecting clemency are not made public, leading to opacity and suspicion. Reforms must include:

- Mandatory publication of detailed, reasoned orders, especially in capital cases.
- Right to Information (RTI) compliance for the clemency process.
- Disclosure of committee deliberations, except in cases affecting national security.
- This will foster public trust and institutional integrity in the executive branch.

4. Mandatory Psychiatric Evaluation of Death Row Inmates

Before executing a death sentence, it should be mandatory to assess the mental fitness of the convict. Mental illness or unsoundness of mind must be a ground for automatic commutation of the death penalty.

This reform:

- Aligns with international human rights standards (e.g., UN Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty).
- Recognizes the impact of long incarceration on mental health.
- Reinforces the principle that execution of mentally ill persons is inhumane and unconstitutional.

5. Public Accountability Mechanisms

To prevent misuse or bias in clemency decisions, a multi-tiered advisory process should be introduced:

- Independent Clemency Review Boards including retired judges, human rights experts, and psychologists.
- Periodic audits of mercy decisions by the National Human Rights Commission (NHRC).
- Legislative oversight via reports submitted to Parliamentary Committees or State Legislatures.
- Such mechanisms will ensure that the clemency process remains democratic, humane, and accountable.

9. Conclusion

The constitutional provisions under Articles 72 and 161 empower the President and Governors to grant pardons, reprieves, respites, or remissions of punishment, especially in cases involving the death penalty. These powers are not merely legal privileges but are rooted in constitutional morality, humanitarian compassion, and the recognition of human fallibility within the criminal justice system. Clemency serves as a crucial corrective mechanism when rigid legal procedures or judicial errors could potentially lead to irreversible injustice, particularly in capital punishment cases where the stakes are life and death. However, despite their noble intent, the unchecked, opaque, and delayed exercise of these powers has exposed significant systemic flaws. In several cases, mercy petitions have remained pending for years, sometimes even after all judicial remedies have been exhausted, leading to severe psychological torment, anxiety, and inhumane living conditions for prisoners on death row. The Supreme Court has recognized that such delays violate Article 21, the right to life and dignity, and that arbitrary rejections without reasoned orders further erode constitutional values. Moreover, the absence of codified guidelines, lack of accountability mechanisms, and susceptibility to political influence have made the exercise of clemency inconsistent and, at times, unjust. This undermines public faith in the fairness of the legal process and raises questions about the rule of law and equal protection under the Constitution. To preserve the legitimacy and moral force of these powers, it is essential that the clemency process be institutionalized, made transparent, and subjected to defined timelines and humane considerations—including the mental and physical health of the prisoner, evidence of rehabilitation, and socio-economic circumstances. Internationally, many

democracies have either abolished the death penalty or subjected clemency powers to strict procedural checks, ensuring a balance between state authority and individual rights.

India, too, must adopt a forward-looking approach where mercy is not perceived as an arbitrary favor, but as a constitutionally guided duty—anchored in empathy, justice, and accountability. Such a system would help reconcile the tension between the finality of judicial verdicts and the moral necessity of mercy, particularly in a legal framework that still retains capital punishment. In doing so, the nation can ensure that while the deterrent function of law is maintained, the dignity and sanctity of human life are not compromised due to systemic inertia or executive indifference. Ultimately, reforming the clemency process is not just a matter of legal efficiency—it is a test of our collective commitment to justice, humanity, and the evolving spirit of the Constitution.

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