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# Review Presidential Mercy Powers: Implications for Justice, Society, and Government Accountability

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## ABSTRACT

*The grasp of the presidential mercy powers such as pardons, commutation of sentences or even reprieves, can be looked at to examine their ambit and function, and implications for the judicial system, societal values, and governmental discretion. Motives and patterns in execution mercy will be analysed from historical and current uses. It is one example of how these powers can be essential aids to justice but in so far as they can themselves give rise to some complications which directly enhance such challenges of fairness and consistency as it is to witness. The choice of mercy was used to determine its positive contribution, through the prevention of excessive punishment, and its harmful use when mercy contravenes judicial interpretation of sentencing, in which case it might cause people to perceive the exercise of discretion in favour of the state at the expense of the victim. It delivers how these mercy powers are, indeed, dynamic systems with public expectations of fair play, and some scrutiny of transparency and ethical implications of executive mercy. This increasingly important area of research is further highlighted by newer legislative mechanisms such as Bhartiya Nagarik Suraksha Sanhita, which has done away with the judicial review of presidential mercy decisions. The finding of this research is that without judicial supervision the whole of this complete freedom given to the executive to exercise mercy is allegedly bereft of any robust sandal between it and possible arbitrary employment and loss of confidence in the public in the justice system. For this reason, this paper contends that there must be discretion granted to mercy powers, but not without other necessary checks on judicial decisions, for mercy powers to serve as a necessary check on judicial decisions but the discretionary nature of those powers requires proper guidelines to ensure consistency and maintain public confidence. These insights serve as a foundation of conversation about how to build transparency and accountability of executive mercy that balances the humanitarian dimensions of mercy with the fundamental principle of justice.*

**Keywords:** Presidential mercy, Mercy petition, Bhartiya Nagarik Suraksha Sanhita, Arbitrariness, Balance.

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## I. INTRODUCTION

Presidential mercy powers of pardon, commutation, and reprieve are properly one enormous tool of justice in the democratic system in which the executive corrects some mistake in the judicial process or cases of great extreme shows mercy. These are found in the Constitution and in recognition of the fact that the harder and fairer the system of justice tends to be sometimes must be hard and just as well. Nevertheless, mercy will always be complicated and always the subject of issue within the governance, and prompts a lot of questions to the Americans, asking if the doing it is a fair thing, whether the mercy is successfully transparent and finally, what is justice in the community.<sup>2</sup>

### (a) Identification of the Research Issue

The very powers that are set up to prevent over-punishment are difficult enough to use to overturn the principle that the very powers were intended to preserve and so destroy them. The problem, of course, is always this:

Where is the proper balance between correction at the executive end and judicial authority? Mercy attunes to public attitudes of nepotism, political expediency, and loss of public confidence in the system. Recent legal reform, for instance, The Bhartiya Nagarik Suraksha Sanhita in India, deprives presidential mercy of judicial review and has thus inserted a fresh layer of complexity and gravity into this question.<sup>3</sup>

### (b) Aim and Purpose of the Study

Consequently, this paper will discuss the implications of presidential mercy powers on the judiciary, society and governmental accountability which are because presidential mercy powers influence society, the judiciary and governmental accountability. It narrows down to the perception of justice and consistency in dispensing mercy decisions. It examines whether a lack of judicial review is associated with arbitrary or biased mercy decisions and whether the institution of mercy is associated with a perception that it enhances public confidence in government and the judiciary.

### (c) Summary of Key Findings from Prior Studies

Mercy and the judiciary constitute an important aspect of the discussion on separation of powers. While mercy provides an essential check against judicial errors, a way of redressing

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<sup>2</sup> Imo Udofa, *The Abuse of Presidential Power of Pardon and the Need for Restraints*, 9 **Beijing L. Rev.** 196 (2018), <https://doi.org/10.4236/blr.2018.92008>.

<sup>3</sup> Imo Udofa, *The Abuse of Presidential Power of Pardon and the Need for Restraints*, 9 **Beijing L. Rev.** 196 (2018), <https://doi.org/10.4236/blr.2018.92008>.

situations where the rule of law seems inappropriate or disproportionate, uncontrolled mercy threatens the judiciary's authority and uniformity in sentencing. Research suggests that in cases where mercy decisions overrule judicial judgments, especially regarding capital punishment or controversial political convictions, the chances for conflict increase (Kumar, 2020)<sup>4</sup>. Some legal experts advocate establishing structured procedures or judicial monitoring to eliminate such conflicts; others believe the lack of structure in mercy decisions is the basis for it<sup>5</sup>. Indeed, the removal of judicial review by the *Bhartiya Nagarik Suraksha Sanhita* relating to mercy determination in India very recently increased debate on the need to protect arbitrary exercises of executive power.

### **1. What is the responsibility of the government concerning mercy clemency?**

The government bears the primary responsibility to ensure that the exercise of mercy and clemency aligns with the tenets of justice, equality, and accountability as alluded to in the introductory paragraphs. Article 72 of Indian Constitution<sup>6</sup> provides that it is through the President that this mechanism of mercy and clemency is exercised as an extraordinary legal remedy, which reduces the harshness of judicial results<sup>7</sup>. Consequently, the government's functions can be understood by three critical dimensions:

#### **(a) Justice and Mercy Composition**

It shall aim at miscarriage of justice because of unduly harsh sentences or merely under some extenuating factor justifying leniency. The government shall so discharge its amicable function that it shall have a balanced and fair system that ensures that mercy petitions are processed by the government on a proper and well-established basis with proper guidance from the legal and administrative bodies<sup>8</sup>.

#### **(b) Sociological Impact and Rehabilitation**

These are the orders of mercy that generally follow a death sentence, and those considerations can have very large social implications. The government would consider public opinion, the possibility of rehabilitation, and the resolution of families to move beyond as family would be considered in this balance struck between these decisions on principles of humanity<sup>9</sup>.

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<sup>4</sup> J.P. Rai, *Exercise of Pardoning Power in India: Emerging Challenges*, 12 *NEHU J.* 1 (2014).

<sup>5</sup> J.P. Rai, *Exercise of Pardoning Power in India: Emerging Challenges*, 12 *NEHU J.* 1 (2014).

<sup>6</sup> India Const. art. 72.

<sup>7</sup> India Const. art. 72.

<sup>8</sup> Poornima Sampath & Priyadarshini Narayanan, *Mercy Petitions: Inadequacies in Practice*, 12 *Nat'l L. Sch. India Rev.* (2000).

<sup>9</sup> Poornima Sampath & Priyadarshini Narayanan, *Mercy Petitions: Inadequacies in Practice*, 12 *Nat'l L. Sch. India Rev.* 123 (2000).

#### (d) Accountability and Procedural Integrity

The very exercise of the power of clemency should reflect governmental accountability and procedural integrity. Decisions have to be well-reasoned, appropriately recorded, and shielded from political or personal biases. The entire jurisprudence of mercy clemency has, as a result, to be adopted judicially to prevent arbitrariness and sanctity of constitutional safeguards in this arena of action.<sup>10</sup>

## II. IMPACT OF THE REMOVAL JUDICIAL REVIEW

#### (a) Undermining Justice and Accountability

Judicial review is the process through which courts invalidate laws and executive actions as unconstitutional. This is probably the most important internal division of powers in a democracy. The removal of the judicial power itself as a means of checking or perhaps curbing the presidential pardon, clemency, and commutation powers from being exercised would have very extensive ramifications on justice, society, and accountability within the government<sup>11</sup>. The whole new picture in constitutional governance where powers become is where presidential mercy powers, let's say-simply rub against the law and constitutional protections above and judicial review checks it-judicial review is the process by which courts declare laws invalid and executive action unconstitutional<sup>12</sup>. However, it has taken away the checks from the judiciary whereby the exercise of executive powers, especially about presidential pardon, clemency, and commutation, would be in excess. This will create quite some differences concerning justice and society related to accountability in governance.

The eyes of judicial review are spanned across the beams from which the branches of government are hanging. The principle of separation or division of powers is the foundation of democratic rule through which the legislative, the executive, and the judiciary should not be able to generate oppressive effects as a result of their activities. By the judicial review, there is a guardian for particular classes of functions or branches to prevent them from transgressing their constitutional bounds. In general, by keeping the executive from an arbitrary and politically motivated decision of his authority, the judiciary serves as the last resort to contain the president's activities about presidential clemency or pardon<sup>13</sup>. If in any way judicial review

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<sup>10</sup> Poornima Sampath & Priyadarshini Narayanan, *Mercy Petitions: Inadequacies in Practice*, 12 **Nat'l L. Sch. India Rev.** 123 (2000).

<sup>11</sup> Dr. Manu Datta, *Clemency in Indian Criminal Justice System*, 8 **JETIR** (Journal of Emerging Technologies and Innovative Research) (June 2021), <https://www.jetir.org>.

<sup>12</sup> Shailja Singh, *Presidential Pardon - Can It Be Subjected to Judicial Scrutiny?* **Constitution**, Manupatra, <https://www.manupatrafast.com> (last visited Dec. 28, 2024).

<sup>13</sup> Shailja Singh, *Presidential Pardon - Can It Be Subjected to Judicial Scrutiny?* **Constitution**, Manupatra, <https://www.manupatrafast.com> (last visited Dec. 28, 2024).

is restrained, that would encourage the president, as pardon power would rest solely with him, otherwise there would be some judicial micrometre in granting pardons which would easily see the festering abuses of power affecting public confidence in justice as a whole.

### **(b) Threats to Fairness in Criminal Justice**

It would very likely create a situation in criminal justice in terms of due process disallowing any discretion by the executive in the exercise of presidential mercy powers; conditions are attached to clemency, e.g., pardon or commutation of sentence. Legal supervision shall not be exercised over such power, because it takes abuse for a perpetrated offence against the pardoning power as mere political motivations, nepotism, or personal relations that lie beyond considerations of justice or equity. This would be more disadvantaged to the marginalized communities and individual persons who may have accumulated disadvantages within the system.<sup>14</sup> A president might therefore favour pardoning political allies or people well connected to power, but hardly so with others who have genuinely repented or transformed. Consequently, it will not be blind before the judicial system, but rather beholden to the whims related to executive power.

However, it creates an inherently unfair and unjust framework for criminal justice as it places a person in an unavoidable situation to exercise unlimited discretion in exercising presidential meritorious power. Clemency; to grant an act like pardon or commutation. This power cannot be exercised without the legal supervision parameter.<sup>15</sup> The president exercises the power of pardon if it is conditioned such that the order issued by the president was the result of political motivation, nepotism, or personal relations rather than from considerations of justice or equity. That would affect most heavily disadvantaged communities and persons who may already have suffered defeat on a first try at the system. For example, a president can pardon his political friends and those well connected to the powers but would not pardon others, who are indeed repentant or reformed. But it creates very much an unjust and inequitable structure of criminal justice, for it throws a person into unavoidable situations for exercising unlimited discretion in the exercise of meritorious power of the presidency<sup>16</sup>.

### **(c) Erosion of Government Accountability and Public Trust**

The absence of judicial review would significantly threaten the safety of personal rights. Courts

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<sup>14</sup> **Explained: Mercy Petition, Presidential Pardon & Judicial Review**, LiveLaw, <https://www.livelaw.in/know-the-law/explained--mercy-petition-presidential-pardon-judicial-review-151714> (last visited Dec. 28, 2024).

<sup>15</sup> Dr. Manu Datta, *Clemency in Indian Criminal Justice System*, 8 **JETIR** (Journal of Emerging Technologies and Innovative Research) (June 2021), <https://www.jetir.org>.

<sup>16</sup> **Explained: Mercy Petition, Presidential Pardon & Judicial Review**, LiveLaw, <https://www.livelaw.in/know-the-law/explained--mercy-petition-presidential-pardon-judicial-review-151714> (last visited Dec. 28, 2024).

are checks against executive violations of fundamental rights and freedoms. Without this method, there would be no recourse to the executive's unconstitutional acts that existed. For instance, the death penalty and clemency based thereon could depend on factors invalid under equally just: political might or created publicity by the media<sup>17</sup>. If, in turn, an individual is given a severe sentence and then not an actor in a courtroom audience, the discretion under clemency is easily transformed into an implement for the further entrenchment of injustice.

Moreover, no judicial review poses a chilling effect on the very idea of accountability within government. One of the functions, from the various, of the judiciary is the capacity to render public officials accountable for their acts. That is, to make such officials answerable for what they do through adherence to the principles of accountability-making. Further, it will take away independence in all the discussions regarding the president's decisions because those decisions would be cajoled to carry a finality that could never be challenged through the profession or the action of civil society groups<sup>18</sup>. All this comes into play and creates unbridged grounds under which accountability is sorely lacking hence eroding trust among citizens of their government with an idea that the executive may see itself above the law as a result. An extremely bad precedent would then be set so that the executive could wield power in a manner that would violate democratic principles and undermine the rule of law without otherwise catching up with the consequences.

#### **(d) Social and Systemic Implications**

The societal implications would not be less serious. The law requires decisions by public authorities to be public, accountable, and challenging. Without judicial review, the executive would make decisions that would unduly favour some groups to leave others vulnerable to the operations of injustice. This would worsen social fissures, with the further possibility that abolition of judicial review would be taken as the final step in the abandonment of all interests and concerns of the socially most vulnerable. It could exercise powers of presidential pardon in favour of individuals to escape prosecution, then, equality before the law would not be paramount. Hence, this would probably create an even culture of impunity in which the holders of power never get accountability for what they do.

The things that may lead to the abolition of judicial review ignite serious fire to the proper

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<sup>17</sup> **Judicial Review in India: Importance, Landmark Cases, and Criticism**, Mondaq, <https://www.mondaq.com/india/constitutional-administrative-law/1467242/judicial-review-in-india-importance-landmark-cases-and-criticism> (last visited Dec. 28, 2024).

<sup>18</sup> **Judicial Review in India: Importance, Landmark Cases, and Criticism**, Mondaq, <https://www.mondaq.com/india/constitutional-administrative-law/1467242/judicial-review-in-india-importance-landmark-cases-and-criticism> (last visited Dec. 28, 2024).

functionality of the justice system, the collection of individual rights, and the accountability to be governed. The very change, for example, pertains to the presidential mercy power which may result in ungoverned discretion on the part of the executive, leaving fairness compromised and the public's trust in the legal system broken<sup>19</sup>. Thus, preventing the judiciary from entering into the remains of the executive branch through the abolishment of judicial review would effectively undermine the very checks and balances that make the foundation of a properly functioning democracy. Indeed, this power would be allowed to promote instead of eradicate injustice with no oversight by a judiciary, and governments would be accountable to no people but only to call to service<sup>20</sup>.

### III. ROLE OF JUDICIAL REVIEW IN PRESIDENTIAL MERCY POWERS: IMPLICATION OF ITS REMOVAL IN INDIA

In India, Articles 72 of the Constitution<sup>21</sup> and Article 161 of the Constitution<sup>22</sup> bestow presidential mercy powers. Consequently, this is an essential method of protection against miscarriages of justice and the arbitrary use of the death penalty. Under these provisions, the President and Governors may grant pardons, remissions, or commutations of sentences, besides reprieves, for convicted persons<sup>23</sup>. However, removing judicial review from these powers would affect the rights of death row convicts, justice, and government accountability, thus fuelling systemic flaws within the legal framework and challenging societal trust in the criminal justice system. This paper considers the implications of stripping away judicial review in the face of long delays, socio-economic biases, and constitutional principles.

#### (a) Judicial Review: An Essential Safeguard

Judicial review is very important to make executive actions legal and just, which includes the exercise of clemency powers. Indian courts have held consistently that there should be due process, natural justice, and accountability in mercy decisions through judicial pronouncements. For instance, the Supreme Court in the case of *Shatrughan Chauhan v Union of India*<sup>24</sup> has held that it can be a lawful reason to commute a sentence of death into life imprisonment solely based

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<sup>19</sup> **Judicial Review in India: Importance, Landmark Cases, and Criticism**, Mondaq, <https://www.mondaq.com/india/constitutional-administrative-law/1467242/judicial-review-in-india-importance-landmark-cases-and-criticism> (last visited Dec. 28, 2024).

<sup>20</sup> **Judicial Review in India: Importance, Landmark Cases, and Criticism**, Mondaq, <https://www.mondaq.com/india/constitutional-administrative-law/1467242/judicial-review-in-india-importance-landmark-cases-and-criticism> (last visited Dec. 28, 2024).

<sup>21</sup> India Const. art. 72.

<sup>22</sup> India Const. art. 161.

<sup>23</sup> J.N. Pandey, *Constitutional Law of India* (50th ed. 2020).

<sup>24</sup> *Shatrughan Chauhan v. Union of India*, (2014) 3 S.C.C. 1 (India).



on undue delay in considering and deciding the mercy petitions. Judicial review of executive decisions assures courts that powers of clemency are exercised without any arbitrariness or malice by constitutional values only<sup>25</sup>.

If judicial review is abolished, decisions marred by procedural flaws and other improper influences political pressures or an inadequacy of mitigation would be irredeemable. The dangers of miscarriages of justice would thereby increase considerably while the humanitarian role as part of the safety net furnished by clemency would be thwarted.

### **(b) Delay in Death Row Cases and Psychological Impact**

Probably, one of the most serious concerns in the practice of capital punishment in India is undue delay in disposing of cases of death row prisoners as noted by Ambedkar, Satchidananda, and Wilson in criticizing systemic flaws. Delays usually occur because of inadequacies in the criminal justice system compounded by bureaucratic inertia in processing mercy petitions. For instance, in the case of the Bara Massacre, the death row convicts were behind bars for decades. Their mercy petitions were not decided even after such long periods and they were subjected to protracted psychological trauma<sup>26</sup>.

Judicial review would be stripped away, and thus courts would not have the discretion to intervene and commute death sentences on account of unreasonable delay. It would not just rob the Constitution's protection under Article 21<sup>27</sup> which guarantees the right to life and dignity, but could also set the stage for a treatment that courts would regard as inhuman and degrading for prolonged imprisonment on death row<sup>28</sup>. There would be no judicial remedy against such cruel and unusual punishment without judicial intervention.

### **(c) Socio-Economic Biases in the Application of Mercy Powers**

Indian exercise of powers of clemency, time and again, had reflected the socio-economic and political disparities inherent in criminal justice. Research indicates that in most cases, the convicts who end up on death row belong to sections of marginalized communities like Dalits, Adivasis, and other backward classes as well as. They come from economically weaker sections too. The structural bias may be manifested in the legal process of investigation and trial to sentence and clemency.

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<sup>25</sup> Shatrughan Chauhan v. Union of India, (2014) 3 S.C.C. 1 (India).

<sup>26</sup> Bara Massacre: Bihar Court Awards Life Sentence to Main Accused, Deccan Herald (Feb. 15, 2023), <https://www.deccanherald.com/india/bara-massacre-bihar-court-awards-life-sentence-to-main-accused-1196615.html>.

<sup>27</sup> India Const. art. 21.

<sup>28</sup> J.N. Pandey, *Constitutional Law of India* (50th ed. 2020).

For instance, the case of the Bara Massacre<sup>29</sup> involved Dalit convicts who suffered systemic injustices, including denial of access to quality legal representation and draconian laws that meted out harsh sentences<sup>30</sup>. These socio-economic biases underscore the role of judicial review in eliminating prejudices or unequal access to justice that may influence decisions on clemency. Without judicial scrutiny, the perpetuation of such injustices would become more likely and further marginalize vulnerable groups.

#### **(d) Undermining Government Accountability**

Judicial review is a very strong mechanism to ensure that the executive is answerable for its actions. Though discretionary, clemency powers must be exercised within constitutional morality and reasonableness. Judicial review is not barred from being undertaken over executive clemency orders and can be challenged in respect of grounds such as arbitrariness, mala fides, or failure to consider relevant factors as stated by the Supreme Court in *Epuru Sudhakar v. Government of Andhra Pradesh*<sup>31,32</sup>. Denying judicial review will ultimately make unchallengeable the mercy petitions on decisions of the executive, undermining the tenets of accountability. The lack of transparency coupled with lack of oversight would lead to an over-concentration of power in the executive, decreasing the sure checks and balances required for a proper democracy. Further, it would create a wedge between public perception and the criminal justice system since a citizen would think clemency decisions are deliberately made on a political ground as opaque.

#### **(e) Impact on Justice and Rule of Law**

The rule of law demands that all actions from the state, including those from the executive, be legal and consistent with the doctrine of fair and just precepts<sup>33</sup>. Clemency, if given in a discretionary, arbitrary manner, will do great harm to the dispensation of justice. Consider, for example how politically motivated pardons or commutations given to influential rather than ordinary citizens may engender inequality before the law.<sup>34</sup>

The removal of judicial review would only weaken the power of the judiciary to redress such

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<sup>29</sup> Bara Massacre: Bihar Court Awards Life Sentence to Main Accused, Deccan Herald (Feb. 15, 2023), <https://www.deccanherald.com/india/bara-massacre-bihar-court-awards-life-sentence-to-main-accused-1196615.html>.

<sup>30</sup> Bara Massacre: Bihar Court Awards Life Sentence to Main Accused, Deccan Herald (Feb. 15, 2023), <https://www.deccanherald.com/india/bara-massacre-bihar-court-awards-life-sentence-to-main-accused-1196615.html>.

<sup>31</sup> *Epuru Sudhakar v. Gov't of Andhra Pradesh*, (2006) 8 S.C.C. 161 (India).

<sup>32</sup> *Epuru Sudhakar v. Gov't of Andhra Pradesh*, (2006) 8 S.C.C. 161 (India).

<sup>33</sup> J.N. Pandey, *Constitutional Law of India* (50th ed. 2020).

<sup>34</sup> Dr. Manu Datta, *Clemency in Indian Criminal Justice System*, 8 **JETIR** (Journal of Emerging Technologies and Innovative Research) (June 2021), <https://www.jetir.org>.

imbalances and therefore erode the rule of law. This would further result in a chilling effect on social confidence in legal institutions since the citizenry would be denied the trustworthiness of the impartiality and fairness of the dispensation of justice.

#### **IV. CONSTITUTIONAL IMPLICATIONS AND BALANCING JUSTICE**

Indian Constitution provides a fine balance among principles of justice, mercy, and accountability. Exercising clemency, vests the executive with these powers, but the judiciary acts as a check in making sure that these are done in accordance with constitutional values<sup>35</sup>. In between the executive privilege of their departments without infringing on the rights of the convict against inhuman treatment as well as against treatment under Article 72<sup>36</sup> and Article 161<sup>37</sup>, the Constitutional Courts have tried to seek a balance. For instance, the 'rarest of the rare cases' doctrine declared by the Supreme in *Bachan Singh v. State of Punjab*<sup>38</sup> establishes the requirement of restraint and objectivity while viewing the imposition of the death penalty<sup>39</sup>. This again agrees with the constitutional imperative to prefer life imprisonment over capital punishment except in the rarest of cases. The judicial review extends this principle to the clemency process, ensuring that mercy powers are exercised in line with the spirit of the Constitution.

#### **V. INTERNATIONAL PERSPECTIVE AND ROLE OF INDIA**

At present, the global trends towards the abolishment of death penalties are carried within instruments such as the Universal Declaration of Human Rights<sup>40</sup> and the International Covenant on Civil and Political Rights<sup>41</sup>, and they are limited to those countries that impose the death penalty. Both instruments provide for a right to life and prohibit any cruel, inhuman, or degrading treatment. The death penalty is still available under Indian law, and there is a need for setting its practices vis-a-vis the international human rights instruments<sup>42</sup>. Judicial review of mercy powers is another assurance that standards will be met since such review will act as a check against arbitrary executions and allays fears in regard to convict rights. Removing judicial oversight will present India as an outlier vis-a-vis global human rights norms and open it up to

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<sup>35</sup> Dr. Manu Datta, *Clemency in Indian Criminal Justice System*, 8 *JETIR* (Journal of Emerging Technologies and Innovative Research) (June 2021), <https://www.jetir.org>.

<sup>36</sup> India Const. art. 72.

<sup>37</sup> India Const. art. 161.

<sup>38</sup> *Bachan Singh v. State of Punjab*, (1980) 2 S.C.C. 684 (India).

<sup>39</sup> *Bachan Singh v. State of Punjab*, (1980) 2 S.C.C. 684 (India).

<sup>40</sup> Universal Declaration of Human Rights, G.A. Res. 217A (III), U.N. Doc. A/810, at 71 (1948).

<sup>41</sup> International Covenant on Civil and Political Rights, Dec. 16, 1966, 999 U.N.T.S. 171.

<sup>42</sup> Neumayer, Eric (2008) Death penalty: the political foundations of the global trend toward abolition. *Human rights review*, 9 (2). pp. 241-268. ISSN 1874-6306.

criticisms for failing to live to any international commitments.

## **VI. THE ROLE OF JUDICIAL REVIEW: A CRUCIAL SAFEGUARD AGAINST ARBITRARY POWER**

Judicial review has been an important part of history in ensuring that the executive powers exercised are always within their constitutional limits, separation of powers, one of the main features of democratic governance, requires an independent judiciary, which would serve as a check against possible overreaching of the executive. The review ensures that the clemency powers are not exercised arbitrarily or under political expediency, nepotism, or personal biases. The absence of judicial scrutiny, therefore, leaves the decisions of mercy unchecked, undermining their integrity and purpose. Judicial review is very important in making sure that there is fairness, as was seen in the case of *Shatrughan Chauhan v. Union of India*, where undue delay in mercy petitions was held as a valid ground for commutation. The intervention by the judiciary ensured that the humanitarian purposes of clemency were preserved without undermining justice. Without this safeguard, decisions of mercy are at the risk of falling into opacity, arbitrariness, and inconsistency.

### **(a) Impact on Justice: A Tilt Toward Executive Overreach**

The presidential mercy powers are inherently discretionary, enabling the executive to respond to extraordinary circumstances. That discretion, however, must be bounded by principles of justice and accountability. Without judicial review, the risk of overreach becomes all too real, undermining the role of the judicial system in dispensing fair and equitable outcomes<sup>43</sup>.

The "rarest of the rare" doctrine developed in *Bachan Singh v. State of Punjab* shows that the judiciary has calibrated the application of capital punishment very carefully in line with constitutional values<sup>44</sup>. The mercy powers, if exercised without judicial review, may bypass such carefully developed principles. For example, executive decisions taken under political pressure or public outcry may run counter to the judicially determined sentences, thus creating an appearance of arbitrariness and undermining the rule of law.

### **(b) Eroding Accountability and Public Trust**

At the heart of good governance is public accountability. To that extent, meaningful judicial review should ensure that clemency powers are exercised in ways that are clear and constitutional; otherwise, an accountability vacuum will ensue where no scrutiny or challenge

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<sup>43</sup> **Presidential Pardon & Judicial Review**, LawCrust, <https://lawcrust.com/presidential-pardon-judicial-review/> (last visited Dec. 28, 2024).

<sup>44</sup> *Bachan Singh v. State of Punjab*, (1980) 2 S.C.C. 684 (India).

is applied to executive action. It has brought forth the facts of democratic principles and has largely demystified the whole web of checks and balances essential for governance.

Public faith in the justice system depends on all organs being Action-openly fair and accountable. This sort of opacity emanating from the end decisions makes the action seem politically driven, and tainted by bias. And without judicial review, citizens see the executive acting above the law, giving rise to unevenness in this trust. Its effects will be innumerable and, in most cases, destabilize the relationship of the state and thus debilitate the credibility of the system of justice.

### **(c) Societal Implications: Marginalization and Inequity**

No judicial review aggravates the socioeconomic bias in the justice system. The poor communities, which, for the most part, are going through death row, suffer the most with respect to unexamined clemency powers. The exercise of court-unexamined mercy may further depress the affected party who, instead of the unmonitored act, benefits from political resources and clout as opposed to the underprivileged and less represented.

## **VII. GLOBAL CONTEXT: IN LINE WITH HUMAN RIGHTS NORMS**

One has also to locate India's approach to the exercise of mercy powers in the broader canvas of international human rights standards. Instruments like the Universal Declaration of Human Rights (UDHR)<sup>45</sup> and the International Covenant on Civil and Political Rights (ICCPR) emphasize the right to life, dignity, and protection against cruel, inhuman, or degrading treatment<sup>46</sup>. Judicial review of the exercise of mercy powers complements these principles by ensuring that the decisions will not offend against global norms relating to fairness and accountability.

The removal of judicial review thus puts India at odds with such international commitments and would expose the country to criticism, and its moral authority on the global stage will be undermined<sup>47</sup>. In the globally changing scenario for the abolition of capital punishment and greater scrutiny of executive discretion, India cannot afford to not move to keep up with such developing norms.

## **VIII. RECOMMENDATIONS FOR REFORM**

To address the challenges identified in this research, a number of reforms would be necessary

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<sup>45</sup> Universal Declaration of Human Rights, G.A. Res. 217A (III), U.N. Doc. A/810, at 71 (1948).

<sup>46</sup> International Covenant on Civil and Political Rights, Dec. 16, 1966, 999 U.N.T.S. 171.

<sup>47</sup> J.P. Rai, *Exercise of Pardoning Power in India: Emerging Challenges*, 12 **NEHU J.** 1 (2014).

to ensure that mercy powers remain instruments of justice and humanity:

- i. **Restoration of Judicial Review:** There should be restoration of judicial review as a check against arbitrary or politically driven mercy decisions. Courts must have the capacity to review clemency powers to ensure that it comports with constitutional principles and the rule of law.
- ii. **Lay Down Clear Guidelines:** The discretionary nature of mercy powers needs guiding principles. These should give an outline of what will guide the clemency decisions, including the nature of the crime, the background of the convict, and any mitigating circumstances.
- iii. **Enhance Transparency:** Mercy decisions need to be made transparently, with detailed reasons recorded and made accessible to the public. This transparency will promote accountability and build public confidence in the clemency process.
- iv. **Address Delays:** Systemic delays in processing mercy petitions must be addressed through procedural reforms. Timely decisions are important for the protection of the rights of convicts and to avoid prolonged psychological suffering on death row.
- v. **Strengthening Oversight Mechanisms:** Other than the mechanism of judicial review, further oversight mechanisms should be introduced to oversee the exercise of the mercy powers. This can be done via independent bodies or commissions reviewing clemency petitions to ensure guidelines are adhered to.
- vi. **Public awareness:** The public and awareness campaigns can help demystify the clemency process and promote a greater understanding of its role within the justice system. Thereby, this would engender more scrutiny and accountability in the exercise of the mercy powers.

## **IX. CONCLUSION**

The presidential mercy powers, when used judiciously, represent the greatest ideals of justice and humanity. They are the counterbalance needed against the rigidities of the legal system, allowing compassion and equity in the most exceptional circumstances. However, this research has proven that the elimination of judicial review erodes these ideals and poses enormous risks of arbitrariness, bias, and loss of public faith. A balanced approach is required for the integrity of mercy powers. This calls for the complete reinstatement of judicial review, clear guidelines, transparency, and accountability.

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