A CRITICAL ANALYSIS OF INDIA'S EVOLVING MERCY PETITION FRAMEWORK: LAW, PROCESS, AND PRECEDENT

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ABSTRACT

The topic for my article is the analysis of the new rules regarding mercy petitions while highlighting both the procedural advancements and persisting flaws in the new framework. Historically, the provisions for seeking mercy in cases of capital punishment were enshrined under Articles 72 and 161 of the Constitution, granting discretionary powers to the President and Governors. However, the absence of procedural clarity led to inconsistencies, delays, and scope for arbitrary executive discretion. The recent codification under BNSS seeks to address these issues by formalising time-bound procedures and defining a hierarchical structure for filing and processing mercy petitions. Through a comparative analysis of the previous constitutional framework and the new statutory provisions, the paper highlights significant procedural advancements, such as fixed timelines, obligatory sequential processing from Governor to President, and mechanisms for handling multiple convicts in collective death sentence cases. It also draws upon landmark judicial pronouncements, including Maru Ram v. Union of India, Shatrughan Chauhan v. Union of India, and the Nirbhaya case, to critique the persisting ambiguities and constitutional tensions inherent in the new legal structure. Despite its improvements, the paper argues that the new framework remains flawed in key areas. It leaves gaps in convict communication, lacks strict timelines for critical executive actions, and preserves wide, potentially arbitrary discretion for the President without explicit reference to binding judicial principles. The finality clause in Sub-section 7 undermines constitutional checks by foreclosing judicial review of executive decisions, contrary to established constitutional jurisprudence. The paper concludes by recommending a more convict-centred, constitutionally consistent approach that aligns statutory procedures with fundamental rights under Article 21 and integrates safeguards from judicial interpretations. It calls for precise

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legislative drafting to eliminate ambiguities and ensure both fairness and efficiency in the exercise of mercy powers.

Keywords: Mercy Petition, Article 21, Fundamental Rights.

INTRODUCTION

The concept of mercy petition is practised in most nations such as the United States of America, the United Kingdom, Canada, and India. It is a request for mercy, commonly against capital punishment or the death penalty, that can be made by the convict or his family members. In India, the mercy petition is submitted to either the President of India (under Article 72) or the Governor of a State (under Article 161) only when the convict has exhausted all his other legal remedies, like appeals and judicial review. As per the judicial interpretations, it is the Ministry of Home Affairs that first considers and reviews the mercy petition based on legal and humanitarian aspects, before advising the President or Governor to either grant it, reduce or cancel the sentence, or reject the plea, upholding the original punishment.

In India, the Mercy petition is considered a constitutional right as it is governed by constitutional articles and judicial interpretation, but was never explicitly included in the Criminal Procedure Code (CrPC), 1973. However, in 2023, a new codified criminal procedural law was introduced, known as Bharatiya Nagarik Suraksha (BNSS), which formally codified the process of filing mercy petitions within the statutory law. This means that while the right to file a mercy petition always existed in the constitution, its procedure has now become more structured and accessible with its introduction in criminal procedural law under BNSS. While highlighting both the procedural advancements and persisting flaws in the new framework, this paper aims to explore the new rules regarding mercy petitions.

Beyond its legal framework, the mercy petition process serves a deeper purpose in balancing justice with humanitarian considerations. Since the death penalty is awarded only in the rarest of rare cases, making it an exception rather than the norm, the mercy petition was introduced as a vital safeguard to uphold the constitutional guarantee of the right to life under Article 21. Moreover, as a last option for those seeking relief from severe fines, the mercy petition process is an important safeguard against any mistakes in judgment or excessively harsh sanctions.

PREVIOUS LEGAL FRAMEWORK GOVERNING MERCY PETITIONS IN INDIA

Article 72 (President's power) and Article 161 (Governor's power) of the Constitution, although simple to read and understand, are vaguely written. The plain reading of these articles suggests that the president and the governor of a state have the power to grant pardons, reprieves, respites, or remissions of punishment or to suspend, remit, or commute the sentence of any person punished with a death sentence but fail to provide the necessary details for their implementation, giving rise to procedural inconsistencies.

THE NEW CODIFIED RULES REGARDING MERCY PETITIONS

The implementation of Bhartiya Nagarik Suraksha Sanhita in 2023 introduced the Mercy Petition under Section 472, establishing a clear legal framework.

Scope and Limitations of Filing a Mercy Petition under Section 472(1): Sub-section 1 of Section 472 allows the convict or his legal heir or any of his relatives to file the mercy petition if he has not, before the President or the Governor of the State within thirty days from when the superintendent has informed him that his special leave appeal to Supreme Court has been dismissed or when the date for his death sentence is confirmed by High court and the period to file for an appeal or a special leave before the Supreme Court has lapsed. This sub-section can be interpreted as both advantageous and disadvantageous for the convict. On one hand, it allows the convict to file for a mercy petition, providing him with a broader scope to seek mercy despite having missed the initial legal remedy available to him. On the other hand, the wording of this section limits the convict's means to gain justice because if the convict is Ill-equipped to file the petition, only his legal heir or his relatives can seek this remedy on his behalf. This gives rise to the problem that the word “relative”, as mentioned in this Section, is generic and not precise on who qualifies as a relative. Moreover, in a situation where the convict has no or is not in touch with any of his living “relatives” or an “heir,” he is automatically and arbitrarily barred from availing of this remedy.

Procedural Hierarchy and Executive Safeguards in Mercy Petitions: Subsection 2 of Section 472 establishes a necessary hierarchy in the procedure for the filling of mercy petition to ensure a systematic structure that facilitates the process while preventing undue strain on the executive by making it mandatory to first approach the governor and only upon the governor's rejection of the petition, submit it to the president within 60 days. Moreover, establishing a 60 period to file the petition with the president will ensure speedy justice. Although this section

creates an orderly framework while preventing delays, nothing in Section 472 provides any guidelines to make sure that the convict is made aware of this rejection by the governor. In a situation where the convict is informed about the rejection of the mercy petition by the Governor after considerable delay, there is no remedy provided or mentioned under this section that he can avail rendering the 60 days an illusion. To avoid this miscarriage of justice in such situations, the Section should be amended to state that the 60-day time frame period to approach the president should start not after the Governor rejects the mercy petition, but rather when this decision is communicated to the convict.

Procedural Safeguards for Mercy Petitions in Collective Death Sentences: Subsection 3 of Section 472 states that the superintendent must ensure that in a case where there are multiple co-convicts, each of them must file their mercy petitions within 60 days of any one convict filing their mercy petition. If no such petition is received from the co-convicts, the superintendent has the discretion to submit the Mercy petition along with the case details to the government on behalf of that co-convict. Previously, since articles 72 and 161 were the only codified laws regarding mercy petitions in India, the vague nature of these statutes has given rise to inconsistencies in practice by allowing the convicts to deliberately frustrate the process through delay tactics. This concern was addressed by the Delhi High Court in the Nirbhaya case, where the court observed that "It cannot be disputed that the convicts have adopted all the delay tactics to frustrate the warrants." Through this remark the court criticized the staggered filing of mercy petitions as a tactic to delay the execution for everyone because according to the Rule 836 and Rule 854 of the Delhi Prison Manual if an appeal or an application is pending before the Supreme Court of one or more convicts in a multi-convict death sentence case, the execution of all co-convicts is delayed during the pending

Although, later the court in the same judgment stated that 'application' in the above-stated rules refers to pending Special Leave Petitions and does not include Mercy Petitions, therefore, the addition of this subclause further strengthens the framework, facilitating timely delivery of justice by authorizing the superintendent to file mercy petitions on behalf of co-convicts after 60 days if they fail to do so, thereby preventing the convicts from using delay tactics. Although one drawback of this section is that it does not put a time constraint on the superintendent to submit the mercy petition to the government, this loophole might lead to unnecessary delays regardless. Superintendent to submit the mercy petition to the government; this loophole might lead to unnecessary delays, regardless.

ROLE OF THE CENTRAL AND STATE GOVERNMENTS

Sections 4 and 6 of Section 472 subject the Central government and the State government to certain time frames to ensure that justice is rendered without undue delay. Sub-section 4 states that the Central Government, upon receiving the mercy petition, is authorised to make recommendations to the President based on the records of the case and the comments of the State government on the same. The central government has to make its recommendations to the President within 60 days of receiving the comments of the State Government and records from the Superintendent of the Jail. This sub-section ensures the President is timely provided with guidance and advice before he decides on the mercy petition, ensuring a certain level of consistency and accountability in the decision-making process. It also facilitates the efficient functioning of the central government, minimising the risk of delays. In contrast, this section fails to impose a time limit on the State Government to send its comments to the Central Government, once again increasing the likelihood of a detrimental delay.

Sub-section 5 of Section 472 ensures that within 48 hours of receiving the order of the President on a mercy petition, the Central government should communicate the same to the Home Department of the State Government and the Superintendent of the jail or officer in charge of the jail. This section ensures that the Home Department of the State Government and the Superintendent of the jail or officer in charge of the jail are promptly notified about the President's order, but nowhere in this section does it mention when or how the convict will be informed of this decision. Further, this Section does not establish a time limit within which the execution of the convict should take place if the mercy petition is rejected. A prolonged delay in the convict's execution after the rejection of the mercy plea by the president may contribute to aggravating the convict's suffering and mental stress.

The court in the case of Shatrughan Chauhan & Anr vs Union of India & Ors, stipulates that "a minimum period of 14 days must be stipulated between the receipt of communication of the rejection of the mercy petition and the scheduled date of execution"[1] the judgment does not establish a fixed timeline for carrying out the execution and neither does this Section**.**

To uphold the proper course of justice and to avoid the infringement of convicts' rights under Article 21, the Section could have been drafted more precisely by specifying a time limit for

[1] Shatrughan Chauhan & Anr vs Union of India 2014 (3) SCC 1, [241.7]

the state government to send its comments to the central government, as well as a clear deadline for carrying out the execution.

PRESIDENTIAL DISCRETION IN MERCY PETITIONS

Sub-section 5 of Section 472 gives the President the power to decide and dispose of the mercy petitions. It further puts an obligation on the President to decide on the mercy petitions of multiple convicts in the same case together in the interest of justice. On one hand, the obligation put on the President would ensure consistency and fairness, whereas on the other hand, this obligation would lead to delays in the pronouncement of judgments as the convicts of the same case are not obligated to file their mercy petitions together. While sub-section 3 of Section 472 does provide a time limit of 60 days for the co-convicts to file for the mercy petition the delay of 60 days and the possible further delay by the superintended, as discussed above in filing the mercy petition, is significant enough to cause a substantial delay in the convict's execution.

Another shortcoming of this sub-section is that it merely states that the President has the power to decide and dispose of the mercy petitions. A plain reading of this Subsection interprets as the President having absolute and arbitrary power in deciding on the mercy petitions. Even if this sub-section is read along with sub-section 4, nowhere has it been mentioned that the President is obligated to abide by the recommendations made by the central government. This principle is stipulated and discussed in the judgment of Maru Ram v. Union of India, wherein the court held that "In exercising this power, the Governor or the President must act not on their judgment but by the aid and advice of their council of ministers."[2]

This judgment by the court subjects the President to mandatorily adhere to the recommendations made by the Central Government while deciding Mercy petitions, thereby stipulating a safeguard against the discretionary power provided to the President. However, this requirement is not expressly stated or reflected anywhere under this section, giving rise to the arbitrary use of executive power. This subsection does not set a time frame mandated for the President within which he has to decide on the mercy petition. This absence of a prescribed time frame is explained in the judgment of Shatrughan Chauhan & Anr vs Union Of India & Ors. The judgment states that "Though no time limit can be fixed for the Governor and the President, it is the duty of the executive to expedite the matter at every stage"[3] because "the

[2] Maru Ram v Union of India (1981) 1 SCC 107, [61]
[3] Shatrughan Chauhan & Anr vs Union of India 2014 (3) SCC 1, [47]

power of the executive to grant pardon under Articles 72/161 is a constitutional power and this Court, on numerous occasions, has declined to frame guidelines for the exercise of power under the said Articles for two reasons: firstly, it is a settled proposition that there is always a presumption that the constitutional authority acts with application of mind. Secondly, this Court, over the years, unanimously took the view that considering the nature of power enshrined in Articles 72/161, it is unnecessary to spell out specific guidelines."[4] This judgment therefore entails that no time limit can be fixed for the President's power under Article 72 by specific guidelines, as it is assumed that the president, as a constitutional authority, will act in good faith and with due application of mind. However, this does not empower the executive to unreasonably delay his decision on the mercy petition. In the same judgment of Shatrughan Chauhan, the court held that "Accordingly, we hold that the delay in disposal of the mercy petition is one of the relevant circumstances for commutation of the death sentence"[5], ensuring that the convict's rights under Article 21 are preserved. To establish a comprehensive statute governing the laws for mercy petitions, the legislature should incorporate these judicial judgments and be more precise in drafting them.

FINALITY OF THE PRESIDENT'S DECISION

Subsection 7 of Section 472 states that the decision made by the President or Governor under Article 72 or 161 of the Constitution is final, providing no remedy against their decision and ensuring that no court can question how it was arrived at. Notably, this section does not allow for any appeal against the decision of the President or of the Governor granting the executive unchecked power to make arbitrary decisions. This Section blatantly goes against the principal judgment laid down in Maru Ram v. Union of India. The judgment stated that: "*Considerations for the exercise of power under Articles 72/161 may be myriad and their occasions protean, and are left to the appropriate Government, but no consideration nor occasion can be wholly irrelevant, irrational, discriminatory or mala fide. Only in these rare cases will the court examine the exercise."*[6]

This means that although the President or Governor enjoys broad discretionary powers under Articles 72 and 161, their decisions are not entirely exempt from judicial review. The Court emphasised that only if a decision is taken arbitrarily, with mala fide intent, or based on

[4] Shatrughan Chauhan & Anr vs Union of India 2014 (3) SCC 1, [20]
[5] Shatrughan Chauhan & Anr vs Union of India 2014 (3) SCC 1, [147]
[6] Maru Ram v Union of India (1981) 1 SCC 107, [72(9)]

irrelevant or discriminatory grounds, will it be subjected to judicial scrutiny. Therefore, Subsection 7 of Section 472 undermines the constitutional safeguards established by the judgment of Maru Ram v. Union of India, going against the principle of checks and balances by giving the executive unwarranted power to make decisions.

CONCLUSION

The introduction of the new codified provisions regarding mercy petitions under Section 472 of the Bharatiya Nagarik Suraksha Sanhita (BNSS) seeks to ensure procedural efficiency and clarity. Although this section has ensured the speedy delivery of justice to death row convicts by reducing unnecessary delays and establishing multiple time limits to be followed, it still fails to be robust in ensuring fair and transparent justice.

To formulate a comprehensive guideline, the statutory provisions should be refined and read more intricately to prevent any unnecessary delays leading up to the convict's execution. It should be more victim-centred by allowing his friends or other people known to him to gain justice on his behalf, and allow for certain remedies against the executive’s shortcomings. Further, it should refrain from giving any authority unchecked, arbitrary power. To accomplish this, the statutory provision should be read by the legal principles and precedents set by the judiciary in various case laws.