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A CONSTITUTIONAL STATUS OF PARDONING POWER OF THE PRESIDENT

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RESEARCH ARTICLE

**ABSTRACT**

Earlier of the Indian Constitution, the law of pardon in British India was the same as in England because sovereign of England was the sovereign of India. Section 295 of the Government of Indian Act 1935 had implies that the Governor General in power to suspend, resist or commute sentences of death. A President is empowered with the power to pardon under Article 72 of the Indian Constitution.

The power of the President to grant pardon extends in cases where the punishment or sentence is by a Court Martial. If the word pardon has been used in the proclamation that it is important to prove a person guilty before he can be granted pardon, it is important to prove that a person has participated in a rebellion.

Every civilized country recognizes and has, therefore provided for the pardoning power to be exercised as an act of grace and humanity in proper cases, without such a power of clemency to be exercised by some department or functionary of government, a country would be most imperfect and deficient in its political morality and in that attribute of deity whose judgments are always tampered with mercy

The Persons with Disabilities Act 1995 provides for both preventive and promotional aspects of rehabilitation like education employment and vocational training, job reservation, research and manpower development, creation of barrier-free environment, rehabilitation of person with disability, unemployment allowance for the disabled, special insurance scheme for the disabled employees and establishment of homes for persons with severe disability etc. Govt. doing efforts for guarantee of maintenance of minimum standards of education required for recognition of rehabilitation qualification by universities or institutions in India. It aims to build an environment that offers those equal opportunities, protection of their rights and full participation in society.

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INTRODUCTION

Earlier of the Indian Constitution, the law of pardon in British India was the same as in England because sovereign of England was the sovereign of India. Section 295 of the Government of Indian Act 1935 had implies that the Governor General in power to suspend, resist or commute sentences of death. The power to pardon is one of the powers which have been conferred on the executive. Article 72 and Article 161 explained the power on the President does the same on the Governor. This power has been provided to heads of various nations.

In simple language "Pardon" means to forgive a person for the crime or any offence he or she has done. The word 'pardon' has been defined as an act of grace, proceeding from the power entrusted with the execution of the law, which provides, one may say a lifeline to the individual who is charged or the punished by the law for the crime that he has committed. It affects both the punishment defined or prescribed for the offence and the guilt of the offender. Pardon may help in saving an innocent person from being punished due to doubtful conviction or

misjudgment on the basis of verdicts. it will be better to save at least one innocent person out of hundred guilty. After all laws are made to save the innocents and to punish the guilty.

The philosophy underlying the pardon power is that "every civilized country recognizes and has, therefore provided for the pardoning power to be exercised as an act of grace and humanity in proper cases, without such a power of clemency to be exercised by some department or functionary of government, a country would be most imperfect and deficient in its political morality and in that attribute of deity whose judgments are always tampered with mercy."

The main objective of pardoning power is to correct while judgment. The pardoning power is founded on consideration of public good and is to be implemented on the ground of public welfare, which is the legitimate object of all punishments, will be as well promoted by a suspension as by an execution sentences. The power of absolute pardon may blot out the guilt itself. It will be not worthy unless the court directs to do so. The accused is blessed freely without any conditions.

JUSTIFICATION

The Constitution of India gives sovereign power in the President and governors. A President is empowered with the power to pardon under Article 72 of the Indian Constitution. Article 72 says that the President shall have the power to grant pardons, reprieves, respites or remissions of punishment or to suspend, remit or commute the sentence of any person convicted of any offence.

Doctrine is more quasi-judicial in nature. A quasi-judicial body would impose a duty to act fairly. The principles of natural justice are applied to Art. 72 and Art.161. The power to grant pardon is execute through president. The Supreme Court has held that the constitutional safeguard enshrined in Article 21 extends to the executive disposal of mercy petitions. As a part of the constitutional schedule, Article 72 is subject to the discipline of Article 21. The accused should have a right to fair hearing. The Supreme Court has held in *Harbans Singh v. State of Punjab* that the power of the government is executive in nature and the principles of natural justice cannot be grafted thereon by means of judicial innovations and activism. Since the principles of natural justice have been applied at each stage of the sentencing procedure, it may legitimately be done away with at the executive stage.

Supreme Court has laid down the law relating to pardoning power :-

In *Maru Ram v Union of India* , the Constitutional Bench of Supreme Court said that Article 72 is to be exercised on the advice of the Central Government and not by the President and that the advice of the Government binds the head of the Republic. In *Dhananjay Chatterjee Dhana v State of West Bengal* , the Supreme Court reiterated its earlier stand in *Maru Ram's* case .

in *Ranga Billa* case again called upon to decide the nature of the pardoning power of the President of India under Article 72 of the Constitution. In this case, death sentence of one of the appellants was confirmed by the Supreme Court. His mercy petition was also rejected by the President. Then, the appellant filed a writ petition in the Supreme Court challenging the discretion of the President to grant pardon on the ground that no reasons were given for rejection of his mercy petition. The court dismissed the petition and observed that "pardon" itself signifies that it is entirely a discretionary remedy and grant or rejection of it need not to be reasoned.

Supreme Court again in *Kehar Singh v Union of India*, reiterated its earlier stand that The power exercisable by the President being exclusively of administrative nature, is not justiciable and cannot be claimed as a matter of right.

In *Swaran Singh v State of U.P.*, The Supreme Court interdicted the Governor's order and said that it is true that it has no power to touch the order passed by the Governor under Article 161, but if such power has been exercised arbitrarily, mala fide or in absolute disregard of the "finer cannons of constitutionalism", such order cannot get approval of law and in such cases, "the judicial hand must be stretched to it." In the early case of *K.M. Nanavati v State of Bombay*, Governor granted reprieve under Article 161 which was held unconstitutional as it was in contrast with the Supreme Court rulings under Article 145.

In a landmark judgment *Epuru Sudhakar & Anr vs Govt. Of A.P. &Ors* , the Supreme Court said that "a limited judicial review of exercise of clemency powers is available to the Supreme Court and High Courts". Granting of clemency by the President or Governor can be challenged.

SCOPE OF THE RESEARCH

The broad objective of the research is that a tremendous change may be brought in governance provided that person's are aware of their right to know and they use it properly in them interest.

It is governed by the advice of the Council of Ministers. the Constitution does not provide for any mechanism to question the legality of decisions of President or governors exercising mercy jurisdiction. in Epuru Sudhakar case has given a small window for the pardoning powers of President and governors for the purpose of ruling out any arbitrariness. The power of the President to grant pardon extends in cases where the punishment or sentence is by a Court Martial. If the word pardon has been used in the proclamation that it is important to prove a person guilty before he can be granted pardon, it is important to prove that a person has participated in a rebellion.

METHODOLOGY

The research methods and methodologies proposed to be used for the present research work would be of comprehensive and composite in nature. The research methodology will be a harmonious combination of fundamental, empirical and action research. In this context, this study will be broadly based on library research and empirical field investigation. These research endeavors will focus their attention on the aims and objectives of the research project and will also test the hypotheses, examine key questions and would present the data and the research facts to prepare models for advanced research. While preparing the research methodology and during the development of research tools and techniques, proper and timely assistance, guidance and cooperation of my guide will always be solicited.

Primary data will be collected from the available literature on pardoning power related website, govt. and private organization and the concerned sections of the constitution. Sample survey and field studies will be conducted for obtaining empirical and scientific data for analysis and examination of various hypotheses and key questions. Secondary information will be gathered from the libraries, reports of commission and committees, constitution, political science, administration law. The departmental of the circulars, standing orders and other instructions pertaining to the subject will also be studied and scrutinized with relation to the basic purpose, aims and objectives of the present research project. The internet will be used for obtaining critical information pertaining to the subject of the project.

Authenticate reliable and relevant data available on the internet; its various sites will be suitably utilized for the purpose of this research study. Opinion polls will be held for elaborating the theme of key questions and testing the hypothesis of the study at macro and micro levels. Relevant journals, Magazines and reports will also be studied to understand various facts of the problem pertaining to the subject of the research in question.

LIMITATION OF THE STUDY

Researcher will face various limitations related to time and agencies analysis. It can affect the research outcomes significantly. It is because due to these constrains, researcher will not be able to include more participants and literature to present more reliable and valid research outcomes.

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