



drishti

## Governor's Delay on Mercy Petition

---

 [drishtiias.com/printpdf/governor-s-delay-on-mercy-petition](https://drishtiias.com/printpdf/governor-s-delay-on-mercy-petition)

### Why in News

---

Recently, the **Solicitor General** told the **Supreme Court (SC)** that Tamil Nadu **Governor** will take a decision in the next three or four days on mercy petition of a convict in the 1991 Rajiv Gandhi assassination case.

- The **concept of Mercy Petition is followed in many nations** like the USA, UK, Canada etc. including India.
- In India, the power to grant pardon is entrusted to the President and the Governors of various states under Article 72 and Article 161 of the Constitution. It adds a human touch to the country's judicial process by conferring powers to grant pardon or show Mercy to criminals sentenced to death.

### Key Points

---

- **Background:**
  - A **pardon request moved by the convict in 2015** was not considered by the Governor, however, a SC order on a related petition in September 2018 **clarified that the Governor was “deemed fit” to decide on the pardon.**
  - Thereafter a recommendation to remit his life sentence was advised by the Cabinet under **Article 161.**
  - However, the Governor's decision is still pending.
- **Centre's Stand:**

The pleas for pardon and release should go to the **President** instead of the Governor as the case is being investigated by a central agency.

- **Petitioner's Argument:**

- A convict was **free to choose between the President and the Governor for pardon.**
- Referred to the Constitution Bench's judgment in the *Union of India versus Sriharan 2015*, which said the “**exercise of executive clemency**” was “**vested in the President or the Governor**”.
- Centre's rejection in 2018 of the Tamil Nadu government proposal to remit the sentence of the convicts under **Section 432** of the **Code of Criminal Procedure** (CrPC) did not stop the convicts from separately moving the Governor for pardon under **Article 161**.

**Section 432 of the CrPC:** It lays down that **the appropriate government**, at any time, without conditions or upon any conditions which the person sentenced accepts, **can suspend the execution of his sentence or remit the whole or any part of the punishment to which he has been sentenced.**

- **SC's Observation:**

The SC termed the Governor's delay “**extraordinary**”. It also noted how a decision was **not forthcoming despite the State government's recommendation.**

- It needs to be noted that **the Governor cannot reject the state's recommendation but there is no time prescribed to take a decision.**
- The Governor **had already returned the file to reconsider the government's decision but the government stood by its decision.**

## **Pardoning Power**

- **Pardoning Power of the President in India:**

- **About:**

- Under **Article 72 of the Constitution**, 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 where the sentence is a sentence of death.

- **Limitation:**

- The President **cannot exercise his power of pardon independent of the government.**
    - In several cases, the SC has ruled that the **President has to act on the advice of the Council of Ministers** while deciding mercy pleas. These include *Maru Ram vs Union of India in 1980*, and *Dhananjay Chatterjee vs State of West Bengal in 1994*.

- **Reconsideration:**

- Although the President is bound by the Cabinet's advice, **Article 74 (1) empowers him to return it for reconsideration once.** If the Council of Ministers decides against any change, the **President has no option but to accept it.**

- **Governor's Pardoning Power:**

- Article 161:** The Governor of a State 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 against any law relating to a matter to which the executive power of the State extends.

- **Difference Between Pardoning Powers of President and Governor:**

- The scope of the **pardoning power of the President under Article 72 is wider than the pardoning power of the Governor under Article 161** which differs in the following two ways:

- **Court Martial:** The **power of the President** to grant pardon **extends in cases where the punishment or sentence is by a Court Martial** but Article 161 **does not provide any such power to the Governor.**
    - **Death sentence:** The **President can grant pardon in all cases** where the sentence given is the sentence of death but the **pardoning power of the Governor does not extend to death sentence cases.**

**Source:TH**