



## Mercy Petition

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### Why in News

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The Tihar Jail administration had asked the convicts in the **Nirbhaya case, 2012** to apply for mercy petition before the President within seven days. The order has come after all other legal options have been exhausted by the convicts.

- Even if one of the convicts applies for the mercy plea, it becomes applicable to all.
- For seeking **mercy petition**, the death sentence by a sessions (trial) court must be confirmed by the High Court.

The death sentence convict has an option to appeal to the Supreme Court. If the Supreme Court either refuses to hear the appeal or upholds the death sentence, then the convict or his relative can submit a mercy petition to the **President of India (Articles 72) or the Governor of the State (161)**.

**Session Court:** District court is referred to as sessions court when it exercises its jurisdiction on criminal matters under the Code of Criminal procedure (CrPc).

### Grounds of Appeal

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- In his/her mercy petition, the person concerned is **required to state the grounds** upon which he/she requests for the grant of pardon.
- These grounds may not have any value in the eyes of law for exonerating the accused person from the offence, but they may play an important role in the release of the person by the President.

The grounds, such as the convicted person is the only **bread earner** of the **family or the physical fitness of the convict, his age** or **even the law was quite harsh or the court by chance committed any mistake or error** inadvertently, may be taken into consideration at the time of disposal of the mercy petition.

- Supreme Court in **Kehar Singh v Union of India, 1988** case reiterated its stand and held that the grant of pardon by the President is an act of grace and, therefore, cannot be claimed as a matter of right.

## Need for the Pardoning Power

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- The **philosophy** underlying the pardon power is that “every civilized country recognizes and provides for the pardoning power as an act of grace and humanity in course of law”.
- The pardoning power is founded on the consideration of **public good** and is to be exercised on the grounds of **public welfare**, which is the legitimate objective of all punishments.

## Constitutional Provision

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- **Article 72** provides the pardoning power to the President of India, it says:  
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-
  - in all cases where the punishment or sentence is by a Court-martial;
  - in all cases where the punishment or sentence for an offence against any law relating to a matter to which the executive power of the Union extends;
  - in all cases where the sentence is a sentence of death.
- **Article 161** provides that 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**.
- In **Dhananjay Chatterjee alias Dhana v State of West Bengal, 1994** case the Supreme Court has said that “The power under Articles 72 and 161 of the Constitution can be exercised by the Central and State Governments, not by the President or Governor on their own”.

The advice of the appropriate Government binds the Head of the state.

**Pardon:** The president can totally absolve/acquit the person for the offence and let him go free like a normal citizen.

**Commute:** To reduce the type of punishment into a less harsh one. For example Rigorous imprisonment to simple imprisonment.

**Remission:** To reduce the punishment without changing the nature of the punishment. For example 20 years rigorous imprisonment to 10 years rigorous imprisonment.

**Reprieve:** A delay is allowed in the execution of a sentence, usually a death sentence for a guilty person to prove his innocence.

**Respite:** Reduce the degree of punishment looking at specific grounds like pregnancy, old age etc.

**Note:** A Court-martial is a trial in a military court of a member of the armed forces who are charged with breaking military law.

## Difference between the pardoning power of President and Governor

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- **Death sentence:** President can pardon the death sentence but the Governor has no power to pardon the death sentence.
- **Court-martial:** The President can pardon in case of Court-martial. But the Governor cannot pardon in the court-martial.
- **Jurisdiction:** President exercises his judicial powers for the punishment which is given under the law made by the Union. Whereas the Governor exercises his judicial powers for the punishment which is given under the law made by the State.

## Procedure Involved

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- A convict under the sentence of death is allowed to file a mercy petition within a period of seven days after the date on which the Superintendent of Jail informs him about the dismissal of the appeal or special leave to appeal by the Supreme Court.
- The petitions are to be presented to the President of India. The President office seeks the cabinet advice.
  - The appeal is examined by the **Ministry of Home Affairs** and the Ministry before giving recommendations to the President, takes the view of State concerned.
  - There is no written procedure to deal with mercy petition.
- **Judicial review:** President's pardon/rejection/delay is also subjected to judicial review.
  - However, if a court finds that the process of the decision taken by the President under Article 72 was not arbitrary or unreasonable, the decision then cannot be interfered with.
  - A **curative petition** is the last judicial corrective measure which can be pleaded in any judgment or decision passed by the Supreme Court which is normally decided by Judges in-chamber.

**Curative petition:** The concept of the curative petition was first evolved by the Supreme Court of India in the matter of **Rupa Ashok Hurra vs. Ashok Hurra and Anr. (2002)** where the question was whether an aggrieved person is entitled to any relief against the final judgement/order of the Supreme Court, after the dismissal of a review petition.

**Article 137:** It provides that in the matter of **laws and rules made under Article 145**, the Supreme Court has the power to review any judgement pronounced (or order made) by it. Such a petition needs to be filed within 30 days from the date of judgement or order.

**Source: TH**