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THE EXECUTIVE POWER TO PARDON

ANIKET GUPTA

The ability to pardon is one of President's State Governors' most significant constitutional powers. This paper examines some of problematic issues that this power raises within an effort to go deeper into study of it. paper have been divided into seven Sec. s for convenience. Part II of document discusses history of pardon authority various goals that can be achieved by using it. It also provides background information on power. Sec. I examine way within which Constitution of United States provides for this authority. Sec. AAA emphasizes value of Council of Masters' advice about pardoning authority proposes that President or Governor should not take this advice into consideration. Sec. V examines domains within which executive pardon power may potentially interfere with legislative executive branches of government, contradicting notion of separation of powers. Sec. V makes an effort to determine bounds of discretionary power of pardon. Sec. V highlights significance of reviewing pardoning mechanism. Finally, Sec. V† A provides critique of Mohammad Afzal Guru case within order to discuss authority to pardon within practical setting.

"Man's life within state of nature have been selfish, nasty, brutish, solitary, poor, short," as Hobbes accurately noted. It is evident from this remark that human nature is such that, within absence of any constraints, people are prone to commit crimes. As result, state was established through social contract, various leaders were appointed to enact laws establish social order. authorities established restrained laws provided restrained justice within order to ensure proper tranquil existence. All reported crimes were assessed punished appropriately within hopes that this would serve as deterrent for future crimes that parties involved would reconsider their wrongdoings before reporting them. severity of crime determined extent of punishment or restriction. Certain crimes were dismissed with fine, while others received harsh punishments, some of which went to prisoner's life. death penalty or capital punishment was harshest punishment for most serious offense. punches given were complete final. Over time, it became apparent that certain severe punishments required further consideration before being implemented because human judgment was fallible prone to bias, which could be confirmed by additional research. It is appropriate to cite following:

"I cannot accept your canon that we are to judge Pope King unlike other men, with favourable presumption that they do no wrong. If there is any presumption it is other way, against holders of power, increasing as power increases".¹

Consequently, notion of forgiveness emerged have persisted for very long time. Positive outcomes from power of pardon include rise within human confidence within dignity of society its laws. It have also had negative effects because large number of criminals have persisted within being threat to society after

having been pardoned have not made amends. Debate over necessity of pardoning power have resulted from this. However, number of issues recent discussions have addressed value of restrictive laws, particularly severity of those imposing severe penalties. It have therefore become very necessary within current situation.

The framers of Constitution retained following information established three branches of government: legislative, executive, judicial. legislature created laws, many of which were restrictive within nature. judge then interpreted laws applied them to punish criminals. executioner then provided finishing touch by examining punishment for errors, making any necessary modifications, applying punishment within accordance with case's merits. Properly,

H.M. Seervad had written:

“Judges must enforce laws, whatever they be, decide according to best of their

Lights; but laws are not always just lights are not always luminous. Nor, again

are Judicial methods always adequate to secure Justice. Power of pardon exists to prevent injustice whether from harsh, unjust laws or from judgments which result in injustice; hence necessity of vesting that power in an authority other than judiciary has always been recognized.”²

However, over time, sanctity of pardoning power was lost, it was impure. As many corruptions have gradually spread, adage "Power corrupts absolute power corrupts absolutely" have also come to apply within this situation. Even though situation isn't as dire right now, speculation about future have led to discussions about whether or not directive ought to be curtailed. This study specifically aims to examine one of features of authority that should have safeguards within place with regard to exercise of pardon power by governor or president.

Statement of Problem

The Constitution of United States have significant guidelines about proper conduct of President Governor while exercising Pardon Power. They are granted this authority within accordance with Art's 72 161, respectively. Currently, Council of Ministers provides advice counsel to President within accordance with Art. 74(1), but not within accordance with aforementioned Art's, which speak to pardoning power. Furthermore, it is explicitly stated that Council of Ministers can only carry out duty of advising acquainting President with his "FUNCTIONS" "NOT POWERS." Regretfully, within modern times, Council of Ministers have consistently interfered with President's duties anytime they had chance to function as pardoning authority and, as result, always attempted to satisfy their own desires, fantasies, interests. These interests frequently take precedence over those of public society. The evolution of this malpractice can be attributed to judicial interpretation, while Indian Constitution does not endorse it within any manner.⁷

Therefore, since pardoning is function, President should follow advice of Mothers be bound by it. If this is indeed power, as its name suggests, then he needs complete discretion when using it.

Therefore, as it can result within arbitrariness mistreatment, neither President nor Ministers should be bound by their advice.

As result, we must choose middle ground wherein pardoning authority must maintain certain predefined prescribed guidelines within mind while using this authority. This definitely excludes him from being constrained by advice given by mothers.

In this manner, President's power would not be fully curtailed, nor would he be granted total freedom authority, as both would have equal consequences.