

## Mercy Petition

### Why in news?

The [Bharatiya Nagarik Suraksha Sanhita \(BNSS\) 2023](#), the proposed replacement for the Criminal Procedure Code (CrPC), contains a new provision on mercy petitions in death sentence cases, thus changing the fundamental nature of the provision.

### What is mercy petition?

About	Union	State
<b>Authority</b>	President	Governor
<b>Constitutional Provision</b>	<b>Article 72</b> -The President shall have the power to grant pardons, reprieves, respites or remissions of punishment.	<b>Article 161</b> - It covers pardoning powers on the governor
<b>Death sentence</b>	They can suspend, remit or commute the sentence of any person convicted of any offence for death sentence.	Governor <u>can't pardon</u> death sentence. He can suspend, remit or commute a death sentence.
<b>Jurisdiction</b>	The pardoning power of the President is applicable to the offence against Central law	It is applicable for the offence committed against State law
<b>Court Martial</b>	He can grant pardon, reprieve, respite, suspend, remit or commute sentences by a court-martial (military court).	Governor doesn't possess such powers.

- **Maru Ram case**- In *Maru Ram vs. Union of India case 1981*, the Supreme Court held that while deciding mercy petitions under Article 72, the President must act on the advice of the council of ministers (CoM).
- President is bound by the Cabinet's advice and can only return the plea for reconsideration once under Article 74 (1).
- After this, if the Council of Ministers decides against the changes suggested by the President, she/he has no option but to accept them.

### What are the new provisions under BNSS?

- **Advice of CoM** - It does not include any requirement for the President to act in line with the advice given by the council of ministers in death sentence cases.
- **Time frame** - It allows a convict under the sentence of death or his legal heir or any relative to file a mercy petition under Article 72 or under Article 161 within 30 days after the date
- **Duties of Jail Superintendent** - The Jail Superintendent informs about the

- Dismissal of the appeal or special leave to appeal by the Supreme Court or
- Date of confirmation of the death sentence by the High Court and
- Time allowed to file an appeal or special leave in the Supreme Court has expired.
- **Report-** Following this, the petition may be presented to the Centre or the State Government's Home Department.
- **Petition to Governor-** Rejection or disposal of the petition by the Governor will result in it being forwarded to the President within 60 days from such rejection or disposal of the plea.
- **Multiple convicts-** The jail superintendent or the officer-in-charge shall ensure that every convict makes a mercy petition within 60 days.
- **Role of Centre-** The Centre will seek the State Government's comments, consider the petition along with the case records, and then "make recommendations to the President within 60 days.
- **Time limit-** It has not been prescribed for the President to dispose of the mercy petitions.
- **Lack of appeal-** No appeal shall lie in any Court against the order of the President made under Article 72 of the Constitution.
- It shall be final, and any question as to the arriving of the decision by the President shall not be enquired into in any Court.

### How this provisions contravenes with the existing legal precedent?

- **Judicial review-** In, *Epuru Sudhakar & Another vs Andhra Pradesh and Others, 2005*, the SC held that the powers of the President or Governor under Articles 72 and 161 are subject to judicial review.
- The decision can be challenged on grounds that
  - It was passed without application of mind
  - It is mala fide and was passed on extraneous or wholly irrelevant considerations
  - Relevant materials were kept out of consideration
  - If the decision suffers from arbitrariness
- **Article 21-** In *Shatrughan Chauhan and Anr vs Union of India (2014)*, SC observed that "Article 21 inheres a right in every prisoner till his last breath and the Court will protect that right."
- The SC guidelines provide a minimum period of 14 days between the rejection of the mercy petition being communicated to the prisoner and his family and the scheduled date of execution.
- However, no such period has been mentioned in the BNSS.
- **Delay-** If there is undue delay in execution due to pendency of mercy petitions or the executive/constitutional authorities have failed to take consider the relevant aspects, the Court can hear the grievance of the convict and commute the death sentence into life imprisonment under Article 32.
- But under the BNSS, there is no time limit for the President to decide the mercy pleas.

### References

1. [Indian Express- Mercy Petition](#)

2. [PIB- Criminal justice Bills](#)

