



Executive Clemency in South Asia: Scope and Limits of Pardoning Power in SAARC Nations

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Abstract

Within the nations of the South Asian Association for Regional Cooperation (SAARC), the Constitutional power of pardon, which has historically been defended as a tool of mercy and remedial justice, has become a site of administrative excess and constitutional tension. Despite being universally vested in the head of state, the region's use of this power often deviates from its humanitarian justification and serves as a politically useful instrument that erodes public trust in criminal justice systems, judicial finality, and equality before the law. The legislative framework enabling executive clemency in SAARC member states-India, Pakistan, Bangladesh, Nepal, Sri Lanka, Bhutan, Maldives, and Afghanistan is examined critically and comparably in this paper. Through a doctrinal analysis of recent and significant case laws such as *A.G. Perarivalan v. State of Tamil Nadu, 2022*, *Bal Krishna Dhungel (Nepal), 2018* and contentious presidential pardons in Sri Lanka and Bangladesh, the study reveals recurring patterns of partisan misuse of mercy powers, arbitrariness, and opacity in jurisdictions lacking significant judicial or statutory constraints. The paper argues that constitutional democracies dedicated to upholding the rule of law, the current deference to executive discretion is normatively untenable. It contends that limited but principled judicial review, combined with procedural protections such as reason-giving, victim engagement, and independent clemency advisory procedures, is required to keep clemency from devolving into an instrument of impunity. The study concludes by suggesting a reform-oriented constitutional framework and regionally harmonized norms for recalibrating executive mercy within the parameters of legality, accountability, and democratic legitimacy.

Key Words: Executive Clemency, South Asia, Pardoning Power, SAARC Nations.

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1. INTRODUCTION

The constitutional power of pardon represents one of the most enduring vestiges of executive discretion within modern constitutional democracies. In India, Articles 72 and 161 vest this authority in the President and Governors respectively, empowering them to grant pardons, reprieves, respites, or remissions of punishment. Normatively justified as an instrument of mercy and corrective justice, the pardoning power was intended to function as a constitutional safety valve—capable of mitigating the rigidity of penal law and correcting exceptional miscarriages of justice.

Yet, contemporary constitutional practice reveals a persistent disjunction between this normative ideal and institutional reality. High-profile pardons, prolonged delays in deciding mercy petitions, and selective exercises of clemency have repeatedly generated public controversy and judicial concern. These developments have raised fundamental constitutional questions: Is executive mercy compatible with the principles of separation of powers and judicial finality? Can a discretionary power remain constitutionally legitimate in the absence of procedural safeguards? And what role should courts play in constraining executive excess without substituting their own judgment?

Indian constitutional jurisprudence has grappled with these questions for over four decades. While the Supreme Court has rejected the notion of unfettered executive discretion, it has simultaneously exhibited institutional hesitation in articulating robust standards of review. This tension culminated in *A.G. Perarivalan v. State of Tamil Nadu*¹, where prolonged executive inaction compelled the court to directly intervene and order release—marking a decisive shift in judicial attitude towards clemency delays and opacity.

This article argues that the existing doctrinal framework governing the pardoning power in India is constitutionally inadequate. Anchored in Indian constitutional theory and supported by comparative insights from SAARC jurisdictions, it contends that executive clemency must be reconceptualised as a procedurally disciplined and constitutionally accountable power, rather than an opaque executive privilege.

2. DIMENSIONS OF PARDON

The French-derived English term pardon, which can be used as both a noun and a verb, comes from the Latin words *par*, which means "to give," and *donum*, which means "to give." Therefore, etymologically speaking, a pardon is a kind of gift, and to pardon is to offer one.² The executive clemency or pardoning power is a legacy of the monarchical prerogative of mercy, transformed in modern constitutions into a formal mechanism by which the head of state can mitigate the harshness of criminal justice. A pardon is an act of mercy, forgiveness, clemency. In the words of Seervai "*Judges must enforce the laws whatever they and decide According to the best of their lights but the laws are not Always just and are not always luminous*". The purpose of the pardoning power is to stop injustice whether from rulings that lead to injustice or from strict and fair legislation. Therefore, it has long been acknowledged that an authority other than the judiciary

¹ (2022) 7 SCC 1

² Samuel Johnson, *Dictionary of the English Language* (3rd ed.1768).

must be given that authority.³ One of the royal prerogatives of the crown in England was the ability to pardon, which the Sovereign may use as an act of grace.⁴ Sir William Blackstone observes, "that special pre-eminence which the king hath over and above all the persons and out of the ordinary course of the common law in right to his royal dignity."⁵

A pardon is a gesture of kindness that comes from the authority entrusted with carrying out the law and releases the recipient from the penalty the law imposes for a crime they have committed. According to Blackstone, the goal of such an act of kindness was to make the sovereign more likeable to his subjects and, more importantly, help them develop the filial piety and personal loyalty that are the sure foundation of a prince.⁶

3. HISTORICAL PERSPECTIVE

In ancient legal systems, the power of pardon was inseparable from the notion of divine or absolute sovereignty.

- **Mesopotamian and Babylonian Codes** (e.g., Code of Hammurabi) recognised the ruler as the ultimate source of justice, with authority to mitigate punishment.⁷
- In **Ancient Egypt**, Pharaohs exercised mercy as an expression of divine kingship.
- In **Ancient India**, texts such as the *Artha shastra* acknowledged royal discretion to temper punishment, though rulers were morally bound by *dharma*.⁸
- **Roman Law** vested clemency (*Clementia*) in the emperor, particularly during the Imperial period, where mercy became a political instrument to consolidate authority.⁹

At this stage, pardon was not a legal right or constitutional mechanism but an expression of absolute rule.

The modern legal conception of pardon derives primarily from **English Common Law**, where it evolved as a **Royal Prerogative**. This power was absolute, unfettered and not subject to any judicial scrutiny. The framers of the **U.S. Constitution** consciously retained the pardon power under **Article II, Section 2**, vesting it in the President. The United States Supreme Court has

³ H.M. Seervai, *Constitutional Law of India*, Universal Law Publishing Co. Pvt. Ltd., p. 2004 available at <http://elearning.vtu.ac.in/P3/CIP71/7.pdf>, (last visited on 02-12-2025).

⁴ Joseph Chitty, "A Treatise on the Law of the Prerogatives of the Crown and the Relative Duties and Rights of the Subject", 4(1820).

⁵ *Ibid.*

⁶ R. Nida and R.L. Spiro, The President as his own Judge and Jury: A Legal Analysis of the President's Self-Pardon Power, 52 *OKLA.L.REV.*197(1997).

⁷ Code of Hammurabi (c. 1754 BCE), trans. L.W. King (Avalon Project, Yale Law School) (recognising royal authority to mitigate punishment) available at <https://avalon.law.yale.edu/ancient/hamcode.asp> (last visited on 05-12-2025).

⁸ Yukta, Sachin Kumar, "The Pardoning Power under the Constitution of India", 5 *Indian Journal of Legal Review* (2025).

⁹ *Ibid.*

clarified on more than one occasion that the term pardon should be given the same meaning under the United States Constitution as was given to it in England.¹⁰

In *US v. Wilson*, Chief Justice Marshall defined a pardon as: - "An act of grace, proceeding from the power entrusted with the executive of laws, which exempts the individual, on whom it is bestowed, from the punishment the law inflicts for a crime he has committed. It is the private, though the official act of the executive magistrate delivered to the individual for whose benefit it is intended and not communicated officially to the court"¹¹.

In India, the law of pardon was included in section 295 of the Government of India Act, 1935. This law did not limit the power of the sovereign. ¹²India's Constitution gives the President the right to pardon people under Article 72, while Governors of the states have a similar authority under Article 161.

Additionally, **Bhartiya Nagarik Suraksha Sahitha**(BNSS) under section 472,473,474,476,477 and **Bhartiya Nyaya Sahita**(BNS) under section 5 confer power on the appropriate government to commute sentence of death or sentence of imprisonment for life as provided therein. The appropriate government under section 5 of the BNS has the power to amend the sentences by applying the procedural rules as mention in section 474 of the BNSS.

4. THE POWER TO PARDON AND THE LEGISLATURE

The principal rationale underlying the power of pardon lies in the dispensation of governmental mercy. The presidential power of pardon constitutes an important component of executive authority, enabling the executive head to intervene in exceptional cases where the rigid application of law yields outcomes that are morally, politically, or socially unacceptable. Acting as a constitutional safety valve, the power allows the executive to temper the severity of the criminal justice system and correct its inevitable imperfections, not by questioning judicial findings of guilt, but by mitigating punishment in the interest of equity, compassion, or public welfare. In this sense, the pardon power reflects the recognition that no legal system, however comprehensive, can foresee every circumstance in which justice demands mercy beyond the strict confines of law¹³

4.1. India

The pardoning power in India is expressly provided under the Constitution and is vested in both the President and the Governor, reflecting India's federal structure.

- Article 72¹⁴ empowers the President of India to grant:

¹⁰ U.S. v. Wilson, (1833) 7 Pet.150; Ex Parte Wells, (1855) 59 U.S. (18 How.) 307.

¹¹ Ibid.

¹² M.P. Jain, Indian Constitutional Law(Lexis Nexis, 9th edn.,2024).

¹³ I. Udofa, "The Abuse of Presidential Power of Pardon and the Need for Restraints" 9 Beijing Law Review, 113-131(2018),available at <https://doi.org/10.4236/blr.2018.92008>,(last visited on 25 December,2025).

¹⁴ Article 72 of the Constitution of India states: "Power of President to grant pardons, etc., and to suspend, remit or commute sentences in certain cases. – (1) 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 – (a) in all cases where the punishment or sentence is by a Court Martial; (b) in all cases where the punishment or sentence is for an offence against any law relating to a matter to

- Pardons
- Reprieves
- Respites
- Remissions of punishment
- Suspension, remission, or commutation of sentence

This power applies in cases:

- Where punishment is by a court-martial¹⁵
- Where the offence is against a Union law¹⁶
- Where the sentence is a sentence of death¹⁷

Aspect	Article 72	Article 161
Authority	President	Governor
Court-martial	Yes	No
Death sentence	Yes	Limited
Scope	Wider	Narrower

Article 72(2) preserves the authority of Parliament to regulate the exercise of this power in court-martial cases.

Article 72(3) expressly provides the power of the President to suspend, remit or commute sentence of death and the article 72(1)(c) would not affect the power of the Governor of a state to suspend, remit, commute sentence of death under any applicable law in force.¹⁸

Article 161 confers similar powers on the **Governor**, but limited to offences against State laws and excluding court-martial cases and death sentences passed under Union law.¹⁹

The President and Governors execute their pardoning powers under Articles 72 and 161 of the Indian Constitution, respectively, based on the advice of their respective Councils of Ministers. The Court made it clear in **Maru Ram v. Union of India**²⁰ that on the recommendation of the council of ministers, a pardon may be granted in an absolute or conditional manner. It is a power of discretion. It can be used before, during, or after legal proceedings are initiated. The president's

which the executive power of the Union extends; (c) in all cases where the sentence is a sentence of death. (2) Nothing in sub-clause (a) of clause (1) shall affect the power conferred by law on any officer of the Armed Forces of the Union to suspend, remit or commute a sentence passed by a Court Martial. (3) Nothing in sub-clause (c) of clause (1) shall affect the power to suspend, remit or commute a sentence of death exercisable by the Governor of a State under any law for the time being in force.”

¹⁵ The Constitution of India, art.72(1)(a),

¹⁶ *Id.*, art. 72(1)(b).

¹⁷ *Id.*, art. 72(1)(c).

¹⁸ *Id.*, art. 72(3).

¹⁹ *Id.*, art. 161.

²⁰ (1981) 1 SCC 107.

pardoning authority is not exhausted by the denial of a single petition. The authority's pardoning power must be used carefully, not at their whim.²¹ Since the President is symbolic and the Central Government is actual, they can only use it in accordance with the legally binding advice of the relevant government.

5. JUDICIAL DISCOURSE ON POWER OF PARDON

In the early years, Indian courts primarily followed the conventional common-law view that the power of pardon was not justiciable. This approach was informed by English constitutional conventions and American jurisprudence, particularly **United States v. Wilson (1833)**, which defined pardon as an "act of grace" granted by administrative authority.²²

The aid and advice doctrine, articulated by the Supreme Court in the case of **Maru Ram v. Union of India**²³, marked a significant shift in judicial discourse. The Court observed that mercy must be exercised within the constraints of the Constitution and cannot trump the rule of law. The ruling of this case bought a constitutional shift by²⁴-

- Rejecting the premise of unrestricted executive grace.
- Bringing the pardoning power under democratic accountability.
- Changing clemency from a personal privilege to an institutional constitutional role.

In the case of **of Kehar Singh v. Union of India**²⁵, the Supreme Court held that the exercise of the pardoning power is not immune from judicial review. The President does not change, correct, or proceed with the judicial record. The president acts on a whole different plane than the judiciary. He acts under constitutional authority, regardless of whether the actual effect of the presidential act is to erase an impression of guilt from the truth or to commute his sentence. In the case of **Sharad Chandra Rabha v. Khagendra Nath**²⁶, The Supreme Court distinguished between the practical and the legal effect of an order of remission by the President/ Governor by stating that, "an order of remission thus does not interfere with the court's order; it only affects the implementation of the court's sentence and relieves the condemned person of his obligation to serve the full period of imprisonment imposed by the court." In the case of **K.M. Nanavati**²⁷, the Supreme Court had stated that, "The judicial power of the Supreme Court under article 142 of the Constitution, whereby it can make orders for doing complete justice and the executive power containing article 161 could be exercised in the same field within certain narrow limits." In **State of Punjab v. Joginder Singh**²⁸, the Supreme Court held that, "The power of the president and the

²¹ The Constitution of India, art. 74(1),

²² Supra Note 6.

²³ Id at 21.

²⁴ Thakur Naveen, "President's power to pardon in case of a death sentence - Whether it is to be his unfettered discretion", 52 Journal of Indian Law Institute 235(2010).

²⁵ (1984) 4 SCC 693.

²⁶ AIR 1961 SC 334.

²⁷ AIR 1961 SC 112.

²⁸ AIR 1990 SC 1396.

governor under article 72 and 161 respectively is absolute and cannot be fettered by any statutory provisions. It also reaffirmed that while exercising the constitutional power under article 72/161, the President or the Governor as the case may be must act on the advice of the Council of Ministers.”

6. JUDICIAL REVIEW OF PARDON DECISIONS

The judicial review of the pardoning power is a classic example of the evolution of law through judicial interpretation. Beginning with extreme reluctance to even look into the subject, the trend has now shifted towards a balance and middle path approach, with the courts largely agreeing on the decision in Marur Ram's case and the limitations imposed therein to carve out their role in cases of review.²⁹In **G. Krishna Goud v. State of Andhra Pradesh**³⁰, the Supreme Court stated that, “It would not turn a blind eye to the public power being exercised in arbitrary or malafide manner, including instances where the President exercised his power under article 72 in a discriminatory manner”. In **Satpal v. State of Haryana**³¹, it was held that, “Since the power of the governor to grant pardons was a constitutional but it would be open to judicial review on certain limited grounds.” The decision of **Epuru Sudhakar v. Government of Andhra Pradesh**,³² greatly increased the court's ability to monitor the power to grant pardons, as the case may be, and their orders can be challenged on the following grounds-“the order has been passed without application of mind , the order is mala fide, the order has been passed on extraneous or wholly irrelevant considerations, relevant materials have been kept out of consideration and that the order suffers from arbitrariness”. In **Shatrughan Chauhan v. Union of India**³³, the Court held that, undue delay in deciding mercy petitions violates Article 21 of the Constitution.

In **A.G. Perarivalan v. State of Tamil Nadu**³⁴, the Supreme Court, condemned the Governor's persistent inaction on remission proposals, stating that it undermines constitutional governance.

By giving executive decisions on mercy petitions statutory finality, the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS) marks a substantial divergence from long-standing constitutional precedent. According to **Section 472(6)**, “No appeal shall lie in any Court against the order of the President or of the Governor made under article 72 or article 161 of the Constitution and it shall be final, and any question as to the arriving of the decision by the President or the Governor shall not be inquired into in any Court.”

This legislative attempt to shield clemency rulings from judicial scrutiny contradicts the Supreme Court's longstanding position that the exercise of pardon powers under Articles 72 and 161 of the Constitution is subject to judicial review.

²⁹ Dhan, P.J., “Justiciability of the President’s Power”, 26(3), Indian Bar Review, 70(1999).

³⁰ (1976) 1 SCC 157.

³¹ (2000) 5 SCC 170.

³² (2006) 8 SCC 161.

³³ (2014) 3 SCC 1.

³⁴ Supra Note 1.



6.1. Pakistan

According to Islamic law, the accused may be pardoned by victims or their legal successors. Islam even promotes forgiving those who are guilty and offers them rewards.³⁵ "To forgive it is closer to piety," Allah states in the Holy Quran. "In the name of Allah, a person may be pardoned in exchange for blood money, any other form of financial reparation, or none at all"³⁶.

According to **Article 45 of the Constitution**, the President may annul, suspend, or modify any sentence imposed by a court, tribunal, or other body, as well as grant pardons, reprieves, and delays in punishment.³⁷ Pakistani courts have typically regarded Article 45 power as an executive prerogative rather than a constitutional function that must be accountable. In **Abdul Malik v. Federation of Pakistan**,³⁸ the Court observed that "the President's authority under Article 45 is independent of judicial procedures and courts cannot look into the wisdom, reason, and propriety of a pardon. Judicial interference could undermine the concept of separation of powers." In **Federation of Pakistan v. Muhammad Ameen**³⁹, the Court reiterated that, "clemency is at the discretion of the executive and the courts lack the authority to challenge presidential mercy orders." In **Zafar Ali Shah v. General Pervez Musharraf**,⁴⁰ "The Court implicitly strengthened executive autonomy in clemency matters by highlighting the supremacy of executive authority in matters constitutionally designated to it." In **Saeed Ahmed v. State**⁴¹, the Supreme Court acknowledged that, "mercy petitions constitute the final constitutional safeguard for condemned prisoners, yet declined to impose procedural standards."

The exercise of this power in Pakistan remains largely insulated from judicial scrutiny and procedural regulation.

6.2. Bangladesh

In Bangladesh, **Article 49 of the Constitution** protects the presidential clemency power. Article 49 of the Bangladeshi Constitution gives the president the right to pardon and to commute, suspend, or remit sentences imposed by judges, tribunals, or other authorities.⁴² Despite being granted by the constitution, this authority does not function in a vacuum. It works in conjunction with statutory requirements found in Sections 401, 402, and 402A of the Code of Criminal Procedure, 1898 (CrPC) and is further enhanced by Sections 54 and 55 of the Penal Code, 1860.

Section 401(1) of the Criminal Procedure Code authorizes the government to suspend or commute a sentence at any time after conviction, either unconditionally or subject to terms

³⁵ Ramzan, M. Saeed, et.al., "President of Pakistan: A Study on the Right of Pardon" *Bulletin of Business and Economics*, 10(4), 226-231(2021), available at <https://doi.org/10.5281/zenodo.7741672>, (last visited on 26 December, 2025).

³⁶ Quran 2:237, available at <http://www.daralifta.org/Foreign/ViewArticle.aspx?ID=1860&CategoryID=3>, (last visited on 26 December, 2025).

³⁷ The Constitution of Pakistan, 1973, art. 45.

³⁸ PLD 2012 SC 788.

³⁹ PLD 2014 SC 394.

⁴⁰ PLD 2000 SC 869.

⁴¹ PLD 2003 SC 389.

⁴² Mahmudul Islam, *Constitutional Law of Bangladesh* 435 (Mullick Brothers Dhaka, 3rd edn., 2016).

accepted by the condemned individual.⁴³This provision demonstrates the executive's continued responsibility in the administration of criminal justice even after judicial resolution.

Section 401(2) creates a limited procedural protection by allowing the Government to seek the trial judge's view, supported by reasons and appropriate judicial records, before deciding on an application for suspension or remission of sentence.⁴⁴Although such judicial opinion is not enforceable, the Supreme Court has seen this consultative system as an important tool for assuring informed executive discretion rather than a mechanical exercise of power.

Except for selecting the Prime Minister and the Chief Justice of the Supreme Court, the President of Bangladesh carried out his duties and authority on the Prime Minister's recommendation. Therefore, in response to a request or suggestion from a minister, the president will use his prerogative mercy. Article 48(3) disregards the President's own discretion.⁴⁵Before proposing any advise on a mercy petition sent to the president, the petition is submitted to the Ministry of Law, Justice, and Parliamentary Affairs for consultation under rule 14 of the Rules of Business.⁴⁶

Hussain Muhammad Ershad, the military dictator of Bangladesh, was the first President to use the constitutional clemency power under Article 49. His use of this authority drew strong criticism for suspected political bias, particularly in 1987, when he pardoned Azam Khan, a party affiliate convicted of murdering Awami League leader Moyezuddin Ahmed of Gazipur. The episode raised worries about the lack of procedural restrictions and the potential politicization of executive mercy.⁴⁷

6.3. Bhutan

Article 2(16) of the Constitution of the Kingdom of Bhutan, 2008, gives the Druk Gyalpo (the King) the authority to pardon, award amnesties, or commute penalties in conformity with the law⁴⁸. Statutory laws, primarily found in the Penal Code of Bhutan, 2004 and the Prison Act of Bhutan, 2009, which govern sentence, remission, and early release procedures, enhance this constitutional jurisdiction.

In 2022, His Majesty King Jigme Khesar Namgyel Wangchuck granted pardon to a political prisoner serving a life sentence in accordance with his royal prerogative of amnesty. The Sentencing Guidelines of the Judiciary of Bhutan⁴⁹ explicitly state that a life-sentenced offender shall remain in prison "until pardoned or otherwise commuted to a fixed period, or receives Royal pardon, amnesty or clemency." According to Bhutanese law, an individual serving a life

⁴³ The Code of Criminal Procedure, 1898, s. 401.

⁴⁴ Id., s. 401(2).

⁴⁵ A.S.M Tariq Iqbal, "President's Prerogative of Clemency in Bangladesh: An Analysis", 6 UIITS Journal of Humanities and Social Science, (2018).

⁴⁶ Rules of Business 1996, Rule 14.

⁴⁷ Mohammad Arafat Hossain and Md. Sher-E-Alam, "A Legal analysis of the Presidential Prerogative of Mercy in Bangladesh" 5 Metropolitan University Journal 137 (2016).

⁴⁸ The Constitution of the Kingdom of Bhutan, 2008, art. 2(16).

⁴⁹ Human Rights Watch, Bhutan: King Should Free Political Prisoners, 5 May 2023, <https://www.hrw.org/news/2023/05/05/bhutan-king-should-free-political-prisoners>, (last visited on 10 December 2025).



sentence can only be released if the King grants amnesty. In 1999, King Jigme Singye Wangchuck issued an order granting amnesty to forty political prisoners, including some serving life sentences. This was followed by his royal pardon in 2022.

6.4. Nepal

Article 276 states: “The President may, in accordance with law, grant pardons, suspend, commute or remit any sentence passed by any Court, judicial or quasi-judicial institution or administrative authority or institution.”⁵⁰

The first Nepalese Constitution, promulgated during the Rana dictatorship, gave the then-Rana Prime Minister, Shree Teen Maharaja, the authority to give pardons, reprieves, respites, or remissions of punishment. This authority was expressly granted under Article 59 of the Government of Nepal Act, indicating that the Rana oligarchy, rather than a constitutional head of state, wields sovereign and executive power.⁵¹ **Section 159 of the Criminal Procedure Code, 2017** provides the list of offences which cannot be pardoned—corruption, torture, rape, aggravated murder, genocide, terrorism-related offenses, kidnapping, hostage-taking, enforced disappearance, human trafficking, money laundering, and narcotics offenses punishable by more than three years in prison.⁵² Additionally, the clause prohibits clemency in situations where the verdict has not reached finality or where the case is pending an appeal, review, revision, or reference.

As a tradition, the President, upon the recommendation of the Government, exercises the power to pardon, suspend, commute, or remit sentences on occasions such as Republic Day, Constitution Day, and Democracy Day.

In the case of **Bal Krishna Dhungel v. Government of Nepal (2018)**, the president grant pardon to former lawmaker of CPN-Maoist for murdering Ujjan Kumar Shrestha of Okhal dhunga district in 1998. A petition was filed by the victim’s brother for quashing the order of the President, the Constitutional bench quashed the government’s recommendation and observed that, “The power of pardon should not be utilized unlimited, uncontrollably and arbitrarily and the president should be aware and sensitive while utilizing the power of pardon. While exercising the power of pardon, the legal norms and rule of law should not be abused.”

In Nepal, presidential pardons have traditionally been politically motivated; even in the unlikely event that an apolitical president is chosen, the government ultimately decides which prisoners should be pardoned and which should not.⁵³

⁵⁰ The Constitution of Nepal, 2015, art. 276.

⁵¹ Ravi Nayak, “Stop the Misuse of Presidential Power of Pardon”, 3 March 2025, available at <https://myrepublica.nagariknetwork.com/news/stop-the-misuse-of-presidential-power-of-pardon>, (last visited on 10 December 2025).

⁵² The Criminal Procedure Code, 2017, s. 159(4).

⁵³ Anjila Shrestha, “The controversial practice of Presidential Pardons in Nepal: Examining the constitutional provisions and political implications”, available at <https://www.nepallivetoday.com/2023/06/09/presidential-pardons-explained/>, 09 June 2023, (last visited on 15 December 2025).

6.5. Sri Lanka

According to **Article 34(1) of the Democratic Socialist Republic of Sri Lanka's 1978** Constitution, the President has the authority to pardon anyone found guilty of a crime⁵⁴. Despite the notion that the president's pardoning authority is used for the benefit of others.⁵⁵The President must ask the trial judge for a report on the death penalty before sending it to the Attorney General for suggestions. The report must then be sent to the Minister of Justice with the Minister's suggestion and finally sent to the President. Article 89 and Article 91(1)(g), which enumerate the disqualifying criteria for being an elector of the Parliament, allow the President to even forgive those who are disqualified.⁵⁶

According to **Article 34(3)**, the power of pardon is also available for an accomplice of any offence.⁵⁷By permitting fundamental rights petitions to check contentious pardons, the 19th Constitutional amendment upholds the separation of powers.

In the case of Mary Juliet Monica Fernando, the former President, Mahinda Rajapaksa, grant her pardon on the occasion of International Women's Day 2009. She was the wife of former MP Milroy Fernando and was convicted for double homicide in 2005.⁵⁸

Duminda Silva, a former MP was granted pardon President Gotabaya Rajapaksa in 2021⁵⁹. The convict was the close ally of Rajapaksha political family. His pardon was challenged by legal heir of deceased. The court observed that, former President Rajapaksa had failed to follow the procedural and substantive requirements imposed by Article 34 of the Constitution and thus the pardon has no legal effect. The Court held that, "Pardon power should be exercised in accordance with the Constitution and written law. It cannot be a vehicle to override judicial verdicts without a legally sustainable basis, underscoring that even constitutionally conferred mercy powers are not beyond judicial scrutiny in a democratic republic." In the case of **Mallikarachchi v. Attorney General**,⁶⁰ The Court recognised that, "Presidential pardon is constitutionally valid but must not be exercised arbitrarily". The aforementioned cases demonstrate the terrible reality that the pardon granted by the Presidents are frequently overlooked and explicitly misused. The mercy clause under Article 34 is intended to correct injustices and should not be utilized as a discretionary gift to be given to anyone for specific personal gain. A positive aspect of Sri Lanka's constitutional framework is the 19th Amendment, which allows the Supreme Court to examine pardons. It can offer a way to preserve executive power checks and balances and stop an unfair culture that threatens the rule of law.

⁵⁴ The Constitution of the Democratic Socialist Republic of Sri Lanka, 1978, art. 34(1).

⁵⁵ William F Duker, "The President's Power to Pardon: A Constitutional History" 18 Wm & Mary L Rev 475 (1977).

⁵⁶ The Constitution of the Democratic Socialist Republic of Sri Lanka, 1978, art 91(1)(g).

⁵⁷ Ibid. art. 34(3).

⁵⁸ Ahalya Lelwala, "Presidential Pardons in Sri Lanka: An Unchecked Executive Power?", 21 July 2020, available on www.veriteresearch.org/2020/07/21/presidential-pardons-in-sri-lanka-an-unchecked-executivepower/ (last visited on 20 December 2025).

⁵⁹ Charya Ekanayake, "Presidential Pardoning Power of Sri Lanka; An Unchecked Executive Power Which Undermines the Role of the Judiciary", 2 Royal Institute of Colombo Law Journal(2021).

⁶⁰ [2002] 3 Sri LR 1.

6.6. Maldives

The Republic of the Maldives' Constitution, which was ratified on August 7, 2008, is the fundamental document that establishes the country as a unitary democratic republic based on Islamic principles. The constitution outlines a presidential system with separation of powers, with the president, who is elected by the people, holding executive authority and acting as both the head of state and the head of government. According to Article 115(s), the President can pardon or reduce a sentence for those convicted of a crime who have no other avenue for appeal.⁶¹

In 2017, the Government of Maldives adopted a regulation under which the President has power to grant pardon to the convicts if minor offences. Earlier, prisoners are required to serve a minimum of a quarter of their respective sentence to be eligible for a presidential pardon.⁶²

The judiciary follows a procedural and constitutional review criteria and may intervene when the pardoning power:

- violates fundamental rights.
- Is impaired by procedural illegality, bad faith, or arbitrariness,
- Undermines fundamental constitutional foundations such as equality before the law (**Article 20**) and the rule of law (**Article 68**).

In the case of money laundering, the former Vice President Ahmed Adeeb and former Managing Director of the Maldives Marketing and Public Relations (MMPRC) Abdulla Ziyath have been granted presidential pardons. Human Rights Commission of the Maldives (HRCM) criticized the presidential pardon by stating that⁶³, "This is not only an abuse of the clemency and sentence commutation powers of the President, but represents the epitome of the protection, impunity and privilege enjoyed by political elite who abuse their positions of power and influence,"

6.7. Afghanistan

The **Constitution of Afghanistan** under **Article 64(18)**, provides for President's power to grant pardon. It states that, "The President has power to reduce and pardon penalties in accordance with the provisions of law."⁶⁴In Afghanistan, the judiciary has never properly set enforceable restrictions on the presidential pardon power, and there has been little public judicial criticism of its misuse. The 2004 Constitution provided no specific procedure for judicial review of executive clemency. Following the Taliban takeover in 2021, the constitutional structure governing presidential pardons has practically rendered inoperative, leaving previous constitutional limits largely ineffective.

⁶¹ The Constitution of the Republic of the Maldives, 2008, art.115(s).

⁶² <https://avas.mv/en/31717>,(last visited on 12 December,2025).

⁶³ Mariyath Mohamed, "Adeeb and Ziyath pardon acts as 'green light' for corruption and kleptocracy: TM" available at <https://edition.mv/news/30075>,(last visited on 24 Decmber,2025).

⁶⁴ The Constitution of Afghanistan, 2004, art. 64(18).

Country	Constitutional Provision	Authority	Nature of Power	Judicial Control
India	Article 72, Constitution of India	President (acting on aid and advice of Council of Ministers)	Executive clemency with constitutional limitations	Yes, limited judicial review
Bangladesh	Article 49, Constitution of Bangladesh	President	Broad executive discretion, read with Criminal Procedure Code	Weak/ Evolving
Sri Lanka	Article 34, Constitution of Sri Lanka	President (after consultation with Minister of Justice)	Executive clemency	Emerging judicial scrutiny
Nepal	Article 276, Constitution of Nepal	President (on recommendation of Council of Ministers)	Conditional executive power	Strong Judicial control
Maldives	Article 115(s), Constitution of Maldives	President	Executive prerogative	Very limited – procedural review only
Bhutan	Article 2(16), Constitution of Bhutan	King	Absolute monarchical prerogative	None
Afghanistan	Article 64(18), Constitution of Afghanistan	President	Weakly regulated executive power	None
Pakistan	Article 45, Constitution of Pakistan	President	Executive clemency	Limited judicial review

7. CONCLUSION

All SAARC constitutions recognize pardon as an act of mercy; nevertheless, the normative basis, procedural safeguards, and degree of judicial oversight differ greatly, resulting in inconsistent outcomes for constitutionalism and the rule of law. The study revealed three identifiable models. India, Nepal, and Pakistan are examples of judicially controlled clemency regimes, with courts asserting limited but significant scrutiny to prevent arbitrariness, mala fides, and political favouritism. Bangladesh, Sri Lanka, and the Maldives, on the other hand, have executive-dominant frameworks distinguished by lax procedural regulation and episodic court pushback, which is frequently ignited only by excessive or politically sensitive pardons. Bhutan and pre-2021 Afghanistan is at the far end of the spectrum, where clemency is an absolute or poorly regulated prerogative that is substantially shielded from judicial accountability.