



## PRESIDENT OF PAKISTAN: A STUDY ON THE RIGHT OF PARDON

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### ABSTRACT

The administration of justice is firmest pillar of the government. The government is bound to dispense justice without any discrimination. Any person who has been convicted of crimes against state must be punished. Although the constitution of Pakistan grants power to president of Pakistan to pardon accused. But this power is subjected to some limitations as well and it should not be exercised arbitrarily. The presidential pardon must not be used as tool to protect those in power. Any decision to pardon convicted person is a slap on face of victim's family. Because of misuse of power the victim's family loose trust in judicial process. This paper analysis the powers of president of Pakistan regarding pardon. Discuss the concept of pardon in Islam. Further, discuss the cases where president of Pakistan granted pardon under what circumstances.

**Keywords:** President of Pakistan, Pardon, Pardon in Islam, Conviction, Judicial process

**JEL Codes:** K1

### I. INTRODUCTION

The word pardon is used in sense of forgiveness, absolution, remission, mercy, or condonation. The act of pardon, which arises from the authority delegated to the execution of the law, absolves the person to whom it is given of the penalty imposed by the law for the offence he committed.<sup>6</sup> The act of forgiving or forgiving a debt or transgression is what forgiveness refers to.<sup>7</sup> A pardon is described as "executive action that decreases or removes a crime's punishment."<sup>8</sup>

When someone breaks the law of state he is brought before the court of law and he is punished for his act as he has acted against the state. The criminal is punished for many reasons because they won't commit more crimes when they are behind the bars or punishing the offender for his wrong act will discourage criminal activities in society. When criminals are left unpunished it promotes criminal activities and anarchy in society. And then society runs on the principle of "Might is right". So to promote peace in society criminals are punished but sometime executives are given power to pardon offender but this power of executive is not unlimited it is subject to some limitations. It can only be exercised for welfare of general public or for public interest but not for personal reasons. Keeping in view the principles of equity and fairness he can use it to protect innocents from punishment. When we talk about pardon the question arises in our mind that what does it act actually mean for someone when he gets pardon? The word pardon is used in sense of forgiveness, absolution, remission, mercy, or condonation. This is seen as a charitable deed. The idea of granting executive chiefs the authority to fire originates from the English system, when it was one of the king's royal prerogatives. Later, the same power was granted by the Unites State constitution to the President,<sup>9</sup> which states that the President has the authority to pardon for all offences except impeachment. Congress cannot

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<sup>6</sup> <http://thelawdictionary.org/pardon/>

<sup>7</sup> <https://en.oxforddictionaries.com/definition/pardon>

<sup>8</sup> Black's law Dictionary

<sup>9</sup> Article II, Section 2, Clause 1 of the Constitution of United State

restrict the President's award of amnesties or pardons, although it may give additional or different amnesties.<sup>10</sup> To grant pardon to someone does not imply that he is innocent but to pardon someone is merely forgiveness of his offence. To pardon someone is also implicit acknowledgment of his offence as that person cannot be pardoned who has not committed any offence. The Article 45 of the constitution of Pakistan, grants power to pardon offender in Pakistan. He can only pardon tazir offences not hudud. If it is observed that these provisions are in contradictions with principles of Islam and are not fulfilling the requirements laid down under Article 2A of constitution, then parliament will take steps to make Article 45 in accordance with Islamic principles.

## **II. PURPOSE OF GRANTING POWER TO PARDON**

The idea of granting executive chiefs the authority to fire originates from the English system, when it was one of the king's royal prerogatives. Later, this power was transfer to the president, forgiveness the punishment of the wrongdoers except impeachment. In Federalist No. 74, Alexander Hamilton argues that "humanity and good policy" needed that the "benevolent prerogative of compassion" be used to temper the stern punishment of the criminal law. The pardoning authority would include a "unfortunate debt exemption."<sup>11</sup> To pardon someone is also implicit acknowledgment of his offence as that person cannot be pardoned who has not committed any offence. The power to pardon is granted for welfare of general public which is also legitimate object of all punishments. When someone is pardoned for his offence or error it also contributes in Public good. It may help in saving an innocent person in case of doubtful conviction. The object of granting power to pardon is to correct judicial errors and when someone is given hope of being Pardoned his behavior is improved in prison institution. It paves the way for rehabilitation of individual. There are also many other reason for granting power to pardon to executive heads. As it is said by former American president "*I have always found that mercy bears richer fruits than strict justice*"<sup>12</sup>

## **III. CONCEPT OF PARDON IN ISLAM**

objective of Islamic legal system is establishment of righteous system and to work for human welfare. In Islamic law there are three types of punishments which are discussed below

### **III.I. PRESCRIBED PUNISHMENTS OR HUDDOOD**

The crimes that fall under this category are legally prohibited act and punishments of these crimes have been already fixed which cannot be either decreased or increased. The crimes that fall under this category are Theft, Highway robbery, Fornication or adultery, Drinking, False accusation and Apostasy.

### **III.II. RETRIBUTION OR QISAS AND DIYA**

Another sort of punishment in Islam is retribution, often known as Qisas. It is founded on the retributive concept. Qisas, the criminal, gets punished for the same harm he caused the victim. If the criminal kills the victim, the criminal will be murdered as well. God says in Holy Quran, "*O you who believe, retribution is prescribed for you in the case of murder...*"<sup>13</sup>

### **III.III. PARDON AS PER ISLAMIC LAW**

Islamic law permits victims or legal heirs of victim to pardon the accused. Islam even encourages pardoning accused and also promise rewards for them. Allah says in Holy Quran, "*To forgive it is closer to piety...*"<sup>14</sup> A person can be pardoned by accepting blood money or any other monetary compensation or without any compensation in the name of Allah.

Islam encourages the concept of pardoning the accused as he should not be punished only on the basis of speculations or accused and benefit of doubt always goes to accused. As the standard of proof in Islam is very high, so

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<sup>10</sup> United States v. Klein (1871), <http://www.heritage.org/constitution/#!/articles/2/essays/89/pardon-power>

<sup>11</sup> Alexander Hamilton, The Federalist Papers: No. 74, The Command of the Military and Naval Forces, and the Pardoning Power of the Executive from the New York Packet. Tuesday, March 25, 1788. Yale Law School, Yale University, United States. [https://avalon.law.yale.edu/18th\\_century/fed74.asp](https://avalon.law.yale.edu/18th_century/fed74.asp)

<sup>12</sup> Abraham Lincoln 1809–65, American statesman, 16th President 1861–5. I have always found that mercy bears richer fruits than strict justice. Remark to Joseph Gillespie, in letter from Gillespie to Herald and Torch Light [Hagerstown, MD] 15 March 1876

<sup>13</sup> Quran 2:178

<sup>14</sup> Quran 2:237

punishments are rarely carried out but because of severe nature of punishments crimes are curtailed in society. And when someone is pardoned for his error it enables him to amend his error or repent on his conduct.

In sharia the victim or heirs of victim are entitled to right to pardon the accused but not the ruler. Quran says in this regard. *“O ye who believe! the law of equality is prescribed to you in cases of murder: the free for the free, the slave for the slave, the woman for the woman. But if any remission is made by the brother of the slain, then grant any reasonable demand, and compensate him with handsome gratitude, this is a concession and a Mercy from your Lord. After this whoever exceeds the limits shall be in grave penalty”*<sup>15</sup>

#### **IV. DISCRETIONARY PUNISHMENTS**

These types of punishments are not fixed but are imposed keeping in view the needs of society and changing circumstances. These are left at decision of legislative authorities within prescribed limitation of Islamic law they enact code of punishments for those offences which don't fall under the category of huddood, called Tazir.

##### **IV.I. PARDON AS PER CRIMINAL LAW**

The error or offence can be pardoned under criminal laws of Pakistan in following way.

##### **IV.II. WAIVER OF RIGHT OF QISAS**

The section 309 of PPC talks about waiver of Qisas. The following person can waive right to Qisas.

1. A cautious Wali may freely relinquish his claim to Qisas at any moment.
2. In certain instances, the right to Qisas is not relinquished.
3. If the Wali is a minor or crazy, the government is a Wali.
4. If the victim has more than one Wali, each of them has the option to relinquish the right to Qisas.
5. A wali who refuses to relinquish his right will be entitled to his part of the diya.
6. If there is more than one victim, the heirs of one victim's claim to Qisas will not impact the rights of the others.<sup>16</sup>

##### **IV.III. COMPOUNDING OF RIGHT OF QISAS**

The section 310 of Pakistan Penal Code deals with compounding of offences.

An adult sane Wali may at any time compound the offence under section 310 of PPC.

The value of badl- e- sulah shall not be less than diyat.<sup>17</sup>

##### **IV.IV. PRESIDENTIAL POWER OF PARDONING IN VARIOUS COUNTRIES**

It is an accepted norm in many parts of the world. In many countries power to pardon is vested on executive heads of the states

INDIA, Article 72 of constitution of India grants power to president to pardon.

USA, the American Constitution grants power to pardon or reprieve except impeachment.

CANADA, National parole Board has power to pardon as per Criminal Records Act.

UK, constitutional monarch can pardon offender on advice of minister.

Article 45 of the constitution of Pakistan's 1973 that the President has the ability to give pardon, reprieve, and delay of punishment, as well as to cancel, suspend, or amend any sentence issued by any court, tribunal, or other body.<sup>18</sup>

It is not Article; same kind of power was granted under constitution of 1962 as this constitution was supposed to be presidential constitution

The Article 18 of constitution of 1962 says “The President can pardon, overturn, suspend, or commute the punishment awarded by a court, tribunal, or other authority”.<sup>19</sup>

##### **IV.V. PARDON CAN BE GRANTED IN PUBLIC INTEREST**

The pardon system, in my view, is a backup mechanism for resolving procedural faults and should not be exploited for personal motives. When a president utilizes his pardon authority to avert injustice, he does so effectively. If a

<sup>15</sup> Quran 2:178, <http://www.dar-alifta.org/Foreign/ViewArticle.aspx?ID=1860&CategoryID=3>

<sup>16</sup> Muhammad Iqbal vs. State, PLJ 1997 Cr.C. (Lah.) 1122.

<sup>17</sup> Abdul Ghafoor vs. State, 1992 SCMR 1218.

<sup>18</sup> Article 45, Constitution of Pakistan's 1973/

<sup>19</sup> Art. 18, Constitution of Pakistan of 1962

president fires too many or too few individuals for personal reasons, he is not serving the public interest; rather, he is misusing his position. A pardon issued only out of sympathy or kindness to save the accused's "further punishment and disgrace," as President Gerald Ford remarked of former President Richard Nixon, is not founded on adequate reason. Because pardons distinguish someone, each pardon might constitute a comparative injustice, a violation of the legal norm of equitable treatment.<sup>20</sup> Although personal pleasure might be justified on the basis that a little kindness is preferable to none, forgiveness is not the same as personal compassion "a component of the constitutional system."<sup>21</sup> There must be good and sufficient reasons for acquittal; for example, if new evidence emerges after a conviction that suggests the convicted person was innocent, the convicted person may be punished; President Franklin Roosevelt pardoned convicted bank robber Martin Prisant on the grounds that Prisant was innocent "He is not guilty of the crime for which he is now being held."<sup>22</sup> Sometimes the president will invoke the public interest to pardon specific individuals or organizations.

The power to pardon has been used by different presidents. Some instances are given below: It may be problematic in this case if a pardon is not given based on both public policy and the interests of the broader public. Despite heavy resistance from the FBI, the US Senate, the media, and the police, the former US president pardoned 16 convicted terrorists in 1991.<sup>23</sup> Clinton granted clemency to three female terrorists on her last day in office in 2000. Similarly, when Maithripala Sirisena was president of Sri Lanka in 2006, he pardoned a Tamil Tiger rebel, which the opposition attacked as a danger to national security. Mirza Tahir Hussain, a British-Pakistani convicted of murdering a taxi driver in Rawalpindi in 1988, was set to be pardoned by Pakistan's previous president. The president pardoned him, and Prince Charles prepared and submitted his pardon application to the president. Former British Prime Minister Tony Blair visited Pakistan in 2006 and addressed the case of Mirza Tahir Hussain.<sup>24</sup> On 17<sup>th</sup> April of 1998 the president Muhammad Rafiq Tarar granted pardon to Parminder Singh Saini, the hijacker of an Indian plane and he later on moved to Canada. In Pakistan no objective criteria is available on the basis of which president will decide about mercy petition as those in power are granted mercy and got scot free while those which are having poor or vulnerable background remains deprive. Since 513 mercy petitions have been dismissed. A mercy petition of Juvenile Muhammad Iqbal was dismissed without any specified reason he has been languishing in jail since 1998, similarly another case could be of Kaniza Bibi she is insane and her mercy petition was also dismissed and she has been in jail since 1989. There should not be pick and choose by president, objective criteria should be defined. On 17<sup>th</sup> April of 1998 the president Muhammad Rafiq Tarar granted pardon to Parminder Singh Saini, the hijacker of an Indian plane and he later on moved to Canada

Prime Minister Nawaz Sharif was also honored. On December 10, 2000, the Chief Executive's Secretariat requested the President to vacate the life sentence and 14 years of harsh imprisonment issued by the Sindh High Court in 2000. Attack Fort was assigned on July 22 by the Court of Accountability. The sentence was overturned by President Rafiq Tarar.

On 3<sup>rd</sup> April 2006 General Pervaiz Musharraf granted special remission of sentence for all prisoners in Pakistani jails

On 23<sup>rd</sup> March 2007 on occasion of Pakistan day the president of Pakistan granted remission of sentences for all prisoners in Pakistani jails.

On 11<sup>th</sup> April 2007 on occasion of Eid milad-un -Nabi he granted again remission of sentences to prisoners.

On 26 April 2009 president Asif Ali Zardari granted remission to those prisoners who were sentenced to amputation of hand and leg.

These powers have been exercised universally keeping in view the principles of equity and natural justice.

President Asif Ali Zardari pardoned Rehman Malik, then Minister of Interior Affairs, in 2010-10, and in January 2004. The accountability court sentenced him to three years in prison under Section 31 A of the NAB Ordinance, which was also affirmed by the Lahore High Court. President Zardari, on the other hand, used his judgement and pardoned him.

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<sup>20</sup> Laura Kalman, Gerald Ford, the Nixon Pardon, and the Rise of the Right, 58 Clev. St. L. Rev. 349 (2010)

<sup>21</sup> 6. Biddle v. Perovich, 274 U.S. 480, 486 (1927).

<sup>22</sup> Prisant v. United States, 92 Ct. Cl. 434, 434 (1941)

<sup>23</sup> An Overview of U.S. Counterterrorism and President Clinton's to Grant Clemency to Flan Terrorists, Senate Hearing 106-259, From the U.S. Government Publishing Office, S. Hrg. 106-259.

<sup>24</sup> Sarmad Ali, Clemency please, September 11, 2017, Daily Times, <https://dailytimes.com.pk/117427/clemency-please>

## **V. LIMITATION TO POWER TO PARDON IN PAKISTAN AND RECOMMENDATIONS TO PREVENT ABUSE OF POWER**

It was held by the Supreme court that president have and shall continue to have power to pardon punishments of tazir offences but he cannot pardon the punishments awarded in matter which fall under category of Qisas ,Diya and huddood ordinance<sup>25</sup>.If it is observed that these provisions are in contradictions with principles of Islam and are not fulfilling the requirements laid down under Article 2A of the constitution of Pakistan then parliament will take steps to make Article 45 in accordance with Islamic principles. According to strict theory of law to grant pardon is a matter of grace not a matter of justice. The president or any executive grants pardon as “a free gift” it is not a right given for consideration.The president will exercise this power keeping in view the principles of equity and fairness it will not be exercised arbitrarily. The president’s power is not absolute it is subjected to some restrictions as well. The reasons on the basis of which someone is being granted or rejected mercy should be very clear and these reasons should be made public. The legislature should by legislation clarifies the ground on the basis of which president can grant mercy or reject someone’s mercy appeals as it should not leave only at president’s choice. The legislature should define prohibited degree in case of which the accused cannot be granted mercy at any cost and these laws and rules should be universal without any discrimination as human lives are sacred.

## **VI. CONCLUSION**

To conclude I can say this power is granted to improve behavior of society. It is powerful constitutional tool of president and only president It cannot be exercised by violating the principles of natural justice and appropriate use of it by president can ensure peace in society. it is considered as act of grace as when someone is punished it contributes in public good but power granted to president under article 45 of constitution of Pakistan is not absolute it is subjected to some limitations and should be used only for welfare of general public. This power should only be used for public good and reasons should be very clear on the basis of which someone is being granted pardon or reject it should be only to protect innocent, those hardened and desperate criminals should not be granted clemency as objective criteria should be established

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<sup>25</sup> Hakim Khan vs. Government of Pakistan PLD 1992 SC 595.

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