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
Authority	President	Governor
Constitutional Provision	**Article 72**-The President shall have the power to grant pardons, reprieves, respites or remissions of punishment.	**Article 161**- It covers pardoning powers on the governor
Death sentence	They can suspend, remit or commute the sentence of any person convicted of any offence for death sentence.	Governor *can't pardon* death sentence. He can suspend, remit or commute a death sentence.
Jurisdiction	The pardoning power of the President is applicable to the offence against Central law	It is applicable for the offence committed against State law
Court Martial	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

