

THE RELEVANCE OF PARDON AND AMNESTY IN NIGERIAN LEGAL SYSTEM

By

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Abstract

This article examined the relevance of pardon and amnesty in Nigerian legal system. The study x-rayed the use of pardon and amnesty by the executive as necessary tools to grant relief from the law to persons concerned with or convicted of any offence created by an Act of the National Assembly. The work observed that pardon and amnesty can be used for rehabilitation and reintegration of individuals into society as well as for national reconciliation, fostering healing and unity. They can also help alleviate prison overcrowding by reducing the number of individuals serving sentences. Using the doctrinal method, this research examined scholarly materials such as journals, books, internet and other published materials that are associated with the subject matter. The objective of this work revealed that although the exercise of the power of pardon by the executive may be based on legal or humanitarian factors, it may also be influenced by political considerations, which has created doubts about the sincerity and genuine intent behind such decisions. The study therefore recommended that clear and transparent criteria and guidelines should be included in the Constitution articulating the circumstances under which pardon or amnesty may be considered, ensuring consistency and fairness in decision-making.

Keywords: Clemency, pardon, prerogative of mercy and amnesty.

1.1 Introduction

In Nigerian legal system, pardon and amnesty are tools used to grant people concerned with or convicted of an offence created by an Act of the National Assembly relief from punishment for the crime committed. They are used by the executive to foster healing, unity and national reconciliation. Although they both aim to provide people relief or a pardon, they can cause tension and controversy when used arbitrarily. This study revealed that the influence of political considerations and a lack of clear criteria for granting pardon and amnesty have led to ambiguity and inconsistencies in decision-making which has eroded public trust and undermined the integrity of the legal system. In Nigeria, the exercise of the power of pardon has generated a lot of controversies as there are claims that the powers have been granted for political reasons and to further narrow partisan interests. The most controversial case in Nigeria was the presidential pardon granted the former Governor of Bayelsa State, Chief Diepreye Alamieyeseigha by President Goodluck Jonathan in March 2013. This pardon generated a lot of criticisms even though it was carried out according to laid down constitutional procedures. This act was seen as an affront on the constitutional responsibility of government to fight corruption since Chief Alamieyeseigha had been convicted of corruption by a UK court while in office. Although it can be argued that the Constitution does not restrict the President regarding persons to whom the powers can be granted neither does it provide guidelines or standards for the grant of such powers. However, the President ought to have known that he is a fiduciary and the trust reposed in him restrains his abuse of such power. Furthermore, section 153 (1) (b) of the Constitution¹ provides for a body known as the

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“Council of States” who is to advise the President in the exercise of the powers of pardon. It could also be argued that the intendment of the framers of the Constitution was to protect the powers from abuse.

Questions have also arisen as to whether the presidential powers of pardon in Nigeria is a pre or post - conviction instrument. That is, can the President of Nigeria exercise the powers of pardon both before and after conviction for an offence as is exercised by the sovereign in Britain and the United States of America? or whether the power is only limited to the post-conviction. This work will analyze the relevant sections of the Nigeria’s Constitution and other relevant materials to determine the nature of executive powers of pardon in Nigeria, the extent and effect of the power, as well as whether pardon is a pre or post-conviction instrument.

1.2 Conceptual Clarifications

This work will attempt to define some concepts that are relevant to this work.

1.2.1 Clemency- Clemency is an act of leniency used for granting a person convicted of a criminal offense relief from a court ordered sentence or punitive measure.² It can be seen as the act of reducing the penalties of a crime.³ On the effect of clemency on subjects, Blackstone, stated that the act of clemency endears the sovereign to his subjects and contribute more than anything to root in their hearts that filial affection and personal loyalty, which are the sure establishment of a prince.⁴ Clemency can therefore be used to relieve a person or reduce the punishment for a crime.

Clemency can be granted in two major ways: via pardon or commuting the sentence. A pardon releases a guilty person from the terms of the existing sentence or any subsequent penalties related to the same offence. Commutations on the other hand, can decrease a person’s sentence in whole or in part. Clemency can be awarded for a variety of reasons and is often requested through a petition or application procedure. The Nigerian Legal system relies heavily on clemency because it gives the executive arm of government a way to exercise its discretionary powers and show mercy and compassion.

1.2.2 Prerogative- the development of pardon in Nigeria is linked to the doctrine of royal prerogative under English monarchical practice. Prerogative means discretion, and can therefore be defined as the executive powers of the president to use his discretion with respect to a person convicted of an offence.

1.2.3 Pardon- means discretion, the power to act according to discretion. Pardon can therefore be defined as the power to act according to discretion, for the public good, without the prescription of the

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¹ Constitution of the Federal Republic of Nigeria 1999 (as amended)

² Kenny, L. , Betsy, P. & Akin, A. ‘Clemency 101: How Sentences can be Pardoned or Commuted’ (2021). <https://www.americanprogress.org/article/clemency-101> accessed 19th July, 2024

³ Study.com. Clemency: Definition, Procedure & Examples (2023) <https://study.com.com/academy/lesson/what-is-clemency-definition-provision.html>. accessed 19th July, 2024

⁴ Blackstone W, *Commentaries on the Laws of England in Four Books* (Reprint of the 3rd Revised Edition, the Law Book Exchange, Ltd. 2003).

law and sometimes even against it.⁵ It has been asserted that the sovereign's power of pardon is a discretionary one that shouldn't be used arbitrarily.⁶

In *Exparte Wells*⁷, a pardon was defined as a work of mercy whereby the King either before attainer, sentence or conviction, or after, forgives any crime, offence, punishment, execution, right, title, debt or duty, temporal or ecclesiastical. In *United States v Wilson*⁸, the court defined pardon as an act of grace, proceeding from the power entrusted with the execution of the laws, which exempts the individual, on whom it is bestowed from the punishment the law inflicts for a crime he committed.

This definition was followed by the courts in Nigeria in *Falae v Obasanjo*⁹, where pardon was defined as an act of grace by the appropriate authority which mitigates or obliterates the punishment the law demands for the offence and restores the rights and privileges forfeited on account of the offence. The effect of a pardon is to make the offender a new man (*novus homo*), to acquit him of all corporal penalties and forfeitures annexed to the offence pardoned. The court stated that by virtue of the pardon contained in Exhibit 11, the disqualification the 1st respondent was to suffer because his conviction has been wiped out. His civil rights and liberties are fully restored and accordingly he has not been caught by the provisions of section 13(i)(h) of the Decree. According to the court, the effect of pardon is to wipe out a sentence and conviction of the individual concerned and reinstate him to his former position as if he was never convicted. The executive powers of pardon can be exercised for several reasons, such as where a President feels a person is innocent and has been unjustly punished and where he feels that though the offender is guilty, the punishment is too harsh.

1.2.4 Amnesty-The word amnesty is derived from the Greek word *amnestia* or *amnesis*, which means forgetfulness, oblivion or to lose memory.¹⁰ Amnesty means overlooking or absolution, the act of forgetting an offence, usually one that relates to offences against the political order of a state like treason and sedition.¹¹ Amnesty can also be defined as a sovereign act of forgiveness for past acts, granted by a government to all individuals (or to certain classes of individuals) who have been guilty of crime, generally political offenses, such as treason, sedition and rebellion. It is an act of a sovereign authority intended to put a stop to procedures that have already been started or are about to be started, as well as verdicts that have already been rendered, by applying the concept of *tabula rasa* in prior offences, which are typically committed against the State.¹² It is frequently contingent upon the return of the accused to obedience and duty within a specified time frame. Amnesty which is synonymous with a complete pardon in that it absolves the offender of their penalty, is included in the definition of pardon.¹³ Amnesty can also be said to be the decision by government to allow offenders to go free and not enforce the usual

⁵ Abhavan, R.N. & Abayomi, S.B, 'An Appraisal of the Power of Pardon under Nigerian Law: Lessons from other Jurisdictions' *Beijing Law Review*, [2022] (13) (2). 16-23

⁶ Nadagoudar, S.V. & Gowda, S. 'The Presidential Power to Pardon in India' *International Journal of Law and Legal Jurisprudence Studies*[2014] (2) 397

⁷ 59 U.S (18 HWO) 307, 311, 1855

⁸ 32 U. S (7 Pet) ISO) 1833

⁹ (1999)4 NWLR (Pt 599) 476,

¹⁰ Weisman, N. A. 'History and Discussion of Amnesty' *Columbia Human Rights Law Review*[1972](1) 529

¹¹ Onikepo, B. 'Amnesty, Criminality and Rule of Law' (2021) <https://www.thisdaylive.com/index.php/2021/07/06/amnesty-criminality-and-rule-of-law> accessed 23rd July 2024

¹² Weisman, N. , 'El Salvador Supreme Court Judgement on Amnesty Law (1993). Proceedings 10-93 of 20th March 1993

¹³ Black, H. C. *Blacks Law Dictionary* (6th ed Deff Prints 1992)

punishment for crime against them.¹⁴ It can therefore be seen as a general pardon for a crime. It is also an act of authority by which pardon is granted to large groups of individuals.

An amnesty law is any legislative, constitutional or executive arrangement that retroactively exempts a select group of people, usually military leaders and government leaders from criminal liability for the crimes that they committed.¹⁵ In contemporary times, amnesty laws have come to be considered as granting impunity for the violation of human rights, including institutional measures that preclude the prosecution for such crimes and reprieves from those crimes already convicted, thereby avoiding any form of accountability.¹⁶ Many international organizations such as Amnesty International, Human Rights Watch and Humanitarian Law Project, have opposed amnesty legislations claiming that by maintaining impunity, amnesty laws violate both local and international constitutional laws.

It is becoming more widely accepted that amnesty for “international crimes” which include crimes against humanity, war crimes, and genocide is forbidden by international law. This interpretation is based on the duties outlined in human rights treaties, the rulings of regional and international tribunals, and the body of law resulting from established state custom (customary international law). General amnesties are being reversed by national, regional and international tribunals more often. Furthermore, amnesty for major offences have often not been granted by subsequent peace accords.¹⁷ In light of this, the International Criminal Court was founded to make sure that in the event that local governments choose not to pursue legal action, offenders would not escape accountability for their crimes.¹⁸

1.3 The Relevance of Pardon and Amnesty in Nigeria Legal System

The relevance of pardon and amnesty in Nigerian legal system can be shown in diverse ways:

1. **Rehabilitation and Reintegration-** Granting pardon and amnesty can contribute to the rehabilitation and reintegration of individuals into society. They acknowledge the potential for personal growth and rehabilitation, encouraging individuals to become law-abiding citizens after serving their sentences.
2. **National Reconciliation-** Pardon can be a tool for national reconciliation, fostering healing and unity. Amnesty also contributes to national reconciliation and peace-building efforts by providing a path for individuals involved in conflicts to return to society without fear of prosecution. It is a key element in addressing historical grievances and promoting unity.
3. **Humanitarian Considerations-** Pardon and amnesty, as legal instruments are grounded in humanitarian principles. They recognize that certain individuals may have been compelled to participate in conflicts due to various factors and offers them an opportunity to reintegrate into society.

¹⁴ Okwori, G. & Mathew, N. U. ‘The Presidential Power to Pardon in India’ *International Journal of Law and Legal Jurisprudence Studies*[2014] (2)397

¹⁵ Williams, B. *Crimes of War Project* (The Book Press 2010)

¹⁶ *ibid*

¹⁷ Antonio, C., *Outlawing Amnesty: The Return of Criminal Justice in Transitional Justice Schemes* (2009) <http://www.antonioacasell.eu> accessed 23rd July 2024

¹⁸ International Justice. Amnesty International <http://www.amnesty.org>>international accessed 6th August 2024

4. **Addressing Socioeconomic Grievances-** amnesty programs can be designed to address underlying socioeconomic grievances that may have contributed to conflict or insurgency. By providing opportunities for education and vocational training, amnesty aims to address root causes and prevent a return to violence. For example, in 2009, late president Umaru Musa Yar'Adua, granted amnesty to the Niger Delta militants in Nigeria who were fighting for resource control.¹⁹
5. **Easing Prison Overcrowding-** pardon can help minimize prison overcrowding by reducing the number of individuals serving sentences. For example, during the COVID- 19 outbreak, there were tidings that Nigerian government was contemplating the release of certain prisoners in order to minimize jail overcrowding and stop the virus's spread in reaction to the difficulties presented by the outbreak. The executive can also use pardon to correct potential judicial errors or miscarriages of justice. It serves as a safety valve to rectify situations where new evidence emerges or doubts about the fairness of a trial arise.
6. **Preventing Protracted Legal Battles:** Amnesty programs can prevent protracted legal battles by offering a non-judicial mechanism for addressing the actions of individuals involved in conflicts. This is especially relevant in situations where legal proceedings might be impracticable or resource-intensive.

1.4 Nature and Scope of Executive Powers of Pardon in Nigeria

Under the Constitution of the Federal Republic of Nigeria 1999 (as amended), Presidential pardoning power is exclusively vested in the President. The power of pardon and clemency under our law is codified in sections 175 and 212 of the Nigerian Constitution. The section provides thus:

The President may:

- a) Grant any person concerned with or convicted of any offence created by an Act of the National Assembly a pardon, either free or subject to lawful conditions.
 - b) Grant to a person a respite either for an indefinite or for a specified period, of the execution of any punishment imposed on that person for such an offence.
 - c) Substitute a less severe form of punishment imposed on that person for such an offence or
 - d) Remit the whole or any part of any punishment imposed on that person for such an offence or any penalty or forfeiture otherwise due to the state on account of such an offence.
- 1) The President's powers under subsection (1) of this section shall be exercised by him after consultation with the Council of State.

¹⁹ *The Guardian*, Nigeria Begins Amnesty for Niger Delta Militants <https://www.theguardian.com> (6th August 2009) accessed 24th July, 2024.

- 2) The President acting under the advice of the Council of State, may exercise his powers under subsection (1) of this section about persons concerned with offences against the army, naval or air force law or convicted or sentenced by a court-martial.²⁰

The same powers is granted to the Governor of a state under section 212 of the Constitution.

In furtherance of this power, section 153(1)(b) of the Constitution provides for a body known as the “Council of State”, who is to advise the President in the exercise of his power with respect to prerogative of mercy (amongst other powers). The section provides thus – the powers of the president under subsection (1) of this section shall be exercised by him after consultation with the council of States.

The question then arises. What is the exact status of the council of state? Is their advise to be interpreted as limiting the pardoning powers of the President? or is it simply a matter of procedure meant to be followed? This research will take the later position as will be shown in this work. We will also answer the question of when pardon can be used? Whether pardon is a pre or post-conviction instrument.

A casual interpretation of sections 175 and 212 of the Nigerian Constitution reveal that the pardoning process is not subject to any rules or regulations. The implication is that the president or governor is not under any form of restriction as to the persons to whom the pardon can be granted.

In *Olu Falae v. Obasanjo*²¹, the Supreme Court of Nigeria appears to support the broad scope of the authority conferred under section 175, yet there are conflicting court rulings that generally restrict the power to a post-conviction tool exclusively. These rulings seem to imply that the pardoning authority may only be rightfully used after a conviction and cannot be used before a conviction. For instance, the Supreme Court stated in *Solale & Anor v the State*,²² state that it needs to be stressed for future guidance that a person convicted for murder or sentenced to death by a High Court and whose appeal is dismissed by the Court of Appeal is deemed to have lodged a further appeal to the court and until that appeal is finally determined, the head of state or the governor of a state cannot under sections 175 or 212 of the 1999 Constitution as the case may be exercise the power of prerogative of mercy in favour of that person”.

Furthermore, the Court of Appeal in *FRN v Achida*²³, argued that the phrase “any person concerned with or convicted of any offence” used in Section 212(1) (a) of the 1999 Constitution cannot be given its literal interpretation because this would create a legal absurdity. According to the court, the phrase “concerned with” does not address the offender but relates to other persons ‘concerned with an offence’ such as the victims of an offence and police officers investigating the offence. The court came to this conclusion in order to limit the interpretation of section 212 (1) (a) of the Constitution to post-conviction pardon, denying offenders the right to enjoy pre-trial or pre-conviction pardon.

²⁰ Section 175(2) CFRN 1999 (as amended)

²¹ n 10

²² (2005) 11 NWLR (pt 937) 460

²³ (1977) 3 SC 53

It is trite that where a constitutional provision is unambiguous, the literal interpretation is preferred.²⁴ This rule of interpretation was supported by the Supreme Court in *Mobil Oil (Nig) Ltd v Federal Board of Inland Revenue*²⁵, where the Supreme Court stated that where the words of a statute are clear, the court shall give effect to their literal meaning. It is only when the literal meaning may result in ambiguity or injustice, the court may seek internal aids within the body of the statutes *in pari material* to resolve the ambiguity or avoid doing injustice.

The provisions of sections 175 and 212 of the Constitution are clear and unambiguous. Hence, the “concerned with” or convicted of any offence created by an Act of the National Assembly within the contemplation of section 175 (1) (a) of the 1999 Constitution implies that the President may exercise the powers conferred on him in favour of a person who has not been convicted of an offence created by an Act of National Assembly but was involved in the commission of that offence. A prior conviction of an offence created by an Act of the National Assembly is not needed for the grant of pardon and holding such a position is clearly against the pardoning process established in almost all the jurisdictions that vests the President or Governor discretion on prerogative of mercy.

In Nigeria, the President at the Federal level and the Governors at the state level normally have the power to grant pardon. Nigerian Presidents have occasionally shown mercy by freeing certain convicts in honor of holidays or other national occasions. The most controversial case in Nigeria was the presidential pardon granted the former Governor of Bayelsa State, chief Diepreye Alamiyeseigha by President Goodluck Jonathan in March 2018. This pardon generated lot of criticisms from different quarters, even though it was carried out according to laid down constitutional procedures. This act was seen as an affront on the fundamental responsibility of government to fight corruption as provided by the Constitution, since Chief Alamiyeseigha had been convicted of corruption while in office.

The defense of the presidency was that the Constitution does not limit the President in terms of the persons he can grant pardon to. However, the President ought to have known that he is a fiduciary and the trust conferred in him restrains his use of such power arbitrarily. It can also be argued that it is the intendment of the Constitution when it made the process of pardon to be in consultation with the council of state. Valid as these arguments may be, the position is that the Constitution does not provide any restrictions on the President as to persons who can be granted pardon or the objective for such grant, thereby opening the process to abuse by the executive. This work therefore calls for reforms in the grant of the presidential powers of pardon and for some form of checks in the grant of such powers as is practiced in other jurisdictions.

1.5 Comparative Analysis of the Power of Pardon in Nigeria with Other Jurisdictions

To understand this topic, there is need to draw a comparison of the nature and scope of the presidential powers of pardon in Nigeria with the executive powers of pardon in other jurisdictions like England and United States with a view to making proposals for reform in Nigeria. The United States, Britain and Nigerian systems all vest their Presidents with the power of pardon, which appears to be comparable

²⁴ Adangor, Z. ‘The Presidential Pardon Granted Chief D.S.P Alayameiseigha: Time to Revisit the President’s Pardoning Power under Section 175 of the Constitution of the Federal Republic of Nigeria 1999’ *Journal of Law and Policy* [2005] 39 – 185

²⁵ (1977) 3 SC 53

in scope and character.²⁶ Sections 175 and 212 of the Nigerian Constitution reveal that the pardoning process is not subject to any rules or regulations. This seems to be intentional because historically, the pardoning authority has functioned similarly to a prerogative²⁷ The nature and scope of the authority granted to the President was summed up in the American court's ruling in *Ex parte Garland*²⁸-where the court not only noted that the authority to pardon is unrestricted and unhindered by legislative oversight, but it also decided that the power may be used to absolve someone of any known crime, either before the initiation of legal processes or following conviction and ruling.

Although section 175 (2) -provides that the President's powers under subsection (1) of this section shall be exercised by him after consultation with the council of state²⁹, and section 153(1)(b) further provides for a body known as the council of state which is to advise the President in the exercise of this power. The question is – does this section empower the council to circumscribe the powers of the President? This research will answer the question in the negative. This is because, given the legal status of the council as a ceremonial body, it does not possess the power in law to carry out checks on the exercise of this power by the President. This work therefore submits that there should be reforms in the exercise of presidential powers of pardon by providing some form of scrutiny in the grant of such powers as practiced in England and United States.

1.5.1 The Executive Powers of Pardon in England.

For a proper understanding of pardon power in England, there is need to review the historical tradition of pardon in ancient Greek and Rome from where the concept derived its roots in the English legal system. The ancient Greeks used a form of clemency that power rested with the people rather than with the Sovereign. Thus, a petition for clemency required the support of at least 6000 people which made it difficult to achieve. Hence, it was reserved for influential people. However, in ancient Rome, clemency was not employed for purposes of justice or mercy, rather it was employed for political purposes. The executive would pardon someone in order to gain favour with the public or increase his popularity.³⁰ The well-known biblical tale of Pontius Pilate forgiving Barabbas rather than Jesus is an illustration of this. Greek and Roman legal Philosophy laid the groundwork for the emergence of monarchical pardon powers in England.

In England, the act of clemency was used to endear the sovereign to his subjects and to gain their affection and personal loyalty to the prince. At common law, the power was absolute, unfettered and not subject to judicial scrutiny. There is no time specified for the grant of pardon, as it can be granted before conviction and after it. The power of pardon which is a special prerogative of the crown is now entrenched in statute. In England, the Constitutional Monarch exercises power on the advice of the Home Secretary.³¹ However, the Home Secretary's decision can in certain circumstances be challenged

²⁶ n 7

²⁷ Grupp, S. 'England Historical Aspects of the Pardon in England' *American Journal of Legal History* [1963] (7) 51-59.
Doi: <https://doi.org/10.2307/844083> accessed 19th July, 2024

²⁸ 71 U.S (4 Wall) 333 (1866)

²⁹ CFRN 1999 (as amended)

³⁰ n 5

³¹ Quora. Does the UK have a Presidential Pardon System? If so, what is the process for granting a pardon <https://www.quora.com> accessed 6th August 2024

by judicial review. The Sovereign pardon powers available in Britain is now applicable in Nigeria by virtue of sections 175 and 212 of the Constitution.³²

1.5.2 The Executive Power of Pardon in United States of America

In respect of the United States, the executive powers of pardon is provided for in Article II, Section 2 of the United States Constitution to the effect that the President shall have the power to grant reprieves and pardons except in cases of impeachment. In interpreting this power, American courts have looked to English jurisprudence. In *Ex parte Wells*,³³ Justice Wayne, stated that at the time of our separation from Great Britain, the King exercised the power as the chief executive prior to the revolution, the colonies, being in effect under the laws of England, well accustomed to the exercise of it in the various forms, as they may be found in the English law book. At the time of the adoption of the Constitution, American politicians were conversant with the laws of England and familiar with the prerogative exercised by the crown. This means that the American Constitution intended to confer on the President of the United States of America the same power of pardon both in nature and effect, as is enjoyed by the sovereign in Great Britain. A pardon may be full, limited or conditional. A full pardon wipes out the offence in the eyes of the law and rescinds the sentence and conviction, and frees the convicted person from serving any uncompleted term of imprisonment or paying any unpaid fine. A pardon is conditional where it does not become operative until the grantee has performed some specified act, or where it becomes void when some specific events happens. The power of pardon in America, just like in England may be exercised before, during or after trial³⁴. In *United States v Wilson*,³⁵ the court stated that- the power of pardon has been exercised, from time immemorial by the executive of England, whose language is their language and to whose judicial institutions theirs bear a close resemblance, they adopt their principles respecting the operations and effect of a pardon and look unto their book for the rules prescribing how it is to be used by the person who would avail himself of it.

With respect to the extent of powers of pardon in America, it is submitted, that the presidential power is very wide.³⁶ According to Hamilton, the prerogative of pardoning should be as unfettered as possible, so that exceptions in favour of unfortunate guilt could be made, otherwise, justice would wear a countenance too sanguinary and cruel.³⁷ He argued that the reason for vesting the power to pardon on the president alone was that in serious insurrection, a well-timed offer of pardon to the rebels could be essential to preserving the Government.

It is instructive to note that in United States, although the executive powers of pardon is unfettered, there are still some form of checks in the exercise of such powers. For example, United States provides some form of checks on the presidential pardon powers. Firstly, the President can be impeached and removed from office for corrupt and fraudulent abuse of pardoning power. Also, if a person is still in office and grant controversial pardon, by election day, he may be rebuked at the polls and not returned to office. Finally, where the President is at the end of his tenure, he could be escorted out of office and

³² CFRN 1999

³³ n 7

³⁴ n 27

³⁵ 32 U.S (7 Pet) ISO) 1833

³⁶ n 27

³⁷ Carannante, J. 'What to do About the Executive Clemency Power in the Wake of the Clinton Presidency' *NYLS law review*, [2003] (47) 325

followed everywhere in life by an unfavorable judgment by history. Although it may be argued that this is not a strong check on the pardon powers, it however, provides some form of safeguards to the grant of the power. This work therefore submits that although the grant of pardon is a matter of discretion, it should be subject to certain checks, particularly because the exercise of such powers not only affects those concerned with the offence but also other members of the society. This was the position of the court in the case of *Gouru Venkata Reddy v State of Andhra Pradesh*,³⁸ where the Indian Supreme Court in overturning the pardon granted an Indian activist who was sentenced to 10 years imprisonment for killing two people, stated that the exercise of executive clemency is a matter of discretion, it is not a matter of privilege. It is a matter of performance of official duty. The power of executive clemency is not only for the benefit of the convict, but while exercising such a power the President or the Governor as the case may be, has to keep in mind the effect of his decision on the family of the victims, the society as a whole and the precedent it sets for the future. An undue exercise of this power is to be deplored. Also in *Epuru Sudhakar & Anor v Government of Andhra Pradesh & ors*³⁹ - the Indian Supreme Court held that “clemency is subject to judicial review and it cannot be dispensed as a privilege or act of grace.

Following the above decisions, this work submits that since the grant of pardon in Nigeria is final, provisions should be made for checks on the exercise of such powers in Nigeria.

1.6 Conclusion

This article has made bare the relevance of pardon and amnesty in Nigeria legal system. The study has also highlighted the problems serving as bottlenecks to the exercise of such powers. The problems notwithstanding, pardon and amnesty will continue to be a part of Nigerian Legal system. This is because no price is too much to pay in order to achieve peace in any country. The study has also shown that pardon and amnesty are inevitable tools used in a legal system to give people relief from the law and to sometimes address injustices caused by the courts. This relief can take the form of a reprieve, which is the temporary cancellation or delay of a sentence, a full pardon, which is the exemption from the terms of the existing sentence or any subsequent penalties related to the same offense. It is however, submitted that since the grant of pardon and amnesty is final and affects not only those who committed the offence, but the victims of the offence and other members of the society, there should be some form of reform in the exercise of such powers by the president.

The study therefore makes the following recommendations

- That clear and transparent criteria and guidelines should be included in the Constitution articulating the circumstances under which pardon or amnesty may be considered, ensuring consistency and fairness in decision-making.
- Provisions should be made for the presidential powers of pardon to be subject to confirmation by other arms of government as demanded by other constitutionally granted presidential powers.

³⁸ (2003) SC 527

³⁹ (2006) SC 3385

- Government should consider the establishment of an independent review mechanism to assess petitions for pardon and amnesty, as an impartial body can provide an additional layer of scrutiny, enhancing the credibility of the process.
- Government should increase public awareness about the amnesty and pardon process and its objectives by seeking public input through consultations to ensure that the broader community's perspectives are considered in decision-making.
- The state and Federal Government of Nigeria should implement comprehensive reintegration programs for individuals granted amnesty and pardon, where these programs should address socio-economic factors, provide education and vocational training, and facilitate the smooth transition of beneficiaries back into society.
- There should be an engagement of local communities in the design and implementation of amnesty programs, as community participation is crucial for successful reintegration and ensuring that the benefits of amnesty extend beyond individual beneficiaries.
- The state or Federal Government should address the root causes of conflicts and grievances that led to the implementation of amnesty programs, as tackling issues such as poverty, inequality, and political marginalization can contribute to long-term stability.
- Provision should also be made for persons dissatisfied with the exercise of power of pardon and amnesty granted by the president or governor to challenge such actions in court. This will help to check the arbitrary exercise of such powers by the president.