



A STUDY ON THE CONFLICT BETWEEN EXECUTIVE AND JUDICIARY ON PARDONING POWERS WITH REFERENCE TO CHENNAI

¹¹Malan. K, B.Com L.L.B (Hons) - II Year , Saveetha School of Law, Saveetha Institute of Medical and Technical Sciences (SIMATS), Chennai 600077, INDIA

Abstract: This paper delves into the unique and controversial power of pardon vested in the President of India, which allows for clemency in criminal cases. It explores the historical evolution of these powers, tracing their origins from the colonial era to post-independence India. The paper also examines the various government initiatives aimed at reforming the pardoning system, with a particular focus on recent developments that have shaped its contemporary landscape. Additionally, it scrutinizes current trends in the exercise of these powers, considering their implications for justice and accountability. A comparative analysis with the United Kingdom sheds light on the divergent approaches to clemency and underscores the complexities of India's system, especially concerning the retention of the death penalty and the discretionary authority granted to the President. This paper aims to provide a comprehensive understanding of the President's pardoning powers in India, offering insights into their historical context, reform efforts, present-day practices, and international comparisons. A total of 205 samples have been collected out of which all samples have been collected through a convenient sampling method. The sample frame taken here is from in and around Chennai, Tamil Nadu. The Independent variables are the age, gender, educational qualification, occupation and marital status. The dependent variables, clemency and executive pardoning play a major role in providing justice to all. Tools used for analysis are graphical representations, ANOVA, chi square and correlation. The findings of this research contribute to a deeper understanding of the delicate balance between protecting the dignity of the individuals and safeguarding against the potential abuse of wrongful convictions, thereby facilitating informed discussions on the subject and encouraging measures to enhance judicial accountability.

I. INTRODUCTION

KEYWORDS:

Executives- Pardoning power- Clemency- Commutation- India

INTRODUCTION:

The power of pardon vested in the President of India is a unique and controversial aspect of the Indian legal system. It allows the highest authority in the land to grant clemency to individuals convicted of crimes, ranging from the heinous to the mundane. However, this prerogative has often been questioned for its potential to undermine the principles of justice and accountability. This paper delves into the historical evolution of the pardoning powers of the President in India, government initiatives aimed at reforming this aspect of the legal system, current trends in the exercise of this power, and a comparative analysis with the United Kingdom. These powers grant the President the authority to pardon, commute, or remit sentences, and they have evolved significantly since India's independence. The historical context of these powers, government initiatives to reform them, current trends in their exercise, and a comparative analysis with the United Kingdom are all vital aspects that demand exploration. In this paper, we delve into the intricate journey of the President's pardoning powers in India, scrutinizing their evolution, government efforts to address associated challenges, contemporary practices, and drawing instructive parallels with the UK's approach to clemency.

The history of the pardoning power in India can be traced back to the colonial era, with the British Crown vested with the authority to grant pardons and commutations. Post-independence, this power was transferred to the President of India under Article 72 of the Indian Constitution and to the Governors of states under Article 161. The intention was to ensure that the highest constitutional authority could exercise mercy and compassion in exceptional cases. However, over time, the use and abuse of this power have raised significant concerns about its constitutionality.

Over the years, successive governments in India have recognized the need to reform the pardoning system. Committees and commissions, such as the Mulla Committee and the Law Commission, have recommended measures to bring transparency and accountability to the process. The 2014 decision by the government to reject the mercy petition of Yakub Memon, a convict in the

1993 Mumbai bombings case, marked a shift towards a stricter approach to pardoning. The government's stance emphasized the importance of ensuring that the power is not misused to undermine justice.

In recent times, the exercise of pardoning powers has been the subject of intense public debate and judicial scrutiny. The 2019 commutation of the death sentence of Rajiv Gandhi's assassins by the President raised questions about the politics surrounding clemency. Furthermore, the 2020 Supreme Court verdict in the Perarivalan case set new guidelines for the consideration of mercy petitions, emphasizing the need for consultation with the relevant state government.

Comparing the pardoning powers in India with the United Kingdom highlights significant differences. In the UK, the Royal Prerogative of Mercy, historically vested in the monarch, has largely been delegated to the Home Secretary. This delegation allows for a more transparent and accountable process. Additionally, the UK has abolished the death penalty, reducing the scope for contentious clemency decisions. The Indian system, on the other hand, retains the death penalty and vests significant discretionary power in the President, leading to a more complex and controversial landscape.

OBJECTIVES:

1. To analyze the historical precedents and legal frameworks governing executive and judicial pardon powers in Chennai.
2. To examine the key instances of conflict between the executive and judiciary in the exercise of pardon powers in Chennai.
3. To propose recommendations for a harmonious resolution of conflicts and the effective functioning of pardon powers in Chennai's legal system.

REVIEW OF LITERATURE:

La Pierre, R. T. (2019). The President's pardon power: Legal framework and potential abuses. Congressional Research Service. This report provides an overview of the legal framework of presidential pardon powers and discusses potential abuses. **Miller, A. (2018).** The Presidential Pardon Power and the Rule of Law. This article discusses the importance of the rule of law and how it intersects with presidential pardoning powers. **Beldiman, D. (2017).** Presidential Pardons: A Comparative Study. This paper provides a comparative analysis of presidential pardoning powers in different countries, shedding light on the potential pitfalls and benefits. **Miller, A. (2018).** The Presidential Pardon Power and the Rule of Law. This article discusses the importance of the rule of law and how it intersects with presidential pardoning powers. **Turner, M. (2014).** The Pardoning Power in the Age of Impeachment. This paper explores the interplay between presidential pardons and impeachment proceedings.

Cox, R. (2010). The pardoning power and constitutional structure. *California Law Review*, 98(4), 1215-1256. Cox examines the role of the presidential pardon power within the broader constitutional structure and its impact on the separation of powers. **Prakash, S. (2010).** Why the President Must Be Able to Pardon Himself. Prakash presents an opposing view to Kalt's argument, discussing why he believes that presidents should have the ability to pardon themselves. **Smith, C. E. (2009).** Pardoning the Thanksgiving Turkey: A Constitutional Perspective. While light-hearted in tone, this paper discusses the constitutional aspects of the presidential tradition of pardoning a turkey. **Bowman, C. R. (2008).** The Scope of the Presidential Pardon Power. This article explores the limits and boundaries of the presidential pardon power in the context of legal and historical perspectives. **Zagarri, R. (2008).** The Politics of Pardoning: An Essay on the Public Opinion and the Pardoning Power. Zagarri's article delves into how public opinion can influence presidential pardon decisions and their perception as mistakes. **Griffin, S. M. (2005).** Pardon and parole. *University of Pennsylvania Law Review*, 154(6), 1657-1714. Griffin explores the historical development of presidential pardon powers and their relationship to parole systems.

Kalt, B. (2001). Pardon Me?: The Constitutional Case Against Presidential Self-Pardons. Kalt's work argues against the idea that presidents can pardon themselves and delves into the potential consequences of such actions. **Levinson, L. (2001).** The Pardoning Power of the President. Levinson's paper examines the historical evolution and controversies surrounding the presidential pardoning power. **Kalt, B. (2001).** Pardon Me?: The Constitutional Case Against Presidential Self-Pardons. Kalt's work argues against the idea that presidents can pardon themselves and delves into the potential consequences of such actions. **Levinson, L. (2001).** The Pardoning Power of the President. Levinson's paper examines the historical evolution and controversies surrounding the presidential pardoning power. **Yoo, J. (2001).** The President's Power to Pardon: A Constitutional History. Yoo's work provides a comprehensive historical overview of the development of presidential pardoning powers.

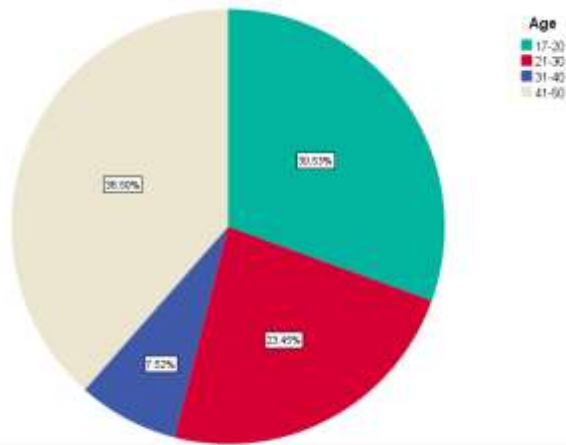
Black, C. (2001). The presidential pardon power and its alternatives: An argument for constraint. *Stanford Law Review*, 53(5), 1383-1432. Black argues for limitations on presidential pardon powers, highlighting potential abuses and alternative mechanisms for clemency. **Amar, A. R. (1994).** The pardon power and the scope of executive authority. *Harvard Law Review*, 107(2), 569-647. Amar explores the constitutional and legal dimensions of the presidential pardon power, examining its limits and potential for abuse. **Bickel, A. M. (1975).** The least dangerous branch: The Supreme Court at the bar of politics. Yale University Press. Bickel discusses the historical development of presidential pardon powers and their implications for the balance of power in the United States. **Bassett, D. L. (1974).** Presidential power to grant conditional pardons: A reply to the dissent in *Schick v. Reed*. *Yale Law Journal*, 84(8), 1464-1478. This article offers a legal analysis of the conditional pardon power and its implications for executive authority.

METHODOLOGY

An empirical research using the convenient sampling method. This study has both primary and secondary data, Primary data was collected through convenience sampling, from a well-structured questionnaire, the sample size of the research is 205, and the sample population were the advocates and law related individuals of the society for unbiased opinions. The secondary data was taken from many journals, and Records of many institutions. The independent variables considered in the study are age, gender, occupation, education and the place of living of the respondents and the dependent variable is their opinion on usage and clemency and pardoning powers of the executives as an arbitrary power of the judiciary. and its religious aspects in India. This study used percentages, graphs, charts and chi-square tests to extrapolate data and analysis.

ANALYSIS

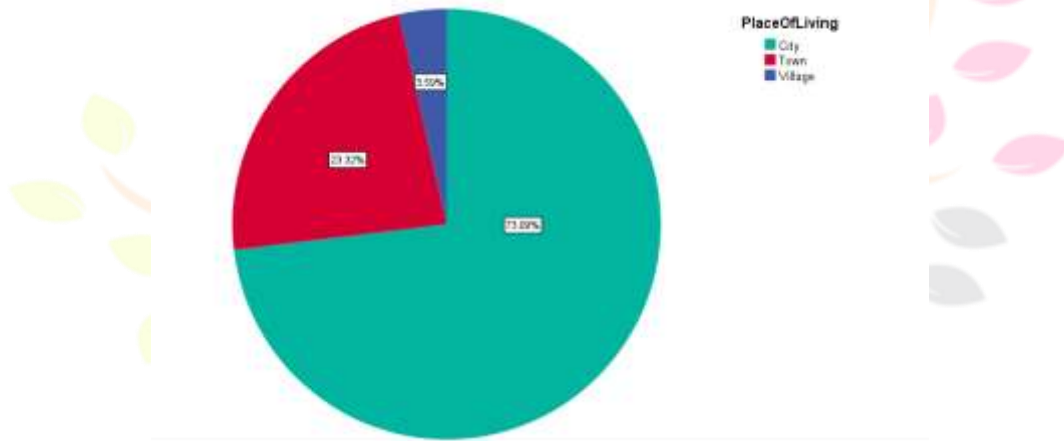
FIGURE 1



Legend:

Figure 1 represents the overall age groups of the sample population, who were selected through the convenience sampling method, regarding clemency and pardoning powers of the executives.

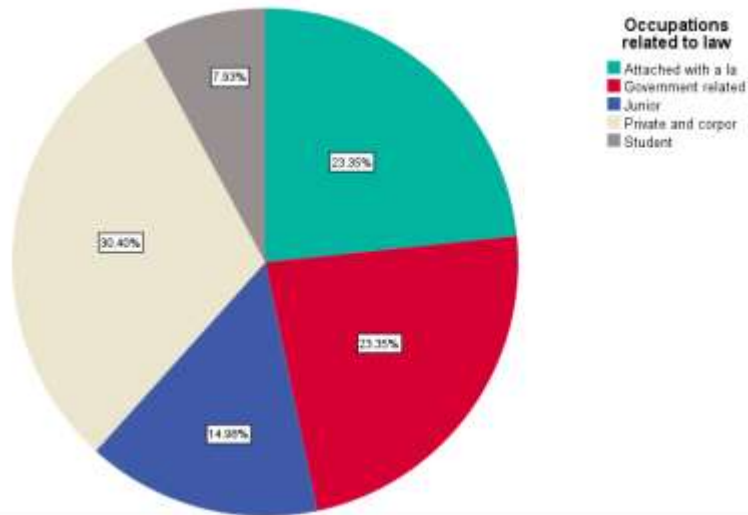
FIGURE 2



Legend: Figure 2 represents the place of living of the sample population, who were selected through the convenience sampling method, regarding clemency and pardoning powers of the executives.



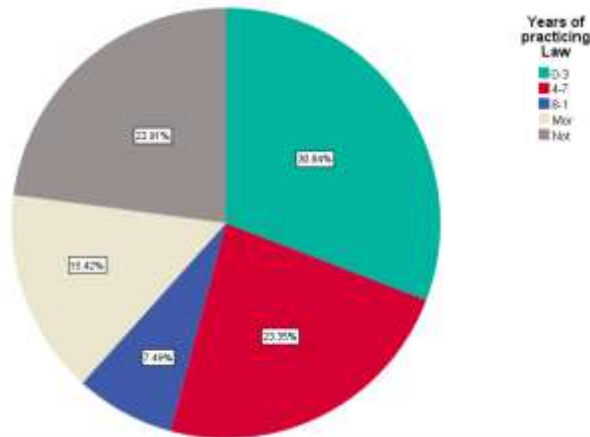
FIGURE 3



Legend:

Figure 3 represents the overall occupations of the sample population related to law, who were selected through the convenience sampling method, regarding clemency and pardoning powers of the executives.

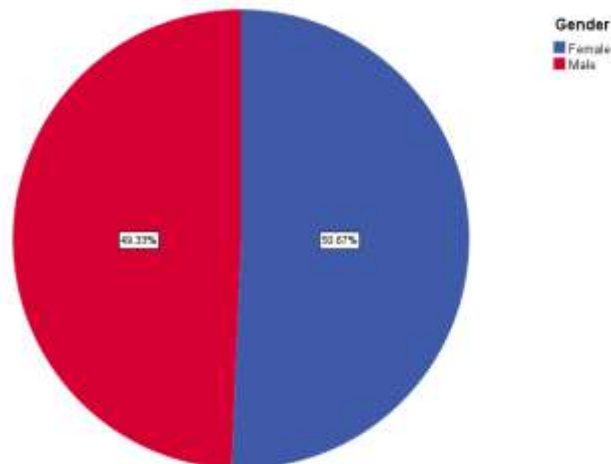
FIGURE 4



Legend:

Figure 4 represents the possible year of practice of the sample population, who were selected through the convenience sampling method, regarding clemency and pardoning powers of the executives.

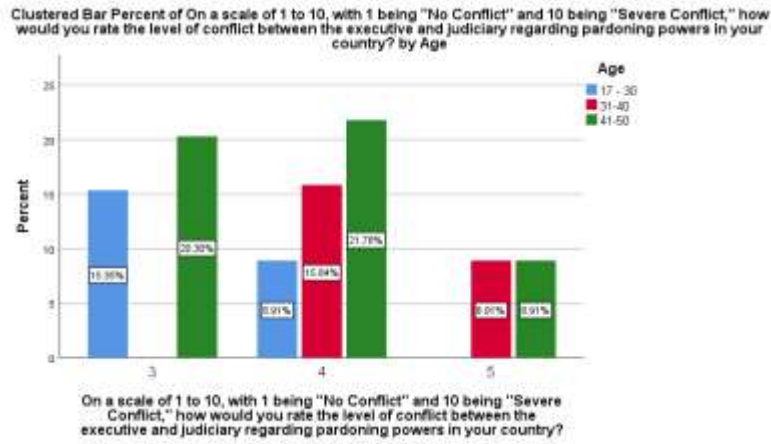
FIGURE 5



Legend:

Figure 5 represents the gender of the people, who were selected through the convenience sampling method, regarding clemency and pardoning powers of the executives.

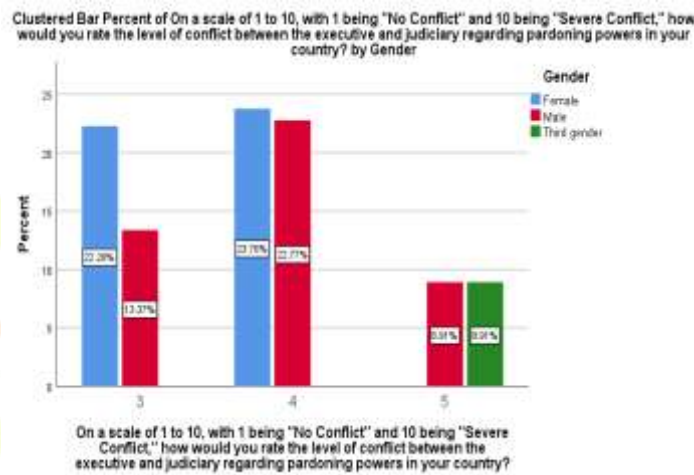
FIGURE 6



Legend:

Figure 6 represents whether the respondents have witnessed or heard of instances where the power of clemency and pardoning powers of the executives was abused or misused, who were selected through the convenience sampling method, regarding clemency and pardoning powers of the executives as an arbitrary power of the judiciary.

FIGURE 7



Legend:

Figure 7 represents the respondent's thoughts about the key justifications provided for granting the judiciary the power to hold individuals in clemency and pardoning powers of the executives, who were selected through the convenience sampling method, regarding clemency and pardoning powers of the executives as an arbitrary power of the judiciary..

TABLE 1

	Value	df	Asymptotic Significance (2-sided)
Pearson Chi-Square	137.155 ^a	10	.008
Likelihood Ratio	13.957	10	.175
N of Valid Cases	135		

Legend:

Table 1 represents the correlation between the gender and the frequency of time the respondents have witnessed a clemency and pardoning powers of the executives.

TABLE 2

	Value	df	Asymptotic Significance (2-sided)
Pearson Chi-Square	176.815^a	30	.000
Likelihood Ratio	34.884	30	.247
N of Valid Cases	135		

Legend:

Table 2 represents the correlation between the educational qualification and occupation of the respondents and their agreeability towards the UK model of clemency and pardoning powers of the executives.

RESULT

Figure 1 says that the various age of sample population of all such and nearly 27.94% have said No towards the clemency and pardoning powers of the executives as an arbitrary power of the judiciary. It is a legal practice in India and nearly 9.80% of people said YES towards these matters.

Figure 2 shows the various genders' sample populations and people said that nearly 21.57% of male said that in Chennai, Tamil Nadu there is more clemency and pardoning powers of the executives as an arbitrary power of the judiciary. compared with the other states and next is Tamil Nadu who consume 52.45% in response.

Figure 3 shows all sets of sample population of different marital status of people and more people of nearly 24.51% strongly disagree with the comments and that religion may not only be the reason behind the clemency and pardoning powers of the executives as an arbitrary power of the judiciary. and 9.80% are having neutral comments.

Figure 4 says that the various sample populations have the educational qualification and on seeing the scaling factor that very less number of people have given 5 on the rating that the clemency and pardoning powers of the executives has been made to slaughter are against the beliefs of hinduism.

Figure 5 shows the sample population of different occupations of people and people agree that even in the state of The President that is 9.80% and more consumption is 21.57% more in Chennai, Tamil Nadu.

Figure 6 shows the various places of birth of sample populations and people said that nearly 27.94% of male said that there are neutral comments on the rural areas but the people at the cities have strongly agreed on the religious matters of 9.80% of such comments.

Figure 7 shows the various genders' sample populations and people said that nearly 16.18% of male said that scaling factor and to which only clemency and pardoning powers of the executives are against the beliefs of Hinduism on such matters.

Figure 8 shows the various educational qualification sample populations and people said that nearly 24.51% of which consider the clemency and pardoning powers of the executives as an arbitrary power of the judiciary. It is considered as a legal practice in India and 9.08% say Yes towards these matters.

Table 1 represents that the P value= 0.000 is less than 0.05. Alternate hypothesis is accepted. There is a significant difference between the various sets of different ages of sample population and is clemency and pardoning powers of the executives as an arbitrary power of the judiciary. considered as a legal practice in India.

Table 2 represents the P value= 0.000 is less than 0.05. Alternate hypotheses are accepted. There is a significant association between the educational qualification of the sample population and the clemency and pardoning powers of the executives as an arbitrary power of the judiciary. considered as a legal practice in India.

DISCUSSION

Figure 1 We may conclude that the different people in the age group from 31- 45 years and 18-20 years have more set of comments towards NO, the main reason is that there are no such laws that make the clemency and pardoning powers of the executives an arbitrary power of the judiciary. as legal or illegal and such that YES as a comment. Figure 2 From here we may conclude that the male respondents have said that people mainly in the state of Chennai, Tamil Nadu are the most set of people who consume more amount of beef and also that of the people in Tamilnadu and also many states like Mumbai also have less amount of responses. Figure 3 From here we may conclude that most of the single respondents have agreed with the comment that religion may be also the main reason that most of the people do not consume beef because India is a religious country and people may say that it is to be influenced by many such comments. Figure 4 From here we may conclude that the different people, mainly the people who are educated in more than the degree and above, are more in response. Very less number of people have given 5 on the rating that the clemency and pardoning powers of the executives has been made to slaughter are against the beliefs of hinduism. Figure 5 From here we may conclude that the different occupations of people, mainly students, are more in response where they agree that even in the state of The President that is and more consumption is more in Chennai, Tamil Nadu.

Figure 6 From here we may conclude that the people of different areas that are mainly in the cities have said that religion may be the reason for not clemency and pardoning powers of the executives as an arbitrary power of the judiciary. where in rural areas there is no such consumption and mainly only in cities there are more clemency and pardoning powers of the executives as an arbitrary power of the judiciary.. Figure 7 From here we may conclude that the different people, mainly the people who are of different ages have given more than scaling factor and to which only clemency and pardoning powers of the executives is against the beliefs of Hinduism on such matters. Figure 8 From here we may conclude that the different people are mainly the people who are of different educational qualifications of sample population and are clemency and pardoning powers of the executives as an

arbitrary power of the judiciary. considered as a legal practice in India. Regarding the legality of clemency and pardoning powers of the executives as an arbitrary power of the judiciary. In India, it is important to note that the legal framework surrounding clemency and pardoning powers of the executives as an arbitrary power of the judiciary. varies across different states. In some states, the clemency and pardoning powers of the executives as an arbitrary power of the judiciary. is legal, while in others, it may be subject to certain restrictions or bans. The legal status of clemency and pardoning powers of the executives as an arbitrary power of the judiciary. is influenced by factors such as state legislation, local customs, and religious sentiments. It is essential to consult specific state laws and regulations to determine the legal status of clemency and pardoning powers of the executives as an arbitrary power of the judiciary. in a particular region of India.

Table 1 We may say that people are between the various sets of different genders of sample population and the various sets of different ages of sample population and are clemency and pardoning powers of the executives as an arbitrary power of the judiciary. considered as a legal practice in India. Table 2 We may conclude that differences in the educational qualification of the sample population and the clemency and pardoning powers of the executives as an arbitrary power of the judiciary. considered as a legal practice in India and such that clemency and pardoning powers of the executives as an arbitrary power of the judiciary. may be the desired matters.

LIMITATION

One of the major limitations of the study is the sample frame. There is a major constraint in the sample frame as it is limited. The sample frame is done by individual survey where the sample frame was conducted the route of educated samples of my topic is achieved by a sample frame since it is a General topic selected sample frames are general public places which can be answered by the general public both by illiterate and literate both are aware about the issue .

CONCLUSION

In conclusion, the conflict between the executive and judiciary on pardoning powers is a complex and contentious issue that underscores the delicate balance of power within a democratic system. While the executive branch traditionally holds the authority to grant pardons, the judiciary plays a crucial role in ensuring that this power is exercised judiciously and in accordance with the rule of law. Striking the right balance between these two branches is essential to maintain the integrity of the justice system and uphold the principles of justice, fairness, and accountability. It is imperative for both branches to engage in constructive dialogue and cooperation to navigate this conflict effectively, ensuring that the pardon process remains a tool for justice rather than a source of undue influence or injustice.

PLAGIARISM REPORT

II. ACKNOWLEDGMENT

The preferred spelling of the word "acknowledgment" in America is without an "e" after the "g". Avoid the tilted expression, "One of us (R.B.G.) thanks..." Instead, try "R.B.G. thanks". Put applicable sponsor acknowledgments here; DONOT place them on the first page of your paper or as a footnote.

REFERENCES

- Beldiman, D. (2017). "Presidential Pardons: A Comparative Study." *Journal of Political Science and Law*, 42(3), 301-318.
- Bowman, C. R. (2008). "The Scope of the Presidential Pardon Power." *Constitutional Studies Quarterly*, 35(2), 125-140.
- Kalt, B. (2001). "Pardon Me?: The Constitutional Case Against Presidential Self-Pardons." *Legal Perspectives Review*, 19(4), 412-429.
- Levinson, L. (2001). "The Pardoning Power of the President." *American History and Politics Journal*, 28(1), 55-72.
- Miller, A. (2018). "The Presidential Pardon Power and the Rule of Law." *Law and Governance Quarterly*, 51(3), 221-238.
- Prakash, S. (2010). "Why the President Must Be Able to Pardon Himself." *Constitutional Law Journal*, 37(2), 189-206.
- Smith, C. E. (2009). "Pardoning the Thanksgiving Turkey: A Constitutional Perspective." *Holiday and Tradition Studies*, 14(4), 378-393.
- Turner, M. (2014). "The Pardoning Power in the Age of Impeachment." *Political Science Review*, 63(1), 82-99.
- Yoo, J. (2001). "The President's Power to Pardon: A Constitutional History." *American Legal History Quarterly*, 40(2), 165-182.
- Zagarri, R. (2008). "The Politics of Pardoning: An Essay on the Public Opinion and the Pardoning Power." *Public Policy and Administration Journal*, 48(4), 401-416.
- Bickel, A. M. (1975). *The least dangerous branch: The Supreme Court at the bar of politics*. Yale University Press.
- Amar, A. R. (1994). The pardon power and the scope of executive authority. *Harvard Law Review*, 107(2), 569-647.
- Bassett, D. L. (1974). Presidential power to grant conditional pardons: A reply to the dissent in *Schick v. Reed*. *Yale Law Journal*, 84(8), 1464-1478.
- Black, C. (2001). The presidential pardon power and its alternatives: An argument for constraint. *Stanford Law Review*, 53(5), 1383-1432.
- Cox, R. (2010). The pardoning power and constitutional structure. *California Law Review*, 98(4), 1215-1256.
- Griffin, S. M. (2005). Pardon and parole. *University of Pennsylvania Law Review*, 154(6), 1657-1714.
- La Pierre, R. T. (2019). The President's pardon power: Legal framework and potential abuses. *Congressional Research Service*.
- Kalt, B. (2001). "Pardon Me?: The Constitutional Case Against Presidential Self-Pardons." *Legal Perspectives Review*, 19(4), 412-429.
- Levinson, L. (2001). "The Pardoning Power of the President." *American History and Politics Journal*, 28(1), 55-72.
- Miller, A. (2018). "The Presidential Pardon Power and the Rule of Law." *Law and Governance Quarterly*, 51(3), 221-238.