

Pardoning Powers of the President

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Manifest pedagogy:

A pardon is an act of mercy, forgiveness, and clemency. In India, the power to pardon is a part of the Constitutional scheme. The purpose of pardoning authority is to repair potential judicial errors because no human system of judicial administration is without flaws. Hence the necessity of vesting that power in an authority other than the judiciary has always been recognized. The prospect of being pardoned serves as an incentive for the criminal to conduct well in jail, and thus aids in the resolution of the prison discipline problem.

In news: Recently, the Union Government claimed that the President and not the Tamil Nadu Governor has exclusive power to decide Rajiv Gandhi's assassination convict A.G. Perarivalan's plea for pardon.

Static dimensions:

- Constitutional Provisions
- Different types under constitution
- Pardoning power of President v/s Governor

Current dimensions:

- Comparison with Pardoning powers of US President
- Power of Pardoning in various countries
- Pardoning Power under Judicial Review

Content:

Constitutional Provisions

The Constitution of India conferred the power on the President of India and the Governors of the States by **Articles 72 and 161** respectively.

Article 72- The President has the authority to give pardons, reprieves, respites, or remissions of punishment, as well as to suspend, remit, or commute the sentence of anyone who has been convicted of a crime:

- In all cases where the punishment or sentence is by a Court Martial;
- In all cases where the punishment or sentence is for an offense against any law relating to a matter to which the executive power of the Union extends;
- In all cases where the sentence is a sentence of death.

Article 161- The governor of a state can award pardons, reprieves, respites, and remissions of punishment to anyone guilty of breaking a state law, as well as suspend, remit, and commute their sentence.

Types of Pardoning Powers of the President-

- **Pardon:** It removes both the sentence and the conviction and completely absolves the convict from all sentences, punishments and disqualifications.
- **Commutation:** It denotes the substitution of one form of punishment for a lighter form. For example, a death sentence may be commuted to rigorous imprisonment, which in turn may be commuted to simple imprisonment.
- **Remission:** It implies reducing the period of sentence without changing its character. For example, a sentence of rigorous imprisonment for two years may be remitted to rigorous imprisonment for one year.
- **Respite:** It denotes awarding a lesser sentence in place of one originally awarded due to some special fact, such as the physical disability of a convict or the pregnancy of a woman offender.

- **Reprieve**: It implies a stay of the execution of a sentence (especially that of death) for a temporary period. Its purpose is to enable the convict to have time to seek pardon or commutation from the President.

Pardoning power of President v/s Governor

- The scope of the pardoning power of the President under Article 72 is wider than the pardoning power of the Governor under Article 161.
- The power differs in the following two ways:
 - The power of the President to grant pardon extends in cases where the punishment or sentence is by a **Court Martial** but Article 161 does not provide any such power to the Governor.
 - The President can grant pardon in all cases where the sentence given is the sentence of death but the **pardoning power of the Governor does not extend to death sentence cases**.
- A death sentence, on the other hand, can be suspended, remitted, or commuted by the governor. In other words, when it comes to the suspension, remission, and commute of death sentences, both the governor and the President have concurrent authority.

Exercise of these Powers

- The process starts with filing a mercy petition with the President under Article 72 of the Constitution.
- **Rashtrapati Bhawan forwards the mercy plea to the Home Ministry**, seeking the Cabinet's advice.
- The above mentioned petition is discussed by the Home Ministry in consultation with the concerned State Government.
- After the consultation, recommendations are made by the Home Minister and then, the petition is sent back to the President.

Comparison with Pardoning powers of US President-

US President-

- The President of the USA has the constitutional right to pardon or commute sentences related to **federal crimes**.
- Clemency is a broad executive power, and is **discretionary** which means the President is not answerable for his pardons and does not have to provide a reason for issuing one.
- The USA Supreme Court has held that this power is granted without limit and cannot be restricted by Congress (legislature).
- All Presidents shall have the power to grant Reprieves and Pardon for Offenses against the United States, except in cases of impeachment.
- Further, the power only applies to federal crimes and not state crimes.
- Those pardoned by the President can still be tried under the laws of individual states.

Indian President—

- The President cannot exercise his power of pardon independent of the government.
- Although the **President is bound by the Cabinet's advice**, Article 74 (1) empowers him to return it for reconsideration once. If the Council of Ministers decides against any change, the President has no option but to accept it.
- His pardoning power applies to federal crimes as well as state crimes.

Power of Pardoning in various Countries

- **British:** The modern practice of pardoning finds its origin in the British system in which it was a Royal Prerogative of the King to forgive. In the UK, the Constitutional monarch can pardon or show mercy to a

conviction on ministerial advice.

- **Canada:** Pardons are considered by the National Parole Board under the Criminal Records Act.

Pardoning Power under Judicial Review

- **In Maru Ram v Union of India**, the Constitutional Bench of the Supreme Court held that the power under Article 72 is to be exercised on the advice of the Central Government and not by the President on his own and that the advice of the Government binds the head of the Republic.
- **Kehar Singh v Union of India:** It held that the grant of pardon by the President is an act of grace and, therefore, cannot be claimed as a matter of right. The power exercisable by the President being exclusive of administrative nature is not justiciable.
- **Epuru Sudhakar case:** Granting of clemency by the President or Governor 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 material has been kept out of consideration.

Mould your thought:

1Q. Explain the scope of the pardoning powers of the President. How do his pardoning powers differ from that of the US President?

Approach to the Answer-

- Introduction with the constitutional provisions on Pardoning powers
- Highlight the Pardoning powers of the President under

Article 72

- Compare with the pardoning powers of US president
- Conclude by stating the real purpose of pardoning powers