

Pardoning powers of US and Indian Presidents

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The power to grant pardon is capable of correcting the mistakes of the judiciary. The ability of the President to use the pardon power fairly and dispassionately depends on his personal integrity and sense of responsibility. But in recent times, the pardon power has been abused as political and other extraneous factors tend to determine its application.

In News: Trump pardons Michael Fynn
Placing it in syllabus Law and Policy

Static dimensions

1. Pardoning powers: Comparison of US and Indian presidents
2. Why are such powers given?
3. Problems of misuse

Current dimensions

1. In news

Content:

In news:

- US President Donald Trump exercised his powers under the country's constitution to pardon **Michael Flynn, his former National Security Advisor.**
- Flynn had twice pleaded guilty to lying to the FBI.
- The pardon effectively ended Flynn's prosecution in the **Russian election interference probe.**
- Recently Trump had commuted the sentence of Roger Stone, another associate who had been convicted as part of the same investigation and was about to report to prison.

Pardoning Powers: Comparison of US and Indian Presidents:

- The President of the US has the constitutional right to pardon or commute sentences related to federal crimes.
- The power is enshrined in **Article 11, section 2, Clause 1, of the US Constitution**, which provides that the President “shall have power to grant reprieves and pardons for offences against the United States, except in cases of impeachment”.
- A President or Governor may grant a **full (unconditional) pardon or a conditional pardon**.
- The full or unconditional pardon entails that a recipient of a pardon may regain the right to vote and to hold various positions of public trust.
- The conditional pardon is said to impose a condition on the offender before it becomes effective.
- The US Supreme Court has held that this clemency power is “granted without limit” and cannot be restricted by Congress.
- **Clemency is a broad executive power and is discretionary** – meaning the President is not answerable for his pardons, and does not have to provide a reason for issuing one.

Limitations:

- Reprieves and pardons cannot be granted in Cases of Impeachment.
- The power only applies to federal crimes and not state crimes, that is, those pardoned by the President can still be tried under the laws of individual states.

Indian president pardoning powers:

- Unlike the US President, whose powers to grant pardons are almost unfettered, the President of India has to act on the advice of the Cabinet.
- Under **Article 72** of the Constitution, “the President

shall have the power to grant pardons, reprieves, respites or remissions of punishment or to suspend, remit or commute the sentence of any person convicted of any offence where the sentence is a sentence of death”.

- Under **Article 161**, the Governor too has pardoning powers, but these do not extend to death sentences.

The President can use his pardoning powers in the cases mentioned below:

- When he is considering a case of punishment against a person who has committed an offence against a Union Law
- When he is considering a case of punishment where the latter is given by the court-martial or military court
- When he is considering a death sentence

Limitations:

- The President cannot exercise his power of pardon independent of the government.
- Rashtrapati Bhawan forwards the mercy plea to the Home Ministry, seeking the Cabinet's advice.
- The Ministry in turn forwards this to the concerned state government.
- Based on the reply, it formulates its advice on behalf of the Council of Ministers.
- In the **Maru Ram vs Union of India case(1980)** and **Dhananjay Chatterjee vs State of West Bengal case(1994)**, the SC has ruled that the ***President has to act on the advice of the Council of Ministers while deciding mercy pleas.***
- 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.
- The SC in the **Epuru Sudhakar case** gave a small window for judicial review of the pardon powers of President

and governors for the purpose of ruling out any arbitrariness.

Why are such powers given?

- The administration of justice by the courts is not necessarily always wise or certainly considerate of circumstances which may properly mitigate guilt.
- Though a person may be rightly convicted, yet the punishment may appear to be excessive and disproportionate or there may be circumstances that justify lowering the sentence.
- Pardons have also been used for the broader public policy purpose of ensuring peace and tranquility in the case of uprisings and to bring peace after internal conflicts.

Problems of misuse:

- Presidents in various countries have applied the pardon power with unequal weight.
- There are numerous cases where public officials charged with high trust violation of law, embezzlement of public funds are shielded by the exercise of the power of pardon.
- At the same time men who have committed petty offences but with no money or influence are usually not considered for pardon.
- In various jurisdictions, including the United States, the pardon power is virtually unchecked by formal constraints as there are no formal measures to limit or overturn the use of the power to pardon.

However, Judicial review of the exercise of pardon power is allowed in India which can be properly used to enforce textual limitations on clemency power.

Mould your thought: Explain the pardoning powers exercised by Indian President and what are its limitations? Why are such

clemency powers needed?

Approach to the answer:

- Write the pardoning powers of Indian president
- Write the limitations of the power
- Write why such powers are given
- Conclusion