

President's power on commuting death sentences

October 10, 2019

Source: *The Hindu*

Manifest pedagogy: The issue of death penalty and clemency powers has been a burning issue owing to Nirbhaya case and assassination of Rajiv Gandhi. The best way to prepare this topic holistically from all dimensions namely

1. Social aspects
2. Polity aspects
3. Ethical issues

In news: The President commuted death sentences to life imprisonment in at least 20 cases over the past nine years.

Placing it in syllabus: Presidential powers

Dimensions:

- Pardoning powers of President
- Role of Home Ministry
- Supreme court judgement on Pardoning power
- Reasons why President is given these powers
- Global view on Presidential pardoning

Content:

Pardoning power of President:

- Of late, President has commuted nearly 20 death sentences to life imprisonment based on the recommendations received from the **Ministry of Home Affairs (MHA)**.
- These commutations were based on the President's exercise of powers under **Article 72** of the Constitution.

- Article 72 of our constitution empowers the **President to grant pardons and to suspend, remit or commute sentences** in certain **cases** where the:
 - Punishment or sentence for an offence against a Union Law,
 - Punishment or sentence is by a court-martial (military court),
 - Punishment is a Death sentence.

(Article 161 empowers the Governor to grant pardons)

-> **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 with a lighter form of punishment. E.g. death sentence may be commuted to rigorous imprisonment.

-> **Remission**: It implies reducing the period of the sentence without changing its character. E.g. a sentence of rigorous imprisonment for five 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.

- The president is bound to follow the advice of the council of ministers.
- Article 72 does not mention any time limitation for the consideration of mercy petitions.

Role of Home ministry:

- In deciding mercy petitions, the **recommendation** of the Ministry of Home Affairs (MHA) **is viewed as the opinion of the council of ministers.**
- Such a petition is sent to the MHA for consideration which then consults the concerned State Government.
- After the consultation, recommendations are made by the Home Minister and the petition is sent back to the President.
- The **president can not overrule the ministry's advice.**
- Recently MHA took a decision to **commute the death sentence of Balwant Singh Rajoana**, convicted over the assassination of then Punjab chief minister Beant Singh, as a "**humanitarian gesture**" ahead of the **550th birth anniversary celebrations of Sikh founder Guru Nanak.**
- As he refused to file a mercy petition the Shiromani Gurdwara Prabandhak Committee (SGPC), the apex body of the Sikhs, filed a petition on his behalf in 2014.
- MHA has also decided to **release eight other Sikh prisoners** convicted under the repealed Terrorist and Disruptive Activities (Prevention) Act (TADA) as a '**token of goodwill**'.
- The ministry's decision to release the eight Sikh prisoners is not in consonance with the **guidelines** regarding the 2018 "**Cabinet decision to grant special remission to prisoners on the occasion of 150th Birth Anniversary of Mahatma Gandhi.**"

As per the guidelines: "special remission will not be given to prisoners who have been convicted for an offence for which the sentence is sentence of death or where death sentence has been commuted to life imprisonment" (cases of convicts involved in serious and heinous crimes like dowry death, rape, human trafficking and convicted under POTA, UAPA, TADA, POCSO Act etc..").

Supreme court judgement on Pardoning power:

- In **Maru Ram v Union of India(1980)** case, it was held by the SC that Article 72 is to be exercised on the advice of central and state governments.
- In **Ranga-Billa(1981)** case, the petitioner challenged the rejection of the mercy petition by the President without citing a reason. **SC dismissed the petition and held that the word “mercy” in itself signifies its discretionary nature.**
- In **Swaran Singh vs State Of U.P. & Ors (1998)** case, SC interfered with the Governor who granted mercy to a person convicted under charges of murder. The SC held that the order passed under Article 161 is absolute but “ if such power has been exercised arbitrarily, mala-fide or in absolute disregard of the “finer cannons of constitutionalism”, then the order cannot be granted and should be scrutinized by the court.
- In the **Epuru Sudhakar & Anr vs Govt. Of A.P. & Ors (2006)** case, it was held that a **limited judicial review of the exercise of pardoning power is available to SC** and pardoning grant can be challenged if it is done with mala-fide order, order on irrelevant considerations, or order suffering from arbitrariness.

Why President is given such powers:

The **philosophy** on which the pardoning power is based is that every country with a criminal justice system must provide for the pardoning power, and **a country without such power is considered to be imperfect and lacks political morality.**

Granting of pardon **frees a convicted person from all legal liabilities**, which provides an opportunity for an individual to start a fresh life and is restored to his original position of innocence in the society. It may serve as a **better method of reformation for convicted persons.**

Sometimes due to false evidence and carelessness of prosecution an innocent becomes the prey of wrongful

convictions and is punished accordingly, it leads to the miscarriage of justice and it can only be rectified by granting pardons. The **pardon is check entrusted with the executive for special cases.**

Once a person is sentenced with punishment by the court and **all the judicial means** to reduce or reconsider the sentence **has been exhausted** then, the **pardon is the only means to secure justice** by reducing or reconsidering the sentence.

The object of conferring this power on the President is **two-fold**:

- To keep the door open for correcting any judicial errors in the operation of law;
- To afford relief from a sentence, which the President regards as unduly harsh.

Global view on Presidential pardoning:

USA: According to U.S. Constitution, the President can grant pardon except in the cases of impeachment. Unlike Indian President the American President has the absolute power, such power cannot be questioned or blocked by the court or the congress. There is no question of any judicial review.

Pakistan: Pakistan's Constitution accords the President with an absolute power to grant pardon, reprieve, respite and remit, suspend or commute any sentence passed by any court, tribunal or authority. The power cannot be questioned.

France: Pardon and act of clemency are granted by President of France who has the sole discretion and power is non questionable and absolute.

Germany: The German President has pardoning power which he can transfer to someone else such as chancellor or the minister of justice.

Russia: An absolute power of pardon is given to the Russian

President.