



Pardoning Power of the President

For Prelims: Pardoning Power of the President, Article 72, President, Supreme Court, Article 161, Governor.

For Mains: Pardoning Power of the President and Governor.

Why in News?

Recently, a claim made by the Centre that the **President had "exclusive powers" to decide** whether to pardon Rajiv Gandhi assassination convict drew criticism from the [Supreme Court](#) before it reserved the case for judgment.

What is Pardoning Power?

- **President:**
 - **About:**
 - 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.
 - **Limitation:**
 - The President **cannot exercise his power of pardon** independent of the government.
 - In several cases, the Supreme Court has ruled that the President **has to act on the advice of the Council of Ministers** while deciding mercy pleas.
 - These include **Maru Ram vs Union of India in 1980**, and *Dhananjay Chatterjee vs State of West Bengal* in 1994.
 - **Procedure:**
 - 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.
 - **Reconsideration:**
 - 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.
 - **Governor:**
 - Under [Article 161](#), the Governor in India too has pardoning powers.

What is the Difference Between Pardoning Powers of President and 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** which differs in the following two ways:
 - **Court Martial:** 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.

- **Death sentence:** 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.

Key Terms

- **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 a 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.

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