



# President's Powers to Pardon

## Why in News

Recently, the **President of the United States of America (USA)** has exercised his **powers** under the constitution to **pardon** his former National Security Advisor.

- Unlike the **USA President**, whose powers to grant pardons are **almost unrestrained**, the **President of India** has to act on the **advice of the Cabinet**.

## Key Points

### ▪ Pardoning Power of the President in the USA:

- 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. But there are few limitations.
  - The USA has a **Presidential system**.
- **The USA Supreme Court** has held that this **power** is granted **without limit** and cannot be restricted by **Congress** (legislature).
- **Limitations:**
  - All Presidents shall have power to grant Reprieves and Pardons 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**.

### ▪ Pardoning Power of the President in India:

- 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 (SC)** 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 **Dhananjoy 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.**
- **Under Article 161, the Governor** in India too has pardoning powers.
- **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.**

## 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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