BLOGS

Pardoning Power of the President and Governor: Detailed Analysis

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The pardoning powers of the President and Governor can be exercised on the advice of the Union Council of Ministers and the State Council of Ministers, respectively. Read more about it in this post!

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Introduction

The Indian Constitution provides the President and the Governors of States with the power to grant pardons, reprieves, respites, remissions, and commutations of punishment. This power is crucial in the Indian judicial system, as it acts as a check on the judicial branch and provides a means of mitigating harsh sentences. Articles 72 and 161 of the Constitution delineate these powers for the President and the Governors, respectively, with notable differences in their scope and application.

Article 72: The Pardoning Power of the President

Article 72 of the Indian Constitution grants the President the authority to exercise clemency in specific situations. The President can grant pardons, reprieves, respites, or remissions of punishment, or suspend, remit, or commute the sentence of any person convicted of an offense in the following cases:

1. By Court Martial: The President has the power to pardon or reduce the sentence of a person convicted by a military court. This includes the ability to intervene in sentences handed down by court martial, which is particularly important for maintaining discipline within the armed

forces while also ensuring justice (Article 72(1)(a)).

2. Offences Against Union Law: The President can grant clemency for offenses that violate laws enacted by the Parliament of India. This includes a wide range of federal crimes, highlighting the President's broad authority to ensure justice at the national level (Article 72(1)(b)).
3. Death Sentences: In cases involving capital punishment, the President has the exclusive power to grant clemency. This includes the power to commute a death sentence to life imprisonment or any lesser form of punishment, offering a critical safeguard against judicial errors (Article 72(1)(c)).

Article 161: The Pardoning Power of the Governor

Article 161 of the Indian Constitution empowers the Governor of a state to grant pardons, reprieves, respites, or remissions of punishment, or to suspend, remit, or commute the sentence of any person convicted of any offense against state law.

However, the scope of the governor's clemency powers is more limited compared to that of the president. The Governor can only exercise these powers in relation to convictions under state laws and cannot interfere with military court sentences or federal crimes (**Article 161**).

Differences Between the President and Governor's Pardoning Powers

While both the President and the Governors have the power to grant clemency, the President's authority is more extensive. Under **Article 72**, the President can pardon sentences handed down by military courts and federal offences and has exclusive power in cases of death sentences. Conversely, the governor's powers under **Article 161** are confined to state laws and do not extend to military court sentences or federal offences.

Types of Clemency Powers

1. Pardon: A pardon completely absolves the offender of all sentences, punishments, and disqualifications, placing them in the same position as if they had never committed the offence. This ultimate act of clemency is a complete release from the consequences of the crime.

2. Respite: A respite involves awarding a lesser punishment on special grounds, such as the pregnancy of a woman. It recognises mitigating circumstances that justify a reduction in the severity of the sentence.
3. Remission: Remission is the reduction of the amount of the sentence without changing its character. For instance, a one-year punishment may be reduced to six months. It is an adjustment of the duration rather than the nature of the sentence.
4. Reprieve: A reprieve is a temporary suspension of a death sentence, often pending a proceeding for pardon or commutation. It provides temporary relief, allowing time for further consideration of the case.
5. Commutation: Commutation involves the substitution of one form of punishment with another of a lighter character. For example, rigorous imprisonment may be commuted to simple imprisonment, thereby reducing the severity of the punishment while maintaining the conviction.

Landmark Cases on Pardoning Power of President and Governor

The powers of the President and the Governors have been interpreted and refined through various landmark judgements:

1. KM Nanavati vs. State of Bombay: The Supreme Court held that the Governor's power to suspend a sentence under Article 161 is subject to the rules made by the Supreme Court under Article 145. This means that the Governor cannot suspend a sentence if the matter is subjudice before the Supreme Court.
2. Kuljeet Singh (Ranga Billa case), Kehar Singh (assassination of Indira Gandhi), and Jumman Khan: In these cases, the Supreme Court affirmed that the President under Article 72 and the Governors under Article 161 have full discretionary power regarding pardoning. No individual can claim a legal right to be pardoned.
3. Epuru Sudhakar vs. Government of Andhra Pradesh: The Supreme Court held that the pardoning power of the President and the Governors is subject to judicial review. The Court used its power of judicial review under Article 142 and not under Article 13 to check the misuse of pardoning power on malafide grounds. The Court observed that the pardoning power must be based on the report of the Home Ministry, must not be malafide or arbitrary, and must not be exercised on the grounds of caste, religion, or political consideration.

Conclusion

The clemency powers vested in the President and the Governors under Articles 72 and 161 of the Indian Constitution are essential components of the justice system. They provide a mechanism for mercy and the correction of judicial errors, ensuring that justice is tempered with compassion. The broader scope of the President's powers reflects their national responsibilities, while the Governor's more limited powers align with their state-level focus. Judicial review ensures that these powers are exercised fairly and justly, maintaining the balance between the rule of law and the need for mercy. The distinctions between the powers of the President and the Governors underscore the federal structure of India, ensuring that both national and state interests are adequately represented and protected.