Pardoning power - Constitutional and Statutory provisions

Why in news?

The Supreme Court has reserved orders on the question whether a Governor can refer the State government's advice for granting remission to life convicts to the President for a decision.

What is Pardoning Power?

Pardoning power is commonly referred to as mercy or clemency power.

President –

- Article 72 of the Constitution empowers the President to grant pardons to persons who have been tried and convicted of any offence in all cases where the:
  - Punishment or sentence is for an offence against a Union Law.
  - Punishment or sentence is by a court martial (military court).
  - Sentence is a sentence of death.
- The pardoning power of the President is independent of the Judiciary. It is an executive power.

Governor –

- Article 161 of the Constitution empowers the governor of a state to grant pardons, reprieves, respites and remissions of punishment or suspend, remit and commute the sentence of any person convicted of any offence against a state law.

The pardoning power of the governor differs from that of the President in following two respects.

- The President can pardon sentences inflicted by court martial (military courts) while the governor cannot.
- The President can pardon death sentence while governor cannot. Even if a state law prescribes death sentence, the power to grant pardon lies with the President and not the governor. However, the governor can suspend, remit or commute a death sentence.

What are the clemency powers of state and central government under CrPC?

- The Code of Criminal Procedure (CrPC) provides for remission of prison sentences.
- Under Section 432, the appropriate state government may suspend or remit a sentence, in whole or in part, with or without conditions to release of prisoners before they complete their prison terms.
- Under Section 433, any sentence may be commuted to a lesser one by the appropriate government.
- However, Section 435 says that if the prisoner had been sentenced in a case investigated by any agency under a Central Act such as CBI the State government can order such release only

in consultation with the Central government.
- In the case of death sentences, the Central government may also concurrently exercise the same power as the State governments to remit or suspend the sentence.

How remission under the CrPC is different from the constitutional power?

- Under the CrPC, the government acts by itself.
- Under Article 72 and Article 161, the respective governments advise the President/Governor to suspend, remit or commute sentences.
- Though it is the decision of the government in either case, the Supreme Court has made it clear that the two are different sources of power.
- Also the SC has upheld the validity of Section 433A of CrPC in which a person imprisoned for a life term cannot be released unless he had completed 14 years.

What is the issue in the Rajiv Gandhi assassination case?

- In September 2018, the State government invoked Article 161 of the Constitution so that the remainder of the life term of the 7 convicts be remitted to release them.
- In this case the Governor has referred the question to the President.
- This has raised constitutional question on whether the Governor can make such a reference to the President.
- The other issue that arises is whether the primacy accorded to the Centre's opinion under the CrPC can be extended even to remission that may be granted by the Governor under Article 161.

Reference

https://www.thehindu.com/news/national/explained-pardon-and-remission-and-who-grants-them/article65413552.ece?homepage=true

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