

## **Polity Class 28**

**26th October, 2023 at 9:00 AM**

### **VETO POWERS OF PRESIDENT (CONTINUES) (09:12 AM)**

- **QUALIFIED VETO**
- It has been provided to the President of the USA.
- If the President sends a bill back to the legislature for its reconsideration and if the Parliament approves it by a special majority it can overrule the president's veto making it mandatory for him to approve the bill.
- Indian President does not possess this veto power.
- Purpose behind the veto powers of the President:
- To prevent hasty legislation by the Parliament that may have been enacted without proper consideration or due to the shortage of time.
- To prevent the parliament from enacting legislation passed due to populist considerations alone.
- To prohibit the parliament from enacting a law that is against the principles of the constitution or if in the opinion of the President, it compromises the national interest.

### **CLEMENCY POWER (09:39 AM)**

- The philosophy behind the Clemency power
- Since no judicial system is free from error, it is important that the Executive should be provided with extraordinary power to pardon a person who has been convicted of a crime.
- Such powers may be exercised in those cases where the courts have awarded undue or harsh punishment to an individual or when the guilt of a person was not proven beyond a reasonable doubt.
- The objective behind these powers is to maintain the faith and the trust of the common man in the criminal justice system.
- Pardon- It means completely doing away with the conviction as well as the sentence. It amounts to turning the clock back and putting the individual in a position in which he was prior to committing the offence.
- Only the President has the power to issue a pardon in case of a death sentence. The governor does not have such powers.
- Commutation- It means changing the character of a punishment to a lighter one.
- Respite- It results in a temporary change in the character of a punishment to a lighter one. It is done only in special circumstances and for a short period of time.
- For e.g. a pregnant woman be issued respite and a rigorous imprisonment may be changed to a simple imprisonment for a temporary period of time.

- **Remission-** It reduces the term of punishment without changing its character. For e.g., 14 years of rigorous imprisonment may be changed to 7 years of rigorous imprisonment.
- **Reprieve-** It results in a temporary stay on the execution of a sentence. It may be done due to certain special reasons.
- **Difference between pardoning powers of President and Governor**
- The president can exercise these powers where the punishment has been provided under Union law whereas the Governor can do the same in those cases where the offence is against a state law.
- The President alone has the power to pardon a death sentence. The Governor does not have such powers but he may commute or provide reprieve for a death sentence.
- The President alone has the power to exercise mercy in case of a punishment given by a court martial.

#### **JUDICIAL REVIEW OF PARDONING POWER (10:48 AM)**

- The Supreme Court in several cases such as *Maru Ram vs UOI*, *Kehar Singh vs UOI* and *Epuru Sudhakar & Anr. v. Government of Andhra Pradesh* has stated that Judicial review of the exercise of pardoning power is possible but on limited grounds.
- The court has stated that judicial review can take place when-
- The power has been exercised without the application of the mind.
- If it was exercised with mala fide intention.
- If it was exercised with irrelevant considerations.
- If relevant material was kept out of consideration.
- If power has been exercised without the aid and advice of CoM.
- In the *Kehar Singh* case, the court stated that the convict does not have the right to an oral hearing with respect to a mercy petition.
- Can Excessive delays in disposing of mercy petitions be a ground for pardoning?
- In certain cases, there has been a massive delay in disposing of mercy petitions of individuals on death row. The court in the *Shatrughan Chauhan* case held that delays in disposing of mercy petition can be a ground for commuting capital punishment to life imprisonment. The court provided the reasoning that excessive delays in such cases are violative of individual rights under Article 21.
- The court overruled its earlier judgement in the *Devender Singh Bhullar* case where it stated that a convict charged with crimes such as terrorism can not come to the court for commutation of death sentence on the grounds of delay.
- In the *Shatrughan Chauhan* case, the court laid down a few other guidelines as well-

- Min. of Home Affairs must place its recommendations on mercy petition in front of the President as soon as possible without unnecessary delay.
- There should be a gap of at least 14 days between the rejection of the mercy petition and the execution of the convict.
- Rejection of mercy petition must be communicated to the convict and the family members in writing.
- The Post Mortem report of the convict must be handed over to the family members.
- Grounds laid by the court to suggest the exercise of pardoning powers by the President and Governor:
- Whether the offence is an act of individual crime or if it affects the society at large.
- Whether there is a chance of repetition of crime in the future.
- Whether any purpose would be served by keeping the convict in prison.
- The socio-economic condition of the convict and his family.
- The health of the convict especially when he or she is suffering from a terminal illness.
- Post-conviction conditions of the convict.
- Parallel remission powers under CrPC- As per 432 and 433 of CrPC an appropriate govt may remit a sentence on justifiable grounds.
- The powers vested in the Central and the state govt under this provision are parallel to constitutional power vested in the President and the Governor.
- It should be exercised according to the limitations imposed by section 433A and should not be exercised in an arbitrary manner.

#### **SOME OF THE OTHER EXECUTIVE POWERS OF THE PRESIDENT (11:47 AM)**

- He makes a declaration of war and peace with the other countries.
- The appointment of the PM and other ministers in the council is made by the President as per Parliamentary conventions.
- Appointments to important constitutional positions such as CAG, Judges of the Supreme Court, High Court, members of UPSC, and ECI are made by the president.
- He appoints the administrators of various UTs and governs them through administrators.
- He appoints the Governors of the state.
- Signs treaties, conventions etc on behalf of India on the global stage.
- He approves rules and regulations for the scheduled areas under Schedule 5.
- Appointment of the PM and other ministers in the council

- The appointment of the PM by the President is not his discretionary power but must be exercised according to Parliamentary conventions.
- If a party or a coalition has a clear majority in LS, the leader of that party should be invited to take oath as PM.
- The problem arises in case of a hung Parliament where the President has the following options-
  - He may invite the leader of the single largest party.
  - The leader of the largest pre-poll or post-poll alliance.
  - Leader of any party or alliance having the maximum possibility of formation of govt.
- The President must exercise his wisdom and decide which leader has the maximum possibility of forming the government and securing the support of the LS.
- The President must keep the national interest in mind and select the person who can provide a stable government to the country.
- The appointment of the other ministers is made by the President on the advice of the Prime Minister.
- Council of Ministers- Headed by PM.
  - 1) Cabinet Ministers-
    - Seniormost Ministers
    - Takes decisions on important matters on the behalf of rest of CoM.
  - 2) Minister of State (Independent Charge)-
    - Full charge of a particular Ministry
    - Can also attend cabinet meetings upon invitation.
  - 3) Minister of state (dependent)-
    - Relatively junior ministers.
    - They report to either Cabinet Ministers or the independent Minister.
  - 4) Deputy Ministers
    - According to Article 75(3), the principle of collective responsibility shall be ensured.
    - If any member does not agree with the decision of the council, he must resign.
    - A minister may also be removed at any time by a Presidential order as per the advice of the PM.
- Since the CoM is supposed to be headed by the PM, his resignation or death results in the dissolution of the entire council.

**TOPIC OF THE NEXT CLASS- PRESIDENT RULE**

