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u) Normally, there is a repeated & deliberated attempt on the part of respective govt. to push their policy prerogatives by adopting the ~~Head~~^{Route} of Ordinance Promulgation. Sometimes their action could be justified on the ground that immediate actions are required in the matters of policy & administration but undue delay takes place in the legislative process of parliament. Generally, the bills passed by Lok Sabha & referred to Rajya Sabha for approval are delayed when Rajya Sabha deliberately refers the bill to respective parliamentary committees. It should be noted that there is no limit within which the committees are required to refer the bill back to Rajya Sabha after its detail scrutiny & evaluation. Apart from this,

Rajya Sabha can also refer the same bill to other parliamentary committees.

iii) Ordinance Promulgating Power also apply a type of psychological & informal pressure over Opposition & Rajya Sabha to pass the Ordinance in the same manner as it was promulgated.

Sometimes, the approval is given on the political consideration & sometimes, the political parties also have the fear to become unpopular once they disapprove the Ordinance.

iv) There are several instances where the use of Ordinance making power seems to be much more legitimate & essential. Ancient Monument & Archeological Site Ordinance 2010, Indian Medical Council Ordinance 2011, & Criminal Law Amendment Ordinance 2013, were promulgated to meet the deadlines imposed by court of law.

The route of Ordinance Promulgation in a transitional & Organic Parliamentary Democracy like India is necessary but not essential. Sometimes, it is regarded as an Undemocratic Path of Law making under which executive deliberately surpasses the legislative authority of parliament. The route of Ordinance Promulgation also encroached upon the principle of Supremacy of legislature since the promulgations have informal impact over the Opposition & Rajya Sabha. There were several instances when Ordinance has been promulgated just before the parliamentary session.

In spite of these criticisms, the route of Ordinance Promulgation remain relevant in India because several safeguards & standards had been applied by court of law over this

exclusive & extra ordinary power of law making.

PARDONING Power of President & Governor

Pardon is an act of grace, mercy, forgiveness & clemency provided by executive against the conviction & sentence awarded by respective courts to any party. The power of pardon exists to prevent injustice whether from harsh, unjust laws or any irrelevant adjudication. The power of executive clemency also provides remedy against misinterpretation of law, fabrication of facts, negligence & miscarriage of justice on the part of court & judges. The power to pardon which is matter of executive clemency is also consistent with the principle of separation of power adopted in Indian Parliamentary Democracy.

Features of Pardoning Power

- Pardon could be conditional or absolute. It becomes conditional when the grantee has to fulfill certain conditions to make pardon operationalized.
- Earlier, Pardon can't be demanded as a matter of right & generally regarded as an act of grace. However, in Shatrughan Chauhan case 2014, court held that it is a Constitutional Rights of citizens & Constitutional Obligations over Executive. Subsequently, if there is any unreasonable & unacceptable delay on the part of Executive to grant or not to grant pardon then the judiciary can intervene in the concerned matter.
- ~~Pardon~~ Power of Pardon is also regarded as a matter of Executive Privilege. However, it is also the part of Constitutional

schemes. Subsequently, some standards & norms could be applied over the exercise of Pardoning Power.

- Former CJI, P.N. Bhagwati in Bachan Singh Case 1980, was of the view that President enjoys absolute power under Article 72. It can't be expected from govt. to decide on a mercy petition objectively. In Govt. of Andhra Pradesh Case Court also held that as long as there is no invidious/deliberate discrimination involved President has to act on the aid & advice of Council of Ministers & P.M.
- It is an Executive function exercised by President & Governor having judicial implications. Pardon is also provided both before & after the conviction.

- In Sarat chandra Rabha Case, 1960, Court held that Executive Pardon is different from Judicial Reduction of Sentence. Since, Judicial Reduction requires legal implications. Similarly, in K.M. Nanaoati case, 1980, Court held that based on the Rules framed by Supreme Court, the power of Reprieve could be exercised by Governor of state.
- If a mercy petition is filed for commutation before President of India, then court, can't intervene in the concerned matter.

Legal Position of Pardoning Power:-

Supreme Court in several of its adjudications clarified the legal aspect of Art 72 & 161. Court in Murukam case 1981 held that considerations of exercise of Power under Art 72 & 161, may be

myriad & their occasion could be ~~protem~~/different. These considerations should be left to appropriate govt. However, if the order proclaimed by Executive is irrelevant, irrational, discriminatory or maligned then court can intervene in the whole matter. Similarly, in "Kehar Singh case 1987," court held that idet⁷² squarely falls within the judicial domain. Court also held that the order of President can't be subjected to Judicial Review on its merit except within the strict limitations defined by Maruram Case.

In Epru Suddakar Case, 2006, Supreme Court further widened the scope of Judicial Review saying that Executive clemency is a part of Constitutional scheme & subject to several standards & norms. In this case

the court specified 5 criterias based on which an order could be reviewed-

- i) if the order is suffering from arbitrariness.
- ii) if the order is based on irrelevant consideration.
- iii) Relevant considerations had been deliberately kept out of the order.
- iv) Order is malafide in consideration
- v) Order is issued without the application of mind.

Supreme Court in Shatrughan Chauhan case, 2014, further widened the scope of Judicial Review by adjudicating that inordinate & unacceptable delay, is sufficient in itself to entitle the convict for commutation. Although the court refused to fix a certain no. of years above which undue delay would amount to torture. It should be noted that the guidelines laid down in 2014, got judgements

set out provision for curative petition even after the appeal at every judicial level & review by Supreme Court. It was blamed that 2014, verdict was accused centre.