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Q3

Compare and contrast the President's power to pardon in India and in the USA. Are there any limits to it in both the countries? What are 'preemptive pardons'?

UPSC Civil Services Mains 2025 · GS II · 10 marks · Indian Constitution

Indian Constitution - historical underpinnings, evolution, features, amendments, significant provisions and basic structure.

Core demand of the question

- Compare the President's pardon in India with the US President's
- State limits in both systems
- Define preemptive pardons and say whether India knows the device

Revision summary

Article 72 (and 161) are exercised on aid and advice; **Maru Ram**, **Kehar Singh**, **Epuru Sudhakar** and **Shatrughan Chauhan** frame Indian limits and delay.

The US Article II pardon is personal, federal-only, and barred in impeachment.

Judicial review is stronger in India; political cost is the main US brake.

A preemptive pardon forgives before conviction, as in Ford-Nixon.

India has no working doctrine of preemptive pardon for the untried.

Introduction

Pardon is the executive's power to soften the criminal law after the courts have spoken - or, in some systems, even before they have. India places it in **Articles 72 and 161**. The United States places it in **Article II**. Both are wide. Neither is a personal whim beyond all law, though the US comes closer to that picture.

Body

India

Article 72 lets the President grant pardons, reprieves, respites or remissions, and commute sentences, for Union offences, court-martial, and death sentences. The Governor's parallel is **Article 161**. The President acts on **aid and advice (Maru Ram v. Union of India)**. **Kehar Singh** allowed a pardon even after a Supreme Court confirmation of death, because mercy is a **different power** from appeal. **Epuru Sudhakar** and **Shatrughan Chauhan** opened **limited judicial review**: the order can be struck for mala fides, irrelevant grounds, or keeping a convict in agonising delay. There is no unfettered personal prerogative. **Swaran Singh** warned against mechanical mercy. Death-row procedure now includes a real mercy file, not a drawer.

United States

Article II gives the President power to grant **reprieves and pardons for offences against the United States, except in cases of impeachment**. It is **personal**, not cabinet-bound in the Indian sense. **Ex parte Garland** and later cases treat it as broad. Congress cannot easily carve it down. Limits are still there: **no pardon for state crimes**, no undoing of impeachment, and a political limit - Ford's pardon of Nixon remains the textbook cost. Federalist 74 defended energy in mercy.

Preemptive pardons

A **preemptive (or prospective) pardon** forgives offences **before conviction**, and sometimes before charge, for a class of past acts. Ford-Nixon is the famous American example. Debate in recent US cycles has asked whether a President may pardon in advance for unnamed future crimes; most scholarship treats **past acts** as the outer line, not a licence for tomorrow's offences.

India's text ("punishment or sentence") is usually read **after sentence**, though the wording of **Article 72** is not as narrow as a lay reader thinks. Practice and the mercy rules run on **petitions after conviction**. There is **no Indian convention of a Nixon-style preemptive pardon** for an untried President or minister. Doing so would collide with equal protection and with the idea that investigation is not the President's to cancel by fiat. If ever attempted, **Epuru Sudhakar** review would be the first stop.

- **Comparison in one line:** India **advises and reviews**; America **personalises and then pays politically**.

Flow diagram

Art 72 -> Aid and advice
Art 72 -> Limited review
US Art II -> Personal pardon
US Art II -> Not state crime / not impeachment
Preemptive -> US Art II

Conclusion

Both Presidents can spare a convict. India's mercy is ministerial and lightly reviewable. America's is personal and mostly political. Preemptive pardon is an American device for past federal offences; it is not an Indian working tool.

Facts & figures

Maru Ram (1980)

Held that the President's mercy power is exercised on the aid and advice of the Council of Ministers, not as a personal royal remainder.

Epuru Sudhakar (2006)

Opened judicial review of pardon for mala fides, irrelevant considerations and similar vices.

Exception in US Article II

No presidential pardon in cases of impeachment, and no reach into state criminal law.

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