Question 29 “Though the constitution prescribes a scheme where parliament is controlling the executive while in practice it has become otherwise i.e. executive controlling the parliament”. Critically Examine the statements.

Under Article 75, The Constitution amply fulfils this ideal by fully underlining the responsibility of the Ministers to the Lok Sabha.

• In the first place, a Minister must be a member of a House of Parliament. Such membership ensures contact between the Executive and the Legislative wings, facilitates co-operation and interaction between them and makes parliamentary control over the Executive somewhat real.

• Ministers stay in office so long as they enjoy the support of a majority in the Lok Sabha. This helps Parliament in calling the Ministers to account, keeping a watch on them, eliciting information from them on matters of public importance and influencing the policy-making process.

• both Houses of Parliament take a number of opportunities to discuss, question, criticise and debate government policy and conduct of administration.

• Fourthly, the Executive cannot ignore and by-pass Parliament because the Constitution enjoins that not more than six months should pass between the end of one session and the beginning of another. Therefore, sooner or later the Executive must face Parliament.

• Lastly, number of constitutional provisions assign to Parliament a role in certain matters pertaining to the Executive, e.g.,

o Parliament is empowered to fix the emoluments, allowances and privileges of the President, Vice-President and the Ministers.

o Houses of Parliament may impeach the President for violation of the Constitution; the elected members of Parliament constitute an important segment of the electoral college for electing the President;

o the Vice-President may be removed from his office by a resolution of the Rajya Sabha agreed to by the Lok Sabha;

o the Vice- President is elected by the members of both Houses of Parliament.

o Powers of the Executive to issue ordinances and declare an emergency are subject to parliamentary control

In the modern set up, however, in effect, more than Parliament controlling the Executive,

it is the other way round, viz. the Executive controlling the Parliament:

• Summoning, prorogation and dissolution of Houses lie in the hands of the Executive.

• The Executive also has a veto on legislation enacted by the Houses and, in financial matters, the executive plays a very important role.

• Practically, all legislation is sponsored by the Ministers.

• The Cabinet is in complete control of the Houses and virtually monopolises business therein.

The dominant role now played by the Cabinet in parliamentary affairs is the result of the

emergence of party governments. The dominant role now played by the Cabinet in parliamentary affairs is the result of the emergence of party governments.

The power to dissolve the House is a potent weapon in the hands of the Prime Minister which he wields to control the House.

Not only this, the Cabinet’s power of dissolution instils responsibility even in its political opponents who cannot create a crisis on every issue by defeating the Ministry, for they know that in that case the Ministry may appeal to the electorate and seek its verdict.

All these circumstances place an enormous amount of power in the hands of the Cabinet

and the Prime Minister. Rarely will a Ministry lose office by an adverse vote so long as it holds

its majority in Lok Sabha. The result is that while in theory Parliament is supreme in that

it can make or unmake a Ministry, in practice, a Ministry once in power controls and leads

the Parliament.

Question 28. Discuss the essential conditions for exercise of the legislative powers by the Governor. Discuss the legality of re-promulgation of ordinances by the Governor without placing them before the Legislature. (PYQ) (To be discussed in class)

Article 213 of the constitution provides for law making power of the governor it says except when the both the houses are in section and governor satisfied of situation which required immediate action he can promulgate any ordinance upon such matter which comes under legislative domain of the governor

All the ordinances shall have same validity and effect similar to act of legislator any such ordinance can be withdrawn any time by the governor

However all the ordinances pass by governor shall get approval within 6 weeks from both the houses of the legislature otherwise they shall lapse it may be noted that maximum of 6 months should not convenes between 2 section of the legislature hance an ordinance have maximum validity 6 months and 6 weeks without getting pass by legislature

In the landmark case of DC wadhava vs State of Bihar (1986) the supreme court has observer that re-promulgation of ordinance without placing before the legislature is Froud on the constitution the court emphasis that this power should be used only exceptional circumstances and repeated re-promulgation by passes legislative process and undermine authority of the legislature the court further observe that it is temporary power conferred to executive to address unforeseen situation when legislation is not in section and it should not be used as substitute power to legislature Also governor should take step to ensure that the section of legislature is called at earliest to consider the ordinance.

Question 27. Instances of President’s delay in commuting death sentences has come under public debate as denial of justice. Should there be a time limit specified for the President to accept/reject such petitions? Analyse. (PYQ) (To be discussed in class)

Article 72 of the constitution provides to pardon upon the president this power has been interpreted to be vary extensive nature and pardon may be granted after the conviction even before

In Kehar singh( Indra Gandhi’s body guard) vs UOI supreme court hold power under article 72 is not prerogative as in United Kingdom rather its part of coitional scheme and president been constitution head has been given this power this power of president is not absolute and it subject to judicial review. Court can examine the decision of president on the grounds of mela fide arbitrariness and violation any constitutional provision

**Delay in grant of pardon:** there has been various occasion when this power has been accused to be exercise on the political ground causing inordinate delay deciding mercy petition.

Arguments for prescribing the time limit:

1. Ensuring the timely justice:

Delays in the execution of judicial pronouncement prolong uncertainty not on the convicts but also their family and society at large prescribing the time frame would mean that justice has been done in the time bound manure

1. Upholding the rule of law: in ordinate delays and decisions can cause arbitrariness in this decision can compromise with the procedural fairness hance time bound decision may protect principles of natural justice and uphold rule of law.
2. Enhance the public perception: delays disposal those cases can create reasonable doubt and sceptics about the fairness of process by the government implementing the time limits could bridge this trust gap and address the denials of justice

Arguments for against the time limit:

1. Toro review and consideration: It is crucial for the president to have sufficient time in order to review all relevant information consult legal experts and consider merits of each case. Imposing the time limit can take away this ability to conduct the comprehensive revive.
2. Complex nature of cases: death penalty often involves intricate legal and factual issue which requires careful examination rushing with the decision making may have serious and adverse implications for society at large.
3. It may impact the presidential desecration: imposing time limit could unduly restrict the president power and undermine the purpose of this authority.

The supreme court has held that excessive delay can cause element of torcher which is violation of article 21 and hance it can ground for computation of sentence supreme court has made it Clare during the Afzal guru case chief purpose of power should be maintain rule of law not to meet any political expediency. the court the famous maru ram case has admitted that it is not possible to draw upon any strict guide line as different cases may be based upon different case may based upon different facts and different circumstance’s hance it has to judged from case to case basis. However supreme has suggested government frame guideline for self-regulation in order to remove arbitrariness and abuse of power.

Q) though the constitution prescribes the scheme where parliament should scribe the scheme were parliament control executive while in practise critical analysis the statement. 250 words

Notes for role of government

Reasons for choosing nominated governor:

The constitute assumably fully debated merits and demerits of nominated governor vs elected governor and finally adopted the mode of appointment by presidential nomination by several reasons:

1. To promote all Indian unity and co-operation between union and state. In the parliamentary system the constitutional head should be
2. impartial but the elected governor would necessarily belong to political party and there may be biases against other party
3. conflict between chief minister and governor: if both the person are directly elected and similar mandate of people there will be power conflict among these two.
4. Additional cost: in the present scheme of the constitution governor act as ceremonial head and hance pending too much money on such a post would be irrational.

opinion’s various committee:

1. Appointment of the government: sarkaria commission has recommended a) governor should be immanent person
2. he should be person should be outside of the state
3. he should be detached from local politics
4. he should not have taken active participation in polities in the recent past

national commission to review working constitution has also suggested appointment of government should be in trusted to a committee consisting prime minister, minister of home affair, speaker of Lok Sabha, and chief minister of state. it also suggested to include vice president in the process

this recommendation was further reiterated in cased of Rameshwar pasad vs UOI 2006 in this case supreme court observe formulate the national policy which should be accepted to all political party and should contain uniform parameter for appointment.

Should chief minister of state consult:

Originally framers of the constitution were of the view the person nominated as governor should be acceptable to the state. governor and chief minister should always be consulted again the study team of ARC (Administrator reform commission) in 1967 recommended to continue the practice of consulting chief minister but with the caution the prime responsibility of appointing governor by the union shall not be diminish.

Sarkaria commission has also argued for appointment of governor with the prior consultation of chief minister as it would give opportunity to certain objection beforehand also commission opined that proper working of parliamentary system depends upon the co-ordinate between the governor and chief minister hance It is desirable that chief minister should be given advisory role at the appointment of governor.

Tenure of the governor:

Governor should hold tenure of 5 year however he can be removed from the office as per the pleasure of president. A survey over the tenure of the governor from 1947 1987 out of 2/3 tenure of governor were prematurely ended. This trend as much faster rate if the period of 1967 1987 is consider this premature end of tenure does not allow the office bearer to act in manure which free from fair and favour hance Sarkariya commission recommends that if tenure of the governor is prematurely ended the union executive shall give a statement before the parliament

Again, panchi commission prescribe that governor should give full five years tenure similar process as impeachment of president should be inserted in the constitution in the governor as well.

Ban of future appointment:

if governor later become minister or hold any private office decision act which can be said to diminish the constitutional post hance sarkaria commission that as mater of convention governor after demitting office should not be eligible for any appointment for any office of profit how ever outgoing governor can be allowed second tenure or contesting election of president and vice president.

Time limit for giving the accent of the bill:

In the purushotam vs state of karela it has been held there is not time limit which has been fixed for the governor for granting accent of the bill it has been also be held no bill shall lapse on the prorogation of the house also bill which is pending before governor does not lapses on the dissolution of the assembly while national commission revive working of constitution (ncrwc) given certain recommendations which has been reiterated by the panchi commission.

* Time limit of 4 months has been prescribed for governor to give accent bill.
* 2)it also recommends that power given to the governor under article 300 with hold the accent to bill shall be done away.
* Once’s the bill has been reserved for consideration of the president a time limit 3 months has been prescribed also.
* It has been recommended once the bill has been reconsider by the state legislative committee president shall bound to give the accent.
* It also recommended the governor cannot reserve the money bill.

Should the post of governor abolish:

The post of the governor is constitutional mandate. And it is mandatory as per article 153 of the constitution to have the governor for every state.

The governor while acting with or without the advice of council of minister plays the important role in the constitutional scheme and structure. He has been considered as linchpin as apparatus of the state.

The office of the governor provides the continuity of the government at the state the tenure of the governor unlike that of chief minister does not depend on the popular support or life of legislative assembly he continuous even when council of minister or legislative assembly dissolved. He also fills the political vacuum political situation break down of constitutional missionary hance it is safe to conclude post of governor is indispensable in the working state government.

Court of record: power to punish for contempt’s.

Notes for judicial system.

1. judgement shall record and used as a evidence in all the courts.
2. Power to regulate itself.
3. Power to punish for contempt.

What is contempt of court:

* 1. Hamper the delivery of justice
  2. Will full disobedience order of court?
  3. Which scandalizes the honestly of judges.
  4. Any act affects the mind of judges.
  5. Two type civil contempt and criminal contempt

How can apply contempt of court.

1. Suo moto.
2. Attorney general or solicitor general.
3. Any person how have accent from attorney general or solicitor general.