



GS FOUNDATION BATCH FOR CSE 2024

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**Polity - 13
(Union Executive)**

Union Executive

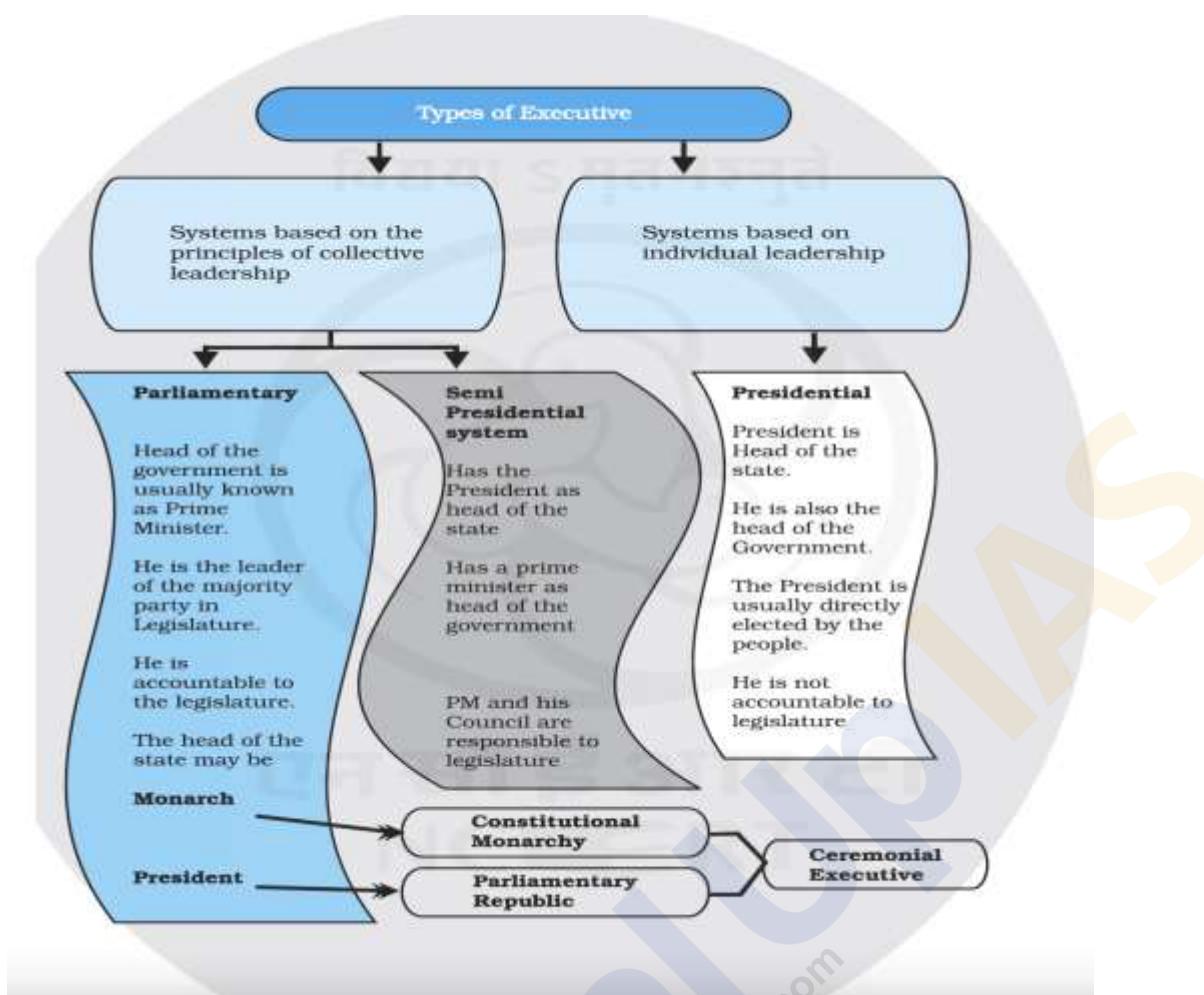
Legislature, executive and judiciary are the three organs of government. Together, they perform the functions of the government, maintain law and order and look after the welfare of the people. The Constitution ensures that they work in coordination with each other and maintain a balance among themselves. In a parliamentary system, executive and the legislature are interdependent: the legislature controls the executive, and, in turn, is controlled by the executive.

Legislative body decide about rules and regulations, while the other one would be in charge of implementing those rules. **The organ of government that primarily looks after the function of implementation and administration is called the executive.**

Executive: executive means a body of persons that looks after the implementation of rules and regulations in actual practice. The official designations of the executive vary from country to country. Some countries have presidents, while others have chancellors. It also extends to the administrative machinery (civil servants).

Political Executive:

Permanent Executive:



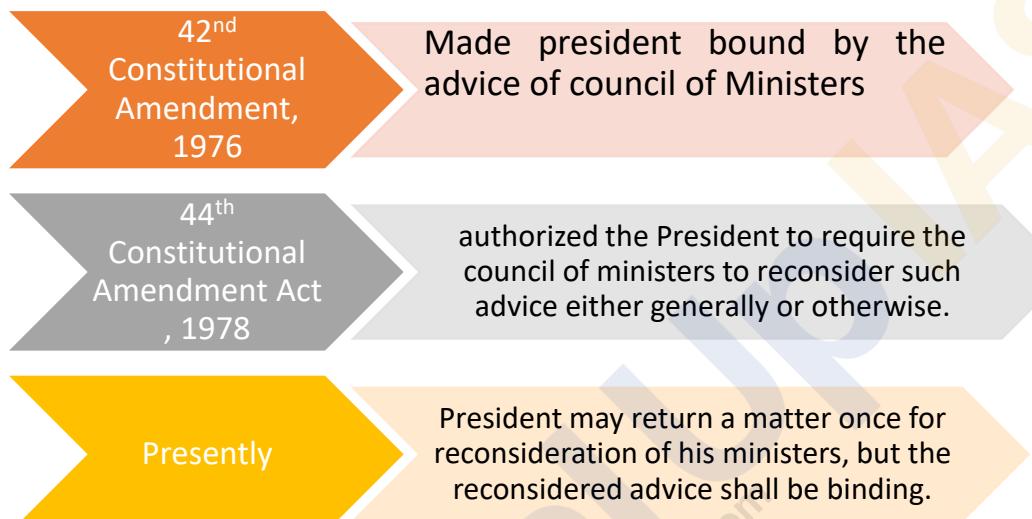
- The USA has a presidential system and executive powers are in the hands of the president.
- Canada has a **parliamentary democracy with a constitutional monarchy where Queen/King of Great Britain is the formal chief of state**, and the prime minister is the head of government.
- In France, both the president and the prime minister are a part of the **semi presidential system**.
- The **president appoints the prime minister as well as the ministers but cannot dismiss them as they are responsible to the parliament**.
- Japan has a parliamentary system **with the emperor as the head of the state and the prime minister as the head of government**.
- Italy has a **parliamentary system** with the president.

In a parliamentary system, the prime minister is the head of government. Most parliamentary systems have a president or a monarch who is the **nominal Head of state**. In such a system, the role of president or monarch is primarily ceremonial and prime minister along with the cabinet wields effective power.

The Constitution of India vests the executive power of the Union formally in the **President**. The President exercises these powers through the Council of Ministers headed by the Prime Minister.

Article 74 (1): *There shall be a Council of Ministers with the Prime Minister at the head to aid and advise the President who shall in the exercise of his functions, act in accordance with such advice.*

Provided that the President may require the Council of Ministers to reconsider such advice...., and the President shall act in accordance with the advice tendered after such reconsideration.



Discretionary Powers of the President: Based on the above discussion can we infer that the President has no discretionary power under any circumstances? This will be an incorrect assessment. Constitutionally, the President has a right to be informed of all important matters and deliberations of the Council of Ministers. The Prime Minister is obliged to furnish all the information that the President may call for. The President often writes to the Prime Minister and expresses his views on matters confronting the country.

Besides this, there are at least three situations where the President can exercise the powers using his or her own discretion.

In the first place,

- We have already noted that the President can send back the advice given by the Council of Ministers and ask the Council to reconsider the decision. In doing this, the President acts on his (or her) own discretion.

Postal Amendment Bill Controversy: In 1986, the Parliament passed a bill known as Indian Post office (amendment) bill. This bill was widely criticised by many for it sought to curtail the freedom of the press. **The then President, Gyani Zail Singh, did not take any decision on this bill.**

After his term was over, the next President, Venkataraman sent the bill finally back to the Parliament for reconsideration. By that time, the government that brought the bill before the Parliament had changed and a new government was

- The President also has veto power by which he **can withhold or refuse to give assent to Bills** (other than Money Bill) passed by the Parliament. No mention in the Constitution about the time limit within which the President must send the bill back for reconsideration. **President can just keep the bill pending with him without any time limit.**
- President may call for information with regards to affairs of the government and matters of policy to be considered by the council of ministers.

Situational Discretion: **Situation** when after an election, no leader has a clear majority in the Lok Sabha President has to decide whom to appoint as the Prime Minister. **In such a situation**, the President has to use his own discretion in judging who really may have the support of the majority or who can actually form and run the government.

Prime Minister and Council of Minister: Roles and Responsibility in a nutshell. India follows a parliamentary system of government wherein the PM acts as the head of government and is **also accountable towards Lok Sabha** (Popular House). Hence it is essential that the Prime Minister has the support of the majority in the Lok Sabha, and it is this **popular support which makes PM most powerful person in the government**. Formally, a leader who has the support of the majority is appointed by the President as Prime Minister.

The Prime Minister allocates ranks and portfolios to the ministers. Depending upon seniority and status in the government the ministers are given the ranks of cabinet minister, minister of State or deputy minister. The Prime Minister and all the ministers must be members of the Parliament. If someone becomes a minister or Prime Minister without being an MP, such a person **has to get elected or nominated to the Parliament within six months.**

Concept of Collective responsibility: The Council of Ministers is collectively responsible to the Lok Sabha. Collective responsibility is based on the **principle of the solidarity of the cabinet**. It implies that a **vote of no confidence even against a single minister leads to the resignation of the entire Council of Ministers**. It also indicates that if a **minister does not agree with a policy or decision of the**

cabinet, he or she must either accept the decision or resign. It is binding on all ministers to pursue or agree to a policy for which there is collective responsibility.

PM Vis-à-vis Council of Minister:

- The Council of Ministers cannot exist without the Prime Minister.
- The Council comes into existence only after the Prime Minister has taken the oath of office.
- The death or resignation of the Prime Minister automatically brings about the dissolution of the Council of Ministers, but the demise, dismissal or resignation of a minister only creates a ministerial vacancy. PM acts as a link between the Council of Ministers on the one hand and the President as well as the Parliament on the other.

How has post of PM become so influential?

This enormous authority wielded by the Prime Minister flows from various sources:

- His control over the Council of Ministers and allocation of portfolios
- leadership of the Lok Sabha,
- command over the bureaucratic machinery,
- access to media, projection of personalities during elections,
- projection as national leader during international summity as well as foreign visits.

However, this is not the case always. Role and status of PM has been found to get diminished if the government is not enjoying full majority and depending on the coalition partners. Political parties of different ideologies come together both as pre-poll and post-poll allies to form a government. Policies are framed after a lot of negotiations and compromises among the allies. In this entire process, the Prime Minister must act more as a negotiator than as leader of the government.

- In the first place, these developments have resulted in a growing discretionary role of the President in the selection of Prime Ministers or the same goes with selection of chief minister by the governor.
- Secondly, coalitional nature of Indian politics in this period has necessitated much more consultation between political partners, leading to erosion of prime ministerial authority.

Ques. In parliamentary System the Prime minister enjoys real powers while president has ceremonial or titular powers. Analyse



Why we adopted present system of election of the president:

- It would have been **anomalous to have the President elected** by adult suffrage directly by the people and not to give him any real and substantive power.
- The method of **direct election would have been very costly and time consuming**.
- There was also the fear that a directly elected President may emerge, in course of time, as **a centre of power in his own right**.

Therefore, the framers of the Constitution thought that it would be adequate to have the President elected indirectly.

- On the other hand, the framers of the Constitution did not want the President to be **elected merely by Parliament alone as that would have been a very narrow basis**, and **Parliament being dominated by one political party would have invariably chosen a candidate from that party**.
- In that case, the President **would not have commanded national consensus** in accordance with the system of proportional by an electoral college, consisting of the elected members of both Houses of Parliament and of the State Legislative Assemblies

We adopted Proportional representation in order to ensure that winning candidates gets returned with absolute majority of votes.

Principles of Presidential election:

Firstly,

- As far as practicable, there is **uniformity in the scale of representation of the different States in a presidential election**

Secondly,

- There has to be parity among states as a whole and parliament as well.

While deciding a case in 1974, In its advisory opinion in *In re, Presidential Poll*, the Supreme Court has ruled that the **election of the President can be held when a State Assembly has been dissolved under Article 356 and its members are unable to participate in the election**.

Article 71(4) protects President's election from being challenged on the ground of the existence of any vacancy for whatever reason among the members of the electoral college electing him.

- All doubts regarding the disputes in the election of president are to be heard **exclusively in the supreme court and its decision shall be final**. Supreme court also has power to frame rules regarding presentation of such petition under Article 145.
- However, it has been held the apex court itself that it shall not entertain any plea with regards to election of president before the completion of electoral process.

- Under section 14 of the Presidential and Vice-Presidential Elections Act, 1952 an election can be called into question either by a candidate at such election or by 10 or more electors. **The Supreme Court has therefore held that a person who is neither a candidate nor an elector could not file a petition to challenge the Presidential election.**
- If the election of a person as President is declared void by the Supreme Court, acts done by him in exercise and performance of the powers and duties of that office before the court's decision are not invalidated.



Representation to UTs: Originally, the elected members of the Legislative Assemblies of Union Territories were not included in the electoral college to elect the President.

In S.K. Singh v V.V. Giri, (1970)

the Supreme Court had ruled that the term 'State' in Article 54 did not include Union Territories. After the above pronouncement, **the Constitution (Seventieth Amendment) Act, 1992**, added an explanation to Article 54 saying that the term "State" in Articles 54 and 55 includes the National Capital Territory of Delhi and the Union Territory of Puducherry. Thus, the elected members of the Legislative Assemblies of Delhi and Pondicherry now have become part of the electoral college.

How Votes are valued:



Benchmarks of Census for the Year 1971 is taken for counting population of the states. This has been affected by the 42nd Amendment Act. This position shall continue till the data of first census conducted after 2026 is available.

- Along with general elections of Union and State legislatures, the **elections of president and vice-president are also conducted by ECI.**

Condition of Office:

- He should not be a member of either House of Parliament or a House of the state legislature.
- If any such person is elected as President, he is deemed to have vacated his seat he is deemed to have vacated his seat in that House on the date on which he enters upon his office as President.
- He is entitled without payment of rent to the use of his official residence the Rastrapathi Bhavan.
- He is entitled to such emoluments, allowances and privileges as may be determined by Parliament.
- His emoluments and allowances cannot be diminished during his term of office.

Vacancy in the President's Office:

A vacancy in the President's office can occur in any of the following Ways:

I. Permanent Vacancy

- On the expiry of his tenure of five years
- By his resignation
- On his removal by the process of impeachment
- By his death

II. Temporary Vacancy

- Or otherwise- when he is unfit or unavailable to continue his duties.

If the vacancy created in the office of president is of permanent nature	If the vacancy created in the office of president is of temporary nature
The constitution prescribes in such a situation an election to elect new president shall be conducted within 6 months.	Then vice president takes charge as acting president and continues until the president is able to resume back his duties.
Until then Vice President takes charge as acting president.	In this case Vice President can act for a period more than 6 months.

As per section 3 of **President Discharge of Functions Act 1969**, In the event of the occurrence of vacancies in the offices of both the President and the Vice-President, by reason in each case of death, resignation or removal, or otherwise, **the Chief Justice of India or, in his absence, the senior most Judge of the Supreme Court** of India available shall discharge the functions of the President until a new President elected.

Subject to the provisions of the Constitution, **Parliament is empowered to enact legislation to regulate any matter connected with the election of the President** [Article 71(3)]. Accordingly, Parliament has enacted the Presidential and Vice-Presidential Elections Act, 1952 to carry out the purposes of Article 71(1).

The Act lays down that a candidate can be nominated when at least **50 voters propose him and 50 voters second** him and he deposits a sum of Rs. 50000. This deposit shall be forfeited if the candidates fails to secure at least 1/6th of the total valid votes.

There is also a condition that **an elector can propose the name of only one candidate in the presidential election.**

In case of election of vice president **20 electors** shall propose his nomination and twenty shall second that.

Schedule for Election: (Presidential and Vice-Presidential Elections Act, 1952)

1. Notification- Around 60 days before the date of expiration of previous president's tenure.
2. 14 Days from date of notification- time given to candidates for filing nomination papers.
3. 1 day is given to returning officer for the scrutiny of nomination papers.
4. Thereafter 2 days are given for candidates if they want to withdraw the nomination.
5. Thereafter at least 14 days given to candidates to seek votes and at least after 14 days from last date of withdrawal of application election can be conducted.

- In case of death of any candidate after nomination, returning officer shall report the death to ECI and existing poll procedure shall lapse. A new poll process shall start thereafter.
- Voting by a proxy is not allowed in the election of the president.

Grounds on which an election of president can be declared void by the supreme court.

- that the offence of bribery or undue influence at the election has been committed by the winning candidate or by any person with the consent of the returned candidate;
- non-compliance with the provisions of the Constitution or of this Act (Presidential and Vice-Presidential Elections Act, 1952) or of any rules or orders made
- the nomination of any candidate has been wrongly rejected or the nomination of the successful candidate has been wrongly accepted.

Petitioner can either claim to annul the election or even claim that he himself and not the person who has been elected is duly fit to get elected. In this case if supreme court finds the claims in the petition true, it can elect the petitioner and cancel the previous election.

Impeachment of the President

The President may be removed from his office, before the expiry of his term, for "**violation of the Constitution**" (Only one ground) by the process of impeachment which is given under Article 61 of the constitution.

1. The charge against him may be preferred by either House of Parliament.
2. Any such charges shall be moved only after a 14 days prior notice has been served to the president.
3. The resolution must be passed by a majority of not less than two-thirds of the total membership of the House.
4. Once the resolution has been passed by the house which has framed the charges, the other house shall investigate substance of the charges labelled against the president.
5. Investigation may be made either by the House itself or by some other agency as the House may direct. The President has the right to appear and be represented at such investigation.
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Impeachment of President in USA

The power to impeach **might possibly be invoked in the event of the President acting independently of, or contrary to, ministerial advice, or for “treason, bribery or other high crimes or misdemeanours.”**

Impeachment is a political instrument; what constitutes “violation of the Constitution” is a matter to be decided by the House which tries the charge and the House is essentially a political organ.

This provisions seems to be have been inspired from the USA constitution. According to Article II, section 4 of the U.S. Constitution, the President can be removed from office on impeachment for, and conviction of, treason, bribery, or other high crimes and misdemeanours. According to Article I, section 3, all impeachments are tried solely by the Senate and when the President is being impeached, the Chief Justice of the Supreme Court is to preside.

But in procedure the impeachment of president in India has got substantial variation from what is being followed in USA.

- **The President in India can be impeached only for violation of the Constitution and not for any criminal offence.**
- In India, impeachment can be tried by either of the two Houses of Parliament, and not necessarily by the Upper House [Rajya Sabha].
- There is no provision for the Chief Justice of India to preside at such sittings of the House when the charge against the President is being investigated.

Privileges given to the President:

Personal Immunity for official acts done during tenure:

- He is **not answerable to any court for the exercise and performance of the powers and duties of his office**, or for “any act done or purporting to be done by him” in the exercise and performance of those powers and duties.
- No court can compel the President to exercise or not to exercise any power, or to perform or not to perform any duty, nor can a court issue any writ in respect of the President’s official acts or omissions.
- He is **not amenable to any mandate, writ, or direction from any court**. No court can compel him to show cause or defend his action. In the case of official acts, an absolute immunity from the process of the court is given to the President.

Criminal Immunity:

- No criminal proceeding whatsoever can be instituted against the President in and no process for the arrest or imprisonment of the President can issue from, any court during his term of office [Article 361(3)]. Thus, no criminal

proceedings can be taken against the President even for acts done in his personal capacity.

Limited Civil Immunity:

- **Civil suits can be instituted against the president but that itself can be done only a notice of at least 60 days has been served to the president.**
- In civil cases, a distinction is drawn between the President's official or personal acts. In respect of his official acts, an absolute bar has been created against a court action; in respect of his personal acts, there is only a partial bar in so far as a two months' notice needs to be given to him prior to the institution of civil proceedings

Working of the Executive:

President as Titular Head:

- **Head of Armed Forces:** Vesting of Supreme command of Armed forces bring the military forces under the civilian control. This helps in removing chances of coup or military rule and also in principles its helpful in ensuring idea of constitutionalism.
- **Head of Union Executive:** According to Article 77(1), all executive action of the Central Government is to be expressed to be taken in the name of the President.
- Though formally vested in the President, the idea could never be that he should personally exercise this power, or take every decision himself. That would be a task physically impossible for him to discharge. It will also be constitutionally undesirable for in a parliamentary system effective powers vest in the Ministers. The Constitution therefore seeks to create a mechanism by which the responsibility for decision making may be passed from the President to others
- For this purpose, a Minister is regarded as an officer subordinate to the President and, therefore, the President can exercise his executive authority through the Ministers.
- Secondly, the President is to **make Rules for the more convenient transaction of the business of the Government** of India and for the allocation of work among the various Minister. Idea here is that the actual administration is run by the Ministers, and not by the President who is a constitutional head, but a Minister cannot, in the very nature of things, take every decision by himself. He does so in the name of the president.
- Thirdly, Parliament may by law confer any function on authorities other than the President. When Parliament does so, the officer concerned can act in his own name.

Hence, president is shall undertake his executive functions only after being advised by the council of ministers. Further, Article 74(2) declares that no court can inquire into the question whether any, and if so what, advice was tendered

by the Ministers to the President. Article 74(2) thus expressly makes advice tendered by the Ministers to the President non-justiciable.

In **Ram Jawaya Kapoor v Punjab (1955)** case, supreme court has observed that we adopted the parliamentary system on the lines of Britain and hence president acts as titular head. So, it is safe to conclude that the **President is the head of the State and only a formal executive. The President is more of a symbol used to formalize the decisions arrived at by the Ministers and the Cabinet.** The effective executive power lies with the Prime Minister and the Ministers who constitute the real executive carrying on the entire burden of conducting the administration of the Union.

Judicial Functions:

- Appoints the Chief Justice and the judges of Supreme Court and high courts.
- Can seek advice from the Supreme Court on any question of law or fact. However, the advice tendered by the Supreme Court is not binding on the President.

Power to Pardon: Article 72 empowers the President to grant pardon, reprieve, respite, or remission of punishment, or to suspend, remit or commute the sentence of any person convicted of any offence in all cases.

- **Reprieve** means stay of the execution of sentence.
- **Respite** denotes postponement of execution of a sentence on existence of special reasons.
- **Remission** reduces the amount of a sentence without changing its character and commutation is changing the sentence to a higher penalty of a different form.
- **Commutation** is changing of one form of punishment to less severe form.
- A pardon is an act of grace which **releases a person from punishment for some offence.** A pardon **may be either full, limited, or conditional.** Full pardon wipes out the offence in the eyes of law; a limited pardon relieves the offender from some but not all the consequences of the guilt and a conditional pardon imposes some condition for the pardon to be effective.
- The President acts in this matter on the advice of the Home Minister.

The scope of the power conferred on the President by Article 72 is very extensive. It extends to whole of India. The power to grant pardon may be **exercised either before a conviction or by an undertrial prisoner or after the conviction.**

Other head superstate in United State or the Great Britain has similar power of granting pardons. In Britain, the Crown enjoys a prerogative to grant pardon to any criminal, but this prerogative is exercised on ministerial advice.

However, the grant of pardon in India is not a prerogative. Rather it is the part of constitutional scheme and structure.

In Kehar Singh V Union of India, Supreme Court has held a view that power of **pardon is a part of constitutional scheme and President being the head of the Constitution and enjoying the high status has been invested with this power**. It is a constitutional responsibility of great significance to be exercised when occasion arises in accordance with his discretion contemplated by the context.

The court has further justify is that in any civilised society there can be no attributes more important than life and personal liberty of its member in most civilised societies, the deprivation of personal liberty and threat of the deprivation of life by actions of the state is regarded seriously and therefore records is provided to the judicial organs for its protection. But judiciary is also not infallible and susceptible to errors of human judgment. So it has been found appropriate that in matters concerning life and liberty, the power is vested in some high authority to scrutinise the validity of threatened denial of life.

Though the Supreme Court has itself not prescribed any guidelines, but in the case of **Maru ram**, it has suggested the **government to frame certain guidelines in order to avoid any discrimination**. The court further has explained that no **constitutional power is to be exercised arbitrarily**. Public power given on a high pedestal has to be exercised in a justified manner. All public power, including constitutional power, sell never be exercisable in arbitrary or mala fide way.

In the same case again, The Supreme Court held that the power of the President to grant pardons under Article 72 of the Indian Constitution is not absolute. It is subject to judicial review, and the court can examine the decision on grounds of mala-fide, arbitrariness, or violation of any constitutional provision.

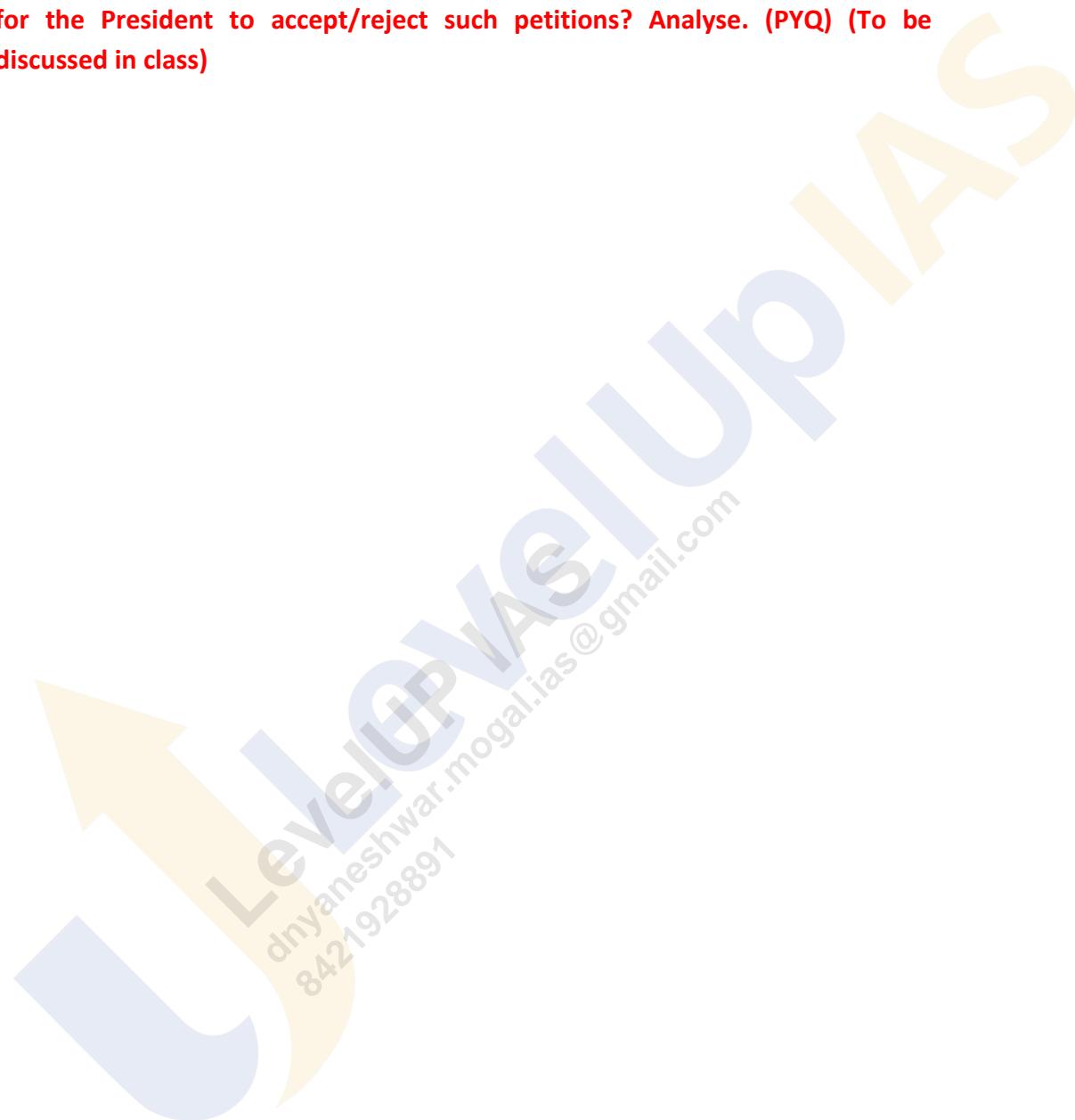
Yet in any case, the Code finds that the power to pardon has been exercised in an irrational, irrelevant and discrimination or mala-fide way the Court can examine the case and intervene, wherever necessary.

Further, **the Law Commission of India in its report on capital punishment has also justified the existence of prerogative of mercy** in the hands of executive. “There may be many matters which may not have been considered by the courts. The hands of the codes are tied down by the evidence placed before it”.

The US President has the constitutional right to pardon or commute sentences related to federal crimes. The Supreme Court has held that this power is “granted without limit” and cannot be restricted by Congress. Clemency is a broad executive power that is discretionary — meaning the President is not answerable for his pardons, and does not have to provide a reason for issuing one. But there are a few limitations.



Ques. 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)





Legislative Functions:

1. Can summon or prorogue the Parliament and dissolve the Lok Sabha.
2. He can also summon a joint sitting of both the Houses of Parliament, which is presided over by the Speaker of the Lok Sabha.
3. Address the Parliament at the commencement of the first session after each general election and the first session of each year.
4. Can appoint any member of the Lok Sabha/RS to preside over its proceedings when the offices of both the Speaker and the Deputy Speaker fall vacant.
5. Nominates 12 members of the Rajya Sabha from amongst persons having special knowledge or practical experience in literature, science, art and social service.
6. Decides on questions as to disqualifications of members of the Parliament, in consultation with the Election Commission except Xth Schedule matters.
7. His prior recommendation or permission is needed to introduce certain types of bills in the Parliament. For example, a bill involving expenditure from the Consolidated Fund of India, or a bill for the alteration of boundaries of states or creation of a new state.
8. He can promulgate ordinances when the Parliament is not in session. These ordinances must be approved by the Parliament within six weeks from its reassembly. He can also withdraw an ordinance at any time.
9. lays the reports of the Comptroller and Auditor General, Union Public Service Commission, Finance Commission, and others, before the Parliament.

Financial Powers:

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Ordinance Making Powers:

An ordinance is only a temporary law. **The executive in Britain or the U.S.A. enjoys no such power. Section 72 of the Government of India Act, 1935, authorised the Governor-General to make and promulgate ordinances for the peace and good government of British India 'in cases of emergency.'**

The technique of issuing an ordinance has been devised with a view to enabling the Executive to meet any unforeseen or urgent situation arising in the country

when Parliament is not in session, and which it cannot deal with under the ordinary law.

Article 123 empowers the president to promulgate such ordinances as the circumstances appear to him to require when:

1. either Houses of Parliament are **not** in session
2. he is **satisfied that circumstances** exist which render it necessary for him to take immediate action.

he acts in this matter, as he does in other matters, **on the advice of the Council of Ministers. Ordinance is not the discretionary power of the president.**

the **38th Amendment of the Constitution had added Art. 123(4) making satisfaction of the President to issue an ordinance non-justiciable but later the 44th Amendment deleted this provision and restored the status quo ante.**

The ordinance is to be laid before each House of Parliament when it reconvenes after the making of the ordinance. It shall **cease to operate at the expiry of six weeks** from the assembly of Parliament unless approved.

Period of six weeks is to be reckoned **from the later of the two dates if both houses meet on different dates.**

The ordinance **comes into effect as soon as it is promulgated** and the maximum duration for which an ordinance may last is **six months and six weeks**, as **six months cannot intervene between two sessions of Parliament**, and the ordinance would cease to operate six weeks after the Parliament meet.

An ordinance may cease to have effect even earlier than the prescribed six weeks, if both Houses of Parliament pass resolution disapproving it. **It may be withdrawn by the Executive at any time.**

A similar power is vested under the governors of the state under article 213. Governors of the state can issue ordinance on all those matters where state legislature is empowered to make laws.

RC Cooper Case 1970: Supreme Court in RC Cooper vs. Union of India (1970) held that the President's decision to promulgate ordinance could be challenged on the grounds that 'immediate action' was not required, and the ordinance had been issued primarily to bypass debate and discussion in the legislature.

In the case of D.C. Wadhwa v. State of Bihar, the Supreme Court of India addressed the issue of re-promulgation of ordinances by the Governor without placing them before the Legislature. The court examined the constitutional validity of such re-promulgation and its impact on the legislative process.

The Supreme Court, in its judgment, held that the re-promulgation of ordinances without placing them before the Legislature is a "fraud on the Constitution." The court emphasized that the power to promulgate ordinances should be used sparingly and only in exceptional circumstances. Repeated re-promulgation of ordinances bypasses the legislative process and undermines the role of the legislature.

The court observed that the power to promulgate ordinances is a temporary power conferred on the executive to address urgent and unforeseen situations when the legislature is not in session. However, this power should not be used as a substitute for the law-making function of the legislature. The court emphasized that the Governor should take steps to ensure that the legislature is convened at the earliest to consider the ordinance.

Krishna Kumar Singh Case 2017: Supreme Court in Krishna Kumar Singh v. the State of Bihar held that the authority to issue ordinances is not an absolute entrustment, but is "conditional upon satisfaction that circumstances exist rendering it necessary to take immediate action".

It further stated that the re-promulgation of ordinances is a fraud on the Constitution and a subversion of democratic legislative processes.

Ques. 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)



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- A **pardon** is an act of grace which **releases a person from punishment for some offence**. A pardon **may be either full, limited or conditional**. Full pardon wipes out the offence in the eyes of law; a limited pardon relieves the offender from some but not all the consequences of the guilt and a conditional pardon imposes some condition for the pardon to be effective.
- The President acts in this matter on the advice of the Home Minister.
- Offences relating to currency and coinage included in Ss. 489-A to 489-D of the Indian Penal Code are matters exclusively within the legislative competence of Parliament and the executive power of the Central Executive extends to this matter Central, and not the State, Central Government is the appropriate Government competent to remit the sentence passed in relation to such offences.
- This doesn't cover the power to pardon the punishment which were granted for the contempt of court.

Legislative Functions (Functions related to legislature):

- Can summon or prorogue the Parliament and dissolve the Lok Sabha.
- He can also summon a joint sitting of both the Houses of Parliament, which is presided over by the Speaker of the Lok Sabha.
- Address the Parliament at the commencement of the first session after each general election and the first session of each year.
- Can appoint any member of the Lok Sabha/RS to preside over its proceedings when the offices of both the Speaker and the Deputy Speaker fall vacant.
- Nominates 12 members of the Rajya Sabha from amongst persons having special knowledge or practical experience in literature, science, art and social service.

- Decides on questions as to disqualifications of members of the Parliament, in consultation with the Election Commission except Xth Schedule matters.
- His prior recommendation or permission is needed to introduce certain types of bills in the Parliament. For example, a bill involving expenditure from the Consolidated Fund of India, or a bill for the alteration of boundaries of states or creation of a new state.
- lays the reports of the Comptroller and Auditor General, Union Public Service Commission, Finance Commission, and others, before the Parliament.

Financial Powers:

- His prior recommendation or permission is needed to introduce certain types of bills in the Parliament. For example, a bill involving expenditure from the Consolidated Fund of India, or a bill for the alteration of boundaries of states or creation of a new state.
- He can promulgate ordinances when the Parliament is not in session. These ordinances must be approved by the Parliament within six weeks from its reassembly. He can also withdraw an ordinance at any time.
- lays the reports of the Comptroller and Auditor General, Union Public Service Commission, Finance Commission, and others, before the Parliament.

RULE MAKING Powers

- authentication of orders and instruments made and executed in the name of the President [Art. 77(2)]
- the more convenient transaction of the government's business [Art. 77(3)];
- conditions of services etc. of Audit and Accounts Department [Art. 148(5)], Chairman and Members of the Union and Joint Public Service Commissions [Art. 318], Secretariat and staff of Houses of Parliament [Art. 98(3)];
- consultation with the U.P.S.C. regarding appointment of officials of the Supreme Court [Art. 146(1)]
- dual membership of Parliament and State Legislatures [Art. 101(2)];
- procedure to be followed at the joint sittings of the two Houses of Parliament [Art. 118(3)];
- regulating the requirements and conditions of service of persons appointed to services and posts in connection with the affairs of the Union (Proviso to Art. 309].

Ordinance Making Powers: (Legislative Powers of the President)

An ordinance is only a temporary law. The executive in Britain or the U.S.A. enjoys no such power. Section 72 of the Government of India Act, 1935, authorised the

Governor-General to make and promulgate ordinances for the peace and good government of British India 'in cases of emergency.'

The technique of issuing an ordinance has been devised with a view to enabling the Executive to meet any unforeseen or urgent situation arising in the country when Parliament is not in session, and which it cannot deal with under the ordinary law.

Article 123 empowers the President to promulgate such ordinances as the circumstances appear to him to require when:

- **Except both the houses are in session;**
- he is **satisfied that circumstances** exist which render it necessary for him to take immediate action;

he acts in this matter, as he does in other matters, on the advice of the Council of Ministers.

the 38th Amendment of the Constitution had added Art. 123(4) making satisfaction of the President to issue an ordinance non-justiciable but later the 44th Amendment deleted this provision and restored the status quo ante.

- The ordinance is to be laid before each House of Parliament when it reconvenes after the making of the ordinance. It shall **cease to operate at the expiry of six weeks** from the assembly of Parliament unless approved.
- Period of six weeks is to be reckoned from the later of the two dates if both houses meet on different dates.
- The ordinance comes into effect as soon as it is promulgated and the maximum duration for which an ordinance may last is **six months and six weeks**, as six months cannot intervene between two sessions of Parliament, and the ordinance would cease to operate six weeks after the Parliament meet.
- An ordinance may cease to have effect even earlier than the prescribed six weeks, if both Houses of Parliament pass resolution disapproving it. **It may be withdrawn by the Executive at any time.**

Prime Minister ('Defacto' executive head of the government)

- Constitution does not contain any specific procedure for the selection and appointment of the Prime Minister.
- Article 75 says only that the Prime Minister shall be appointed by the president.
- Conventionally leader of majority party in general elections; if none then leader of single largest party or coalition.

- In such a situation, the President usually appoints the leader of the largest party or coalition in the Lok Sabha as the Prime Minister and asks him to seek a vote of confidence in the House within a month.
- In 1997, the Supreme Court held that a person who is not a member of either House of Parliament can be appointed as Prime Minister for six months, within which, he should become a member of either House of Parliament; otherwise, he ceases to be the Prime Minister.

Functions of PM:

- **With Respect to council of Ministers:**
 - Recommends appointment of ministers.
 - Allocates and re-shuffles portfolios.
 - Can ask minister to resign or recommend to president to remove him.
 - Presides over the meetings of Council of Ministers.
 - If he resigns all Council has to resign
- **With Respect to President**
 - communicate to the President all decisions of the council of ministers.
 - furnish such information relating to the administration of the affairs of the Union and proposals for legislation as the President may call
 - advises the president with regard to the appointment of important officials like attorney general of India, Comptroller and Auditor General of India, chairman and members of the UPSC, election commissioners, chairman and members of the finance commission and so on.
- **With Respect to Parliament:**
 - He advises the President with regard to summoning and proroguing of the sessions of the Parliament.
 - He can recommend dissolution of the Lok Sabha to President at any time.
 - He announces government policies on the floor of the House.
- **Other powers and Functions**
 - He is the chairman of the NITI Ayog (which succeeded the planning commission), National Integration Council, Interstate Council, National Water Resources Council and some other bodies.
 - He plays a significant role in shaping the foreign policy of the country.
 - He is the chief spokesman of the Union government.
 - He is the crisis manager-in-chief at the political level during emergencies.
 - As a leader of the nation, he meets various sections of people in different states and receives memoranda from them regarding their problems, and so on.
 - He is leader of the party in power.
 - He is political head of the services.

Central Council of Ministers

- Article 74 deals with the status of the council of ministers while Article 75 deals with the appointment, tenure, responsibility, qualification, oath and salaries and allowances of the ministers.
- The Prime Minister shall be appointed by the President and the other Ministers shall be appointed by the President on the advice of the Prime Minister.**
- The total number of ministers, including the Prime Minister, in the Council of Ministers **shall not exceed 15%** of the total strength of the Lok Sabha. This was added by 91st Constitutional Amendment Act,2003
- A member of either house of Parliament belonging to any political party who is disqualified on the ground of defection shall also be disqualified to be appointed as a minister. This provision was also added by the 91st Amendment Act of 2003.
- The ministers shall hold office during the pleasure of the President.
- The council of ministers shall be collectively responsible to the Lok Sabha.
- The salaries and allowances of ministers shall be determined by the Parliament.
- Every minister shall have the right to speak and take part in the proceedings of either House, any joint sitting of the Houses and any Committee of Parliament of which he may be named a member. But he shall be entitled to vote only in the house he is member of.

PERMANENT EXECUTIVE: BUREAUCRACY (described as civil service)- (Role of Civil Services in Democracy will be discussed in detail during classes on Governance)

- The bureaucracy is an instrument through which welfare policies of the government must reach the people.
- In the parliamentary system, the legislature also exercises control over the administration. The administrative officers cannot act in violation of the policies adopted by the legislature.
- The bureaucracy is also expected to be politically neutral.
- Indian bureaucracy today is an enormously complex system. It consists of the All-India services, State services, employees of the local governments, and technical and managerial staff running public sector undertakings.
- Makers of our Constitution were aware of the importance of the non-partisan and professional. **So, the Union Public Service Commission has been entrusted with the task of conducting the process of recruitment of the civil servants for the government of India.**

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)

Arguments for a time limit:

1. **Ensuring timely justice:** Supporters of a time limit argue that setting a specific deadline for the President's decision would help ensure that justice is delivered in a more timely manner. Delays in the decision-making process can cause prolonged uncertainty for the individuals involved, including the convicts, victims' families, and society at large.
2. **Upholding the rule of law:** A time limit would promote consistency and adherence to established legal procedures. It would prevent undue delays, reduce the likelihood of arbitrary decision-making, and maintain the integrity of the justice system.
3. **Addressing concerns of denial of justice:** Public perception of delayed decisions on death penalty cases can create skepticism about the fairness and efficacy of the process. Implementing a time limit could help address concerns of denial of justice, ensuring that the President's decision is made within a reasonable timeframe.

Arguments against a time limit:

1. **Thorough review and consideration:** Decisions regarding death penalty cases are weighty and have irreversible consequences. It is crucial for the President to have sufficient time to review all relevant information, consult legal experts, and thoroughly consider the merits of each case. Imposing a time limit may undermine the ability to conduct a comprehensive and fair review.
2. **Complex nature of cases:** Death penalty cases often involve intricate legal and factual issues that require careful examination. Rushing the decision-making process may lead to errors or oversight, potentially resulting in wrongful convictions or unjust commutations.
3. **Impact on presidential discretion:** Granting the President the power to commute death sentences is a constitutional prerogative, intended to allow for the exercise of executive clemency. Imposing a time limit could unduly restrict the President's discretion and undermine the purpose of this authority.

In the case of *Shatrughan Chauhan & Anr v. Union of India*, a three-judge bench of Supreme Court delivered a landmark judgement on death penalty holding that an **excessive delay in carrying out the death sentence was an essential mitigating factor in a plea for commutation**. The Court held that, in the absence of proper, plausible and acceptable reasons for the delay, the delay of twelve years in considering the mercy petition is a relevant ground for the commutation of death sentence into life imprisonment.

The Court was of cogent view that **undue, inordinate and unreasonable delay in execution of death sentence does certainly attribute to torture which indeed is violation of Article 21** and thereby entails as the ground for commutation of sentence.

Opinions of the apex court:

Supreme Court has made it clear (During Afzal guru case)- that maintenance of the rule of law, and not political expediency, **should be the criteria for grant of pardon or remission of sentence by the President or Governor**. Any such decision, the apex court reminded, should not only be for the benefit of the convict, but should take into account its effect on the families of the victims and the society as well.

The court, however, admitted it was not possible to draw up any guidelines for exercise of the power of pardon or remission. "The exercise of the power depends upon the facts and circumstances of each case and the necessity or justification for exercise of that power has to be judged from case to case,"

"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.,
 - Parliament is empowered to fix the emoluments, allowances and privileges of the President, Vice-President and the Ministers.
 - 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;
 - the Vice-President may be removed from his office by a resolution of the Rajya Sabha agreed to by the Lok Sabha;
 - the Vice-President is elected by the members of both Houses of Parliament.
 - 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.