
CHAPTER V

THE ROLE OF THE PRESIDENT IN RELATION TO
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The power of the President to summon prorogue or dissolve Lok-Sabha may be exercised by the Prime Minister, in actual practice, either with or without deliberation by the Cabinet. A suggestion was made in the Constituent Assembly that to guard against arbitrary advice by the Prime Minister for the dissolution of Lok Sabha; it might be enacted that, in case, the Prime Minister desired the dissolution of the House earlier than the Completion of the normal term of five years as provided in the Constitution; he should record the reasons thereof in writing. The suggestion was not accepted by the Chairman of the Drafting Committee Dr. B. R. Ambedkar when he said:

" In the same way, as the King in the United Kingdom does, the President of the Indian Union will test the feeling of the House whether the House agrees that the affairs should be carried on with some other leader without dissolution. If he finds that the feeling was that there was no other alternative except dissolution, he would as a Constitutional President undoubtedly accept the advice of the Prime Minister to dissolve the House. Therefore, it seems that the insistence upon having a document in writing stating the reasons why the Prime Minister wanted a dissolution of the House seem to be unless and not worth the paper on which it is

written. There are other ways for the President to test the feelings of the House and to find out whether the Prime Minister was asking for dissolution of the House for bonafide reasons or for purely party purpose. I think we could trust the President to make a correct decision between the party leaders and the House as a whole¹.

The Prime Minister can seek a special mandate or choose the most favourable time in the party interest for mid-term election in order to improve his/her majority in Parliament to provide an effective and stable Government. Such conventions are equally applicable to India. The weapon of dissolution may be said to be, the power of party leadership to withdraw from rebellious M.P.'s the party label at the next election. "Dissolution may not be an effective intra-party disciplinary weapon"². This weapon as Ivor Jennings feels, is to be used by the leader as a "psychological influence" inducing a private members to remain loyal to the Government.

It may also act as "a deterrant to parliamentary revolt" often saving the Government from defecting by the

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- 1) Constituent Assembly Debates 101, VIII, p.p.106-7.
 - 2) Wisemen, H.V., 1966, Parliament and the Executive An Analysis with readings, p.p.83-3, London.

fear it instils in the back benches³. Sir Ivor Jennings feels that it is the "big stick... intended never to be a "Psychological influence" including "a private member to remain loyal to the Government"⁴.

The President like the British Monarch, may exercise two pregrgatives,

- i) Appointment of the Prime Minister, and ;
- ii) The dissolution of Lok Sabha.

While no advice to the President is possible, it is less so in the case of dissolution. It is but natural to expect that refusal of dissolution must be backed by a reasonable possibility of formation of an alternative Government. This is an onerous responsibility for the Head of the State to take upon himself. Since there is a risk of the office becoming involved in party politics, especially if the alternative Government is not stable and dissolution becomes inevitable.

The justifiable constitutional position seems to be that while a Prime Minister with a clear majority cannot be

3) Morrison Herbert, 1966, Government and Parliament - A Survey from the inside, p.p.107-110, Oxford.

4) Jennings, W.I., 1957, Farliament; p.p.7 and 136, Cambridge.

refused dissolution, it is more likely to be denied to a Prime Minister with a minority in the House, if there is a possibility of alternative Government. In the states, the Governor's refusal to dissolve the Assembly on the advice of a defeated Chief Minister can be justified by discretionary powers. There is also scope for imposition of President's Rule and to keep the Assembly in abimated suspension, if an alternative Government could not be formed, after the Governor's refusal of dissolution of the Assembly⁵.

Such accepted practices obtaining in the states cannot equally apply to the centre. If the President miscalculates the mood of the country while acting at the dictates of his conscience, and if subsequent events prove his decision to have been inexpedient, it damages his neutral position and risks the prestige of the high office.

In December, 1970, though Mrs. Indira Gandhi's Government was not defeated in the House, the President seems to have been satisfied about the impossibility of an effective alternative Government till 1972, if he was to refuse dissolution to Mrs. Gandhi whose party was in a minority in the House (228 out of 523) and maintained itself in power through adhoc alliances with the D.M.K. and the C.P.I.

5) In November, 1967, the Chief Minister of Punjab apprehending defeat in the Assembly advised Governor, Dr. D.C. Favre to dissolve the Assembly. But the Governor instead invited Lachman Singh Gill of the Congress - backed Janta Party to form the Government. The Governor claimed that he was not bound by the advice of the out-going Chief Minister to dissolve the Legislative Assembly.

" the socialist and secular programmes and politics "6.

Half an hour after the Presidential proclamation; Mrs. Gandhi made a broadcast to the nation to justify her step in recommending parliament's dissolution on the expected ground that she needed a fresh mandate to be able to implement the Government's policies and programmes"7. The broadcast was

 6) The following is the text of the communique from Rashtrapati Bhavan on the dissolution of the fourth Lok-Sabha.

" The Prime Minister met the President on December 24 and conveyed to him the proposal to dissolve the Lok-Sabha. She said that the sole consideration for making this request was the Government's desire to seek a fresh mandate from the people to enable the Government for effectively implement the socialist and secular programme and policies.

" Subsequently, on the same day, some opposition leaders also met the President.

" The Prime Minister again called on the President in the evening and conveyed to him the Cabinet decision to recommend to the President the dissolution of the Lok-Sabha.

" After careful consideration of the matter, the President has accepted the recommendation".

The President signed the order at 9 p.m. on December 27, 1970.

7) The following is the text of Mrs. Indira Gandhi broadcast:

" There comes a time to the life of a nation when the Government of the day has to take an unusual step to cut through difficulties in order to solve the pressing problems with which the country is be set".

" The present is such a time. Therefore, on the advice of the Council of Ministers, the President has dissolved the Lok-Sabha before its full term. In a Parliamentary democracy, this is not unusual, but in India it has happened for the first time.

" why did we do this, when it is conceded on all sides that our Government could have continued in power for

something in the better of an election manifesto projecting the issues the Congress (R) will employ in the mid-term General Election. Mrs. Gandhi spoke about the Government's unsuccessful efforts to abolish privy purses and alleged that her attempts to accelerate the pace of social and

7) Contd..

another 14 months. It is because we are concerned not merely with remaining in power but with using that power to ensure a better life to the vast majority of our people and for satisfy their aspirations for a just social order. In the present situation, we feel, we cannot go ahead with our proclaimed programme and keep our pledges to our people.

" In the years since independence, the nation has many achievements to its credit - vast and complex industrial enterprises: agrarian reforms, including the abolition of the Zamindari system, mass education including substantial expansion of University and technical education; major social reforms and advance in many other spheres particularly in science and technology".

" But despite this progress, many problems still await solution. Millions live in backwardness and poverty in town and country side. Justice - social, economic and political - which is the basis of our constitution, is yet a goal to be fought for and attained. Our people are rightly impatient in their ardent desire for a speedier and more resolute advance towards this goal".

" Our recent political initiatives reflect this urge. The decision to nationalize the banks, the setting up the monopolies commissions and the attempt to abolish privy purses were welcomed by large masses of people throughout the country".

" These attempts to accelerate the pace of social and economic reform have naturally roused the opposition of vested interests. Reactionary forces have not hesitated to obstruct in every possible way the proper implementation of these urgent and vitally necessary measures".

" The present political situation has set in motion a process of rethinking on major political issues within every political party".

economic reforms had been obstructed by " vested interests " and " reactionary forces ". She was taking time to recommend " an unusual step to cut through difficulties in order to solve the pressing problems with which the country is beset".

Dissolution puts an end to the longevity of Lok-Sabha. Parliament can't reassemble again until after a General Election. The end of the life of Lok-Sabha either by an order made by the President under Article 85 (2) or on the expiration of the period of five years from date appointed for its first,

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" With the division in the Congress we lost our party majority although throughout we have retained the confidence of Parliament. The amendments to the constitution designed to have the way to abolish privy purses and princely privileges were lost by a fraction of a vote, in the Rajya Sabha. The Presidential Order derecognizing the princes has been struck down by Supreme Court as unconstitutional. Economic difficulties and the growing impatience of the people are being exploited by political elements. Violent activities are being organized by extremists. Reactionary groups are arousing communal passions and trying to divide our people. This has often led to a breakdown of law and order and the dislocation of normal life; causing suffering to our people. The challenges posed by the present critical situation can be met only by the proper and effective implementation of our secular socialist policies and programmes through democratic processes.

" Time will not wait for us. The millions who demand food, shelter and jobs are pressing for actions".

" Power in a democracy resides with the people. That is why we have decided to go to our people and to seek a fresh mandate from them. We hope that the elections will be completed in time for the new Lok-Sabha to assemble in March, 1971, well before the end of the current financial year."

" The old year is ending. I wish you each one of you - a happy new year, a year of renewed hope and common endeavour to realize the great goals which we have set for ourselves".

Jaihind".

meeting is termed as "Dissolution of the House of the People". Bill pending in Lok-Sabha and pending in Rajya Sabha on the date of dissolution lapse⁸. All business pending before Lok-Sabha or any of its committees lapse on dissolution⁹. In a nutshell, dissolution marks the end of

8) Article: 107 (5).

9) Several significant measures that the outgoing Lok-Sabha was seized ~~which~~ have lapsed with its dissolution and these could be reviewed in a new House at the expense of much effort and preselvarice that went into bringing up the measures for a certain stage towards consummation.

Such a measure is the PSP leader, Mr. Nath Pai's non-official Bill which has been on the anvil for quite some time. Following the Supreme Court Judgement in the Golaknath Case, the Bill wanted to restore to Parliament the authority to amend any part of the constitution including the part dealing with the Fundamental Rights.

" There was considerable controversy in the ruling party on the issue of the Bill and it was discussed several times at party level and in the House. It was referred to a Joint Select Committee. After the privy purses case, there was a suggestion that the Government should adopt the Bill and have it passed. But with the dissolution of Lok Sabha, the Bill lapsed.

So is the case of the Scheduled Castes and Scheduled Tribes (Amendment) Bill on which the House ~~had~~ exhaustive debate more than once. It had gone to a joint select Committee too. The main contention clauses in the Bill were whether a person of the Scheduled Tribes after being converted to Christianity will continue to enjoy the facilities extended to the Scheduled Tribes and secondly, whether a few castes should be added for the list of the Scheduled Castes. Because a decision could not be reached in the ruling party's conclaves on these issues, passing of the Bill was postponed.

A far more controversial political problem that must be introduced a new in a further Lok-Sabha is the one relating to the Mysore-Maharashtra-Kerala border dispute.

Lok-Sabha and is followed by the constitution of a new House. But according to Article 94, the Speaker shall not vacate his office until immediately before the first meeting of Lok-Sabha after dissolution¹⁰.

The Constitution is silent about the continuance of the Council of Ministers in Office. Following the British practice; Mrs. Gandhi's Government was allowed to continue in office even after the dissolution of Lok-Sabha on December, 27, 1970.

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After much consideration and forethought the subject was broached in the outgoing Lok-Sabha in the shape of placing on the table of the House the Mahajan Commission Report.

This very act of placing of the report on the table of the House by the Minister of State for Home Affairs, Mr. K. C. Pant had created almost an uncontrollable uproar in the House on the last day of its Winter Session, making the Speaker to adjourn it. Even then it gave Maharashtra an illusory satisfaction. The entire process has to be gone through de novo, should the Government of the day desire that the Mahajan Commission Report be considered by Parliament.

Besides, four important legislative House to joint Select Committees which would all lapse as a result of the dissolution of the House.

The Most important among them is the Central Excise Bill. The Joint Select Committee was deliberating on it for nearly two years now. It has toured almost the entire country and met industrialists, traders and their organizations and various chambers of Commerce and industry in course of these two years.

Similarly affected will be the Central Sales Bill, the Customs Tariff Bill, and the Election Laws Bill which aims at simplifying election laws. But the forthcoming election will not be able for benefit from the deliberations on the last named Bill.

10) Article: 94, Second Proviso.

This was alleged to be a violation of constitutional mandate contained in Article 75 (3) of the Constitution. It was alleged that the President can't be said to be the agent of the Council of Ministers and he is not bound by their aid and advice. Under Article (1), the President is the real repository of executive power of the Union which he may exercise ⁱⁿ accordance with the provisions of the Constitution of India through officers subordinate to him. British conventions of the unwritten Constitution may be relevant in all respects in the interpretation of the Indian Constitution.

Under Article 75 (3), the Council of Ministers is not suppose to the outlast the House of the People. The legality of the continuation of the Council of Ministers in India after December 27th, 1970, had been challenged in the Supreme Court of India, as an appeal against the Madras High Court judgement. The Supreme Court, has ruled that such continuance is legal and Constitutional¹¹.

Presidents' Power to Assent the Bill:

Article 111, which is concerned with the Presidents' power to assent the Bills runs as follows:

11) U.N.R. Rao Vs. Indira Gandhi, AIR, 1971 S.C.

1002 (V.58 C.202) The Supreme Court viewed that the Council of Ministers does not cease to hold office even after dissolution of the House of the People.

When a Bill has been passed by the House of Parliament, the President shall declare either that he assents to the Bill or that he withholds assent therefrom.

Provided that the President may, as soon as possible after the presentation to him of a Bill for assent, return the Bill if it is not a Money Bill to the Houses with a message requesting that they will consider the Bill or any specified provisions thereof and; in particular Bill consider the desirability of introducing any such amendments as he may recommend in his message; and when a Bill is so returned, the Houses shall reconsider the Bill accordingly, and if the Bill is passed again by the Houses with or without amendment and presented to the President for assent, the President shall not withhold assent therefrom.

After a careful reading of this provision, it appears that the President has three options before him: (i) ...

- i) He shall declare either that he assent to the Bill, or;
- ii) He withholds assent therefrom, or;
- iii) He may return the Bill for reconsideration if it is not a Money Bill.

Now the question is: Is the President's power to withhold his assent absolute? D.D.Basu says that if any bill is brought in the direct contravention of any of the Directive Principles,

the President or the Governor may refuse his assent to such Bill on the ground, though the Courts may not declare the Act is valid, if it is enacted.¹²

K.K.Munshi observed:

" If a Bill submitted to him for instance, violates a fundamental right or the prescribed ambit of State powers, he is bound Consistently with his Oath, to exercise one of the two votes; otherwise he would be guilty of a failure to protect the Constitution"¹³

Under the Indian Constitution, the President under Article 356 has the right to with-held his assent. For i.e. ' The Pepsu Appropriation Bill ' was ~~with~~ held by the President on the ground that on the date in question the power of Parliament to legislate in respect of Pepsu had already lapsed".

The Governor of Madhya Pradesh, Mr.H.M.Pataskar, with held his assent from the 'Land Revenue Rationalization Bill'

- 12) D.D.Basu, Comentry on the Constitution of India, (Calcutta), Vol.II, 5th Ed.,1957, p.667.
- 13) K.K.Munshi, The President under the Indian Constitution (Bhartiya Vidya Bhavan, Bombay, 1963), p.42.

on the ground that there was every possibility that the Bill might harm for the smooth working of the administration".

Besides under Article 201, even the courts cannot question the Constitutionality or propriety of either aspect or refusal by the President to reserved Bills.

Going by the word of the Constitution is not possible. Keeping in view the said arguments, it appears that the President has the absolute and exclusive power to veto a particular legislation. But it does not fall in line with the accepted principles of Parliamentary democracy. The Parliamentary democracy is not made of words only but the conventions also.

According to Article 117, a money Bill can't be introduced without the prior consent of the President as a convention; therefore, the question of withholding assent to such a kind of Bill does not arise. It would be absurd on the part of the President to veto a Bill which has been introduced in the House of the People on his own recommendation. Moreover, the political power in a democratic set-up hinges upon the power of purse which is considered the right of the popular chamber, and if an indirectly elected President pokes his nose, that would be antithetical to the real concept of democracy.

Constitutional Amendment & The President's Veto Power:

According to Article 368, when the Bill is passed in each House by a majority of the total membership of that House and by a majority of not less than 2/3rd of the members of that House present and voting, it shall be presented to the President for his assent upon such assent being given to the Bill, the Constitution shall stand amended in accordance with the term of the Bill¹⁴. Again here there is a lot of difference between the phraselogy used in Article 368 and Article 111. In them Article 111 is infeated with negative approach and Article 368 is positive. Accordingly under Article 368 the Presidents assent is simply a formality.

Returning of Bills:

Article 111 does not prescribe any time limit for the President to return a Bill for reconsideration. He may do so " as soon as possible ". In Article 91 of the Draft Constitution, it was stated that " the President may, not later than six weeks after the presentation to him of a

 14) The Amendment in Articles 54, 55, 73, 162, 241, chapter IV of Part V Chapter 5 of Part VI, Chapter I of Part XI any of the Lists in Seventh schedule, the representation of States in Parliament and the provisions of Article 368 require two thirds majority plus ratification by 50% States' Legislatures.

Bill for assent, return the Bill if it is not a Money Bill ... But Dr. Ambedkar, the Chairman of the Drafting Committee, moved an amendment in the Constituent Assembly to substitute the words " as soon as possible " for the words " not later than six weeks ". The amendment was carried¹⁵.

H.V. Kamath was very critical of this move¹⁶. The constitution uses the word " May " instead of " shall " which means that it is not obligatory on the part of the President to send the Bill for reconsideration. There is nothing in the Constitution which binds the President to return a Bill vetoed by him. When a particular Bill is returned by the President, that the Houses are required to consider it " accordingly ", which means in the light of the amendments suggested by him. They cannot incorporate any fresh amendment. This is obligatory on his part only in case the Bill is passed in the same form or in the light of his own amendments. In this context on August 18, 1948, Dr. Prasad wrote a letter to B.N. Rau, the Constitutional Adviser and asked: could the President use his discretion in giving assent to a Bill ?

"The answer was negative."

15) Constituent Assembly Debates Vol. VIII, p.p. 192-6.

16) Constituent Assembly Debates Vol. VIII, p. 195.

The President and his Power to Assent the States
Bills:

Article 200 empowers the Governor, in his discretion to reserve a Bill for the consideration of the President. But in some cases the reservation is compulsory. The Governor is free to reserve any bill but normally he reserves a Bill which is either unconstitutional, or falls in the jurisdiction of the centre, or there is already a central legislation, or it does not comply with the central statutory requirements.

The application and the nature of Article 201 shows that the Union Government can freely disturb the autonomy of the States. It is likely to be done when the party in power in the Centre is opposed to that of the State.

Since the Governors are appointed by the Central Government, there is every possibility that through the instrumentality of Governors this power may be used to protect the interests of the party in control of the Central Government.¹⁷

17) From 1950 to 64, out of the 45 Governors 24 belonged to Congress Party. In most of the cases the burnt out politicians, defeated candidates of the Congress and the favourite boys and crack pots of the Central Government are appointed as Governors. Under such circumstances, it is wild to imagine that they can go against the policies of the Centre, i.e. Mahinder Singh Dahiya " The appointment of the Governor and its Implications"- The Modern Review-June, 1971, pp.37-8.

If the Central Government, however, becomes an impediment in the way of the application of a programme adopted by a party in control of a State Government, it may be characterised as a violation of the mandate given by the electorates and the party Government, which is the cornerstone of Parliamentary democracy.

In this connection, it is also important to mention that in a country like India where the centrifugal tendencies are gaining ground, some sort of check is essential over the States, otherwise the Fifth columnists would destroy the Unity of the Country as purported by the framers of the Constitution¹⁸. But this power should be used in the interest of the nation and not to enhance the objectives of a particular party. The President should use his power on the basis of provincial autonomy and the principles of Federation.

Besides the office of the President compared to the other countries as an Executive Head of the State, certainly enjoys a better position under the Constitution. The office

 18) Mr. Prokash Singh Badal, the former Chief Minister of Punjab, is reported to have threatened to secede from the Indian Union. It is regarded as highly improper and unpatriotic on his part. See the letter of Bharpur Singh, published in the Tribune, Chandigarh, August, 30th, 1971.

the President in India may be in future be called to play a major role in Indian politics. One cannot overrule the criticism that it is influenced by a strong majority political party in the Parliament of India. Time had arisen when the President was called to play an important role in the recent past; the change of the ' Janta Government ' in India had raised many a controversies, regarding the role of the President in calling the ' leader of opposition to form an alternative government. It need not be ruled out that such crises will never again take place. Hence what is most required is to accept certain conventions, and practice certain well laid customs regarding the role of the President. Though the constitution wants the role to be that of a Titular Head, nevertheless the President may step over the limits laid down. There are various aspects in the Constitution which do not state clearly the position of and the role of the President quite clear. Hence, it is better to make searching question and try to relise the reality of the situation.