

# DISSOLUTION OF THE LOK SABHA

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## Introduction

The dissolution of the twelfth Lok Sabha on the twenty sixth day of April, 1999, by the President Mr. K.R. Narayanan, and the role of the latter in the intense political decision making preceding the same, have thrown open afresh the debate as to the exact role of the President as envisaged in the Constitution in the matter of dissolution. This paper attempts to analyse this issue in light of various controversial views on the subject. Pre-independence constitutional debates in India were influenced by two models of democratic government: the British Parliamentary system, and the Presidential system of the United States. In the final analysis the British model being closer home, "every instalment of constitutional reform was regarded as a step towards the establishment of a democratic and responsible government as it functioned in Britain."<sup>1</sup> Thus, it is widely accepted by various scholars that the founding fathers of the Constitution had opted for the parliamentary system of government. Working on this premise, the concepts such as executive decision making as well as delineating limits and laying a system of checks and balances on the different wings of the government as provided by the inherent federal structure, have been debated over and over again. However, when the Constitution actually came into force, a reading of its provisions sparked off a new line of thought as to the very nature of government, and the Presidential model of the United States which had been earlier rejected was now compared and contrasted.<sup>2</sup> These discussions and debates were mainly concerned with the respective powers of the President and the Prime minister in the Constitution and in cases where both entities were strong the clash of opinions was soon recognised. The powers given to the President were regarded as a safeguard to be utilised only in the case of acute constitutional crises which would tantamount to failure of the cabinet responsibility vis-à-vis Parliament.<sup>3</sup> The "power" of the President in India to dissolve the Lok Sabha is a "power" to be

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1 Noorani, *The Presidential System - the Indian Debate*, 13 (1989).

2 *Ibid.* A decade and a half after the Indian Constitution came into force a powerful plea for the Presidential system was made at the All India Congress Committee by R. Venkataraman, then minister of industries in the Madras government. On the 19th of November 1966, the India International Centre hosted a seminar on the *Parliamentary versus the Presidential system of Government*, in which eminent academics and publicists participated.

3 Sathe, *Two Swords in a Scabbard: A case for Presidential Form of Parliamentary Democracy*, 44 (1989).

exercised taking into consideration the views of the Council of Ministers headed by the Prime Minister. This would amount to collective decision-making depending on co-operative stands taken by the President and the Prime Minister, without allowing for the usurpation of power by either in deciding as important a constitutionally as well as nationally significant move as the dissolution of the Lok Sabha. It would also be in tandem with the concept of the President intervening in grave situations of mis-governance to restore the functioning of the Constitution, as his oath demands, in discharge of his powers under the Constitution. However, the cases in which this power of the President has been recognised and acted on have been few and far between. As this paper goes on to illustrate, the Indian experience of dissolution has, unfortunately, been one of arbitrary decisions depending more on vested political interests, rather than a genuine political will to safeguard those of the country and upholding constitutional provisions.

### **Dissolution of the Lok Sabha - Constitutional Position**

The power of dissolution under the Indian Constitution is provided by a reading of two articles, Article 83<sup>4</sup> and Article 85<sup>5</sup> and a reading of these provisions would indicate that:

- It is for the President to dissolve the House “from time to time”.
- If the President does not dissolve the House for five years, at the end of five years it will automatically stand dissolved unless its life is extended during Emergency, by Parliament.<sup>6</sup>

Conditions precedent to the exercise of the right to dissolve Parliament are:

- The existence of a representative body, which is the object of dissolution;
- An act of the Executive which implies a separate and distinct state organ, vested with the right to dissolve, and
- The summoning of a new Parliament.<sup>7</sup>

4 Clause 2 of Article 83 of the Constitution states:

(2) The House of the People, unless sooner dissolved, shall continue for five years from the date appointed for its first meeting and no longer and the expiration of the said period of five years shall operate as a dissolution of the House:

provided that the said period may, while a Proclamation of Emergency is in operation, be extended by Parliament by law for a period not exceeding one year at a time and not extending in any case beyond a period of six months after the Proclamation has ceased to operate.

(By the Constitution (forty-second Amendment) Act, 1976, the life of the Lok Sabha was made six years. It was, however, restored to five years, by the Forty fourth Amendment in 1978. )

5 Article 85 clause (2) (b) of the Constitution provides that the President may from time to time dissolve the House of the People.

6 Kashyap, *Dissolution of the Lok Sabha*, 5 Journal of Parliamentary Information 184 (1987).

7 Markesinis, *op.cit.*

The general elections that follow a dissolution of Parliament represent an important safeguard against an abuse of the right. The new Lok Sabha has to be constituted in terms of the Representation of Peoples Act, 1951.<sup>8</sup>

Again, under the same Act, a general election to the Lok Sabha can be held six months in advance of the expiration of the life of the existing House, although the new House is constituted only after the dissolution of the existing House<sup>9</sup>. Once the House is so constituted, it becomes amenable to dissolution, i.e., it can be dissolved even before it has been summoned to meet or started functioning. It was held by the Court in *K.K. Aboo v. Union of India and Ors.* that neither Article 172 nor Article 174 of the Constitution prescribes that a dissolution of a State Legislature can only be after the date fixed for its first meeting. Once the Assembly is constituted, it becomes capable of dissolution and once it is dissolved, it cannot be summoned to meet, for its members immediately lose their representative character.<sup>10</sup>

The dissolution of the Lok Sabha before the completion of its full term is also not unconstitutional. Let us examine the dissolution of the second Lok Sabha on 31st March, 1962, when it had not completed the full term of five years. A petition before the Circuit Bench of the Punjab High Court at Delhi under Article 226 of the Constitution praying that a rule *nisi* be issued (and in the interval respondents be directed not to proceed with the summoning of the Third Lok Sabha, on 16th April, 1962) declaring the premature dissolution void and ineffective, was dismissed by the High Court on 4th April, 1962 since dissolution must be interpreted in the Constitutional sense by reading Articles 83 and 85 together.<sup>11</sup>

Dissolution puts an end to the representative character of the individuals who at the time compose the Lok Sabha and when dissolved, the Lok Sabha cannot again assemble until after a general election.<sup>12</sup>

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8 The Act provides that: "A general election shall be held for the purpose of constituting a new House of the People on the expiration of the duration of the existing House or on its dissolution." It further provides that:

The President shall by one or more notifications published in the Gazette of India on such date or dates as may be recommended by the Election Commission call upon all Parliamentary constituencies to elect members in accordance with the provisions of this Act. Provided that where a general election is held otherwise than on the dissolution of the existing House of the People, no such notification shall be issued at any time earlier than six months prior to the date on which the duration of that House would expire. – per S.14 of the Act.

9 Section.30 of the Representation of People, Act, 1951.

10 AIR 1965 Ker 229.

11 Kaul and Shakdhar, *Practice and Procedure of Parliament*, 158 (1978).

12 The above mentioned case has also held that "A Legislature can be summoned to meet only if it is in *esse* at the time. A dissolved Legislature is incapable of being summoned to meet." *Supra* n. 18.

**Convention regarding Dissolution: Power to Dissolve, Circumstances of Dissolution and the Relevance of the Aid and Advice Clause**

Conventions actually embodied in the Constitution are an important part of the conventions which have been found necessary in the United Kingdom in working a Cabinet form of Parliamentary Government under a Constitutional Monarch. However, apart from them, there are conventions closely connected, which are not expressly enacted in our Constitution<sup>13</sup>. Thus where the Constitution throws open areas of ambiguity, custom has it that established conventions which *should not* undermine the written word of the Constitution must be followed to provide appropriate guidelines. It has been accepted that the President's power to dissolve the Lok Sabha is not to be exercised in his discretion alone but on the advice of the Council of Ministers. Yet the exact nature of the President's power to dissolve the Lok Sabha is still vague and unsettled. If the Prime Minister has lost the confidence of the House and advises the President to dissolve it, the President may take the advice of the Prime Minister for dissolution. There is tremendous scope for the development of conventions with respect to the dissolution of the Lok Sabha.<sup>14</sup>

- If the Lok Sabha is to be dissolved before the full term of five years, then a formal order by the President to this effect is essential and the dissolution does not take place automatically as in the case of the completion of five years. Thus the Election Commission can issue a Notification on the constitution of the next Lok Sabha only when the President dissolves the present House.<sup>15</sup> While this rule is inviolable, there have been incidents in the past, (1952 and 1957), when even after the elections, the Lok Sabha was not dissolved and the sitting members of those Houses attended "lame-duck" sessions. Fortunately, this did not create a problem then, because the same ruling party was voted back to power in those elections.<sup>16</sup> In the present Indian political scene, it is essential that should dissolution occur prior to the completion of a full term, an order must be passed formalising the same. Yet, on the same issue there is also a belief that the Election Commission "is legally bound to issue a "due constitution" notification, bringing into existence the next Lok Sabha, irrespective of whether the previous Lok Sabha had been dissolved or not, a view conflicting with what is stated above.<sup>17</sup> Needless to say, in constituting the next House, the Election Commission, need not wait for a formal order from the President if the House had in mean time completed the five year tenure.

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13 Seervai, 2 *Constitutional Law Of India*, 2714 (1993).

14 Mukharji, *The Critical Problems of the Indian Constitution*, 156 (1968).

15 *Ibid.*

16 *Front*, *BJP ask RV to dissolve Lok Sabha*, Indian Express, Bangalore, 23rd November, 1989.

17 *New Lok Sabha must be formed before December 4*, Indian Express, 27th November, 1989.

- Under Article 75(3) of the Constitution, the Council of Ministers is collectively responsible to the Lok Sabha. By a vote of no confidence, the Lok Sabha can bring down a government. Dissolution at a theoretical level, does not subject the Lok Sabha to the wishes of the Government but to the wishes of the electorate. In practice, however, a person who leads a disciplined party having a comfortable majority in the Lok Sabha can become a very powerful Prime Minister and coupled with a weak President at the helm of the affairs of the executive, may very easily secure such a dissolution.<sup>18</sup>
- Again according to convention, and the Constitution, the Prime Minister selects his team of Ministers and they are appointed on his recommendation. The conventions governing matters such as resignation of a minister or dissolution of the House follow from the nature of collective responsibility to the Lower House, which imply that the Ministry commanding a majority in the Lok Sabha can carry on the Government with the approval of the House. If this majority is lost, the Ministry must resign or must seek a dissolution. Under these circumstances the question arises as to what must be the role of the President in this matter? Must he in all situations agree to the advice given to him by the Council of Ministers or is he to act solely in his own discretion?

Now in *ordinary circumstances* the rule in England is that the Queen must accept any recommendation that the Prime Minister may submit that the Parliament be dissolved.<sup>19</sup> There must be *extra -ordinary* circumstances when this rule does not apply. According to Dicey, dissolution of Parliament has come to be a power in the hands of the Prime Minister alone. It is an “appeal from the legal sovereign to the political sovereign”, the latter being the people voting at the election or the electorate.<sup>20</sup> The position of the President in the Indian Republic is however, different and a total standard of political neutrality cannot be expected to be maintained.<sup>21</sup>

Article 53 of the Constitution provides that the executive power of the Union vests in the President. Under Article 74(1) all the functions of the President have to be discharged by him with the aid and advice of the Council of Ministers headed by the Prime Minister. Therefore, it is contended that the exercise of the power of dissolution is an executive function of the President’s office and as such has to be

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18 Quoting from Dasgupta Punyapriya, *Record of a lament*, Deccan Herald, 20th December, 1996- “Zail Singh was in no position to stand up to the young, inexperienced, impetuous Prime Minister (Rajeev Gandhi)”.

19 Halsbury, *Laws Of England*, Vol.8, 4th edn., para.819.

20 Dicey, *An Introduction to the Study of the Law of the Constitution*, 432 (1994).

21 *Infra* n. 22.

performed with the aid and advice of the Council of Ministers. However every power conferred by the Constitution on any authority, must be exercised in accordance with the Constitution and in accordance with valid laws enacted under it, or continued by it.<sup>22</sup> Thus if the President feels that the advice of the Council of Ministers defeats the underlying principles of democratic government, he must act with discretion and wisdom. Thus in India as in England, dissolution may be rejected if the President opines that

- The existing Parliament is still vital, viable and capable of doing its job.<sup>23</sup>
- A general election would be detrimental to the national economy,<sup>24</sup> and
- The President could find another Prime Minister who would carry on his government for a reasonable period with a working majority in the House of Commons.<sup>25</sup>

Moreover, it has been held in *Samsher Singh v. State of Punjab*,<sup>26</sup> that one of the few instances in the Indian Constitution when the President will not have to act in accordance with the advice of the ministers was in removing a government which has lost its majority in Parliament.<sup>27</sup> The judgement is fallacious to the extent that it adds a rider saying that even in this situation the Head of State should avoid getting involved in politics and must be advised by his Prime Minister who will eventually take responsibility for this step. As shown above this is a constitutional and practical impossibility given the nature of the Indian President and his office.

Another argument in favour of the President playing an active role in exercising discretion regarding dissolution is the fact that the President takes an

22 The Shah Commission Reports contain numerous cases where power has been exercised by the Prime Minister and individual ministers in total disregard of the Constitution and the law.

23 Tope, *Constitutional Law Of India*, 432 (1992).

24 *Ibid.*

25 *Ibid.* In these situations Sir Alan Lascelleves, the King's private secretary, remarked once that the King may refuse to grant the request for dissolution. *See also*, Anson on *Law and the Constitution*, where he has pointed out that the Crown is bound to grant dissolution only if it is properly asked.

26 AIR 1974 SC 2192.

27 See para 153 of the judgement wherein Krishna Iyer, J., says that the aid and advice clause would be exceptioned in cases involving:

- (a) the choice of Prime Minister ...
- (b) the dismissal of a Government which has lost its majority in the House but refuses to quit office; and
- (c) the dissolution of the House where an appeal to the country is necessitous.

oath of office through which a promise is made to preserve, protect and defend the Constitution of India.<sup>28</sup> Thus the President can discontinue the Ministry in office if it engages in actions that are unconstitutional, or if its activities are not conducive to smooth constitutional governance. Such a situation may arise when, for instance, the ministry fears large scale defections from its ranks, or is unable to cope with an onslaught by the opposition on a particular issue. The logical end to this argument would be that the President is not bound by the unconstitutional advice of a ministry to dissolve the Lok Sabha, even though it might possess a majority there. If it becomes difficult to form a viable new ministry since the old one still enjoyed the confidence of the House, the President must dissolve the House and order fresh elections.<sup>29</sup>

Another question of importance is, whether the President could constitutionally continue his Council of Ministers after the Parliament had been dissolved. This was raised in *U.N.R. Rao v. Indira Gandhi*,<sup>30</sup> where the Court held that according to the mandatory nature of the provisions of Article 74 while dissolution brings the existence of the House to an end the Council of Ministers continues to remain in office. The Court further held that the Council of Ministers naturally will not enjoy the confidence of the House. It is humbly submitted that this dichotomy would be resolved if an indiscriminate use of Article 74 were not made in the reasoning of the Court.<sup>31</sup> It is submitted that the same logic would apply when the dissolution is by operation of law.

Yet again in *Madan Murari v. Chaudhari Charan Singh* the Calcutta High Court held that the President is not bound to accept the advice tendered by the Prime Minister though in normal situations he should accept by the constitutional precedents and conventions.<sup>32</sup>

### **Position as gauged from Constituent Assembly Debates:**

A reading of the Constitutional Assembly Debates indicates the thought process behind having the provision of dissolution as a check on the self-propagating tendency of Parliament. The views expressed by the members indicate a desire for checks and balances and therefore definitely entail a large amount of discretion on part of the President.<sup>33</sup> To questions raised regarding the advice given by the

<sup>28</sup> See, Constitution of India, 1950, Article 60.

<sup>29</sup> Raghavan and Bhattarai, *Judicial Scrutiny of the dissolution of Legislatures - Notes from the Indian Sub-Continent*, Law Asia 31 (1996-97), at 32.

<sup>30</sup> AIR 1971 SC 1002.

<sup>31</sup> Elaborated upon in Critique, *Infra*. p.23.

<sup>32</sup> AIR 1980 Cal 95. See, para. 12 of judgement per Mukharji, J.

<sup>33</sup> As articulated by the Hon'ble Shri K. Santhanam, who said "... I do not see any definite provision fixing a time limit for the duration of these provisional assemblies and Parliament... The whole Constitution is full of checks and balances and this is no exception." Again Ananthasayanam Ayyangar said that "...if the House sits for three or four years there should be some provision for its dissolution, if it becomes necessary." - quoted from CAD Vol. XI, p.16.

Prime Minister to the President in this respect, Dr. B.R. Ambedkar replied that the President would act not only on the advice of the Prime Minister but also use other measures to test the feeling of the House with respect to dissolution. He further opined that the President was not bound to accept such advice if tendered. Thus the Constitutional Assembly clearly shows that the intention of the framers was to vest the President with discretion and act in consultation with the Council of Ministers, but not in a role subservient to it.<sup>34</sup>

### **In Practice:**

Having looked at the theory behind dissolution, a few practical instances will now be reviewed. The sixth Lok Sabha held its first meeting on 25 March 1977 and after remaining in existence for nearly two years and a half, it was dissolved by the President on the 22 August 1979, in the midst of very interesting political happenings. On the resignation of Mr. Charan Singh and his Ministry following on the withdrawal of support by the Congress Party led by Mrs. Indira Gandhi, the outgoing Ministry advised a dissolution of the House of the People. The President then dissolved the Lok Sabha and ordered fresh elections; the Charan Singh ministry remained in office, till the elections were over.<sup>35</sup> It is the President's action of asking a Prime Minister who never faced the House even once to remain as 'caretaker' Prime Minister which is in question here.<sup>36</sup>

The President's action was clearly contrary to Art.75(1) read with Art.75(3), and the convention, which is necessarily implied in that Article. The President ought not to have called upon a person to form a Government unless he commanded the confidence of the majority of the Lok Sabha. Thus his action was not only improper and discriminatory, but led to a situation in which he should never have placed the country. He set up a government which never commanded the confidence of the Lok Sabha at all and a Prime Minister who never once faced the House. He thus set a bad precedent, but it must be admitted that the case in point once more refutes the assumption that the President is always bound by the advice of the Council of Ministers.

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34 He said "the President of the Indian Union, will test the feelings 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 alternative except dissolution, he would as a Constitutional President undoubtedly accept the advice of the Prime Minister to dissolve the House. Therefore it seems to me that the insistence upon having a document in writing stating the reasons why the Prime Minister wanted a dissolution of the House seems to be useless. There are other ways for the President to test the feeling of the House, and to find out whether the Prime Minister was asking for bona fide reasons or for purely party purposes.." *Cited from ibid.*

35 Reddy, *Without Fear or Favour, Reminiscences and Reflections of a President*, 37 (1989).

36 *My Momentous Time - Sanjeeva Reddi*, The Hindu, Bangalore, 28th October, 1989.

Again in 1991, the Prime Minister Mr. Chandra Shekhar resigned because the Congress Party which supported his minority government withdrew its support<sup>37</sup>. He also advised the President to dissolve the Lok Sabha. At that time there was not a single party in the House which could have formed the Government. Hence the President had no option but to dissolve the Lok Sabha. He however waited for ten days before doing so. This delay was severely criticised resulting in his dissolving the Lok Sabha after that period.

In 1996, the Bharatiya Janata Party, ministry headed by Atal Behari Vajpayee, resigned just before the Confidence motion was put to vote in the Lok Sabha, a thirteen member coalition was formed thereafter led by Prime Minister Deve Gowda. He having lost the Confidence motion, Mr I.K. Gujral was appointed Prime Minister. When support was withdrawn from his government, Mr. Gujral resigned and the 11th Lok Sabha was dissolved with Mr. Gujral appointed as caretaker Prime Minister<sup>38</sup>.

This spate of dissolutions culminated on the 26th of April, 1999, with the dissolution of the 12th Lok Sabha, after the Vajpayee government at the Centre lost the motion of confidence on April 17, 1999. This dissolution is interesting in that an informed and decisive role was played in it by the President K.R. Narayanan, in keeping with the Constitutional provisions. Following the resignation of Atal Behari Vajpayee, the President began an intensive consultation process with legal and constitutional experts. In doing so he had two major objectives of avoiding ordering a mid-term election and seeing whether a party, or a combination of parties can provide a workable viable alternative government with the prospect of stability for a substantial period of time if not for the remaining term of the twelfth Lok Sabha.<sup>39</sup> These consultations were thus with those who had voted against the motion of confidence on April 17, 1999 and if these failed, the President expressed his intention to take up the BJP's claim. On April 25th, 1999, the non-BJP parties not having succeeded in coming up with an alternative, and no accretion in the number supporting the BJP-led alliance having been brought to his notice, the President conveyed his opinion to the Prime Minister that the twelfth Lok Sabha "was not capable of yielding a government with a reasonable prospect of stability"<sup>40</sup>, and that therefore dissolution became necessary. Finally on April 26, 1999, the Cabinet recommended dissolution and the President in due course dissolved the twelfth Lok Sabha, which will go down in history as that with the shortest lifespan any

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37 Chandra Shekhar had in the House only 56 members of his party and that also a breakaway group from the Janata Dal on behalf of which he and others contested the election.

38 Dhavan, *Back to the People*, Indian Express, Bangalore, 1st January, 1998. See also, Murthy, *Yes, Prime Minister*, The Week, 4th January, 1998.

39 *Text of President Narayanan's Communique*, Deccan Herald, Bangalore, 27th April, 1999.

40 *Ibid.*

House has had. However, the process of dissolution is in keeping with the consultative process between the President and the Council of Ministers as envisaged by the Constitution and conventions alike, with the President playing a decisive though not authoritarian role.

There is a general consensus in India and in England, that the President or the Crown can refuse a request for dissolution of Parliament: the difficulty lies in identifying the situations in which such an action would be Constitutionally appropriate.<sup>41</sup> Moreover actual refusal by three Governor Generals in Canada<sup>42</sup>, in South Africa<sup>43</sup> and in Australia<sup>44</sup>, has strengthened the fact that no longer can it be asserted that the President has no discretion in the matter of granting dissolution, though it is best exercised with wisdom and co-operation.

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41 While there have not been precedents in Indian Constitutional History from where any clear conclusions can be drawn, in Ireland the matter arose in November, 1994, following a controversial appointment of a former Attorney-General to the position of President of the High Court, the 22 month coalition government of Fianna Fail and the Labour Party, collapsed. Article 13.2.2 of the Constitution of Ireland, provides that : “ the President may in his absolute discretion refuse to dissolve Dail Eirann on the advice of a Taoiseach who has ceased to retain the support of a majority in the Dail Eirann.”

However, it is also clear that the President cannot refuse dissolution to a Prime Minister who retains the support of a majority in the parliament. The possible solutions could be sought in such a context:

- The President could grant a dissolution on Prime Ministerial request and a General Election would take place; or
- The opposition parties could try and form a coalition and the President appoint its leader as the Prime Minister;
- the Fianna Fail ministers could replace the Prime Minister with another leader who could secure a continued coalition government, in which case, neither a dissolution nor a general election would be required.

Further, Article 28.10 of the Constitution provided that should the Prime Minister lose majority support by losing a formal vote of confidence, he would be obliged to resign. When the Deputy Prime Minister, Dick Spring, announced that he would vote against the Prime Minister, Albert Reynolds, in a vote of confidence, the Prime Minister resigned.

On the 15th of December, after five weeks of political turmoil, John Burton, the leader of the Fine Gael Party, with the support of the Labour and Democratic Left Party, was elected Prime Minister. Thus the second option has been preferred and a new government formed without a dissolution of Parliament.

*Cited from, Barnett, Constitutional and Administrative Law, 166 (1995).*

42 In 1926, the Governor-General, Viscount Byng, refused Mackenzie King's request, believing that Meighen, the Conservative leader, could form a government with a majority. Meighen's new government was defeated 4 days later on a vote of confidence, and he was granted what Mackenzie King had been denied. *Cited from, Laver, Michael and Schofield, Multi-Party Government: The Politics of Coalition in Europe, 147 (1990).*

43 In 1939, the Governor-General, Sir Patrick Duncan, rejected Hertzg's request for a general election. *Ibid.*

44 In 1975, the Governor-General, Sir John Kerr, refused Whitlam's request for a Senate, rather than a general, election. *Ibid.*

## Conclusion

The most important issue raised within this paper has been whether the recommendation of the Prime Minister is necessary to enable the President to dissolve the Lok Sabha or could the President act on his own if warranted by circumstances?<sup>45</sup>

The resignation of the V.P. Singh government in 1990 without recommending a dissolution threw up an interesting Constitutional point as to whether if the President came to the conclusion that he had to dissolve the Lok Sabha he would have to do so on his own.<sup>46</sup> The former President Mr. R. Venkataraman<sup>47</sup>, when faced with this question in November 1990, held the view that the Prime Ministerial advice was a must.<sup>48</sup> In 1991 again when Mr Chandra Shekhar resigned as Prime Minister and recommended that the House be dissolved the President did dissolve the House, but he based his decision not “solely on the recommendation of the outgoing Prime Minister but on other factors also”.<sup>49</sup> The best illustration of an informed and consultative Presidential exercise of discretion regarding the necessity of dissolution is that of the twelfth Lok Sabha, wherein, the President himself feeling the need for dissolving the House, did so after conveying his opinion to the Prime Minister and then acting on the recommendation of the Cabinet.

The root of our difficulties stems from the false belief that the Indian President is a Constitutional dummy. The Supreme Court in *Samsher Singh's*<sup>50</sup> case was perfectly justified in emphasising that the President must act on the aid and advice of the Council of Ministers. However this would not mean that the Presidential office has discretion or power under the Constitution.<sup>51</sup> In judicial dicta laid down in *Jayantilal Amritlal Shodhan v. F.N. Rana*<sup>52</sup>, the court listed about ten items as

45 Katyal, *Can President dissolve Lok Sabha on his Own?*, The Hindu, 1st December, 1997.

46 *Dissolution - R.V.'s Last Option*, Indian Express, Bangalore, 4th November, 1990.

47 *A Copy-Book President*, Deccan Herald, Bangalore, 7th March, 1991.

48 He maintained that the “President cannot on his own responsibility dissolve the House. If he had such a power, he could distort democracy by dissolving the Lok Sabha at his whim, subject only to being impeached after the new House was constituted. While the question whether the advice of a defeated Prime Minister is binding on the President is a moot point, I had no doubt that the President had no power to dissolve the Lok Sabha except on the recommendation of the Prime Minister.” Cited from, Padmanabhan, *The Inside Drama*, Indian Express, 21st July, 1994.

49 *Chandra Shekhar's Tenure as Prime Minister*, The Hindu, 24th July, 1994. See also, Noorani, *The President's Decision*, Indian Express, 2nd March, 1991; Gangal, *Powers and Obligations*, Hindustan Times, Bangalore, 3rd March, 1991; Ramanujachari, *President and the Constitution - Prescription for dictatorship*, Indian Express, Bangalore, 12th April, 1991; Noorani, *The President's Proposals*, Indian Express, Bangalore, 3rd June, 1991.

50 *Supra* n. 38.

51 Dhavan, *Presidential Election: People v. Party bosses*, Indian Express, Bangalore, 24th June, 1991.

52 AIR 1964 SC 648.

exclusively that of the President which could not be delegated, and which the President, by necessary implication, must exercise in his discretion. Again in *Sardarilal v. Union of India*,<sup>53</sup> the court held that in a matter where the interest of the security of the state had to be considered, the personal attention of the President is essential. Further in the *Samsher Singh* judgement, where Krishna Iyer J. and Bhagwati, JJ. clearly laid down that in the case of a Government which has lost its majority, the dissolution of the Lok Sabha becomes an area of the President's discretion.<sup>54</sup> Moreover in *A. Sanjeevi Naidu v. State of Madras*,<sup>55</sup> in support of the decision in *Sardarilal* it was held that in exercise of Executive powers or functions the President has to be satisfied personally. The President should be able to stand up to Prime Ministerial excesses, not to stultify the administration but as the keeper of the nation's conscience.<sup>56</sup>

The position on dissolution of the Lok Sabha under the Indian Constitution could be summarised as follows:

- The President ordinarily would dissolve the Lok Sabha on the advise of the Prime Minister commanding majority in the Lok Sabha. But he may refuse to do so if he thinks that the House is viable and can provide another Council of Ministers<sup>57</sup>.
- If the advice given by a Prime Minister who has lost majority in the House, it is open to the President either to accept or reject the advice.
- The President may ascertain the wishes of the members of Parliament if the party position in the House is confusing and then take a decision about dissolution.
- The President will be justified in dismissing the Council of Ministers and dissolving the Lok Sabha if he is convinced that the Prime Minister is acting unconstitutionally and abusing his majority in the House. Such an action of the President would be constitutional. However such cases would be extremely rare, since the President should in all situations test every other possibility before giving way to dissolution.

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53 AIR 1971 SC 1577. See also, Benjamin, *Has the Constitution failed us?*, Deccan Herald, Bangalore, 19th April, 1997.

54 Ramanujachari, *Presidential Powers - Advice and Action*, Indian Express, Bangalore, 15th May, 1997.

55 (1970) 1 SCC 443.

56 *Ibid*. See also, Mulgaokar, *The President and the Constitution*, Indian Express, Bangalore, 29th June, 1991.

57 For example many legal experts opined that if the Gujral ministry asked the President to dissolve the Lok Sabha before any formal withdrawal of support by the Congress, the President was not bound by such advice - Katyal, *President has many options; polls last resort*, Deccan Herald, Bangalore, 21st November, 1997; *First timers Launch forum to lobby against Lok Sabha dissolution*, Deccan Herald, Bangalore, 21st November, 1997.

- The President must try to find out whether an alternate ministry is possible if the Prime Minister resigns. It would mean that he has to ascertain the wishes not only of the leaders of the political parties but also of the members of various parties and thereby would imply an inevitable involvement in the political scene as mentioned earlier.<sup>58</sup>

Lastly it is suggested that a constitutional amendment be made with a view to ensuring that the Cabinet also goes out of office automatically on dissolution of the Lok Sabha, since otherwise the caretaker ministry, gets a tremendous advantage at the time of the elections. On dissolution of the House the President would appoint advisors-official and non-official to carry on the administration of the government, till a new government is sworn in. Such an amendment would serve to give equal opportunity to all political parties contesting elections.<sup>59</sup>

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58 Katyal, *Make The Reality Meaningful*, The Hindu, Bangalore, 16th March, 1998; Chopra, *The Presidential Siren*, The Hindu, Bangalore, 8th August, 1998.

59 Tope, *supra.*, n. 23 at p.466.