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## Propagation and Dissolution of the Parliament – A legal study

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*Constitutional Law is considered the highest law of the land and one of the most important facet of this is the Parliament of India. The legalities related to Prorogation and dissolution of the house, the background related to these, and the procedure of prorogation along with the procedure and implications of dissolution are discussed in detail in the current short article. Further various exceptional situations related to the above are also discussed in consonance with the powers of the president and the speaker of the houses of the Parliament. Certain case laws to support the legal jargon are discussed as well in this article. The framers of the Constitution of India have encompassed and envisioned every possible scenario in detail related to the sessions of parliament, their procedures, impact, etc., and the far-sightedness of these scholars is reflected in the minutest of details. The aim of this article is to bring forward these processes for a better understanding of constitutional law.*

**Keywords:** *prorogation, procedure, prorogation implications, dissolution.*

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### INTRODUCTION

The parliament of our country India is considered to be the temple of democracy and the Indian Constitution is the sacred book. The Indian Parliament consists of three things which are the two houses namely Lok Sabha and Rajya Sabha along with the President of India. These houses meet various times in a year and this meeting of houses is known as sessions of

the Parliament. This is the period where the houses meet uninterrupted to carry out their discussion. The sessions of Parliament are basically divided into three sessions namely the Budget Session (February to May), The Monsoon Session (extending from July to September), and the Winter Session (extending from November to December). One needs to note that an ongoing session of Parliament can be terminated by adjournment, adjournment sine die, prorogation or dissolution. The key areas the Researcher has tried to cover in this paper are regarding the critical analyses of the background and procedure of Prorogation and dissolution of the sessions of parliament. Prorogation is the ending of any parliamentary session by a written instruction of the President and it terminates both the sitting and the sessions of the houses. On the other hand, dissolution terminates the life of the Houses of Parliament (Lok Sabha only) and new general elections are required.

### **BACKGROUND: PROROGATION OF THE SESSIONS OF PARLIAMENT**

Article 85 of the Constitution of India talks about the prorogation powers given to the President of India and states that:

“(1) The President shall from time to time summon each House of Parliament to meet at such time and place as he thinks fit, but six months shall not intervene between its last sitting in one session and the date appointed for its first sitting in the next session

(2) The President may from time to time

(a) Prorogue the Houses or either House;

(b) Dissolve the House of the People”<sup>1</sup>

Prorogation in the most basic term refers to the termination of the session of Rajya Sabha or Lok Sabha by a written instruction of the President under article 85 of the Indian Law of the land. Prorogation normally follows the adjournment of the sitting of the house which occurs sine die. This refers to adjourning the house without assigning a day for a further meeting or hearing. There is a specific time difference between the adjournments of house sine die and the

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<sup>1</sup> Constitution of India

prorogation of the session of the Parliament and it is generally three to four days. However, there have been instances wherein the Sessions of the Parliament were prorogued on the same day they were adjourned sine die. Further one needs to note that it is never compulsory that both the houses of the Parliament are adjourned on the same day as there have been instances that denote otherwise. The leading example of such a situation is the 141<sup>st</sup> Session of Rajya Sabha that started on 23<sup>rd</sup> February 1987 however got adjourned sine die on 20<sup>th</sup> March 1987 and was later prorogued on 24<sup>th</sup> March, four days later. On the other hand, the eighth session of the VIII Lok Sabha was commenced on 23<sup>rd</sup> February 1987 and adjourned sine die on 12<sup>th</sup> May 1987. The Speaker of the Lok Sabha used his powers as specified under proviso to Rule 15, started the Session again on 27<sup>th</sup> July till 28<sup>th</sup> August 1987 which in the end was finally prorogued on September 3, 1987.<sup>2</sup>

## **PROCEDURE OF PROROGATION**

On the day or the one before both the Houses of the Parliament are scheduled to be adjourned sine die after the end of their session, A note is submitted for the approval of the minister of the Parliamentary Affairs which inter alia proposes that the Houses which are scheduled to be adjourned on that day or the following day shall also be prorogued on their adjournment. After the approval of the minister, the proposal is given for the approval of the Cabinet Committee of Parliamentary Affairs (CCPA) and the consent is generally obtained by the circulation of the papers. If for the instance the CCPA has not been constituted at that time, a note containing the above in the papers shall be sent to the Prime Minister for his approval after it has been approved by the Minister. Once it has been approved by the CCPA or the Prime Minister as the case may be then, the secretary of the Ministry of Parliamentary Affairs communicates this decision of the government to the secretary-general of the two houses of the Parliament. The two Parliament secretariats then separately take the approval of the President of the Nation to the proposed date of prorogation of their respective Houses. Thus in

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<sup>2</sup> PM Bakshi, *Commentary on the Constitution of India* (2nd edn, Universal Law publishing 2016)

the final stage when the President gives his assent to the prorogation of the House, the same is notified in the Gazette Extraordinary<sup>3</sup>

## DECISIONS

### **Requirement of placing proposal of Prorogation of Rajya Sabha before Cabinet relaxed:**

The Ninth Session of the VI Lok Sabha and 11<sup>th</sup> Session of the Rajya Sabha were adjourned sine die on 20<sup>th</sup> August 1979. Subsequently, the Lok Sabha was dissolved by the President on 22 August 1979 and it was felt necessary to prorogue the Rajya Sabha. The Lok Sabha and Rajya Sabha Secretariats were informed of the Government's decision to prorogue the Rajya Sabha which was prorogued on 24 August 1979 itself. Proposals to prorogue the Rajya Sabha following the dissolution of the IX Lok Sabha on 13 March 1991, the XI Lok Sabha on 4 December 1997, and XII Lok Sabha on 26 April 1999 in similar situations were, however, placed before the Cabinet Committee on Parliamentary Affairs for its approval and after the Committee approved the proposals, the two Secretariats were requested to take further necessary action in the matter.

### **Houses Prorogued with the Approval of Prime Minister**

First Sessions of the XI, XII, and XIII Lok Sabha and corresponding Sessions of the Rajya Sabha were prorogued after obtaining the approval of the Prime Minister as the Cabinet Committee on Parliamentary Affairs had not been constituted by then. (Rule 12 of the Government of India (Transaction of Business) Rules - Departure from Rules:- "The Prime Minister may, in any case, or classes of cases permit or condone a departure from these Rules, to the extent he deems necessary."<sup>4</sup>

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<sup>3</sup> MN Kaul and SL Shakhder, *Practise and Procedure of Parliament* (7th edn, Lok Sabha Secretariat 2016)

<sup>4</sup> Arun Shouri, *The Parliamentary System* (Rupa and Company 2002)

## **Lok Sabha Prorogued during Recess Period of Budget Session to enable the Government to promulgate ordinances**

Ninth Session of X Lok Sabha and 170th Session of the Rajya Sabha was adjourned for recess on 13 May 1994 to meet on 13 June 1994. In order to enable the Government to promulgate ordinances, the Lok Sabha which was adjourned on 13 May 1994 was prorogued on 23 May 1994. (The Rajya Sabha which was also adjourned on 13 May 1994 was not prorogued.) After prorogation of the Lok Sabha, the following three ordinances were promulgated:

1. The Manipur Municipalities ordinance, 1994 (promulgated on 24 May 1994);
2. The Punjab Municipal Corporation Law (Extension to Chandigarh) ordinance, 1994 (promulgated on 24 May 1994); and
3. The New Delhi Municipal Council ordinance, 1994 (promulgated on 25 May 1994).

The Bills relating to the above ordinances were passed during the next Session of the Lok Sabha and in the second part of the same Session of the Rajya Sabha held after the recess.<sup>5</sup>

### **BACKGROUND: DISSOLUTION OF SESSION OF PARLIAMENT**

A dynamically evolving Constitution of our country is one of the pivotal features around which our Indian democracy revolves around. In such an institution dissolution of anybody consisting of an elected representative is a very recurring process that imparts legitimacy to the very existence and functioning of such an institution. Every democratic institution has to undergo scrutiny and authentication from time to time to ensure that it is a participative institution that takes into the notion the views of the people of this nation as democracy stands on the undeniable saying that it is “by the people, for the people, and of the people”. The Parliament is the highest representative body in India and expresses the sovereign will of the people and hence this institution also undergoes the process of dissolution periodically. Democratic credence is provided to this institution by the periodic renewal of tenure and thus this process assumes great and critical significance.<sup>6</sup>

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<sup>5</sup> 'Sessions of Rajya Sabha' (*rajyasabha.nic*) <<https://rajyasabha.nic.in>> accessed 01 September 2021

<sup>6</sup> VK Agnihotri, 'Impact of dissolution of Lok Sabha (lower house) on legislative and other business' (*rajyasabha.nic*, 1 August 2003) <<https://www.rajyasabha.nic.in>> accessed 01 September 2021

Article 83 of the Constitution of India states about the Duration of Houses of Parliament:

“(1) The council of States shall not be subject to dissolution, but as nearly as possible one-third of the members thereof shall retire as soon as may be on the expiration of every second year in accordance with the provisions made in that behalf by Parliament by law

(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 as a time and not extending in any case beyond a period of six months after s the Proclamation has ceased to operate”<sup>7</sup>”

In the most basic sense, the dissolution of Lok refers to the voluntary resignation of all members of the same to ensure new elections. A general election process is taken up once every five years for the election of new members of the Lok Sabha. The Rajya Sabha is called the Upper House of the Parliament and consists of the elected people from the State and Union Territories elected by members of the State Legislative assemblies by means of a single transferable vote system. Thus the upper house of the Parliament is a permanent one due to the fact that it is not subject to any kind of dissolution. However, 1/3<sup>rd</sup> of the members of Rajya Sabha retire biennially. Thus only the Lok Sabha on completion of its terms stands dissolved by virtue of the provisions of the Constitution and the President has to issue an order of dissolution to formally complete the process. This five years term may be extended in case of any proclamation of emergency for up to one year and shall be dissolved after completion of six months after the cease of emergency proclamation.

The Lok Sabha however can also be stopped from working (dissolved) prior to the end of five years of its term on the grounds that the house no longer enjoys a majority and that it no longer represents the will of the people. This can be done by the President of the Country. The power of the Prime Minister to advise the President is a very potential weapon in the Prime

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<sup>7</sup> Constitution of India

Ministers' hand to keep his party's interest intact and is the only thing preventing the breaking up of the party. Further, if the President does not accept this advice, he has to find an alternative Prime Minister using his discretionary powers who can command a majority in the House and seek his advice to act accordingly.<sup>8</sup> Article 85 of the Indian Constitution gives the President the above powers. Dr. B.R. Ambedkar in the Constituent Assembly debate had entire faith in the discretionary power of the President of India and hence said that he could be trusted for making the correct decision in the matter of dissolution of Lok Sabha<sup>9</sup>

Article 85 states that:

“(1) The President shall from time to time summon each House of Parliament to meet at such time and place as he thinks fit, but six months shall not intervene between its last sitting in one session and the date appointed for its first sitting in the next session

(2) The President may from time to time

(a) Prorogue the Houses or either House;

(b) Dissolve the House of the People<sup>10</sup>”

## IMPLICATIONS OF DISSOLUTION OF LOK SABHA

### A) Implication of dissolution on pending bills

The passing of bills for legislative purposes is one of the most important functions of the Parliament. A bill is basically a statute in a draft that has not yet become a law as it is not passed in both houses of the Parliament yet. In order for a bill to become a law or a statute, it has to be passed by both houses of the Parliament followed by the assent of the President. Thus it is quite clear that since it requires the assent of both houses and due to dissolution the majority is lost in the Lok Sabha, it no longer represents the will of the people and hence the

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<sup>8</sup> MN Kaul and SL Shakhder, *Practice and Procedure of Parliament* (5th edn Lok Sabha Secretariat 2001)

<sup>9</sup> 'Constituent Assembly Debates on 16 June, 1949 Part I' (*Indiankanoon.org*)

<<https://indiankanoon.org/doc/1155224/>> accessed 02 September 2021

<sup>10</sup> Constitution of India

procedure is stalled. Before The Government of India Act 1935, in the early 1920s, there was no specific provision that dealt with the fate of pending bills in the Parliament in case of dissolution of Lok Sabha. However after the commencement of this act, a somewhat clear picture came into light through section 107 clause 4, and clause 5.

“107. (4) A Bill pending in the Council of States which has not been passed by the House of the People shall not lapse on a dissolution of the House of the People.

(5) A Bill which is pending in the House of the People, or which having been passed by the House of the People is pending in the Council of States, shall, subject to the provisions of article 108, lapse on a dissolution of the House of the People.<sup>11</sup>”

i) Effect of a pending bill in the lower house :

- All those bills which had originated in the Lok Sabha and are pending to be passed will lapse on the day of dissolution.
- Further, all those bills which originated in the Rajya Sabha and were passed down to Lok Sabha and are pending here will also be deemed to have lapsed as a result of the dissolution of Lok Sabha.
- Similarly, all those bills that originated and passed in Lok Sabha and are subsequently pending will also be lapsed due to the dissolution of the Lower House.
- If a bill is passed by the Lok Sabha and later on approved and passed by Rajya Sabha after recommending certain amendments, then that bill will also have lapsed it is not disposed of by Lok Sabha prior to its dissolution.
- For instance, around 31 government bills and over 200 private bills were pending before the 14<sup>th</sup> Lok Sabha in the year 2009. These included bills like Pension Fund Regulatory and Development Authority bill 2005, NHAI Amendment bill 2008, etc. which were lapsed as the house dissolved in May 2009.<sup>12</sup>

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<sup>11</sup> Government of India Act 1935

<sup>12</sup> Agnihotri (n 6)



ii) Effect of dissolution on bills pending before Rajya Sabha:

- Rajya Sabha as we know is a permanent house of the Parliament and thus a bill originated here and still pending in this house will not lapse as the bill is not yet transmitted to the Lok Sabha.
- As mentioned earlier, the bill passed by the Rajya Sabha and pending in the Lok Sabha will have lapsed on the dissolution of Lok Sabha. As many as 8 bills lapsed like this in the 14<sup>th</sup> Lok Sabha, 4 in the 12<sup>th</sup> Lok Sabha, etc.<sup>13</sup>
- If a bill originates in the Rajya Sabha and is passed to Lok Sabha and they send it back with recommendations and is now pending again in Rajya Sabha will also lapse on the dissolution of Lok Sabha. For instance, the Architect Bill was passed by the Rajya Sabha in May 1970s and was returned back in December the same year with recommendations. However, on 27<sup>th</sup> December, the Lok Sabha was dissolved and the bill subsequently lapsed.<sup>14</sup>
- If a bill is passed by both the Houses of the Parliament and sent to the President for his assent and then sent back to the Rajya Sabha for recommendations does not lapse with the dissolution of the Lok Sabha. The biggest example of this is The Post Office Bill, 1986<sup>15</sup>

**B) Implications of dissolution on Parliamentary Committees:**

Parliamentary committees are mini legislatures in the Indian Democratic setup wherein politicians from different political parties share a common stage and play a non-partisan role in the discussions of matters of public importance. Various bills and subjects of discussion are referred to these committees with a view of seeking advice and recommendations from these committees. Various experts from different fields might be present or from the subject of discussion as well. The advice of these committees holds great importance as standing recommendations can be included in the bills which can be very beneficial for the public. Dissolution of Lok Sabha puts a brake on the working of these committees which can result in

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<sup>13</sup> Narain Yogendra, *Rajya Sabha at work* (2006)

<sup>14</sup> *Ibid*

<sup>15</sup> *Ibid*

the lapse of the same due to the dissolution of Lok Sabha.<sup>16</sup> Rule 285 of the Rules of Procedures and the Conduct of Business in the Lok Sabha States that:

“285. A Committee that is unable to complete its work before the expiration of its term or before the dissolution of the House may report to the House that the Committee has not been able to complete its work. Any preliminary report, memorandum, or note that the Committee may have prepared or any evidence that the Committee may have taken, shall be made available to the new Committee.<sup>17</sup>”

i) Effect of dissolution on the Bills pending before Department-related Parliamentary Standing Committees of Rajya Sabha:

- Bills that are introduced in the Rajya Sabha are referred to Department-related Parliamentary Standing Committees which are under the administrative control of the Rajya Sabha
- The committees lapse on the dissolution of the Lok Sabha however these bills do not lapse but only become defunct for the time being. However, the only condition here is that the bill must have been originated in the Rajya Sabha only where on the formation of the committee, the bills are taken up for consideration Suo Moto by these committees.
- The bill lapses if it was introduced in the Lok Sabha.<sup>18</sup>

ii) Effect of dissolution on the Bills pending before Department-related Parliamentary Standing Committees of Lok Sabha

- Bills that are introduced in the Lok Sabha are referred to the Department-related Parliamentary Standing Committees which are under the administrative control of the Lok Sabha.
- The bills as we know lapses with the dissolution of the Lok Sabha and hence the recommendations and advice of these committees also hold no importance and are deemed to have lapsed. Even if the committee submits its report to the Speaker of Lok

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<sup>16</sup> Agnihotri (n 6)

<sup>17</sup> *Rules and Procedures and Conduct of Business of Lok Sabha* (12th edn, Lok Sabha Secretariat)

<sup>18</sup> Kaul and Shakdher (n 8)

Sabha prior to its dissolution, it would have no effect as the bill will have lapsed subsequently to the dissolution of Lok Sabha.

- Bill that is introduced in Rajya Sabha and sent here for reconsideration and advice needs to be sent again after the formation of new committees subsequent to the reconstitution of the new Lok Sabha.<sup>19</sup>

iii) Effect of Dissolution on Bills pending before the Joint Committees:

- A bill introduced by Lower House in the committee formed will cease to operate on the dissolution and the members of Upper House who were the members of the Joint Committee will cease to be the member of that particular committee. The Joint Committee set up by Upper House for a bill issued by the Lower House will also lapse.
- However, a bill introduced by the Upper House in a joint committee set up by the Upper House itself will not lapse on the dissolution of the Lower House.
- Further any ad-hoc joint committee as setting up by the parliament also becomes defunct on the dissolution of Lower House.<sup>20</sup>

## EXCEPTIONAL SITUATIONS

If the Indian President summons both the Houses of Parliament for a joint session to discuss a bill that was rejected by both the houses of the Parliament then such bill does not lapse on the dissolution of Lower House if the President has summoned both the houses before prior to the dissolution of Lower House. If any bill has been passed by both the Houses of the Parliament and is sent to the President for his assent such bill has not lapsed on the dissolution of Lower House. However, there is no express provision in the Indian Constitution for this. In such cases when the house dissolves after sending the bill to the President, the President then passes it on to the newly elected house who can pass the bill once again with or without any amendments.<sup>21</sup> In the leading case of *Purshottam Nambiar vs. the State of Kerala*, it was held that “a Bill pending assent of the Governor or President is outside clause (5) of Article 196 and

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<sup>19</sup> Kaul and Shakhder (n 8)

<sup>20</sup> Agnihotri (n 6)

<sup>21</sup> Kaul and Shakhder (n 8)

cannot be said to lapse on the dissolution of the Assembly. [Article 196(5): A Bill which is pending in the Legislative Assembly of a State, or which having been passed by the Legislative Assembly is pending in the Legislative Council, shall lapse on a dissolution of the Assembly.]”

## **CONCLUSION**

The Constitution of India has defined properly all the situations that may arise due to the dissolution of Lok Sabha. Although this situation brings a standby in the legislative jargon of India, this gives an opportunity to rise again. This paves a way for new elections of Lok Sabha. Both the Houses of Parliament can co-ordinate for ensuring that this dissolution does not create a huge logjam in the Legislative business of the house. Rest said these procedures of Prorogation and Dissolution must be introduced by the President using his discretionary keeping in mind various principles of morality as Legislature is one of the most important functions in any democratic setup.