

CASE NO.:  
Special Reference Case 1 of 2002

PETITIONER:  
not available

RESPONDENT:  
not available

DATE OF JUDGMENT: 28/10/2002

BENCH:  
C.J.I., V. N. Khare & Ashok Bhan.

JUDGMENT:  
O P I N I O N

V.N. KHARE, J

The dissolved Legislative Assembly of the State of Gujarat was constituted in March 1998 and its five-year term was to expire on 18.3.2003. On 19.7.2002 on the advice of the Chief Minister, the Governor of Gujarat dissolved the Legislative Assembly. The last sitting of the dissolved Legislative Assembly was held on 3rd April 2002. Immediately after dissolution of the Assembly, the Election Commission of India took steps for holding fresh elections for constituting the new Legislative Assembly. However, the Election Commission by its order dated 16th August, 2002 while acknowledging that Article 174(1) is mandatory and applicable to an Assembly which is dissolved and further that the elections for constituting new Legislative Assembly must be held within six months of the last session of the dissolved Assembly, was of the view that it was not in a position to conduct elections before 3rd of October, 2002 which was the last date of expiry of six months from last sitting of the dissolved Legislative Assembly. It is in this context the President of India in exercise of powers conferred upon him by virtue of clause (1) of Article 143 of the Constitution of India referred three questions for the opinion of the Supreme Court by his order dated 19th August, 2002 which run as under :

"WHEREAS the Legislative Assembly of the State of Gujarat was dissolved on July 19, 2002 before the expiration of its normal duration on March 18, 2003;

AND WHEREAS Article 174(1) of the Constitution provides that six months shall not intervene between the last sitting of the Legislative Assembly in one session and the date appointed for its first sitting in the next Session:

AND WHEREAS the Election Commission has also noted that the mandate of Article 174 would require that the Assembly should meet every six months even after the dissolution of the House, and that the Election Commission has all along been consistent that normally a Legislative Assembly should meet at least every six months as contemplated by Article 174, even where it has been dissolved;

AND WHEREAS under section 15 of the Representation of the People Act, 1951, for the purpose of holding general elections on the expiry of the duration of the Legislative Assembly or its dissolution, the Governor shall, by notification, call upon all Assembly Constituencies in the State to elect members on such date or date as may be recommended by the Election Commission of India;

AND WHEREAS the last sitting of the Legislative Assembly of the State of Gujarat was held on 3rd April, 2002, and as such the newly constituted Legislative Assembly should sit on or before 3rd October, 2002;

AND WHEREAS the Election Commission of India by its order No. 464/GJ-LA/2002 dated August 16, 2002 has not recommended any date for holding general election for constituting a new Legislative Assembly for the State of Gujarat and observed that the Commission will consider framing a suitable schedule for the general election to the State Assembly in November-December 2002. Copy of the said order is annexed hereto;

AND WHEREAS owing to the aforesaid decision of the Election Commission of India, a new Legislative Assembly cannot come into existence so as to meet within the stipulated period of six months as provided under Article 174(1) of the Constitution of India;

AND WHEREAS THE Election Commission has held that the non-observance of the provisions of Article 174(1) in the present situation would mean that the Government of the State cannot be carried in accordance with the provisions of the Constitution within the meaning of Article 356(1) of the Constitution and the President would then step in;

AND WHEREAS doubts have arisen with regard to the Constitutional validity of the said order of the Election Commission of India as the order of the Election Commission which would result in a non-compliance with the mandatory requirement envisaged under Article 174(1) of the Constitution under which not more than six months shall intervene between two sittings of the State Legislature;

AND WHEREAS in view of what has been hereinbefore stated, it appears to me that the questions of law hereinafter set out have arisen which are of a such nature and of such public importance that it is expedient to obtain the opinion of the Supreme Court of India;

NOW, THEREFORE, in exercise of the powers conferred upon me under clause (1) of Article 143 of the Constitution, I, A.P.J. Abdul Kalam, President of India, hereby refer the following questions to the Supreme Court of India for consideration and report thereon, namely:-

i) Is Article 174 subject to the decision of the Election Commission of India under Article 324 as to the schedule of elections of the Assembly?

(ii) Can the Election Commission of India frame a schedule for the elections to an Assembly on the premise that any infraction of the mandate of Article 174 would be remedied by a resort to Article 356 by the President?

(iii) Is the Election Commission of India under a duty to carry out the mandate of Article 174 of the Constitution, by drawing upon all the requisite resources of the Union and the State to ensure free and fair elections?"

Much before the matter was taken up for hearing it was made clear by the Bench hearing the reference that it would neither answer the reference in the context of the election in Gujarat nor look into the questions of facts arising out of the order of the Election Commission and shall confine its opinion only on questions of law referred to it.

When this reference was taken up objections were taken by learned (1)  
counsel appearing for the Election Commission, several national political parties  
and counsel for various States that this reference need not be answered and it  
requires to be returned unanswered, inter alia, on the grounds :

(a) that, the reference raises issues already decided or determined  
by earlier Supreme Court judgments regarding the plenary and  
all encompassing powers of the Election Commission to deal  
with all aspects of an election under Articles 324-329 ;

(b) that, if the Supreme Court considers the said question again, it  
would convert advisory Article 143 jurisdiction into an  
appellate jurisdiction, which is impermissible ;

(c) that, if Article 174 were to override Article 324, question No. 3  
is unnecessary. Also, if question No. 1 is answered in the  
affirmative, question No. 3 is automatically answered. In any  
event, the last part of question No. 3 raises a question to the  
effect as to whether the Election Commission is obliged to  
ensure free and fair elections, the answer to which is axiomatic,  
obvious and completely unnecessary to be answered in a  
Presidential Reference ;

(d) that, since question No. 2 cannot stand in the abstract, it also  
ought not to be gone into and deserves to be sent back  
unanswered ;

(e) that, no undertaking has been furnished by the Union of India  
that they would be bound by the advice of this Court and,  
therefore, the reference need not be answered ;

(1) Sh. K.K. Venugopal, Sr. Counsel

(f) that, the reference proceeds on the flawed legal premise that  
Article 174 applies to the holding of periodic elections and mandates  
the Election Commission to hold elections within the six-month  
period from the last session of dissolved Legislative Assembly and,  
therefore, this Court should return the reference unanswered ; and

(g) that, the reference is a disguised challenge to the order of the  
Election Commission dated 16th August, 2002 which is  
inappropriate in a reference under Article 143.

In support of the aforesaid propositions learned counsel relied upon the  
following decisions : (1) In re : Cauvery Water Disputes Tribunal - (1993)  
Suppl.1 SCC 96; (2) In re : Keshav Singh, Special Reference No. 1 of 1964-  
( 1965) 1 SCR 413 ; (3) In re : The Special Courts Bill, 1978, Spl Ref. No. 1 of  
1978 - (1979) 1 SCC 380; (4) In re : Appointment of Judges Case, Special  
Reference No. 1 of 1998 - (1998) 7 SCC 739; (5) The Ahmedabad St. Xavier's  
College Society & Anr vs. State of Gujarat & Ors (1974) 1 SCC 717; (6) In  
re: Presidential Poll, Special Reference No. 1 of 1974 - (1974) 2 SCC 33; (7) In  
re : The Kerala Education Bill, 1957 - (1959) SCR 995; and (8) Dr.M. Ismail  
Faruqui & Ors. vs. Union of India & Ors - (1994) 6 SCC 360.

In re: The Kerala Education Bill, 1957 (supra), it was urged that since the  
Bill introduced in the Legislative Assembly has been referred to under Article 143  
and the same having not received legislative sanction the reference need not be  
answered. Dealing with the said argument this Court held that under Article 143,  
the Supreme Court is required to advise the President not only as to any question

which has arisen but also as to a question which is likely to arise in future.

In re: Special Court Bill, 1978 (supra), it was held that it was not necessary that the question on which the opinion of the Supreme Court is sought must have arisen actually. It is competent for the President to make a reference at an anterior stage, namely, at the stage when the President is satisfied that the question is likely to arise. Chandrachud, CJ at pg. 400, para 20 held that :

"20. Article 143(1) is couched in broad terms which provide that any question of law or fact may be referred by the President for the consideration of the Supreme Court if it appears to him that such a question has arisen or is likely to arise and if the question is of such a nature and of such public importance that it is expedient to obtain the opinion of the Court upon it. Though questions of fact have not been referred to this Court in any of the six references made under Article 143(1), that Article empowers the President to make a reference even on questions of fact provided the other conditions of the Article are satisfied. It is not necessary that the question on which the opinion of the Supreme Court is sought must have arisen actually. It is competent to the President to make a reference under Article 143(1) at an anterior stage, namely, at the stage when the President is satisfied that the question is likely to arise. The satisfaction whether the question has arisen or is likely to arise and whether it is of such a nature and of such public importance that it is expedient to obtain the opinion of the Supreme Court upon it, is a matter essentially for the President to decide. The plain duty and function of the Supreme Court under Article 143(1) of the Constitution is to consider the question on which the President has made the reference and report to the President its opinion, provided of course the question is capable of being pronounced upon and falls within the power of the court to decide. If, by reason of the manner in which the question is framed or for any other appropriate reason the court considers it not proper or possible to answer the question it would be entitled to return the reference by pointing out the impediments in answering it. The right of this Court to decline to answer a reference does not flow merely out of the different phraseology used in clauses (1) and (2) of Article 143, in the sense that clause (1) provides that the Court "may" report to the President its opinion on the question referred to it, while clause (2) provides that the Court "shall" report to the President its opinion on the question. Even in matters arising under clause (2), though that question does not arise in this reference, the Court may be justified in returning the reference unanswered if it finds for a valid reason that the question is incapable of being answered. With these preliminary observations we will consider the contentions set forth above."

In re: Keshav Singh, Special Reference No. 1 of 1964, (supra) 413, Gajendragadkar, CJ speaking for the Court stated that the words of Article 143(1) are wide enough to empower the President to forward to this Court for its advisory opinion any question of law or fact which has arisen or is likely to arise, provided it appears to the President that such a question is of such a nature or of such public importance that it is expedient to obtain the opinion of the Court upon it.

In re: Allocation of Lands and Buildings, 1943 FCR 20, Gwyer, CJ stated "we felt some doubt whether any useful purpose would be served by giving of an opinion under Section 213 of the Government of India Act. The terms of that section do not impose an obligation on the Court, though we should always be

unwilling to decline to accept a reference except for good reason; and two difficulties presented themselves. First, it seemed that questions of title might sooner or later be involved, if the Government whose contentions found favour with the Court desired to dispose of some of the lands in question to private individuals and plainly no advisory opinion would furnish a good root of title such as might spring from a declaration of this Court in proceedings taken under Section 204 (1) of the Act by one government against the other".

In re: Levy of Estate Duty, 1944 FCR 317, it was held that Section 213 of the Government of India Act empowers the Governor General to make a reference when questions of law are "likely to arise".

From the aforesaid decisions it is clear that this Court is well within its jurisdiction to answer/advise the President in a reference made under Article 143(1) of the Constitution of India if the questions referred are likely to arise in future or such questions are of public importance or there is no decision of this Court which has already decided the question referred.

In the present case what we find is that one of the questions is as to whether Article 174 (1) prescribes any period of limitation for holding fresh election for constituting Legislative Assembly in the event of premature dissolution of earlier Legislative Assembly. The recitals contained in the Presidential reference manifestly demonstrate that the reference arises out of the order of the Election Commission dated 16th August, 2002. In the said order the Election Commission has admitted that under Article 174(1) six months should not intervene between one Assembly and the other even though there is dissolution of the Assembly. The reference proceeds upon the premise that as per order of the Election Commission, a new Legislative Assembly cannot come into existence within the stipulated period of six months as provided under Art.174(1) of the Constitution on the assessment of conditions prevailing in the State. Further, a doubt has arisen with regard to the application of Article 356 in the order of the Election Commission. In view of the decision in Re: Presidential Poll, 1974 (2) SCC p.33 holding that in the domain of advisory jurisdiction under Article 143(1) this Court cannot go into the disputed question of facts, we have already declined to go into the facts arising out of the order of the Election Commission. But the legal premise on which order was passed raises questions of public importance and these questions are likely to arise in future. The questions whether Article 174(1) is mandatory and would apply to a dissolved Assembly, that, whether in extraordinary circumstances Article 174(1) must yield to Art.324, and, that, the non-observance of Article 174 would mean that the government of a State cannot be carried on in accordance with the provisions of the Constitution and in that event Art.356 would step in, are not only likely to arise in future but are of public importance. It is not disputed that there is no decision of this Court directly on the questions referred and further, a doubt has arisen in the mind of the President of India as regards the interpretation of Art 174(1) of the Constitution. Under such circumstances, it is imperative that this reference must be answered. We, therefore, overrule the objections raised and proceed to answer the Reference.

Question No. 1

Is Article 174 subject to decision of the Election Commission of India under Article 324 as to the schedule of election of the Assembly?

In an effort that aforesaid question be answered in the negative it was, inter  
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alia, urged on behalf of the Union of India, one of the national political parties and  
(4)  
one of the States:

a) that, the provision in Article 174(1) of the Constitution that six months

shall not intervene between the last sitting of one session and the date appointed for its first meeting of the next session is mandatory in nature and it applies when the Governor either prorogues either of the Houses or dissolves the Legislative Assembly;

b) that, Article 174(2) empowers the Governor to prorogue or dissolve the Legislative Assembly and Article 174(1) does not make any exception in respect of the interregnum irrespective of whether the Governor has prorogued the House or dissolved the Legislative Assembly under Article 174(2);

S/Sh. (2) Harish N. Salve, Solicitor General of India (3) Arun Jaitley, Senior Counsel (4) Kirit N. Rawal, Addl. Solicitor General.

c) that, on the correct interpretation of Art. 174, the mandate of Article 174(1) is applicable to the dissolved Assembly also. Such an interpretation would be in the defence of a democracy and, therefore, as and when an Assembly is prematurely dissolved, the Election Commission has to fix its calendar for holding fresh election within the time mandated under Article 174(1);

d) that, alternatively, it was argued that in a situation where mandate under Article 174(1) cannot be complied with, it does not mean that the mandate is directory in nature; and

e) that, the holding of election immediately after dissolution of the Assembly is also necessary in view of the sanction which is required to be taken with regard to Money Bills by the Legislative Assembly.

(5) (10) (14)

The contentions advanced on behalf of the other national political parties,

(18)

(6) (7) (8) (9) (11) (12) (13) (15) (16) (17)

political parties as well as other States is that Article 174(1) is neither applicable

to the dissolved Assembly nor does it provide any period of limitation of six S/Shri (5) Kapil Sibbal (6) K. R. Parasaran (7) Ram Jethmalani (8) P.P. Rao (9) Milon Banerji (10)

Rajeev Dhawan (11) Ashwani Kumar (12) M.C. Bhandre (13) Devendra Dwivedi (14) P.N. Puri (15) A.M. Singhvi (16) Gopal Subramaniam (17) V. Bahuguna (18) A. Sharan - all senior counsel

months for holding fresh election in the event of a premature dissolution of the Legislative Assembly. According to learned counsel appearing for these parties, there is no provision either in the Constitution or in the Representation of the People Act which provides an outer limit for holding election for constituting the new Legislative Assembly or the new House of the People, as the case may be, in the event of their premature dissolution.

On the argument of learned counsel for the parties, the first question that arises for consideration is whether Article 174(1) is applicable to a dissolved Assembly?

A plain reading of Article 174 shows that it stipulates that six months shall not intervene between the last sitting in one session and the date appointed for its first sitting in the next session. It does not provide for any period of limitation for holding fresh election in the event a Legislative Assembly is prematurely dissolved. It is true that after commencement of the Constitution, the practice has been that whenever either Parliament or Legislative Assembly were prematurely dissolved, the election for constituting fresh Assembly or Parliament, as the case may be, were held within six months from the date of the last sitting of the dissolved Parliament or Assembly. It appears that the Election Commission's interpretation of Article 174 that fresh elections for constituting Assembly are required to be held within six months from the date of the last sitting of the last session was very much influenced by the prevailing practice followed by the Election Commission since enforcement of the Constitution. At no point of time any doubt had arisen as to whether the interval of six months between the last sitting of one session and the first sitting of the next session of the Assembly under Article 174(1) provides a period of limitation for holding fresh election to

constitute new Assembly by the Election Commission in the event of a premature dissolution of Assembly. Since the question has arisen in this Reference and also in view of the fact that Article 174 on its plain reading does not show that it provides a period of limitation for holding fresh election after the premature dissolution of the Assembly, it is necessary to interpret the said provision by applying accepted rules of interpretations.

One of the known methods to discern the intention behind enacting a provision of the Constitution and also to interpret the same is to look into the Historical Legislative Development, Constituent Assembly Debates or any document preceding the enactment of the Constitutional provision.

In His Holiness Kesavananda Bharati Sripadagalvaru etc. vs. State of Kerala & Anr. etc. (1973) 4 SCC 225, it was held that Constituent Assembly debates although not conclusive, yet show the intention of the framers of the Constitution in enacting provisions of the Constitution and the Constituent Assembly Debates can throw light in ascertaining the intention behind such provisions.

In R.S. Nayak vs. A.R. Antulay (1984) 2 SCR 495, it was held that reports of the Commission which preceded the enactment of a legislation, reports of Joint Parliament Commission, report of a Commission set up for collecting information leading to the enactment are permissible external aid to construction of the provisions of the Constitution. If the basic purpose underlying construction of legislation is to ascertain the real intention of the Parliament, why should the aids which Parliament availed of such as report of a Special Commission preceding the enactment, existing state of Law, the environment necessitating enactment of legislation, and the object sought to be achieved, be denied to the Court whose function is primarily to give effect to the real intention of the Parliament in enacting the legislation. Such denial would deprive the Court of a substantial and illuminating aid to construction of the provisions of the Constitution. The modern approach has to a considerable extent eroded the exclusionary rule in England.

Since it is permissible to look into the pre-existing law, Historical Legislative Developments, and Constituent Assembly Debates, we will look into them for interpreting the provisions of the Constitution.

#### Historical Legislative Developments

Government of India Act, 1915 & Government of India Act, 1919

Part VI of Government of India Act 1915 dealt with the Indian Legislatures containing provisions dealing with Indian and governor's provinces legislatures. Section 63D dealt with Indian Legislature while Section 72B dealt with the legislature of Governor's provinces. Sections 63D(1) and Sec. 72B(1) run as under:

" Sec 63D(1) : Every Council of State shall continue for five years and every Legislative Assembly for three years from its first meeting: Provided that:

a) either Chamber of the Legislature may be sooner dissolved by the Governor general; and

(b) any such period may be extended by the governor General, if in special circumstances he so think fit; and

c) after the dissolution of either Chamber the Governor General shall appoint a date not more than six months or, with the sanction of the Secretary of the State, not more than nine months from the date of dissolution for the next session of that Chamber"

Sec 72B(1) : Every Governor's legislative council shall continue for three years from its first meeting : Provided that :

a) the Council may be sooner dissolved by the Governor ; and

b) the said period may be extended by the Governor for a period not exceeding one year, by notification in the official gazette of the province, if in special circumstances (to be specified in the notification) he so think fit; and

c) after the dissolution of the council the Governor shall appoint a date not more than six months or, with the sanction of the Secretary of the State, not more than nine months from the date of dissolution for the next session of the council.

After repeal of Government of India Act 1915, Government of India Act 1919 came into force. Section 8 of the Government of India Act 1919 provided for sittings of Legislative Council in provinces. Section 8 read as follows :

" Sec 8(1) : Every Governor's legislative council shall continue for three years from its first meeting : Provided that:

a) the Council may be sooner dissolved by the Governor; and

b) the said period may be extended by the Governor for a period not exceeding one year, by notification in the official gazette of the province, if in special circumstances (to be specified in the notification) he so think fit; and

c) after the dissolution of the council the Governor shall appoint a date not more than six months or, with the sanction of the Secretary of the State, not more than nine months from the date of dissolution for the next session of the council"

Similarly, Section 21 provided for the sittings of the Indian legislature. Section 21 runs as under:

"Sec 21(1) : Every Council of State shall continue for five years and every Legislative Assembly for three years from its first meeting : Provided that:

a) either Chamber of the Legislature may be sooner dissolved by the Governor General; and

b) any such period may be extended by the Governor General, if in special circumstances he so think fit; and

c) after the dissolution of either Chamber the Governor General shall appoint a date not more than six months or, with the sanction of the Secretary of the State, not more than nine months from the date of dissolution for the next session of that Chamber.

A combined reading of Sections 63D(1) & 72B(1) of Government of India Act 1915 and Sections 8(1) and 21(1) of Government of India Act 1919 shows that the Governor General could also either dissolve the Council of State or the



Legislative Assembly sooner than its stipulated period or extend the period of their functioning. Further, it was mandated that after the dissolution of either Chamber, the Governor General shall appoint a date not more than six months or with the sanction of the Secretary of the State, not more than nine months from the date of dissolution, for the next session of that Chamber. Similarly, the Governor of the province could also either dissolve the Legislative Council sooner than its stipulated period or extend the period of its functioning. Further, the Governor was duty bound after the dissolution of the legislative council to appoint a date not more than six months, or with the sanction of the Secretary of the State, not more than nine months from the date of dissolution for the next session of legislative council.

It is noteworthy that these powers of the Governor General and the Governor of the province were similar to the powers exercised by the British monarch historically under British conventions. The mandate to the Governor General and the Governor to fix the date for the next session of the new chamber or the legislative council respectively was based on the British conventions whereunder the monarch fixes a date for next session of the House of Commons after its dissolution. Further the power of Governor General to extend the period of Legislative Council or to prematurely dissolve it was also based on British conventions.

#### Government of India Act 1935

The Government of India Act, 1919 was repealed by the Government of India Act, 1935. Section 19(1) provided for the sittings of the Federal Legislature. Section 19(1) runs as under:

Sec 19(1) : The Chambers of the Federal Legislature shall be summoned to meet once at least in every year, and twelve months shall not intervene between their last sitting in one session and the date appointed for their first sitting in the next session."

Similarly, Section 62(1) of the Act provided for sittings of Provincial Legislature. Section 62(1) runs thus:

"62(1) : The Chamber or Chambers of each Provincial Legislature shall be summoned to meet once at least in every year, and twelve months shall not intervene between their last sitting in one session and the date appointed for their first sitting in the next session"

We find that under the Government of India Act, 1935, there was a complete departure from the provisions contained in the Government of India Act, 1915 and Government of India Act, 1919 as regards the powers and responsibilities of the Governor General and the Governors of the Provinces to extend the period of the chambers or fix a date for the next session of the new chamber. By the aforesaid provisions, not only were the powers to extend the life of the chambers of the Federal Legislature and the Provincial Legislatures done away with, but the British Convention to fix a date for the next session of the new chamber was also given up. These were the departures from the previous Acts. It may also be noted that under the Government of India Act, 1935, statutory provisions were made in respect of the conduct of elections. Under Schedule V Para 20 of the Government of India Act, 1935, the Governor General was empowered to make rules for carrying out the provisions of the Vth and VIth Schedule. Para 20 as a whole related to matters concerning elections, and Clause (iii) particularly pertained to conduct of elections. Similarly, Schedule VI of the Government of India Act, 1935 contained provisions with respect to electoral rolls and franchise. Such provisions are not found in either the Government of India Act, 1915 or the Government of India Act, 1919. Thus, we see that statutory provisions have come in for the first time and conduct of elections has been entrusted in the hands of the executive. Since the power to fix the calendar for holding elections was given in the hand of

executive, therefore, the provisions for fixing a date of next session of new legislature in The Government of India Act of 1915 and 1919 was given up in the 1935 Act. This shows that elections in India were no longer based on the British conventions.

Under the Constitution of India, 1950, even these provisions have been departed from. While under the Government of India Act, 1935, the conduct of elections was vested in an executive authority, under the Constitution of India, a Constitutional authority was created under Art 324 for the superintendence, direction and conduct of elections. This body, called the Election Commission, is totally independent and impartial, and is free from any interference of the executive. This is a very noticeable difference between the Constitution of India and the Government of India Act, 1935 in respect of matters concerning elections for constituting the House of the People or the Legislative Assembly. It may be noted that Arts.85(1) and 174(1) which were physically borrowed from Govt. of India Act, 1935 were only for the purposes of providing the frequencies of sessions of existing Houses of Parliament and State Legislature, and they do not relate to dissolved Houses.

Constituent Assembly Debates with regard to Articles 85 & 174 of the Constitution

Draft Articles 69 and 153 correspond to Article 85 and Article 174 of the Constitution respectively. Article 69 dealt with the Parliament and Article 153 dealt with State Legislative Assembly. When the aforesaid two draft Articles were placed before the Constituent Assembly for discussion, there was not much debate on Draft Article 153. But there was a lot of discussion when Draft Article 69 was placed before the Constituent Assembly. Draft Articles 69 and 153 run as under:

" 69 (1) : The Houses of Parliament, shall be summoned to meet twice at least in every year, and six months shall not intervene between their last sitting in one session and the date appointed for their first sitting in the next session

(2) Subject to the provisions of this Article, the President may from time to time -

(a) summon the Houses or either House of Parliament to meet at such time and place as he thinks fit;

(b) prorogue the Houses;

(c) dissolve the House of the People.

153 (1) : The House or Houses of the Legislature of the State shall be summoned to meet twice at least in every year, and six months shall not intervene between their last sitting in one session and the date appointed for their first sitting in the next session.

(2) Subject to the provisions of this Article, the Governor may from time to time --

(a) summon the Houses or either House to meet at such time and place as he thinks fit;

(b) prorogue the House or Houses;

(c) dissolve the Legislative Assembly.

(3) The functions of the Governor under sub-clauses (a) and (c) of clause (2) of this Article shall be exercised by him in his

discretion".

On 18.5.1949, when Draft Article 69 came up for discussion, there was a proposal to change the intervening period between the two sessions of the Houses of Parliament from six months to three months so as to ensure that the Parliament has more time to look into the problems faced by the people of the country. Prof. K.T. Shah one of the members of the Constituent Assembly, while moving an amendment to the Draft Article 69, as it then stood, said that the Draft Article was based on other considerations prevailing during the British times, when the legislative work was not much and the House used to be summoned only for obtaining financial sanction. Shri H.V. Kamath while intervening in the debate emphasized on the need to have frequent sessions of the Houses of Parliament. He suggested that the Houses should meet at least thrice in each year. He pointed out that in the United States of America and the United Kingdom, the Legislatures sat for eight to nine months in a year as a result of which they were able to effectively discharged their parliamentary duties and responsibilities. He also emphasized that the period of business of transactions provided in the Federal or State Legislatures under the Government of India Act, 1935 were very short as there was not much business to be transacted then by those Legislatures. He also reiterated that the Houses of Parliament should sit more frequently so that the interests of the country are thoroughly debated upon and business is not rushed through. Prof K.T. Shah was very much concerned about the regular sitting of the Parliament and, therefore he moved an amendment 1478 which read as follows :

"at the end of Art 69(2) (c), the following proviso is to be added:

Provided that if any time the President does not summon as provided for in this Constitution for more than three months the House of the People or either House of Parliament at any time after the dissolution of the House of the People, or during the currency of the lifetime of the House of the People for a period of more than 90 days, the Speaker of the House of the People or the Chairman of the Council of States may summon each his respective House which shall then be deemed to have been validly summoned and entitled to deal with any business placed or coming before it".

Further, Prof KT Shah also moved amendment No. 1483, which provided for insertion of Cl. (3) after Art 69(2), and a proviso thereto, which is very relevant. Clause (3) runs as under:

"(3): If any time the President is unable or unwilling to summon Parliament for more than three months after the prorogation or dissolution of the House of the People and there is in the opinion of the Prime Minister a National Emergency he shall request the Speaker and the Chairman of the Council of States to summon both Houses of Parliament, and place before it such business as may be necessary to cope with the National Emergency. Any business done in either House of Parliament thus called together shall be deemed to have been validly transacted, and shall be valid and binding as any Act, Resolution or Order of Parliament passed in the normal course:

Provided further that if at any time the President is unable or unwilling to summon Parliament for a period of more than three months or 90 days after prorogation or dissolution of the House of the People, and the Prime Minister is also unable or unwilling to make the request aforesaid, the Chairman of either Houses of Parliament thus called together shall be deemed to be validly convened and entitled to deal with any business places before it".

Shri B.R.Ambedkar, while replying to the aforesaid proposed amendment, highlighted that after the Constitution comes into force, no executive could afford to show a callous attitude towards the legislature, which was not the situation before as the legislature was summoned only to pass revenue demands. Since there was no possibility of the executive showing a callous attitude towards the legislature, this would take care of the fear voiced by some members that no efforts to go beyond the minimum mandatory sittings of the Houses of Parliament would be made. He further dwelled on the fact that the clause provided for minimum mandatory sittings in a year so that if the need arose, the Parliament could sit more often and if more frequent sessions were made mandatory, the sessions could be so frequent and lengthy that members would grow tired.

From the aforesaid debates, it is very much manifest that Articles 85 and Article 174 were enacted on the pattern of Sections 19(1) and 62(1) of the Government of India Act, 1935 respectively which dealt with the frequency of sessions of the existing Legislative Assembly and were not intended to provide any period of limitation for holding elections for constituting new House of the People or Legislative Assembly in the event of their premature dissolution. Further, the suggestions to reduce the intervening period between the two sessions to three months from six months so that Parliament could sit for longer duration to transact the business shows that it was intended for existing Houses of Parliament and not dissolved ones, as a dissolved House cannot sit and transact legislative business at all.

It is interesting to note that during the debate Prof K.T.Shah suggested amendment Nos. 1478 and 1483, quoted above, which specifically contemplated the possibility of a dissolved House of the People and convening of the Council of States in an emergency session by the President or the Speaker if the circumstances so necessitated. Even these amendments were not accepted. This shows that Draft Article 69 was visualized in the context of a scenario applicable only to a living and functional House and that the stipulation of six months intervening period between the two sessions is inapplicable to a dissolved House.

Moreover, it may be noticed that if the suggestion put forth during the course of the debate that the Houses of Parliament should sit for eight to nine months in a year was accepted, it would not have given sufficient time for holding fresh elections in the event of premature dissolution of either Parliament or Legislative Assembly and it would also have led to a breach of Constitutional provisions. This also shows that what is contained in Article 174(1) is meant only for an existing and functional House. In a further scenario, if the suggestion during the debate for reducing the intervening period from six months to three months were accepted, it would mean that after premature dissolution of the Houses of People or the Legislative Assembly, fresh elections have to be held so that House of People or Legislative Assembly could hold their first sitting within three months from the date of last sitting of the dissolved Parliament or Legislative Assembly, as the case may be. This would also have not allowed sufficient time for holding election for constituting either House of People or a Legislative Assembly. This shows that the intention of the framers of the Constitution was that the provisions contained in Article 174 were meant for a living and existing Legislative Assembly and not to a dissolved Legislative Assembly.

Debates during the Constitution First Amendment Bill regarding amendment of Article 85 and Article 174

The original Articles 85 and 174 as they stood prior to first Constitution Amendment and after the Amendment read as follows :

|                                 |           |                                           |                                                  |
|---------------------------------|-----------|-------------------------------------------|--------------------------------------------------|
| <br> <br> Article<br>tution<br> | <br> <br> | Original Articles in the Constitution<br> | <br>As amended by Consti<br>(Amendment) Act 1951 |
|---------------------------------|-----------|-------------------------------------------|--------------------------------------------------|

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|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Article 85<br>to time<br>Sessions of<br>nt to<br>Parliament,<br>thinks<br>Prorogation &<br>intervene<br>Dissolution.<br>sion and                                                                                              | (1) the Houses of Parliament shall be summoned to meet twice at least in every year, and six months shall not intervene between their last sitting in one session and the date appointed for their first sitting in the next session.<br>(2) Subject to the provisions of cl. (1), the President may from time to time -<br>(a) Summon the Houses or either House to meet at such time & Place as he thinks fit;<br>(b) Prorogue the Houses;<br>(c) Dissolve the House of the People | (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.<br>(2) The President may from time to time -<br>(a) Prorogue the Houses of either House<br>(b) Dissolve the House of the People                    |
| Article 174<br>time to<br>Sessions of the<br>to<br>State Legislature<br>te to meet<br>Prorogation &<br>s<br>Dissolution<br>not inter-<br>g in one<br>pointed for<br>t session.<br><br>m time<br><br>either<br><br>ve Assembly | (1) The House or Houses of the State shall be summoned to meet twice at least in every year, and six months shall not intervene between their last sitting in one Session and the date appointed for their first sitting in the next session.<br>(2) Subject to the provisions of cl. (1), the Governor may from time to time -<br>(a) summon the House or either House to meet at such time and place as he thinks fit;<br>(b) prorogue the House or Houses                         | (1) the Governor shall from time to time summon the House or each House of the Legislature of the State 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.<br>(2) the Governor may from time to time -<br>(a) prorogue the House or House;<br>(b) dissolve Legislative Assembly |

The aforesaid original Articles show that what was mandated was that the Houses of Parliament and State Legislature were required to meet at least twice in a year and six months shall not intervene between the last sitting in one session and the date appointed for their first sitting in the next session. This resulted in absurdity. If it was found that the session then had been going on continuously for

12 months, technically it could have been contended that the Parliament had not met twice in that year at all as there must be prorogation in order that there may be new session and, therefore, the original Article 174(1) resulted in contradictions. In order to remove the said absurdity, the First Amendment Bill for amendment of Articles 85 and 174 was moved. While introducing the First Amendment Bill, Pt Jawahar Lal Nehru stated thus:

"one of the Articles mentions that the House shall meet at least twice every year and the President shall address it. Now a possible interpretation of that is that this House has not met at all this year. It is an extraordinary position considering that this time this House has laboured more than probably at any time in the previous history of this or the preceding Parliament in this country. We have been practically sitting with an interval round about Xmas since November and we are likely to carry on and yet it may be held by some acute interpreters that we have not met at all this year strictly in terms of the Constitution because we started meeting November and we have not met again it has not been prorogued the President has not addressed the Parliament this year. Put in the extreme way, suppose this House met for the full year without break except short breaks, it worked for 12 months, then it may be said under the strict letter of the law that it has not met all this year. Of course that Article was meant not to come in the way of our work but to come in the way of our leisure. It was indeed meant and it must meet at least twice a year and there should not be more than six months interval between the meetings. It did not want any government of the day to simply sit tight without the House meeting." (emphasis mine)

While intervening in the debate, Dr. B.R. Ambedkar stated thus:

" .due to the word summon, the result is that although Parliament may sit for the whose year adjoining from time to time, it is still capable of being said that Parliament has been summoned only once and not twice. There must be prorogation in order that there may be a new session. It is felt that this difficulty should be removed and consequently the first part of it has been deleted. The provision that whenever there is a prorogation of Parliament, the new session shall be called within six months is retained."

(emphasis mine)

Even other members of the Parliament who participated in the debate with regard to the proposed amendment of Article 85 and Article 174 were concerned only with the current session and working of the existing House of the People. The proceedings of the debate further show that the entire debate revolved around prorogation and summoning. There was no discussion as regards dissolution or Constitution of the House at all and the amendment was sought to remove the absurdity which has crept into the original Articles 85 and 174. For these reasons we are of the view that Art.174(1) is inapplicable to a dissolved Assembly.

Textually

The question at hand may be examined from another angle. As noticed earlier, the language employed in Article 85 and Article 174 is plain and simple and it does not contemplate an interval of six months between the last sitting in one session and the date appointed for its first sitting in the next session of the new Assembly after premature dissolution of Assembly. Yet we will examine Article 174 textually also.

Article 174 shows that the expression 'date appointed for its first sitting in the next session' in Article 174 (1) cannot possibly refer to either an event after the

dissolution of the House or an event of a new Legislative Assembly meeting for the first time after getting freshly elected. When there is a session of the new Legislative Assembly after elections, the new Assembly will sit in its "first session" and not in the "next session". The expression 'after each general election' has been employed in other parts of the Constitution and one such provision is Article 176. The absence of such phraseology 'after each general election' in Article 174 is a clear indication that the said Article does not apply to a dissolved Assembly or to a freshly elected Assembly. Further, Article 174(1) uses expressions i.e. 'its last sitting in one session', 'first sitting in the next session'. None of these expressions suggest that the sitting and the session would include an altogether different Assembly i.e. a previous Assembly which has been dissolved and its successor Assembly that has come into being after elections. Again, Article 174 also employs the word 'summon' and not 'constitute'. Article 174 empowers the Governor to summon an Assembly which can only be an existing Assembly. The Constitution of an Assembly can only be under Sec 73 of the Representation of the People Act, 1951 and the requirement of Art 188 of the Constitution suggests that the Assembly comes into existence even before its first sitting commences.

Again, Article 174 contemplates a session, i.e. sitting of an existing Assembly and not a new Assembly after dissolution and this can be appreciated from the expression 'its last sitting in one session and its first sitting in the next session'. Further, the marginal note 'sessions' occurring in Articles 85 and 174 is an unambiguous term and refers to an existing Assembly which a Governor can summon. When the term 'session or sessions' is used, it is employed in the context of a particular Assembly or a particular House of the People and not the legislative body whose life is terminated after dissolution. Dissolution ends the life of legislature and brings an end to all business. The entire chain of sittings and sessions gets broken and there is no next session or the first sitting of the next session after the House itself has ceased to exist. Dissolution of Legislative Assembly ends the representative capacity of legislators and terminates the responsibility of the Cabinet to the members of the Lok Sabha or the Legislative Assembly, as the case may be.

The act of summoning, sitting, adjourning, proroguing or dissolving of the Legislature is necessarily referable to an Assembly in praesenti i.e. an existing, functional legislature and has nothing to do with the Legislative Assembly which is not in existence. It is well understood that a dissolved House is incapable of being summoned or prorogued and in this view of the matter also Article 174(1) has no application to a dissolved Legislative Assembly, as nothing survives after dissolution.

#### Conceptually

Yet, Art 174 may be examined conceptually. Conceptually, Article 174 deals with a live legislature. The purpose and object of the said provision is to ensure that an existing legislature meets at least every six months, as it is only an existing legislature that can be prorogued or dissolved. Thus Article 174 which is a complete code in itself deals only with a live legislature.

Article 174(1) shows that it does not provide that its stipulation is applicable to a dissolved legislature as well. Further, Article 174 does not specify that interregnum of six months period stipulated between the two sessions would also apply to a new legislature vis--vis an outgoing legislature. If such be the case, then there was no need to insert the proviso to Article 172(1) and insertion of the said proviso is rendered meaningless and superfluous.

Further, if Article 174 is held to be applicable to a dissolved House as well, it would mean that Article 174(2) is controlled by Article 174(1) inasmuch as the power has to be exercised under Article 174(2) in conformity with Article 174(1). Moreover, if the House is dissolved in 5th month of the last session, the election will have to be held within one month so as to comply with the requirement of Article 174(1) which would not have been the intention of the framers of the Constitution.

Yet, there is another aspect which shows that Article 174(1) is inapplicable

to a dissolved Legislative Assembly. It cannot be disputed that each Legislative Assembly after Constitution is unique and distinct from the previous one and no part of the dissolved House is carried forward to a new Legislative Assembly. Therefore, Article 174(1) does not link the last session of the dissolved House with the newly formed one.

The distinction between frequency of sessions and periodicity of the elections

A perusal of Articles 172 and 174 would show that there is a distinction between the frequency of meetings of an existing Assembly and periodicity of elections in respect of a dissolved Assembly which are governed by the aforesaid provisions.

As far as frequency of meetings of Assembly is concerned, the six months rule is mandatory, while as far as periodicity of election is concerned, there is no six months rule either expressly or impliedly in Article 174. Therefore, it cannot be held that Article 174 is applicable to dissolved House and also provides for period of limitation within which the Election Commission is required to hold fresh election for constituting the new Legislative Assembly.

Whether, under the British Parliamentary practice a proclamation which on the one hand dissolves an existing Parliament and on the other fixes a date of next session of new Parliament is embodied in article 174 of the Constitution.

(2)

It was also urged on behalf of the Union of India that Indian Constitution is enacted on pattern of Westminster system of parliamentary democracy and, therefore, election has to be held within the stipulated time following the British conventions as reflected in Article 174(1) of the Constitution. It was urged that since the Parliament was a single entity with the responsibility to debate matters affecting public interest on a continuous basis, it was most appropriate that long gaps were not there between its sessions.

(2)

Learned counsel relied upon certain passages from several books in support of his contention which run as under :

Erskine May's Treatise on the Law, Privileges, Proceedings and Usage of Parliament 21st Edn.: "'A Parliament' in the sense of a parliamentary period, is a period not exceeding five years which may be regarded as a cycle beginning and ending with a proclamation. Such a proclamation on the one hand dissolves an existing Parliament, and on the other, orders the issue of writs for the election of a new Parliament and appoints the day and place for its meeting. This period, of course, contains an interregnum between the dissolution of a Parliament and the meeting of its successor during which there is no Parliament in existence; but the principle of unbroken continuity of Parliament is for all practical purposes secured by the fact that the same proclamation which dissolves a Parliament provides for the election and meeting of a new Parliament. A session is the period of time between the meeting of a Parliament, whether after a prorogation or a dissolution, and its prorogation."

JAG Griffith and Michael Ryle, Parliament: Functions, Practice and Procedures, 1989: "A Parliament is summoned by the Sovereign to meet after each general election and the duration of a Parliament is from that first meeting until Parliament is dissolved by



the Sovereign, prior to the next general election.

The continuity of Parliament is today secured by including in the same proclamation the dissolution of one Parliament, the order for the issuing of writs for the election of a new Parliament and the summoning of that Parliament on a specified date at Westminster. Under Sec 21(3) of the Representation of People Act, 1918, the interval between the date of the proclamation and the meeting of Parliament must be not less than 20 days, although this period can be further extended by proclamation. During this interval the general election is held."

(2)

Passages relied upon by the learned counsel are extremely inappropriate in the Indian context for holding elections for constituting either House of the People or the Legislative Assembly. As is clear from the passages themselves, under British Parliamentary system, it is the exclusive right of the Monarch to dissolve the Parliament and the Monarch by the same proclamation also provides for the election and meeting of its successor, which is not the case under the Indian Constitution. Under the Indian Constitution, the power has been entrusted to the Election Commission under Article 324 to conduct, supervise, control and direction and, therefore, the British convention cannot be pressed into service. In our democratic system, the Election Commission is the only authority to conduct and fix dates for fresh elections for constituting new House of People or Legislative Assembly, as the case may be. However, it is true that in the year 2000, Electoral Commission has been constituted in England by the Political Parties, Elections and Referendums Act, 2000, but the conventions sought to be relied upon are prior to the year 2000 and the Election Commission also does not have the power to fix dates for holding elections for constituting the House of Commons. Therefore, the British conventions cannot be said to be reflected in Article 174. Yet another reason why the British convention for fixing a date for newly constituted Parliament cannot be applied in India is that under British Parliamentary system, there is a continuity of Parliament, whereas in India once the Parliament gets dissolved, all the business which is to be transacted comes to an end and the House of People cannot be revived.

Is there any difference between the British Parliamentary practice and Parliamentary practice under the Indian Constitution as regards Prorogation, Adjournment and Dissolution ?

(2)

In this context, learned counsel appearing for Union of India also relied upon the following passages from Erskine May, Parliamentary Practice, 20th Edn. as regards Prorogation, Adjournment and Dissolution under British conventions and argued that the session is the period of time between the meeting of a Parliament whether after prorogation or dissolution. According to learned counsel there is continuity in the Parliament and it forms an unbroken chain. In substance the argument is that consequences of prorogation or dissolution of a House is the same and therefore, Art.174(1) is applicable to new Legislative Assembly after dissolution.

Prorogation

The effect of a prorogation is once to terminate all the current business of Parliament. Not only are the sittings of the parliament at an end, but all proceedings pending at the time are quashed, except impeachments by the Commons, and appeals before the House of Lords. Every bill must therefore be renewed after a prorogation, as if it had never been introduced.

Adjournment

Adjournment is solely in the power of each House respectively: though the pleasure of the Crown has occasionally been signified in person, by message, commission or proclamation, that both Houses should adjourn; and in some cases such adjournments have scarcely differed from

prorogations. But although no instance has occurred where the House has refused to adjourn, the communication may be disregarded.

#### Dissolution

The Queen may also close the existence of Parliament by a dissolution, but is not entirely free to define the duration of the Parliament. Parliament is usually dissolved by a proclamation under great seal, after having been prorogued to a certain day, but such a proclamation has been issued at a time when both Houses stood adjourned. This proclamation is issued by the Queen, with the advice of her Privy Council; and announces that the Queen has given orders to the Lord Chancellor of Great Britain and the Secretary of State for Northern Ireland to issue out writs in due form, and according to law, for calling a new Parliament; and the writs are to be returnable in due course of law.

(2)

The aforesaid passages relied upon by learned counsel are wholly inapplicable in the context of Indian Constitution. Under Art.85(2) when the President on the advice of the Prime Minister prorogues the House, there is termination of a session of the House and this is called prorogation. When the House is prorogued all the pending proceedings of the House are not quashed and pending Bills do not lapse. The prorogation of the House may take place at any time either after the adjournment of the House or even while the House is sitting. An adjournment of the House contemplates postponement of the sitting or proceedings of either House to reassemble on another specified date. During currency of a session the House may be adjourned for a day or more than a day. Adjournment of the House is also sine die. When a house is adjourned, pending proceedings or Bills do not lapse. So far as, the dissolution of either House of the People or State Legislative Assembly is concerned, the same takes place on expiration of the period of five years from the date appointed for its first meeting or under Art.85(2) or Art.174(2). It is only an existing or functional Lok Sabha or Legislative Assembly which is capable of being dissolved. A dissolution brings an end to the life of the House of the People or State Legislative Assembly and the same cannot be revived by the President. When dissolution of House of the People or State Legislative Assembly takes place all pending proceedings stand terminated and pending Bill lapses and such proceedings and Bills are not carried over to the new House of the People or State Legislative Assembly when they are constituted after fresh elections.

From the afore-mentioned passages relied upon, it is apparent that there is a difference in the British parliamentary practice and the Indian practice under the Indian Constitution as regards dissolution and prorogation. Under Indian Constitution dissolution brings a legislative body to an end and terminates its life. Prorogation, on the other hand, only terminates a session and does not preclude another session, unless it is coincident with the end of a legislative term. In other words, prorogation, unlike dissolution, does not affect the life of the legislative body which may continue from the last session until brought to an end by dissolution. This is the difference in the meaning of prorogation and dissolution. In so far as the effects following from prorogation and dissolution on pending legislative business are concerned, in England, prorogation puts an end to all pending business in the Parliament, whereas in India, this is not the case. Under Articles 107 and 196, there is a specific provision that mere prorogation will not lead to lapsing of Bills pending at that point of time. It is only on dissolution that the pending Bills lapse under Articles 107(5) and 196(5) of the Constitution. Thus, we see that there is practically no difference in the effects following prorogation and dissolution in England, which difference is specifically contemplated under the India Constitution. In England, dissolution does not bring with it any special or additional consequences apart from those that attend upon prorogation. Therefore, the British convention with respect to summoning, proroguing and dissolution of the House of Commons is also of not much relevance in the Indian context.

From the above, the irresistible conclusion is that Article 174(1) is neither applicable to a dissolved House nor does it provide for any period for holding election for constituting fresh Legislative Assembly.

Whether the expression "the House" is a permanent body and is different than the House of People or the Legislative Assembly under Articles 85 and 174 of the Constitution.

(2)

It was then urged on behalf of the Union that under Article 174 what is dissolved is an Assembly while what is prorogued is a House. Even when an Assembly is dissolved, the House continues to be in existence. The Speaker continues under Art 94 in the case of the House of the People or under Art 179 in the case of the State Legislative Assembly till the new House of the People or the Assembly is constituted. On that premise, it was further urged that the fresh elections for constituting new Legislative Assembly has to be held within six months from the last session of the dissolved Assembly.

At first glance, the argument appeared to be very attractive, but after going deeper into the matter we do not find any substance for the reasons stated hereinafter.

Drafting the text of a Statute or a Constitution is not just an art but is a skill. It is not disputed that a good legislation is that the text of which is plain, simple, unambiguous, precise and there is no repetition of words or usage of superfluous language. The skill of a draftsman in the context of drafting a Statute or the Constitution lies in brevity and employment of appropriate phraseology wherein superfluous words or repetitive words are avoided. It appears that the aforesaid principle was kept in mind while drafting the Government of India Act, 1915, the Government of India Act, 1919, and the Government of India Act 1935. The draftsman of the Constitution of India has taken care to maintain brevity and the phraseology used is such that there is no ambiguity while making provisions for the Constitutional institutions in the provisions of the Constitution.

In this background, wherever the Constitution makers wanted to confer power, duties or functions or wanted to make similar provisions both for Council of States as well as House of the People or to the State, Legislative Council and the Legislative Assembly, they have referred both the institutions under Part V Chapter II and Part VI Chapter III of the Constitution as 'two Houses', 'each House', 'either House' & 'both Houses'. On the other hand, the Constitution makers, when they wanted to confer powers, functions and duties or to make provisions exclusively either for House of the People or Council of States, they have referred the said institutions either as Council of States or House of the People. Similarly, in States when the Constitution makers wanted to confer power, functions, duties or wanted to make similar provisions both for the Legislative Council and the Legislative Assembly, they referred both the institutions as 'Houses', 'either House', 'both Houses', 'each House' and where there was no Legislative Council, and power was to give exclusively to Legislative Assembly, it is referred as Legislative Assembly. The aforesaid pattern of drafting has been borrowed from Government of India Acts, 1915, 1919 and 1935 which we shall notice hereinafter.

Section 63 of Government of India Act, 1915 provided that Indian Legislature shall consist of the Governor General and two Chambers viz., Council of State and Legislative Assembly. Section 63D(1)(a) provided that either Chamber of the Legislature may be summoned/dissolved by the Governor General. The expression 'Chamber' here is analogous to the expression 'House'. Under Section 63D(1)(c) of the Act, after the dissolution of either Chamber, the Governor General was required to appoint a date not more than six months or with the sanction of the Secretary of the State not more than nine months after the date of dissolution for the next session of the Chamber. Since both the "Chambers" were subject to dissolution, therefore, under Section 63D(1)(c) both the Council of States and Legislative Assembly have been referred as 'either Chamber', and not as 'Council of States or Legislative Assembly'. This shows that the expressions "either Chamber" are referable to Council of States as well as Legislative Assembly. Under Government of India Act, 1919 again, the Indian Legislature consisted of the Governor General and two Chambers viz., Council of States and the Legislative Assembly. Under Section 21(1)(a) of the Act, "either Chamber" of the Legislature could be dissolved by the Governor General and under Section 21(1)(c) it was provided that after dissolution of either Chamber, the Governor General shall appoint a date not more than six months or with the sanction of the Secretary of the State not more than nine months after the date of dissolution, the next session. This provision is in pari materia with Section 63D of Government of

India Act, 1915. In this case also, we find that since both the Chambers viz., Council of State and Legislative Assembly were subjected to dissolution, therefore, in Section 21(1)(c) the Council of State or Legislative Assembly both were referred to as 'either Chamber' and not as Council of State or Legislative Assembly.

Section 18 of Government of India Act, 1935 provided that the Federal Legislature was to consist of His Majesty represented by Governor General and two Chambers to be known respectively as 'Council of State' and Federal Assembly'. Under sub-section (4) of Section 18 of the 1935 Act, the Council of State was made a permanent body not subject to dissolution, but as many as 1/3rd members thereof shall retire in every third year, in accordance with the provisions in that behalf contained in the First Schedule. Sub-section (2) of Section 19 of the Government of India Act, 1935 which is similar to Article 85 of the Constitution of India, provided that the Governor General may in his discretion summon the Chambers or either Chamber to meet at such time as he deems fit, prorogue the Chamber and dissolve the Federal Assembly. In this case, the dissolution is not of Chambers, but of the Federal Assembly for the simple reason that Council of State was made a permanent body not subject to dissolution and, therefore, the Federal Assembly which was subjected to dissolution has been specifically referred in the Section.

In Government of India Act, 1935, there was a provincial legislature and under Section 60 of the Act, it was provided that there shall provincial legislature which shall consist of His Majesty represented by the Governor and in the provinces of Madras, Bombay and Bengal and United Provinces Bihar and Assam there shall be two Chambers and in other provinces one Chamber. In Sub-section (2) thereof, it was further provided that where there are two Chambers of the Provincial Legislature, they shall be known as Legislative Council and Legislative Assembly and where there is one Chamber the same will be known as Legislative Assembly. Sub-section (3) of Section 61 provided that every Legislative Council shall be a permanent body not subject to dissolution. Sub-section (2) of Section 62 of the Act provided that Governor may in his discretion from time to time summon the Chambers or either Chamber, prorogue the Chamber or Chambers and dissolve the Legislative Assembly. This provision is *pari materia* with Art 174 of the Constitution of India. In this case also, it is very much clear that since Legislative Council has been made a permanent body and the Legislative Assembly was subjected to dissolution, therefore, the expression 'Chamber' has not been employed for the Legislative Assembly, but expressly Legislative Assembly has been mentioned.

Coming to the Constitution of India, Article 85 is in *pari materia* with Section 19 of the Government of India Act, 1935. Similarly Article 174 is in *pari materia* with Section 62 of Government of India Act, 1935. Article 79 of Constitution of India provides that there shall be a Parliament for the Union which shall consist of President and two Houses respectively to be known as Council of States and House of People. Article 83 provides that the Council of States shall not be subject to dissolution. Article 85 provides that the President may, from time to time, prorogue the Houses or either House and dissolve the House of People.

Here again, since Council of States is a permanent body and not liable to dissolution, therefore, instead of using the expression 'either House', the expression 'House of People' has been employed, the same being liable to dissolution. The same thing holds for the State Legislature under Art 168, Art 172 and Art 174 of the Constitution.

From the aforesaid provisions, it is clear that the expressions "Houses", "both Houses" and "either House" and "the House" are used synonymously with the institutions known as Council of States and House of the People and are interchangeable expressions.

The matter may also be examined from another angle. Under Article 86, the President is empowered to specially address either House of Parliament or both Houses assembled together. Similarly, under Article 87, the President is empowered to address both Houses of Parliament assembled together. Under Article 88, every Minister and Attorney General has a right to speak or take part in the proceedings of either House. Article 98 provides that each House of Parliament shall have a Secretariat Staff and under clause (2) thereof, the Parliament is empowered to make law for regulating the appointment and conditions of services of persons appointed to the Secretariat staff of either House of Parliament. Article 99 provides that every member of either House of Parliament shall, before taking his seat, make and subscribe before the President,

or some person appointed in that behalf by him an oath or affirmation according to the form set out for the purpose in the Third Schedule. Article 100 provides that all questions at any sitting of either House or joint sitting of the Houses shall be determined by a majority of votes of the members present and voting, other than the Speaker or person acting as Chairman or Speaker. Article 101 provides that no person shall be a member of both Houses of Parliament. Similarly, Article 102 uses the expression 'either House of Parliament'. Article 103 again uses the expression 'either House of Parliament'. Articles 104, 106 and 107 also use the expression 'either House of Parliament'. This shows that the Constitution framers, wherever they wanted to make similar provisions for both Council of States and House of the People, have used the expressions "House", "either House", "both Houses", "Houses" only for the purpose of maintaining brevity and to avoid using Council of States and House of the People again and again.

Analogous provisions are found in the provisions dealing with the State Legislature under Part VI Chapter III of the Constitution. Article 168 provides that for every State, there shall be a Legislature which shall consist of the Governor and in the States of Bihar, Maharashtra, Karnataka and Uttar Pradesh two Houses and in other States one House. Sub-clause (2) thereof further provides that where there are two Houses, one shall be known as the Legislative Council and the other as the Legislative Assembly, and where there is only one House it shall be known as Legislative Assembly. Sub-clause (2) of Article 172 provides that the Legislative Council of a State is a permanent body which is not subject to dissolution. Under Article 174(1), the Governor is empowered to summon the House or each House of Legislature of the State to meet at such time and place as he deems 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. Under clause (2) of Article 174 the Governor has power to prorogue the House or either House and dissolve the Legislative Assembly. Here again, we find that since Legislative Council is a permanent body, it cannot be dissolved and therefore, the expression 'Houses' does not find place in Clause (2)(b) of Art.174.

Similarly, in the case of State Legislature, there are provisions where the Constitution makers have used the expression 'either House' 'both Houses' and 'Houses of Legislature' wherever they intended to apply similar provisions to both the Legislative Council as well as Legislative Assembly.

Article 175 empowers the Governor to address 'both the Houses assembled together' and his power to send messages to 'Houses of Legislature' of the State. Article 176 provides for a special address by the Governor to both the 'Houses' assembled together. Article 177 speaks of the rights of ministers and Advocate General to speak in and take part in the proceedings of 'both Houses'. Article 187 dealing with Secretariat of the State Legislature uses the expressions, 'the House', 'each House', 'common to both Houses' and 'Houses'. The head note of Article 189 reads: "voting in Houses, power of Houses". Article 190 also refers to 'both Houses'. Article 196, uses the expressions 'either House', 'both Houses', and 'Houses' while referring to both the Legislative Assembly and Legislative Council. Similarly, Article 197(2) also provides for passage of a Bill by the 'Houses of the Legislature' of the State. Article 202 and Article 209 also use the expression 'Houses' while referring to both the Legislative Assembly and Legislative Council. These provisions may be contrasted with Articles 169, 170, 171, 178, 179, 180, 181, 182, 183, 184, 185 and Article 186 which deal exclusively either with the Legislative Council or the Legislative Assembly. Similarly, Articles 197 and 198 also mention Legislative Assembly and Legislative Council separately. Thus, the Constitution makers have specifically referred to Legislative Assembly and the Legislative Council wherever there was a need to do so. Moreover, Articles 188, 191 and 193 while dealing with the respective matters specified therein mention both Legislative Assembly or Legislative council separately. Since the Constitution was being drafted for the entire country and not for a particular State, the Constitution framers thought it fit to specify the Legislative Assembly or Legislative Council separately to avoid confusion in States having just the Legislative Assembly and not the Legislative Council.

It may be noted here that there is a difference in phraseology used in Arts. 99 and 188, which deal with oath or affirmation of members, Arts.103 and 191, which deal with disqualification of members and Arts.104 and 193 which deal with penalty for sitting and voting before making oath or affirmation or when not qualified or disqualified. Articles 99, 103 and 104 employ the expression 'either House' while Arts.188, 191 and 193 mention "Legislative Assembly or Legislative

Council". This difference in phraseology can be explained on the basis of the fact that there are many states where there is no Legislative Council, and therefore, in this context, use of the expression "either House" in Arts.188, 191 and 193 could have been misleading.

From the aforesaid provisions, it is manifest that there is no distinction between the 'House' and 'Legislative Assembly'. Wherever the Constitution makers wanted to make similar provisions for Legislative Council as well as Legislative Assembly, both together have been referred to as Houses and wherever the Constitution makers wanted to make a provisions exclusively for the Legislative Assembly, it has been referred to as Legislative Assembly. For the aforesaid reasons our conclusion is that the expressions "The House" or "either House" in clause (2) of Art.174 of the Constitution and Legislative Assembly are synonymous and are interchangeable expressions. The use of expression "the House" denotes the skill of Draftsman using appropriate phraseology in the text of the Constitution of India. Further the employment of expressions "the House or "either House" do not refer to different bodies other than the Legislative Assembly or the legislative Council, as the case may be, and have no further significance.

2.(a) Is there any period of limitation provided under the Constitution of India or Representation of the People Act for holding fresh election for constituting new Legislative Assembly in the event of premature dissolution of a Legislative Assembly ?

In this context, we have looked into the provisions of the Constitution of India, but we do not find any provision expressly providing for any period of limitation for constituting a fresh Legislative Assembly on the premature dissolution of the previous Legislative Assembly. On our interpretation of Article 174 (1), we have already held that it does not provide for any period of limitation for holding elections within six months from the date of last sitting of the session of the dissolved Assembly. Section 15 of the Representation of the People Act, 1951 provides that general election is required to be held for the purpose of constituting a new Legislative Assembly on the expiration of duration of the existing Assembly or on its dissolution. Sub-section (2) thereof provides that for constituting new Legislative Assembly, the Governor shall by notification, on such date or dates, as may be recommended by the Election Commission, call upon all Assembly constituencies in the State to elect members in accordance with the provisions of the Act, rules and orders made thereunder. The proviso to sub-section (2) of Section 15 of the Act provides that where an election is held otherwise than on the dissolution of the existing Legislative Assembly, no such notification shall be issued at any time earlier than six months prior to the dates on which the duration of that Assembly would expire under the provision of clause (1) of Article 172.

The aforesaid provisions also do not provide for any period of limitation for holding elections for constituting new Legislative Assembly in the event of premature dissolution of an existing Legislative Assembly, excepting that election process can be set in motion by issuing a notification six months prior to the date on which the normal duration of the Assembly expires. Thus, the question arises as to whether the Constitution framers have omitted by oversight to provide any such period for holding election for constituting new Assembly in an event of premature dissolution or it was purposely not provided for in the Constitution. For that purpose, we must look into the legislative developments and the Constitutional debates preceding the enactment of Constitution of India.

As earlier noticed, Sections 63D and 72B(1) of the Government of India Act, 1915 and Sections 8(1) and 21(1) of the Government of India Act, 1919 empowered the Governor General in case of Indian Legislature and the Governor in case of Provincial Legislature to dissolve either chambers sooner than their stipulated period and appoint a date, not more than six months or, with the sanction of the Secretary of the State, not more than nine months from the date of dissolution for the next session of that Chamber. Thus the statutes themselves provided a period of limitation within which elections were to be held for constituting the new Chamber. The power of the Governor General to fix a date for the next chamber was similar to the powers exercised by the British Monarch historically under the British conventions.

However, in Government of India Act, 1935, the period of limitation fixed for holding election for constituting Legislative Council and Legislative Assembly

were dispensed with and under Schedule V, Para 20 to the Government of India Act, 1935, the Governor General was empowered to make rules for carrying out the provisions of the Vth and VIth Schedule. Para 20 thereof as a whole, related to matters consisting of elections and clause (3) particularly pertains to conduct of elections. Similarly, Schedule VI of Government of India Act, 1935 contained provisions with respect to electoral roll and franchise. Thus, the conduct of election was entrusted to the Executive and the Executive was empowered to fix the date or dates for holding elections for constituting Federal Legislature as well as Provincial Legislature.

When the question, who would conduct the elections under Indian Constitution was debated upon before the Constituent Assembly, concerns were expressed by the members of the Constituent Assembly in entrusting the same in the hands of the Executive and, in fact, there was unanimity among the members that an independent Constitutional Authority be set up for superintendence, direction, control and the conduct of elections to Parliament and Legislature of every State. In this connection, Dr. B.R. Ambedkar stated before the Constituent Assembly thus:

"But the House affirmed without any kind of dissent that in the interest of purity and freedom of elections to the legislative bodies, it was of the utmost importance that they should be freed from any kind of interference from the executive of the day. In pursuance of the decision of the House, the Drafting Committee removed this question from the category of Fundamental Rights and put it in a separate part containing Articles 289, 290 and so on. Therefore, so far as the fundamental question is concerned that the election machinery should be outside the control of the executive Government, there has been no dispute. What Article 289 does is to carry out that part of the decision of the Constituent Assembly. It transfers the superintendence, direction and control of the preparation of the electoral rolls and of all elections to Parliament and the Legislatures of States to a body outside the executive to be called the Election Commission."

It is in light of the aforesaid discussion, Article 324 was enacted and the superintendence, direction, control and conduct of election was no more left in the hands of the Executive but was entrusted to an autonomous Constitutional Authority i.e. the Election Commission. It appears that since the entire matter relating to the elections was entrusted to the Election Commission, it was found to be a matter of no consequence to provide any period of limitation for holding fresh election for constituting new Legislative Assembly in the event of premature dissolution. This was deliberate and conscious decision. However, care was taken not to leave the entire matter in the hands of the Election Commission and, therefore, under Article 327 read with Entry 72 of List I of VIIth Schedule of the Constitution, Parliament was given power subject to the provisions of the Constitution to make provisions with respect to matters relating to or in connection with the election of either House of Parliament or State Legislature, as the case may be, including preparation of electoral roll. For the States also, under Article 328 read with Entry 37 of List II, the Legislature was empowered to make provisions subject to the provisions of the Constitution with respect to matters relating to or in connection with election of either House of Parliament or State Legislature, including preparation of electoral roll. Thus, the Parliament was empowered to make law as regards matters relating to conduct of election of either Parliament or State Legislature, without affecting the plenary powers of the Election Commission. In this view of the matter, the general power of superintendence, direction, control and conduct of election although vested in the Election Commission under Article 324(1), yet it is subject to any law either made by the Parliament or State Legislature, as the case may be which is also subject to the provisions of the Constitution. The word 'election' has been interpreted to include all the steps necessary for holding election. In *M.S. Gill vs. Chief Election Commissioner* (supra), *A.C. Jose vs. Sivan Pillai and others* (1984) 2 SCC 656 and *Kanhiya Lal Omar vs. R.K. Trivedi and others* (1985) 4 SCC 628, it has been consistently held that Article 324 operates in the area left unoccupied by legislation and the words 'superintendence, 'control' 'direction' as well as 'conduct of all elections' are the broadest of the terms. Therefore, it is no more in doubt that the power of superintendence, direction and control are subject to law

made by either Parliament or by the State Legislature, as the case may provided the same does not encroach upon the plenary powers of the Election Commission under Article 324.

We find that the Representation of the People Act, 1951 also has not provided any period of limitation for holding election for constituting fresh Assembly election in the event of premature dissolution of former Assembly. In this context, concerns were expressed by learned counsel for one of the national political parties and one of the States that in the absence of any period provided either in the Constitution or in the Representation of the People Act, the Election Commission may not hold election at all and in that event it would be the end of democracy. It is no doubt true that democracy is a part of the basic structure of the Constitution and periodical, free and fair election is substratum of democracy. If there is no free and fair periodic election, it is end of democracy and the same was recognized in *M.S. Gill vs. Chief Election Commissioner* (1978) 1 SCC 404 thus:

" A free and fair election based on universal adult franchise is the basic, the regulatory procedures vis--vis the repositories of functions and the distribution of legislative, executive and judicative roles in the total scheme, directed towards the holding of free elections, are the specifics. The super authority is the Election Commission, the kingpin is the returning officer, the minions are the presiding officers in the polling stations and the electoral engineering is in conformity with the elaborate legislative provision."

Similar concern was raised in the case of *A.C. Jose vs. Sivan Pillai and others* (1984) 2 SCC 656. In that case, it was argued that if the Commission is armed with unlimited arbitrary powers and if it happens that the persons manning the Commission shares or is wedded to a particular ideology, he could by giving odd directions cause a political havoc or bring about a Constitutional crisis, setting at naught the integrity and independence of the electoral process, so important and indispensable to the democratic system. Similar apprehension was also voiced in *M.S. Gill vs. Chief Election Commissioner* (supra). The aforesaid concern was met by this Court by observing that in case such a situation ever arises, the Judiciary which is a watchdog to see that Constitutional provisions are upheld would step in and that is enough safeguard for preserving democracy in the country.

However, we are of the view that the employment of words "on an expiration" occurring in Sections 14 and 15 of the Representation of the People Act, 1951 respectively show that Election Commission is required to take steps for holding election immediately on expiration of the term of the Assembly or its dissolution, although no period has been provided for. Yet, there is another indication in Sections 14 and 15 of the Representation of the People Act that the election process can be set in motion by issuing of notification prior to the expiry of six months of the normal term of the House of People or Legislative Assembly. Clause (1) of Article 172 provides that while promulgation of emergency is in operation, the Parliament by law can extend the duration of the Legislative Assembly not exceeding one year at a time and this period shall not, in any case, extend beyond a period of six months after promulgation has ceased to operate. Further, under Articles 123 and 213, the life of an ordinance promulgated either by the President or by the Governor, as the case may be, is six months and repeated promulgation of ordinance after six months has not been welcomed by this Court. Again, under Articles 109, 110, and 111 and analogous Articles for State Assembly, Money Bill has to be passed by the House of People or by the Legislative Assembly. The aforesaid provisions do indicate that on the premature dissolution of Legislative Assembly, the Election Commission is required to initiate immediate steps for holding election for constituting Legislative Assembly on the first occasion and in any case within six months from the date of premature dissolution of the Legislative Assembly.

2 (b) Is there any limitation on the powers of the Election Commission to frame schedule for the purpose of holding election for constituting Legislative Assembly ?

So far as the framing of the schedule or calendar for election of the Legislative Assembly is concerned, the same is in the exclusive domain of the



Election Commission, which is not subject to any law framed by the Parliament. The Parliament is empowered to frame law as regards conduct of elections but conducting elections is the sole responsibility of the Election Commission. As a matter of law, the plenary powers of the Election Commission can not be taken away by law framed by Parliament. If Parliament makes any such law, it would be repugnant to Article 324. Holding periodic, free and fair elections by the Election Commission are part of the basic structure and the same was reiterated in *Indira Nehru Gandhi vs. Raj Narain* (1975) Suppl. 1 SCC 1 which runs as under: "198. This Court in the case of *Kesavananda Bharati* (supra) held by majority that the power of amendment of the Constitution contained in Article 368 does not permit altering the basic structure of the Constitution. All the seven Judges who constituted the majority were also agreed that democratic set-up was part of the basic structure of the Constitution. Democracy postulates that there should be periodical elections, so that people may be in a position either to re-elect the old representatives or, if they so choose, to change the representatives and elect in their place other representatives. Democracy further contemplates that the elections should be free and fair so that the voters may be in a position to vote for candidates of their choice. Democracy can indeed function only upon the faith that elections are free and fair and not rigged and manipulated, that they are effective instruments of ascertaining popular will both in reality and form and are not mere rituals calculated to generate illusion of defence to mass opinion.."

The same is also evident from Sections 14 and 15 of the Representation of People Act, 1951 which provide that the President or the Governor shall fix the date or dates for holding elections on the recommendation of the Election Commission. It is, therefore, manifest that fixing schedule for elections either for the House of People or Legislative Assembly is in the exclusive domain of the Election Commission.

(3) Application of Article 356

It appears that the interpretation of Art.174(1) of the Constitution by the Election Commission in its order was mainly influenced by the past practice adopted by the Election Commission holding elections for constituting fresh Legislative Assembly within six months of the last sitting of the dissolved House. It also appears that the gratuitous advice of application of Art.356 by the Election Commission in its order was in all its sincerity, although now on our interpretation of Article 174(1), we find that it was misplaced. However, the Election Commission in its written submission has stated thus: "The decision, contained in the Election Commission's order dated 16.8.2002, was taken without reference to Article 356. However, it was merely pointed out that there need be no apprehension that there would be a constitutional impasse as Article 356 could provide a solution in such a situation".

In that view of the matter and the view we have taken in regard to the interpretation of Art.174(1), there is no need to go further into the question of application of Art.356 in the context of the order of the Election Commission out of which the Reference arises.

As a result of the aforesaid discussion, our conclusions are as follows:

a) The Reference made by the President of India under Article 143(1) arises out of the order of the Election Commission dated 19.8.2002 and the questions raised therein are of public importance and are likely to arise in future. Further, there being no decision by this Court on the questions raised and a doubt having arisen in the mind of the President in regard to the interpretation of Article 174(1) of the Constitution, the Reference is required to be answered.

b) Article 174(1) of the Constitution relates to an existing, live and functional Legislative Assembly and not to a dissolved

Assembly.

c) The provision in Article 174(1) that six months shall not intervene between its last sitting in one session and the date appointed for its sitting in the next session is mandatory and relates to the frequencies of the sessions of a live and existing Legislative Assembly and does not provide for any period of limitation for holding fresh elections for constituting Legislative Assembly on premature dissolution of the Assembly.

d) The expressions "the House", "either House" is synonymous with Legislative Assembly or Legislative Council and they do not refer to different bodies other than the Legislative Assembly or the Legislative Council, as the case may be.

e) Neither under the Constitution nor under the Representation of the People Act, any period of limitation has been prescribed for holding election for constituting Legislative Assembly after premature dissolution of the existing one. However, in view of the scheme of the Constitution and the Representation of the People Act, the elections should be held within six months for constituting Legislative Assembly from the date of dissolution of the Legislative Assembly.

f) Under the Constitution, the power to frame the calendar or schedule for elections for constituting Legislative Assembly is within the exclusive domain of the Election Commission and such a power is not subject to any law either made by Parliament or State Legislature.

g) In view of the affidavit filed by the Election Commission during hearing of the Reference, the question regarding the application of Article 356 is not required to be gone into.

In accordance with the foregoing opinion, we report on the questions referred as follows:

Question No. (i) :

This question proceeds on the assumption that Article 174 (1) is also applicable to a dissolved Legislative Assembly. We have found that the provision of Article 174(1) of the Constitution which stipulates that six months shall not intervene between the last sitting in one session and the date appointed for its first sitting in the next session is mandatory in nature and relates to an existing and functional Legislative Assembly and not to a dissolved Assembly whose life has come to an end and ceased to exist. Further, Article 174(1) neither relates to elections nor does it provide any outer limit for holding elections for constituting Legislative Assembly. The superintendence, direction and control of the preparation of electoral roll and conduct of holding elections for constituting Legislative Assembly is in the exclusive domain of the Election Commission under Article 324 of the Constitution. In that view of the matter, Article 174(1) and Article 324 operate on different fields and neither Article 174(1) is subject to Article 324 nor Article 324 is subject to Article 174(1) of the Constitution.

Question No. (ii):

This question also proceeds on the assumption that Article 174(1) is also applicable to a dissolved House. On our interpretation of Article 174(1), we have earlier reported that the said Article is inapplicable to a dissolved Legislative Assembly. Consequently, there is no infraction of the mandate of Article 174 (1) in preparing a schedule for elections to an Assembly by the Election Commission. The Election Commission in its written submissions stated thus:

"The decision, contained in the Election Commission's order dated 16.8.2002, was taken without reference to Article 356. However, it was merely pointed out that there need be no apprehension that there would be a constitutional impasse as Article 356 could provide a

solution in such a situation".

In that view of the matter, the question of applicability of Article 356 on the infraction of the provisions of Article 174 loses much of its substance and, therefore, application of Article 356 is not required to be gone into.

Question No. (iii):

Again, this question proceeds on the assumption that the provisions of Article 174(1) also apply to a dissolved Assembly. In view of our answer to question No. (i), we have already reported that Article 174(1) neither applies to a prematurely dissolved Legislative Assembly nor does it deal with elections and, therefore, the question that the Election Commission is required to carry out the mandate of Article 174(1) of the Constitution does not arise. Under Article 324, it is the duty and responsibility of the Election Commission to hold free and fair elections at the earliest. No efforts should be spared by the Election Commission to hold timely elections. Ordinarily, law and order or public disorder should not be occasion for postponing the elections and it would be the duty and responsibility of all concern to render all assistance, cooperation and aid to the Election Commission for holding free and fair elections.

The Reference is answered accordingly.