CASE NO.:
Special Reference Case 1 of 2002

PETITIONER:
Under Article 143(1) of the Constitution of India

RESPONDENT:

DATE OF JUDGMENT: 28/10/2002

BENCH:
B.N.KIRPAL CJI & V.N.KHARE & K.G.BALAKRISHNAN & ASHOK BHAN & ARIJIT PASAYAT

JUDGMENT:
JUDGMENT

DELIVERED BY:
V.N.KHARE, (J)
K.G.BALAKRISHNAN, (J)
ARIJIT PASAYAT, (J)

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 a 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 this 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 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 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.(SIC) 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 question 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 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 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;
(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. 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; (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 and Anr. v. State of Gujarat and Ors. - (1974) 1 SCC 714; (6) In re: Presidential Poll, Special Reference No. 1 of 1974; (7) In re: The Kerala Education Bill, 1957 - (1959) SCR 995; and (8) Dr. M. Ismail Faruqui and Ors. v. Union of India and Ors

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 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 Government General to make a reference when question 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 the 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

16thAugust, 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 Article 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, holding that in the domain of advisory jurisdiction under Article 143(1) this Court 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 Article 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 Article 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 (SIC) has arisen in the mind of the President of India as regards the interpretation of Article 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 alia, urged on behalf of the Union of India, one of the national political parties and 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);

c) that, on the correct interpretation of Article 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.

The contentions advanced on behalf of the other national political parties, 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 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. v. State of Kerala and Anr. etc. 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 v. A.R. Antulay, 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 Section 72B(1) run as under:
"Section 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"
Section 72B(1): Every Governor's legislative counsel 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 sitting of Legislative Council in provinces. Section 8 read as follows:
"Section 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:

> "Section 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 Section 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 duly 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:
Section 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 VIthSchedule. 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 Article 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 Articles 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 Legislature 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 shifting 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 Legislature 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 Legislature. 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 Article 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 of 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 Clause (3) after Article 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 like 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 sitting 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 House 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 House 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 suggestions 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. T his 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:

Article	Original Articles in the Constitution	As amended by Constitution (Amendment) Act, 1951
Article 85	Sessions of Parliament Prorogation & Dissolution. (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. (1) The President shall from time to time summon each House of Parliament to meet at such time and place as he thinks fit, but six months shall not intervene between its last sitting in one session and the date appointed for its first sitting in the next session.	(2) Subject to the provisions ofcl. (1), the President may from time to time - (2) The President may from time to-(a) Prorogue the Houses of either House (b) Dissolve the House of the People (a) Summon the Houses or either House to meet at such time & Place as he thinks fit; (b) Prorogue the Houses; (c) Dissolve the House of the People
Article 174	Sessions of the State Legislature Prorogation & Dissolution (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. (1) The Governor shall from time to summon the House or each House to 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.	(2) Subject to the provisions of cl. (1), the Governor may from time to time- (2) the Governor may from time to time- (a) Summon the House or either House to meet at such time and place as he thinks fit; (a) prorogue the House or either House; (b) prorogue the House or Houses (b) dissolve Legislative Assembly

The aforesaid original Articles show that what was mandated was that the House 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 siting with an internal round and X mas 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 int eh 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 Article 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 plan 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 Section 73 of the Representation of the people Act, 1951 and the requirement of Article 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 Article 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 end the life of legislature and brings an end to all business. The entire chain of sittings and sessions gets broken and there is not 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, Article 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-a-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 5thmonth 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.

It was also urged on behalf of the Union of India that Indian Constitution is enacted on patten 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.

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 Section 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."

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?

In this context, learned counsel appearing for Union of India also relied upon the following passages -- from (SIC) May, Parliamentary Practice, 20thEdn. 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, Article 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 sitting 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 case 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 House stood adjourned. This proclamations 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.

The aforesaid passages relied upon by learned counsel are wholly inapplicable in the context of Indian Constitution. Under Article 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's 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 Article 85(2) or Article 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 places 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 he 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 Article 85 and 174 of the Constitution.

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 Article 94 in the case of the House of the People or under Article 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 word's r repetitive words as avoided. It appears that the aforesaid principle was kept in mind while drafting the Government of India Act 1935, 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 Houses', 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 the 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(i)(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 show 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 Article 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 thee 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 Article 168, Article 172 and Article 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 sent, 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'. Article 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 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 the 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 promgue 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 'House' does not find place in Clause (2)(b) of Article 174.

Similarly, in the case of State Legislature, there are provisions where the Constitution makers have used the expression 'either House' 'both Houses' and 'House 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 'House' assembled together. Article 177 speaks of the rights of ministers and Advocate General to speak in the 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 House, 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 Legislature 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 while 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 is phraseology used in Articles 99 and 188, which deal with oath or affirmation of members, Articles 103 and 191, which deal with disqualification of members and Articles 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 Articles 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 Articles 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 out conclusion is that the expressions "The House"or "either House" in Clause (2) of Article 174 of the Constitution and Legislative Assembly are synonymous and are interchargeable 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 the 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, nor 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 the 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 VIthSchedule. 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 v. Chief Election Commissioner (suprs), A.C. Jose v. Sivan Pillai and Ors. - and Kanhiya Lal Omar v. R.K. Trivedi and Ors., it has been consistently held that Article 324 operates in the area left unoccupied by legislation and the words 'superintendence, 'controi' '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 v. Chief Election Commissioner - (1978) 1 SCC 464 thus:

> "A free and fair election based on universal adult franchise is the basic, the regulatory procedures vis-a-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 specifies. 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 v. Sivan Pillai and Ors. 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 be 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 v. 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 of 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 to 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 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 v. Raj Narain which run 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 Article 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 Article 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 Article 174(1), there is no need to go further into the question of application of Article 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 calender 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 is 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 provision 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.

Balakrishnan, J.

I had the advantage of reading the Opinion in draft of my learned brothers V.N. Khare and Arijit Pasayat, JJ. and I fully concur with the opinion expressed by them regarding interpretation of Article 174 and the consequential answers to the reference made by the President of India, and I would like to add the following.

The Legislative Assembly of Gujarat was dissolved by the Governor of Gujarat on 19th July, 2002 in exercise of the powers conferred on him under Article 174(2)(b) of the Constitution. The full term of the Legislative Assembly would be expiring on 18thMarch, 2003. After the dissolution of the Assembly, the ruling party in the State of Gujarat requested the Election Commission for conducting fresh General Election urgently so that the new

Legislative Assembly would be able to have its first session before 6thOctober, 2002. The ruling party of the State of Gujarat made this demand on the basis of the premise that under Article 174(1) of the Constitution, there shall not be more than six months period in between the last session of the dissolved assembly and the first meeting of the next session of the Assembly to be newly constituted. Certain other political parties, public-spirited citizens and organisations urged the Election Commission not to hold the general election to the Gujarat State Legislative Assembly but to wait for some more time until the people who were affected by the communal riots and violence returned to their houses from the various relief camps where they were staying.

In the last week of February, 2002 an unfortunate incident took place at the railway station in Godhara in Gujarat in which a railway compartment was set on fire and several people who were occupants of that compartment died of burning. After this incident a spate of communal violence erupted in various parts of Gujarat and curfew was clamped in many cities of the State of Gujarat. Many people who had been the victims of such riots were put in the relief camps. Election Commission, which was requested to conduct the election, visited Gujarat and in the Order passed by the Election Commission on 16thAugust, 2002, the following observations were made:
(1) The Commission was of the opinion that Article 174(1) of the Constitution was applicable even in respect of dissolved Assemblies and in the Order it is stated that the Commission has, in the past, been taking the view that the six months mentioned in Article 174(1) of the Constitution applies not only to a Legislative Assembly in existence but also to dissolved assembly and elections to constitute a new Legislative Assembly have always been held within such time so as to enable the new Assembly to meet within the period of six months from the last sitting of the last session of the dissolved Assembly;
(2) Commission was of the opinion that any other view on the interpretation of Article 174(1) of the Constitution may lead to extensive gaps between two Houses of a Legislative Assembly and the abuse of democracy, there being no provision in the Constitution or in any law in force prescribing a period during which an election to be held to constitute a new Legislative Assembly on the dissolution of the previous house;
(3) The Commission further observed that Article 174(1) of the Constitution cannot be read in isolation and it has to be read along with other relevant provisions of the Constitution, particularly Article 324 of the Constitution and this Article being not subject to the provisions of any other Article of the Constitution including Article 174(1), vests the superintendence, direction and control, inter alia, of the preparation of electoral rolls for, and conduct of, elections to Parliament and State Legislature in the Election Commission. The Commission further observed that free and fair election based on universal adult franchise being the basic feature of the Constitution the same cannot be held in view of the prevailing situation in Gujarat. The Commission was of the view that there was large scale movement and migration of electors due to communal riots and violence and they had not returned to their homes and they would not be able to go to the polling station to cast their votes and the electoral rolls had to be revised.

Therefore, the Election Commission came to the conclusion that it was not in a position to conduct free and fair election immediately after the dissolution of the Assembly and after the electoral roll is revised, the Commission would be in a position to conduct election to the General Assembly in the month of November/December, 2002.

The Commission was also of the view that Legislative Assembly should meet at least every six months as contemplated by Article 174(1) of the Constitution even when it has been dissolved and in case it was not feasible, that would mean that the Government of the State cannot be carried on in accordance with the provisions of the Constitution within the meaning of Article 356(1) of the Constitution and the President would step

in and declare a state of emergency.

After the receipt of the report of the Election Commission, the Presidential Reference was made under Article 143(1) of the Constitution of India and the Order of Reference proceeded on the assumption that the mandate of the Constitution under Article 174(1) is that six months shall not intervene between the last sitting of the previous session and the date appointed for the first sitting in the next session and 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(1) of the Constitution, even where it has been dissolved, and the Order of the Election Commission of India dated August 16, 2002 had not recommended any date for holding general election for constituting a new Legislative Assembly for the State of Gujarat. The 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. The following observation of the Election Commission was also noted in the Reference:

> "AND WHEREAS the Election Commission has held that the non-observation 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 such a nature and of such public importance that it is expedient to obtain the opinion of the Supreme Court of India."

The following three questions were referred to the Supreme Court of India for consideration:
(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 requisite resources of the Union and the State to ensure free and fair elections?

After the receipt of the reference, notices were issued to all the States and all the recognised national political parties. On behalf of the Union of India, Solicitor General Shri Harish N. Salve appeared and raised the following contentions. It was contended on behalf of the Union of India that Article 174 is applicable even to dissolved assemblies and since there is no time limit at all for conducting fresh election, it would hypothetically lead to a situation of Council of Ministers continuing perennially after the dissolution of Assembly, which, in turn, would lead to a breakdown of the constitutional democracy. It was argued that there is no question of Article 174, or Article 85, or Article 85 or Article 164 coming in conflict with Article 324 and these provisions operate in different fields and the power of superintendence, direction and control of elections vested with the Election Commission should be exercised in the manner which would be consistent with the constitutional scheme of representative government. It is submitted that the Election Commission

must use all the requisite resources of Union and the State to ensure free and fair election. It was further argued that the power under Article 356 is utterly irrelevant for ascertaining the constitutional mandate for holding elections and this power is highly discretionary and is to be exercised where there is a breakdown of the constitutional machinery. The executive government has no legal authority to compel the holding of elections - not even Parliament can, by resolution, legally compel the Election Commission to fix a particular schedule for the elections. By the same token, the Election Commission cannot recommend - or even proceed upon the premise of -- imposition of President's Rule, which would require executive action ratified by Parliament.

Shri Arun Jaitley, Sr. Advocate, appearing on behalf of the Bharatiya Janata Party contended that the view of the Election Commission that Article 174 is subject to Article 324 of the Constitution is wholly erroneous and contrary to the constitutional mandate. It was further submitted that Article 324 does not enable Election Commission to exercise untrammeled powers and the Commission must exercise power either of the Constitution or the law under Article 327 and 328. It was also argued that even when the Assembly is dissolved, the House continue to exist and, therefore, Article 174 is applicable even to dissolved assemblies. A reference was made to the Parliamentary practice in various other countries including Britain.

Shri Kapil Sibal, Sr. Advocate appearing on behalf of the Indian National Congress contended that Article 174 has no application to dissolved Assembly. However, he submitted that on dissolution of an Assembly, it is the duty of the Election Commission is conduct the election immediately and every step shall be taken to see that the new Legislative Assembly met for its first session at the earliest. However, it was submitted that the Election Commission is the supreme authority, which should take a decision as to when a free and fair election can be held. Article 324 of the Constitution gives vast power to the Election Commission to decide the question as to when the election shall be held and if the Election Commission fails to carry out the constitutional mandate for any other extraneous reason, such decision can be challenged under judicial review. According to the counsel, any other interpretation of these constitutional provisions would lead to a situation where the Election Commission would be forced to conduct election when it is not possible to conduct a free and fair election and that would be against the constitutional spirit of a democratic government. It was submitted that as the Reference was based on the wrong assumption of the constitutional provisions, it need not be answered by this Court.

Shri Ram Jethmalani, Sr. Advocate appearing on behalf of the State of Bihar submitted that Article 174 applies to an Assembly whose personality/identity is not interrupted or altered by premature dissolution or expiry of its period of duration. Free and fair elections being a basic feature of a democratic and Republican Constitution, Article 174 will have to yield to Article 324. It was further submitted that Article 356 does not include the power to suspend the operation of Article 174. It was also submitted that Article 174 imposes a mandate only on the Governor of the State and is not concerned with the Election Commission.

Shri Rajeev Dhavan, Sr. Advocate appearing on behalf of the Communist Party of India (Marxist) also supported the contention raised by the counsel who appeared for Indian National Congress and contended that Article 174 is not applicable to dissolved Assembly. Similar contentions were raised by counsel for other political parties and counsel who appeared for various States.

Shri K.K. Venugopal, Sr. Advocate appearing on behalf of the Election Commission submitted that Article 174 has no application to dissolved Assemblies. It was submitted that free and fair election is the basic feature of the Constitution and the power of superintendence, direction and

control of election vests with the Election Commission. It was further submitted that as the Reference has been made on the wrong premise, this Court need not answer the same. it was also submitted that the Election Commission has been trying its best to conduct election at the earliest even under very adverse circumstances and for the past 50 years Election Commission earned a good reputation as a free and independent body, which has conducted elections to various State Legislatures and the House of the People.

We are greatly beholden to other Senior Lawyers, M/s. K. Parasaran, P.P. Rao, Milon Banerjee, M.C. Bhandare, Ashwani Kumar, P.N. Puri, A. Sharan, Devendra N. Dwivedi, A.M. Singhvi, Gopal Subramaniam, and Vijay Bahuguna, who had made very enlightening arguments on various vexed legal questions involved in this case.

The first and foremost question that arises for consideration is whether Article 174 is applicable in respect of a dissolved Assembly. The next question that arises for consideration is the interplay of Article 147 and Article 324 of the Constitution. Incidently, a question also may arise whether the Election Commission can postpone the election indefinitely on one pretext or the other and create a situation where there is a breakdown of democratic form of Government. Article 174 of the Constitution reads thus:

"174. Sessions of the State Legislature, prorogation and dissolution - (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.

(2) The Governor may from time to time-

(a) prorogue the House or either House;

(b) dissolve the Legislative Assembly".

Article 324 of the Constitution reads as under:

324. Superintendence, direction and control of elections to be vested in an Election Commission-

(1) The superintendence, direction and control of the preparation of the electoral rolls for, and the conduct of, all elections of Parliament and to the Legislature of every State and of elections to the offices of President and Vice-President held under this Constitution shall be vested in a Commission (referred to in this Constitution as the Election Commission).

(2) .....

(3) .....

(4) .....

(5) .....

(6) .....".

Section 8 of the Constitution (First Amendment) Act, 1951 amended Article 174 of the Constitution. The amended Article requires the Governor to summon the House or each house of the Legislature to the State and this Article mandates that six months shall not intervene between the last sitting of one session and the date appointed for the first sitting of the next session. The sole object of Article 174(1) is to ensure accountability of executive to the people through their elected representatives. Article 164(2) states that the Council of Ministers shall be collectively responsible to the Legislative Assembly of the State. In a democratic form of Government the responsibility of the Government is to the people of the country and the Members of the Legislative Assembly represent the people of the State and the Council of Ministers shall be collectively responsible to the Legislative Assembly. Therefore, frequency of the meeting of the Legislative Assembly is necessary, otherwise, there will not be any check and balance to the actions of the executive government. The Solicitor General contended that Article 174 would apply even to a dissolved assembly because the House as such is not dissolved and it was pointed out that when the British Parliament is dissolved, notice to summon the next session of the Parliament is simultaneously issued. On that basis, it was contended that Article 174 is even applicable to a dissolved Assembly. We do not find

much force in this contention. The plain meaning of the words used in Article 174 itself would show that Article 174 has no application to a dissolved Assembly. The words "six months shall not intervene between its last sitting in one session and the date appointed for its first sitting in the next session" occurring in Article 174 clearly indicate that the interregnum between the two sessions shall not be six months and that is applicable only in respect of a live Assembly. Once the Assembly is dissolved, Article 174 has no application.

Of course, in the Report of the Election Commission it is stated that that Commission has all along been taking the view that once the Assembly is dissolved it would take all possible steps to see that the first sitting of the next Assembly would be made possible within a period of six months of the last sitting of the dissolved Assembly. This is a very healthy convention which is being followed since the adoption of our Constitution and we must appreciate the action of the Election Commission in scheduling the election in such a way that the first session of the next Assembly meets within the period of six months of the last sitting of the dissolved Assembly. But that by itself is no reason to interpret that Article 174 would apply to a dissolved Assembly. Frequency of meeting as provided under Article 174 would apply to an Assembly which is in esse at that time.

Therefore, a question may arise that if Article 174 is not applicable to a dissolved Assembly, can the Election Commission postpone election for indefinite period so as to defeat the democratic form of Government? Is there any mandate in the Constitution or in the Representative of People Act, 1951 prescribing time to conduct the election? Obviously, neither the Constitution nor the Representation of People Act, 1951 prescribes any time limit for the conduct of election after the term of the Assembly is over either by premature dissolution or otherwise. Proviso to Section 15(2) of the Representation of People Act, 1951 states that where a general election is held otherwise than on dissolution of the existing House of the People, no notification for election shall be issued at any time earlier than six months prior to the date on which the duration of that House would expire under the provisions of Clause (2) of Article 83. Once there is dissolution of the Assembly, the Election Commission shall take immediate steps to conduct the election an see that the new Assembly is formed at the earliest point of time. A democratic form of Government would survive only if there are elected representatives to rule the country. Any delay on the part of the Election Commission is very crucial and it is the Constitutional duty of the Election Commission to take steps immediately on dissolution of the Assembly. Article 324 of the Constitution gives vast powers to the Election Commission and time and again this Court has pointed out the extent of powers and duty vested with the Election Commission. It was argued by various counsel appearing on behalf of the various political parties as to what would be the position if the Election Commission would indefinitely postpone the election under some pretext or the other. So, the question posed was: ’Quis custodiet ipsos custodes’ - who will guard the guards themselves?

The Election Commission is vested with the power to decide the election schedule. It can act only in accordance with the Constitutional provisions. The election process for electing the new Legislative Assembly should start immediately on the dissolution of the Assembly. There may be cases where the electoral roll may not be up-to-date and in such case the Election Commission is well within its power to update the electoral roll and the time taken for such updating of the electoral roll shall be reasonable time. Ordinarily, the Election Commission would also require time for notification, calling of nomination and such other procedure that are required for the proper conduct of election. There may be situation where the Election Commission may not be in a position to conduct free and fair election because of certain natural calamities. Even under such situation the Election Commission shall endeavour to conduct election at the earliest making use of all the resources within its command. Ample powers are given to the Election Commission to coordinate all actions with the help of

various departments of the Government including military and para-military forces. When an Assembly is dissolved by the Governor on the advice of the Chief Minister, naturally, the Chief Minister or his political party seeks fresh mandate from the electorate. The duty of the Election Commission is to conduct fresh election and see that a democratically elected Government is installed at the earliest and any decision by the Election Commission, which is intended to defeat this very avowed object of forming an elected Government can certainly be challenged before the Court if the decision taken by the Election Commission is perverse, unreasonable or for extraneous reasons and if the decision of the Election Commission is vitiated by any of these grounds the Court can give appropriate direction for the conduct of the election.

The next point that arises for consideration to form opinion regarding the questions referred to this Curt is as to the application of Article 355 of the Constitution. Reference to Article 356 was incidentally made by the Election Commission to point out that if Article 174 cannot be complied with, the possible alternative is to invoke Article 356 and declare a state of emergency. I do not think that the solution suggested by the Election Commission is appropriate or justified. Article 356 has no application under any of these situations. It is an independent power to be exercised very rarely and this power is hedged by ever so many Constitutional limitations. In view of the above discussion, the three questions made in the Reference can be answered in the following manner.
(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?

Article 174 and Article 324 operate in different fields. Article 174 does not apply to dissolved Assemblies. The schedule of the election of the Assembly is to be fixed having regard to the urgency of the situation that a democratically elected Government be installed at the earliest and the process of election shall start immediately on the dissolution of the Assembly. Though the ultimate authority to decide as to when a free and fair election can be conducted is Election Commission, such decisions shall be just and reasonable and arrived at having regard to all relevant circumstances. Any decision to postpone election on unreasonable grounds is anathema to democratic form of government and it is subject to judicial review on traditionally accepted grounds.
(ii) Can the Election Commission of India frame a schedule for the elections to an Assembly on the premises that any infraction of the mandate of Article 174 would be remedied by a resort to Article 356 by the President?

The framing of schedule for election for the new Legislative Assembly shall start immediately on dissolution of the Assembly and the Election Commission shall endeavour to see that the New Legislative Assembly meets at least within a period of six months of the dissolution. Article 356 regarding declaration of state of emergency in the State has no relevance to the fixation of the election schedule.
(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?

The Election Commission is under a constitutional duty to conduct the election at the earliest on completion of the term of the Legislative Assembly on dissolution or otherwise. If there is any impediment in conducting free and fair election as per the schedule envisaged by the Election Commission, it can draw upon all the requisite resources of Union of State within its command to ensure free and fair election, though Article 174 has no application in the discharge of such constitutional obligation by the Election Commission. It is the duty of the Election Commission to see that the election is done in a free and fair manner to keep the democratic form of Government vibrant and active.

Arijit Pasayat, J.

Free, far and periodic elections are the part of the basic structure of the Constitution of India, 1950 (in short the 'Constitution). In a democracy the little man - voter - has overwhelming importance and cannot be hijacked from the course of free and fair elections.

'Democracy' and 'free and fair election' are inseparable twins. There is almost an insevereable umbilical cord joining them. The little man's ballot and not the bullet of those who want to capture power (starting with booth capturing) is the heartbeat of democracy. Path of the little man to the polling booth should be free and unhindered, and his freedom--to-elect a candidate of his choice is the foundation of a free and fair election.

The message relates to the pervasive philosophy of democratic elections which Sir Winston Churchill vivified in matchless words:
"At the bottom of all tributes paid to democracy is the little man, walking into a little booth, with a little pencil, making a little cross on a little bit of paper-no amount of rhetoric or voluminous discussion can possibly diminish the overwhelming importance of the point."

If we may add, the little, large Indian shall not be hijacked from the course of free and fair elections by mob muscle methods, or subtle perversion of discretion by men' dressed in little, brief authority'. For 'be you ever so high, the law is above you'.

The moral may be stated with telling terseness in the words of William Pitt: "Where laws end, tyranny begins'. Embracing both these mandates and emphasizing their combined effect is the elemental law and politics of Power best expressed by Benjamin Disraeli:
"I repeat .... that all power is trust - that we are accountable for its exercise-that, from the people and for the people, all springs, and all must exist."

At the threshold: why the Reference was made, and in what background.

The Gujarat Legislative Assembly met on 3rd April, 2002 and thereafter was dissolved on 19thJuly, 2002. Election Commission passed an order on 16thAugust, 2002 holding that free and fair elections was not possible in Gujarat, even though Article 174 of the Constitution mandatorily provides that the time gap between two sittings of the House should not exceed six months. In that context, the Election Commission held that Article 324 postulates "free and fair election" and when it is not possible to hold it, the provisions contained in Article 174 have to yield. That gave rise to doubts and the President of India has made reference to this Court under Article 143(1) of the Constitution, basically on that core issue and three questions have been referred. First question specifically refers to Article 174 and Article 324. The Election Commission observed that even if the period prescribed under Article 174 cannot be adhered to the situation can be met by imposition of President's Rule by Article 356 of the Constitution. The Reference (including the preambles) and relevant portion of Election Commission's order so far as relevant for the Reference read as follows:
President Address:

WHEREAS the Legislative Assembly of the State of Gujarat was dissolved on July 19, 2002 before the expiration of this 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 dates 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 ad 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 such a 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?
Order of the Election Commission (Relevant portions)
1. The term of the Legislative Assembly of the State of Gujarat was

normally due to expire, in terms of Article 172(1) of the Constitution, on the 18thMarch, 2003. Keeping that in view, the Commission had been planning to hold the next general election in the State for constituting a new Legislative Assembly in the early part of the year 2003, along with the general elections to the Legislative Assemblies of Himachal Pradesh, Meghalaya, Nagaland and Tripura whose terms are also normally due to expire in the month of March, 2003.

2. The Legislative Assembly of the State of Gujarat was, however, dissolved prematurely by the Governor of Gujarat on the 19thJuly, 2002 in exercise of his powers under Article 174(2)(b) of the Constitution. On such premature dissolution of the State Legislative Assembly, a demand is being made, particularly by the Bhartiya Janta Party and a few other smaller parties and NGOs, that the general election to constitute the new Legislative Assembly be urgently held by the Commission so as to enable the new Legislative Assembly so constituted to meet for its first session before 6thOctober, 2002. In support of such demand, they are citing Article 174(1) of the Constitution which provides that the '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 this first sitting in the next session'. The last session of the dissolved Legislative Assembly of Gujarat was prorogued on 6thApril, 2002 and it is contended that the first session of the new Legislative Assembly should be held before 6thOctober, 2002 and, therefore, it is mandatory for the Commission to hold the election well before 6th October, 2002. They also claim that the situation in the State of Gujarat is quite normal and conductive to the holding of free and fair elections, as is evident from the facts that the panchayat elections in large areas were successfully conducted in April 2002, that HSC, SSC examination were held peacefully and that various religious festivals like the Rath Yatra had passed off without any untoward incident.

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4. The Commission has carefully examined the provisions of Article 174(1) of the Constitution. It has also considered other relevant provisions in the Constitution having a bearing on functioning of the Legislative Assemblies and the conduct of elections to constitute them. The Commission has, in the past, been taking the view that the six months in Article 174(1) of the Constitution applies not only to a Legislative Assembly in existence but also to elections to constitute the new Assembly on the dissolution of the previous Assembly and in all past cases, like the recent dissolution of the Goa Legislative Assembly on 27th February, 2002, wherever any Assembly has been dissolved prematurely by the Governor under Article 174(2)(b) of the Constitution (and where the President has not taken over the administration of the State under Article 356 of the Constitution on the dissolution of the Assembly), elections to constitute a new Legislative Assembly have always been held in such time as have enabled the new Assembly to meet within the period of six months from the last date of the last session of the dissolved Assembly. Similar action has been taken by the Commission wherever the House of the People has been prematurely dissolved by the President under Article 85(2)(b) of the Constitution-for example the dissolution of the House of the People in 1999, 1998 and earlier in 1991, 1979 and 1971 - so that the new House of the People could meet within the period of six months from the last sitting of the dissolved House.

5. Thus, the Commission has all along been consistent that, normally, a Legislative Assembly should met at least every six months as contemplated by Article 174(1) of the Constitution, even when it has been dissolved (except where President's Rule has been imposed in the State under Article 356 of the Constitution). The Commission sees no convincing/justifiable reason to take a different view in the present case. In fact, any other view on the interpretation of Article 174(1) of the Constitution might lead to extensive gaps between two Houses of a Legislative Assembly and the abuse of democracy, there being no provision in the Constitution or in any law in force prescribing a period during which an election is to be held to constitute a new Legislative Assembly on the dissolution of the previous

House. This will be contrary to the basic scheme of the Constitution which prescribes that there shall be a State Legislative Assembly (Article 168) and the Council of Ministers shall be collectively responsible to that Assembly [Article 164(2)] and that if a minister is not a member of the Assembly for a consecutive six months period, he shall cease to be a minister [Article 164(4)]. A more alarming situation may arise with Parliament where Article 85(1) of the Constitution makes identical provisions relating to the holding of sessions of the House of the People. Any view that the House of the People need not meet every six months and the elections be indefinitely postponed after one House has been dissolved would not only be destructive of the whole Parliamentary system so assiduously built in our Constitution but also be abhorrent to every section of the Indian polity and citizenry.

6. The Commission is also fortified in its above interpretation by the view taken by the President and Parliament on the provisions of Article 174(1) whenever there was an imposition of President's Rule in a State under Article 356 of the Constitution. Whenever the Legislative Assembly of any State has been dissolved in the past by the President under Article 356 of the Constitution, the provisions of Article 174(1) have invariably been expressly suspended in the Proclamation issued by the President under that Article and approved by Parliament during the operation of that Proclamation (See for example, the latest Proclamation dated 10thFebruary, 1999 issued by the President dissolving the Goa Legislative Assembly an imposing President's Rule in that State). If Article 174(1) has no application after an Assembly has been dissolved, as is being contended by one set of representations, there is no question of the suspension of that provision after the dissolution of the Assembly by the said Proclamation.

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8. There is, to the Commission's knowledge, no authoritative pronouncement of the Supreme Court or of any High Court on this aspect of the issue. But the most plausible view that appears to the Commission in that Article 174(1) of the Constitution envisages that normally, the Legislative Assembly of a State should meet every six months even after the dissolution of one House.

9. The next question for consideration of the Commission is whether the Commission is obliged whatever may be the circumstances to hold the general election within the period remaining out of six months from the date of the last sitting of the dissolved Assembly. The Commission does not accept this view. Article 174(1) of the Constitution cannot be read in isolation and it has to be read along with other relevant provisions of the Constitution, particularly Article 324 of the Constitution. Article 324, which is not subject to the provisions of any other Article of the Constitution including Article 174(1), vests the superintendence, direction and control, inter alia, of the preparation of electoral rolls for, and conduct of, elections to Parliament and State Legislature in the Election Commission. Elections, in the context of democratic institutions, mean free and faire elections and not merely a ritual to be gone through periodically. In the words of the Constitution Bench of the Supreme Court in T.N. Seshan v. Union of India and Ors. [(1995) 4 SCC 61]:

'Democracy being the basic feature of our constitutional set up, there can be no two opinions that free and fair elections to our Legislative bodies alone would guarantee the growth of a healthy democracy in the country. In order to ensure the purity of the election process, it was thought by our Constitution-makers that the responsibility to hold free and fair election in the country should be entrusted to an independent body which would be insulated from political and/or executive interference.'

Again the Constitution Bench of the Supreme Court observed in the famous Keshavanand Bharati v. State of Kerala that 'Free, fair fearless and impartial elections are the guarantee of a democratic polity.' Likewise, the Supreme Court repeatedly underscored the importance of free and faire elections in the case of Mohinder Singh Gill v. Chief Election Commissioner and Ors., Kanhiya Lal Omar v. R.K. Trivedi and a catena of other decisions. In the case of Mohinder Singh Gill (supra), the Supreme Court observed:

'The free and fair election based on universal adult franchise is the

basic....it needs little argument to hold that the heart of the Parliamentary system is free and fair election periodically held, based on adult franchise and that social and economic democracy may demand much more.'

Similar sentiments of the Supreme Court laying stress on free and fair elections to the legislative bodies have found echo in every other decision of the Supreme Court on elections

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11. Thus, the Constitutional mandate given to the Election Commission under Article 324 of the Constitution is to hold free and fair elections to the legislative bodies. And, in the Commissioner's considered view, if a free and fair election cannot be held to a legislative body at a given point of time because of the extraordinary circumstances then prevailing, Article 174 of the Constitution must yield to Article 324 in the interest of genuine democracy and purity of elections. Further, in the Commission's considered view, such interpretation of the provisions of Articles 174(1) and 324 would not create a situation which is not contemplated or envisaged under the Constitution and which cannot be met thereunder. The non-observance of the provisions of Article 174(1) in the aforesaid eventuality would mean that the Government of the State cannot be carried on 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.

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61. After completion of this exercise to correct the electoral rolls and bringing them as up-to-date as possible and creation of conditions conducive for free and fair elections in the State, the Commission will consider framing a suitable schedule for the general election to the State Assembly in November-December 2002.

It may be noted here that the Election Commission in the written submissions filed and the submissions made before us has stated that the observations regarding imposition of Presidents rule were not made in the context of Article 356 of the Constitution, which we shall deal in detail infra. The third question relates to the exercise of power in the context of Article 174.

When the Reference was taken up for hearing we made it clear to the parties that the correctness of factual conclusions arrived at by Election Commission in its order shall not be considered by us. Only legal issues and the foundations therefore i.e. as recorded in the order were to be analysed. We also pointed out to learned counsel for the parties that while considering a Reference there is no adversarial lis involved. We record our appreciation that learned counsel appearing for the parties have placed their submissions as amicus curiae, though there was divergence in approach.

It was argued by some of the learned counsel that the Reference need not be answered because the questions do not arise of the order of the Election Commission though the Preamble is based on the same. It is not imperative for the Court to answer the Reference and even if any doubt is entertained, that cannot be on hypothetical premises and answers which are self-evident and/or issues settled by this Court by its decisions need not be answered. It was submitted that the questions which are inherently incapable of being answered should not be answered. The Reference was as described by some of the learned counsel to be inappropriate and defective. It was submitted that the Reference is potentially political and seeking judicial review though disguised as a Reference. Per contra, submissions were made by some of the learned counsel who have submitted that the questions are of great national interest, and there is no political overtone and in order to avoid controversies in future and to have the law settled, the Reference has been made.

The questions referred are intrinsically linked with the conclusions of the Election Commissioner and are clearly relatable to it. The scope and ambit of reference under Article 143(1) has been examined by this Court in

several cases. In some cases, this Court had declined to answer References on the ground that political issues are involved or that the Court does not act in exercise of appellate jurisdiction while dealing with a Reference. It will be proper to take note of few decisions on this aspect where References were not answered on the ground that they are potentially political or that the Advisory Jurisdiction is not appellate in character [See Dr. M. Ismail Faruqui and Ors. v. Union of India and Ors. and in the matter of Cauvery Water Disputes Tribunal (1993) Supp 1 SCC 96(II)].

The Federal Court in Re The Allocation of Lands and Buildings in a Chief Commissioner's Province (AIR 1943 FC 13) a Reference under Section 213(1) of the Government of India Act which is similar to Article 143 said that though the terms of the at section do not impose an obligation on the Court, the Court should be unwilling to accept a Reference except for good reasons. This Court accepted the Reference for reasons which appeared to be constitutional importance as well as in public interest.

In Re Kerala Education Bill (AIR 1958 SC 956 - 1959 SCR 995) Das, C.J. referred to the Reference in Re The Allocation of Lands and Buildings (supra) and the Reference in Re Levy of Estate Duty (AIR 1944 FC 73) and the observations in both the cases that the Reference should not be declined excepting for good reasons. This Court accepted the Reference on the questions of law arising or likely to arise. Das, C.J. in Re Kerala Education Bill (supra) said that it is for the President to determine what questions should be referred and if he does not have any serious "doubt" on the provisions, it is not for any party to say that doubts arise out of them. In short, parties appearing in the Reference cannot go behind the order of the Reference and present new questions by raising doubts. (See In Re: Presidential Poll).

This Court is bound by the recitals in the order of Reference. Under Article 145(1) we accept the statements of fact set out in the Reference. The truth or otherwise of the facts cannot be enquired or gone into nor can Court go into the question of bona fides or otherwise of the authority making the Reference. This Court cannot go behind the recital. This Court cannot got into disputed questions of fact in its advisory jurisdiction under Article 143(1).

The correct approach according to us has been laid down by a 7 Judge Bench in Special Reference No. 1 of 1964 [commonly known as Keshav Singh Contempt Case] (1965) 1 SCR 413. After culling out the core issues (as seen at page 439) from the questions set out at pages 429, 430 at page 440 it was observed as follows:

> "Though the ultimate solution of the problem posed by the questions before us would thus lie within a very narrow compass, it is necessary to deal with some wider aspects of problem which incidentally arise and the decision of which will assist us in rendering our answers to the questions framed in the present Reference".
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> (Underlined for emphasis)

It would be appropriate to take note of certain pivotal provisions in the Constitution; Representation of Peoples' Act, 1951 (in short 'R.P. Act, 1951) and the Government of India Act, 1935 (in short 'Government Act'). Article 172: Duration of State Legislature-(1) Every Legislative Assembly of every State, unless sooner dissolved, shall continue for five years from the date appointed for its first meeting and no longer and the expiration of the said period of five years shall operate as a dissolution of the Assembly:

Provided that the said period may, while a Proclamation of Emergency is in operation, be extended by Parliament by law for a period not exceeding one year at a time and not extending in any case beyond a period of six months after the Proclamation has ceased to operate.
(2) The Legislative Council of a State shall not be subject to dissolution,

but a nearly as possible one-third of the members thereof shall retire as soon as may be on the expiration of every second year in accordance with the provisions made in that behalf by Parliament by law.
Article 174: Sessions of the State Legislature, prorogation and dissolution-(1) The Governor shall from time to time summon the House or each House of the Legislature of the State to meet as such time and place as he thinks fit, but six months shall not intervene between its last sitting in one session and the date appointed for its first sitting in the next session.
(2) The Governor may from time to time-
(a) prorogue the House or either House;
(b) dissolve the Legislative Assembly
Article 324: Superintendence, direction and control of elections to be vested in an Election Commission - (1) The superintendence, direction and control of the preparation of the electoral rolls, for and the conduct of, all elections to Parliament and to the Legislature of every State and of elections to the offices of President and Vice-President held under this Constitution shall be vested in a Commission (referred to in this Constitution as the Election Commission).
(2) The Election Commission shall consist of the Chief Election Commissioner and such number of other Election Commissioners, if any, as the President may from time to time fix and the appointment of the Chief Election Commissioner and the other Election Commissioners shall, subject to the provisions of any law made in that behalf by Parliament, be made by the President.
(3) When any other Election Commissioner is so appointed the Chief Election Commissioner shall act as the Chairman of the Election Commission.
(4) Before each general election to the House of the People and to the Legislative Assembly of each State, and before the first general election and thereafter before each biennial election to the Legislative Council of each State having such Council, the President may also appoint after consultation with the Election Commission such Regional Commissioners as he may consider necessary to assist the Election Commission in the performance of the functions conferred on the Commission by Clause (1).
(5) Subject to the provisions of any law made by Parliament, the conditions of service and tenure of office of the Election Commissioners and the Regional Commissioners shall be such as the President may be rule determine:

Provided that the Chief Election Commissioner shall not be removed from his office except in like manner and on the like grounds as a Judge of the Supreme Court and the conditions of service of the Chief Election Commissioner shall not be varied to his disadvantage after his appointment:

Provided further that any other Election Commissioner or a Regional Commissioner shall not be removed from office except on the recommendation of the Chief Election Commissioner.
(6) The President, or the Governor of a State, shall, when so requested by the Election Commission, make available to the Election Commission or to a Regional Commissioner such staff as may be necessary for the discharge of the functions conferred on the Election Commission by Clause (1).
Article 327: Power of Parliament to make provision with respect to elections to Legislatures. - Subject to the provisions of this Constitution, Parliament may from time to time by law make provision with respect to all matters relating to, or in connection with, elections to either House of Parliament or to the House or either House of the Legislature of a State including the preparation of electoral rolls, the delimitation of constituencies and all other matters necessary for securing the due constitution of such House or Houses.
Article 356: Provisions in case of failure of constitutional machinery in States - (1) If the President, on receipt of report from the Governor of a State or otherwise, is satisfied that a situation has arisen in which the government of the State cannot be carried on in accordance with the provisions of this Constitution, the President may be Proclamation -
(a) assume to himself all or any of the functions of the Government of the

State and all or any of the powers vested in or exercisable by the Governor or any body or authority in the State other than the Legislature of the State;
(b) declare that the powers of the Legislature of the State shall be exercisable by or under the authority of Parliament;
(c) make such incidental and consequential provisions as appear to the President to be necessary or desirable for giving effect to the objects of the Proclamation, including provisions for suspending in whole or in part the operation of any provisions of this Constitution relating to any body or authority in the State:

Provided that nothing in this clause shall authorize the President to assume to himself any of the powers vested in or exercisable by a High Court, or to suspend in whole or in part the operation of any provision of this Constitution relating to High Courts.
(2) Any such Proclamation may be revoked or varied by a subsequent Proclamation.
(c) Every Proclamation under this Article shall be laid before each House of Parliament and shall, except where it is a Proclamation revoking a previous Proclamation, cease to operate at the expiration of two months unless before the expiration of that period it has been approved by resolutions of both Houses of Parliament.

Provided that if any such Proclamation (not being a Proclamation revoking a previous Proclamation) is issued at a time when the House of the People is dissolved or the dissolution of the House of the People takes place during the period of two months referred to in this clause, and if a resolution approving the Proclamation has been passed by the Council of States, but no resolution with respect to such Proclamation has been passed by the House of the People before the expiration of that period, the Proclamation shall cease to operate at the expiration of thirty days from the date on which the House of the People first sits after its reconstitution unless before the expiration of the said period of thirty days a resolution approving the Proclamation has been also passed by the House of the People.
(4) A Proclamation so approved shall, unless revoked, cease to operate on the expiration of a period of six months from the date of issue of the Proclamation.

Provided that if and so often as a resolution approving the continuance in force of such a Proclamation is passed by both Houses of Parliament, the Proclamation shall, unless revoked, continue in force for a further period of six months from the date on which under this clause it would otherwise have ceased to operate, but no such Proclamation shall in any case remain in force for more than three years;

Provided further that if the dissolution of the House of the People takes place during any such period of six months and a resolution approving the continuance in force of such Proclamation has been passed by the Council of States, but no resolution with respect to the continuance in force of such Proclamation has been passed by the House of the People during the said period, the Proclamation shall cease to operate at the expiration of thirty days from the date on which the House of the People first sits after its reconstitution unless before the expiration of the said period of thirty days a resolution approving the continuance in force of the Proclamation has been also passed by the House of the People.

Provided also that in the case of the Proclamation issued under Clause (1) on the 11thday of May, 1987 with respect to the State of Punjab, the reference in the first proviso to this clause to "three years" shall be construed as a reference to five years.
(5) Notwithstanding anything contained in Clause (4), a resolution with respect to the continuance in force of a Proclamation approved under Clause (3) for any period beyond the expiration of one year from the date of issue of such proclamation shall not be passed by either House of Parliament unless-

(a) a Proclamation of Emergency is in operation, in the whole of India or, as the case may be, in the whole or any part of the State, at the time of the passing of such resolution, and
(b) the Election Commission certifies that the continuance in force of the Proclamation approved under Clause (3) during the period specified in such resolution is necessary on account of difficulties in holding general elections to the Legislative Assembly of the State concerned:

Provided that nothing in this clause shall apply to the Proclamation issued under Clause (J) on the 11thday of May, 1987 with respect to the State of Punjab.
Representation of People Act, 1951
Section 14: Notification for general election to the House of the People -
(1) A general election shall be held for the purpose of constituting a new House of the People on the expiration of the duration of the existing House or on its dissolution.
(2) For the said purpose the President shall, by one or more notifications published in the Gazette of India on such date or dates as may be recommended by the Election Commission, call upon all parliamentary constituencies to elect members in accordance with the provisions of this Act and of the rules and orders made thereunder:

Provided that where a general election is held otherwise than on the dissolution of the existing House of the People, no such notification shall be issued at any time earlier than six months prior to the date on which the duration of that House would expire under the provisions of Clause (2) of Article 83.
Section 15: Notification for general election to a State Legislative Assembly - (1) a general election shall be held for the purpose of constituting a new Legislative Assembly on the expiration of the duration of the existing Assembly or on its dissolution.
(2) For the said purpose the Governor or the Administrator as the case may be shall, by one or more notifications published in the Official Gazette of the State 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 this Act and of the rules and orders made thereunder:

Provided that where a general election is held otherwise that on the dissolution of existing Legislative Assembly on such notification shall be issued at any time earlier than six months prior to the date on which the duration of that Assembly would expire under the provisions of Clause (1) of Article 172 or under the provisions of Section 5 of the Government of Union Territories Act, 1963, as the case may be.
Section 30: Appointment of dates for nomination etc. - As soon as the notification calling upon a constituency to elect a member or members is issued, the Election Commission shall, by notification in the Official Gazette, appoint-
(a) the date of publication of the first mentioned notification or, if that day is a public holiday the last date for making nominations, which shall be the seventh day after holiday, the next succeeding day which is not a public holiday.
(b) The date for the scrutiny of nomination, which shall be, the day immediately following the last day for making nominations or, if that day is a public holiday, the next succeeding day which is not a public holiday,
(c) The last date for the withdrawal of candidature, which shall be the second day after the date for the scrutiny of nominations or, if that day is a public holiday, the next succeeding day which is not a public holiday.
(d) The date or dates on which a poll shall, if necessary, be taken which or the first of which shall be a date not earlier than the fourteenth day after the last date for the withdrawal of candidature; and
(e) the date before which the election shall be completed.
Section 73: Publication of results of general elections to the House of the People and the State Legislative Assemblies and of names of persons nominated thereto - Where a general election is held for the purpose of

constituting a new House of the People or a new State Legislative Assembly, there shall be notified by the Election Commission in the Official Gazette, as soon as may be, after the results of the elections in all the constituencies other than those in which the poll could not be taken for any reason on the date originally fixed under Clause (d) of Section 30 or for which the time for completion of the election has been extended under the provisions of Section 153 have been declared by the returning officer under the provisions of Section 53 or, as the case may be, Section 66, the names of the members elected for those constituencies and upon the issue of such notification that House or Assembly shall be deemed to be duly constituted:

Provided that the issue of such notification shall not be deemed-
(a) to preclude-
(i) the taking of the poll and the completion of the election in any Parliamentary or Assembly constituency or constituencies in which the poll could not be taken for any reason on the date originally fixed under Clause (d) of Section 30; or
(ii) the completion of the election in any Parliamentary or Assembly constituency or constituencies for which time has been extended under the provisions of Section 153; or
(b) to affect the duration of the House of the People or the State Legislative Assembly if any functioning immediately before the issue of the said notification.
Government of India Act, 1935:
18. Constitutional of the Federal Legislative - (1) There shall be a Federal Legislature which shall consist of His Majesty, represented by the Governor General, and two Chambers, to be known respectively as the Council of State and the House of Assembly (in this Act referred to as "the Federal Assembly").
(2) The Council of State shall consist of one hundred and fifty-six representatives of British India and not more than one hundred and four representatives of the Indian States, and the Federal Assembly shall consist of two hundred and fifty representatives of British India and not more than one hundred and twenty-five representatives of the Indian States.
(3) The said representatives shall be chosen in accordance with the provisions in that behalf contained in the First Schedule to this Act.
(4) The Council of State shall be a permanent body not subject to dissolution, but as near as may be one-third of the members thereof shall retire in every third year in accordance with the provisions in that behalf contained in the said First Schedule.
(5) Every Federal Assembly, unless sooner dissolved, shall continue for five years from the date appointed for their first meeting and no longer, and the expiration of the said period of five years shall operate as a dissolution of the Assembly.
19. Session of the Legislature, prorogation and dissolution - (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.
(2) Subject to the provisions of this section, the Governor-General may in his discretion from time to time-
(a) summon the Chambers or either Chamber to meet at such time and place as he thinks fit;
(b) prorogue the Chambers;
(c) dissolve the Federal Assembly.
(3) The Chambers shall be summoned to meet for their first session on a day not later than such day as may be specified in that behalf in His Majesty’s Proclamation establishing the Federation.

In the aforesaid background it would be expedient to render answers to the questions framed in the Reference.

The judicial aspect of these triple questions alone can attract judicial jurisdiction. However, even if we confine ourselves to legal problematic,

eschewing the political overtones, the words of Justice Holmes will haunt the Court: "We are quite here, but it is the quite of a storm center". The judicature must, however, be illumined in its approach by a legal - sociological guideline and a principled- pragmatic insight in resolving with jural tools and techniques, the various crises of human affairs' as they reach the forensic stage and seek dispute-resolution in terms of the rule of law. Justice Cardozo felicitously set the perspective:
The great generalities of the Constitution have a content and significance that vary from age to age.
Chief Justice Hidayatullah perceptively articulated the insight:
One must, of course, take note of the synthesized authoritative content or the moral meaning of the underlying principle of the prescriptions of law, but not ignore the historic evolution of the law itself or how it was connected in its changing moods with social requirements of a particular age.

The old Articles of the supreme lex meet new challenges of life, the old legal pillars suffer new stresses. So we have to adopt the law and develop its latent capabilities if novel situations, as here, are encountered. That is why in the reasoning we have adopted and the perspective we have projected, not literal nor lexical but liberal and visional is our interpretation of the Articles of the Constitution and the provisions of the Act. Lord Denning's words are instructive:
"Law does not stand still. It moves continually. Once this is recognized, then the task of the Judge is put on a higher plane. He must consciously seek to mould the law so as to serve the needs of the time. He must not be a mere mechanic a mere working mason, laying brick on brick, without thought to the overall design. He must be an architect - thinking of the structure as a whole building for society a system of law which is strong, durable and just. It is on his work that civilized society itself depends.
The constitutional scheme with regard to the holding of the elections to parliament and the State Legislatures is quite clear. First, the Constitution has provided for the establishment of a high power body to be in charge of the elections to Parliament and the State Legislature and of elections to the offices of President and Vice-President. That body is the Commission. Article 324 of the Constitution contains detailed provision regarding the constitution of the Commission and its general power. The superintendence, direction and control of the conduct of elections referred to in Article 324(1) of the Constitution are entrusted to the Commission. The words 'superintendence', 'direction' and 'control' are wide enough to include all powers necessary for the smooth conduct of elections. It is, however, seen that Parliament has been vested with the power to make law under Article 327 of the Constitution read with Entry 72 of List I of the Seventh Schedule to the Constitution with respect to all matters relating to the elections to either House of Parliament or to the House or either House of the Legislature of a State subject to the provisions of the Constitution. Subject to the provisions of the Constitution and any law made in that behalf by Parliament, the Legislature of a State may under Article 328 read with Entry 37 of List II of the Seventh Schedule to the Constitution make law relating to the elections to the House or Houses of Legislature of that State. The general powers of superintendence, direction and control of the elections vested in the Commission under Article 342(1) naturally are subject to any law made either under Article 327 or under Article 328 of the Constitution. The word 'election' in Article 324 is used in a wide sense so as to include the entire process of election which consists of several stages and it embraces many steps, some of which may have an important bearing on the result of the process. Article 324 of the Constitution operates in areas left unoccupied by legislation and the words 'superintendence', 'direction' and 'control' and well as 'conduct of all elections' are the broadest terms which would include the power to make all such provisions. [See Mohinder Singh Gill v. Chief Election Commissioner, New Delhi, A.C. Jose v. Sivan Pillai and Kanhiya Lal Omar v. R.K. Trivedi and Ors.].

Before the scheme of the Constitution is examined in some detail it is

necessary to give the pattern which was followed in framing it. The constituent Assembly was unfettered by any previous commitment in evolving a constitutional pattern "suitable to the genius and requirements of the Indian people as a whole". The Assembly had before it the experience of the working of the Government Act several features of which would be accepted for the new Constitution. Our Constitution borrowed a great deal from the Constitutions of other countries, e.g. United Kingdom, Canada, Australia, Ireland, United States of America and Switzerland. The Constitution being supreme all the organs and bodies owe their existence to it. Noen can claim superiority over the other and each of them has to function within the four-corners of the constitutional provisions. The preamble embodies the great purposes, objectives and the policy underlying its provisions apart from the basic character of the State which was to come into existence, i.e. a Sovereign Democratic Republic. It is the executive that has the main responsibility for formulating the government policy by "transmitting it into law" whenever necessary. "The executive function comprises both the determination of the policy as well as carrying it into execution. This evidently includes the initiation of legislation, the maintenance of order, the promotion of social and economic welfare, the direction of foreign policy, in fact the carrying on or supervision of the general administration of the State". With regard to the civil services and the position of the judiciary the British model has been adopted inasmuch as the appointment of Judges both of the Supreme Court of India and the High Courts of the States is kept free from political controversies. Their independence has been assured. But the doctrine of parliamentary sovereignty as it obtains in England does not prevail here except to the extent provided by the Constitution. The entire scheme of the Constitution is such that it ensures the sovereignty and integrity of the country as a Republic and the democratic way of life by parliamentary institutions based on free and fair elections. These aspects have been highlighted in Kesavananda Bharati’s case (supra).

Democracy is a basic features of the Constitution. Whether any particular brand or system of government by itself, has this attribute of a basic feature, as long as the essential characteristics that entitle a system of government to be called democratic are otherwise satisfied is not necessary to be gone into. Election conducted at regular, prescribed intervals is essential to the democratic system envisaged in the Constitution. So is the need to protect and sustain the purity of the electoral process. That may take within it the quality, efficacy and adequacy of the machinery for resolution of electoral disputes.

The first question essentially relates to the interplay between two Articles i.e. Article 174 and Article 324 of the Constitution. A bare reading of the aforesaid two Articles makes it clear that they operate in different fields. Article 14 appears in Chapter III of Part VI of the Constitution relating to State Legislature. The parallel provision, so far as the Union is concerned, is contained in Article 85 in Chapter II of Part V of the Constitution. Chapter III of Part VI with which we are presently concerned deals with State Legislature. Article 168 provides that for every State there shall be Legislature which shall consist of the Governor and in for States with two Houses and in other States one House of the State. Where there are two Houses of the Legislature of a State, one is known as a Legislative Council and other is Legislative Assembly and when there is only one House, it is known as the Legislative Assembly. Article 172 provides for the duration of State Legislatures. Article 174 deals with sessions of the State Legislatures, prorogation and dissolution. Under Clause (1), the Governor is required to summon the House or each House of the Legislature of the State from time to time to meet at such time and place as he thinks fit. It further provides that six months shall not intervene between its last sitting of one session of the House and the date appointed for its first sitting in the next session of the House. The requirement relating to the meeting within the prescribed time period is the crucial issue in the reference. Clause (2) deals with power of the Governor to (a) prorogue the House or either House or (b) dissolve the

Legislative Assembly. Almost in similar language are couched Articles 83 and 85. As has been rightly contended by some of the learned counsel, Article 174 does not deal with elections. ON the contrary, the occasion for holding of elections to the conducted by the Election Commission arise only after dissolution of the House. It is the stand of the Union of India, the Election Commission and some of the parties that the Election Commission is duty bound to ensure meeting of the House within the time indicated in Article 174(1). According to them, the urgency and desirability involved in calling the meeting of the House cannot be frustrated by postponing elections. Thus, according to them, the Election Commission has to ensure that the elections are held in time, so that the State Legislature can meet within the prescribed time period. On the other hand, learned counsel for some of the other parties have submitted that the period of six months does not operate in respect of the dissolved Assemblies. Election Commissioner under the Constitution is required to hold "free and fair election" and election which is not free and fair is, sham or manipulated, and no election at all. Article 174 according to them relates to the live assembly and not assembly which on dissolution has suffered civil death. It has been pointed out by them that no time period is prescribed for holding the elections after dissolution either in the Constitution or Representation of People' Act, 1950 (in short R.P. Act 1950) and R.P. Act 1951'. The stand of the Union of India, the Election Commission and some of the parties is that in the scheme of the Constitution and the laws framed under Article 327, it is impossible to conceive that elections can be deferred indefinitely. According to them, the fact that elections constitute basic structure of the Constitution, the care taker Ministry is not the answer and not even imposition of President's Rule. According to them, President Rule can be imposed only if the enumerated circumstances exist and not otherwise. Imposition of President's Rule has to be ratified by both the Houses of Parliament. It is further submitted that Election Commissioner has to ensure holding of elections and not holding up the elections, and effort should be to take necessary assistance from the Center and the States, if necessary, to hold the elections and that is why the third question has been referred. With reference to the language used in Article 174 that is

> "between its last sitting in one session and the date appointed for its first sitting in the next session", it is pointed out that the House does not get dissolved, it is only the Legislative Assembly which gets dissolved. Therefore, the Election Commissioner is duty bound to see that Article 324 is exercised in such a manner that prescription under Article 174 is not diluted or rendered ineffective.

So far as Chapter III of Part VI is concerned, like Chapter III of Part V. difference is made between the Legislature, the Legislative Assembly and the House of the People, as the case may be, Article 79 says that there shall be a Parliament for the Union which shall consist of the President and the two Houses to be known respectively as the Council of States and the House of the People. As indicated above, in almost identical language is couched Article 168, Clause (1) of which provides that for every State there shall be a Legislature which shall consist of the Governor etc. It was submitted by some of the learned counsel that the House is known as Legislative Assembly so far as the States are concerned and so far as the Parliament is concerned, two Houses are known as Legislative Council and the Legislative Assembly. According to them, it is only the nomenclature and that on the dissolution of the Legislative Assembly or the House of the People, as the case may be, there is no House in existence. This plea though attractive is not tenable. The question of holding elections by the Election Commissioner to meet the dead line fixed under Article 174, some times becomes impossible of being performed. In a hypothetical case if the House of People or the Legislative Assembly is dissolved a month before the expiry of the six months period, it becomes a practical impossibility to hold the election to meet the dead line. There may be several cases where acts of God intervene, rendering holding of election impossible even though a time schedule has been fixed. In such cases, even if the elections are held after six months period they do not become invalid. The Election

Commission in such cases cannot be asked to perform the impossible. There lies the answer to the question whether Article 174 has mandatory attributes.

The House of the people or the Legislature is a permanent body. On dissolution of the House of the People or the Legislative Assembly, the House does not cease to be in existence. Dissolution in its broadest sense means decomposition, disintegration, undoing a bond. In a broad sense - the Constitutional - it implies the dismissal of an Assembly or the House of the People. Dissolution is an act of the Executive which dismisses the legislative body and starts the process through exercise of franchise by the little men who are the supreme arbitrators of the State to put the new legislative body in place. The natural dissolution is on expiry of period fixed under the Constitution, and other mode of dissolution is by an act of the Executive. It is the lawful act of the Executive that prematurely dissolution ends the life of the Legislature. We are not concerned whether such an act of the Executive can be subject to judicial review which is another matter.

The exercise of the right of the Executive to dissolve the House of the People or the Legislative Assembly pre-supposes certain conditions i.e. (i) the existence of a representative body which is the object of dissolution and (ii) the act of the Executive which implies a separate and distinct state organ vested with the power to dissolve (iii) the consequential summoning of a new House of People or Legislative Assembly after the election is held by the Election Commission and the result notified after its conclusion.

The State organ vested with the right to dissolve Parliament must express its will to do so in a manner which accords with the Constitution, and the relevant laws. The primary consequence of dissolution is that House of People or the Legislative Assembly, as the case may be, legally ceases to exist and cannot perform its legislative functions. Such pre-mature interruption of the life of the House of the People or the Legislative Assembly as the case may be, amongst others factors affects it as a body as well as its individual members likewise its work is also abruptly ended, subject to prescribed exclusions, if any. Any further meeting of the ex-members has to be considered an ordinary meeting of citizens, and not an official session of the Legislative Assembly or House of People in the legislative capacity.

When the House meets after the results of election are notified and notification has been issued under the relevant law, it becomes a live body after it is duly constituted. The constituents of the body may have been changed but the constitutional body which is permanent one becomes alive again. Therefore, the submission that under Article 174(1) time period fixed does not apply to dissolved Legislative Assembly has substance.

Dissolution brings a legislative body to an end. It essentially terminates the life of such body and is followed by a constitution of new body (a Legislative Assembly or a House of People, as the case may be). Prorogation on the other hand relates to termination of a session and thus preclude another session, unless it coincides with end of the legislative term. The basic difference is that prorogation unlike dissolution does not affect a legislative body’s life which may continue from session to session, until brought to an end of dissolution. Dissolution draws the final curtain upon the House. Once the House is dissolved it becomes irrevocable. There is no power to recall the order of dissolution and or revive the previous House. Consequently effect of dissolution is absolute and irrevocable. It has been described by some learned authors that dissolution

> "passes a sponge ever the parliamentary slate". The effect of dissolution is in essence termination of current business of the legislative body, its sittings and sessions. There is a cessation of chain of sessions, sittings and for a dissolved legislative body

> and there cannot be any next session or its first sitting. With the election of legislative body a new Chapter comes into operation. Till that is done, the sine qua non of responsible government i.e. accountability is non-existent. Consequentially, the time stipulation is non-existent. Any other interpretation would render use of the word "its" in relation to "last sitting in one session" and "first sitting in the next session" without significance.

In providing key to the meaning of any word or expression the context in which it is said has significance. Colour and content emanating from context may permit sense being preferred to mere meaning depending on what is sought to be achieved and what is sought to be prevented by the legislative scheme surrounding the expression. It is a settled principle that in interpreting the statute the words used therein cannot be read in isolation. Their colour and content are derived from their context and, therefore, every word in a statute must be examined in its context by the word 'context'. it means in its widest sense as including not only other enacting provisions of the same statute but its preamble, the existing state of the law, other statutes in pari materia and the mischief which the statute intended to remedy. While making such interpretation the roots of the past the foliage of the Present and the seeds of the future cannot be lost sight of Judicial interpretation should not be imprisoned in verbalism and words lose their thrust when read in vacuo. Context would quite often provide the key to the meaning of the word and the sense it should carry. Its setting would give colour to it and provide a cue to the intention of the Legislature in using it. A word is not a crystal, transparent and unchanged; it is the skin of living thought and may vary greatly in colour and content according to the circumstances and the time in which the same is used as was observed by Homes, J. in Towne v. Eisner [(1917) 245 US 418m 425.]

The following passage from Statutory Interpretation by Justice G.P. Singh (Eighth Edition, 2001 at pp. 81-82) is an appropriate guide to the case at hand:
"No word", says Professor H.A. Smith "has an absolute meaning, for no words can be defined in vacuo, or without reference to some context". According to Sutherland there is a "basic fallacy" in saying "that words have meaning in and of themselves", and "reference to the abstract meaning of words", states Craies, "if there be any such thing, is of little value in interpreting statutes" ....in determining the meaning of any word or phrase in a statute the first question to be asked is---"what is the natural or ordinary meaning of that word or phrase in its context in the statute? It is only when that meaning leads to some result which cannot reasonably be supposed to have been the intention of the Legislature, that it is proper to look for some other possible meaning of the word or phrase". The context, as already seen, in the construction of statutes, means the statute as a whole, the previous state of the law, other statutes in pari material the general scope of the statute and the mischief that was intended to remedy".

The judicial function of the Court in interpreting the Constitution thus becomes anti nomi. It calls for a plea upon a continuity of members found in the instrument and for meeting the domain needs and aspirations of the present. A constitutional court like this Court is a nice balance of jurisdiction and it declares the law as contained in the Constitution but in doing so it rightly reflects that the Constitution is a living and organic thing which of all instruments has the greatest claim to be construed broadly and liberally. [See Goodyear India Ltd. v. State of Haryana and Anr. and Synthetics and Chemicals Ltd. v. State of U.P. and Ors.].

In the interpretation of a constitutional document words are butthe framework of concepts and concepts may change more than wordsthemselves. The significance of the change of the concepts themselvesis vital and constitutional issues are not solved by a mere appeal tothe meaning of

words without an acceptance of the line of theirgrowth. It is aptly said that the intention of the Constitution is rather tooutline principles than to engrave details. (See R.C. Poudval v. Union of India and Ors.).

In Purushothaman Nambudiri v. The State of Kerala, a Constitution Bench of this Court observed as follows:

> "Dissolution of Parliament is sometimes described as 'a civil death of Parliament'. Ilbert, in his work on 'Parliament', has observed that 'prorogation means the end of a session (not of a Parliament)';"
> "in any case, there is no continuity in the personality of the Assembly where the life of one Assembly comes to an end another Assembly is in due course elected."

It will be also clear from the Constituent Assembly Debates (vis-a-vis Article 153 - presently Article 174) that the stress was on frequent meetings of long durations of live Legislative Assembly.

In May's Parliamentary Practice, the following paragraph reinforces the view:

> "A session is the period of time between the meeting of a Parliament, whether after the prorogation or dissolution, and its prorogation...During the course of a session either House may adjourn itself of its own motion to such as ti pleases. The period between the prorogation of Parliament and its reassembly in a new session is termed as 'recess'; while the period between the adjournment of either House and the resumption of its sitting is generally called an 'adjournment'.

A prorogation terminates a session; an adjournment is an interruption in the course of one an the same session."

There is a direct decision of the Kerala High Court in K.K. Aboo v. Union of India on the point. It was inter alia observed as follows:

> "A Legislature can be summoned to meet only if it is in esse at the time. A dissolved Legislature is incapable of being summoned to meet under Article 174 of the Constitution. The question therefore is not whether the Legislature should or could have been summoned to meet, but whether its dissolution ordered by the President, is constitutionally valid."

The view is well founded.

The position gets further clear that one looks at the original Article 174 which was amended in 1951. The un-amended Article 174 reads as follows:

> "174(1) The House or Houses of the Legislature of the State shall be summoned to meet twice at lest 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 Clause (1), the Governor may from time to time--

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

(b) prorogue the House or Houses."

Having reached the conclusion that Article 174 in terms does not apply to dissolved Assembly (similar in the case of Article 85 in case of House of People), the other question that survives consideration is that can there be a time limit fixed for holding the elections in such cases? It has been emphatically submitted by some of the learned counsel that the Constitution does not provide for any time of limitation, nor does not R.P. Act.

Can it be said that the framers of the Constitution intended that in case of life of the elected body comes to an end on expiry of the fixed duration, a time limit for holding elections is imperative, while in the case of a pre-mature dissolution it does not so?

Sections 14 and 15 of the R.P. Act, 1951 deal with notification for general election to the House of the People and the State Legislative Assemblies respectively. It is clearly stipulated that notification for holding the election cannot be issued at any time earlier than 6 months prior to the date on which the duration of the House will expire under provisions of Clause (2) of Article 83 or under Clause (1) of Article 172 respectively. The obvious purpose is that the President or the Governor, as the case may be, to call upon the electorate to elect members in accordance with the provisions of the Rules, Act and the orders made thereunder on such dates as may be recommended by the Election Commission. The dates are to be so fixed that they are not much prior to the expiry of the duration. Here also, the underlying object is that the elected members are to continue for the full term. It has been fairly accepted by learned counsel for the parties who submitted that there is no time limit fixed that there should always be a responsible Government. Our Constitution establishes a democratic republic as is indicated in the Preamble to the Constitution itself and Cabinet system of Government is generally known as the responsible government. We may notice here that in a democracy the sovereign powers vest collectively to the three limbs i.e. the executive, legislature and the judiciary. Section 14 of the R.P. Act, 1951 mandates that general elections shall be held for the purpose of constituting the new House of People on the expiry of the duration of the existing House or on its dissolution. Similar is in the case of Legislative Assembly in the background of Section 15. When the election is to be held on the expiry of the fixed term, the Election Commissioner knows the date in advance and can accordingly fix up schedule of the election. The problem arises when there is a pre-mature dissolution. In that case, the Election Commissioner becomes aware only after the dissolution takes place. He cannot, therefore, fix up any schedule in advance in such a case. The consequential fall out of not holding election for a long time is the functioning of a care-taker government which is contrary to the principles of responsible Government. The caretaker government is not the solution to deferring elections for unduly long periods.

As noted above, due to unforeseen contingencies it may become impossible to constitute new House of People or the Legislative Assembly. Deferring an election is an exception to the requirement that elections should be held as early as practicable. The requirement of summoning the House has inbuilt in it; the existence of a House capable of being summoned. Therefore even in the case of pre-mature dissolution, effort of the Election Commission should be to hold elections in time so that a responsible government is in office. At the cost of repetition it may be indicated that where free and fair election is not possible to be held, there may be inevitable delay. But reasons for deferring elections should be relatable to acts of God and normally not acts of man. Myriad reasons may be there for not holding elections.

In determining the question whether a provision is mandatory or directory, the subject matter, the importance of the provision, the relation to the provision to the general object intended to be secured by the Act will decide whether the provision is directory or mandatory. It is the duty of the courts to get the real intention of the legislature by carefully attending the whole scope of the provision to be construed. The key to the opening of every law is the reason and spirit of the law, it is the animus impotentia, the intention of the law maker expressed in the law itself, taken as a whole". (See Bratt v. Bratt (1826) 3 Addams 210 at p. 216).

The necessity for completing the election expeditiously is enjoined by the Constitution in public and State interest to see that the governance of the country is not paralysed.

The impossibility of holding the election is not a factor against the Election Commission. The maxim of law impotentia exusat legem is intimately connected with another maxim of law lex non cogit ad impossibilia. Impotentia excusat legem is that when there is a necessary or invincible

disability to perform the mandatory part of the law that impotentia excuses. The law does not compel one to do that which one cannot possibly perform. "Where the law creates a duty or charge, and the party is disabled to perform it, without any default in him, and has no remedy over it, there the law will in general excuse him." Therefore, when it appears that the performance of the formalities prescribed by a statute has been rendered impossible by circumstances over which the persons interested had no control, like the act of God, the circumstances will be taken as a valid excuse. Where the act of God prevents the compliance of the words of a statute, the statutory provision is not denuded of its mandatory character because of supervening impossibility caused by the act of God. (See Broom's Legal Maxims 10th Edition at pp. 1962-63 and Craies on Statute Law 6th Ed. P. 268). These aspects were highlighted by this Court in Special Reference 1 of 1974 (1975 (1) SCR 504). Situations may be created by interested persons to see that elections do not take place and the caretaker government continue in office. This certainly would be against the scheme of the Constitution and the basic structure to that extent shall be corroded.

A responsible Government provides for a healthy functioning. The democracy has to be contrasted with a caretaker government which is ad hoc in all its context and which is not required to take any policy decision. A piquant situation may arise when a Cabinet of Ministers being sure that it will loose the vote of confidence, calls for a dissolution a few days before the expiry of the six months' period in terms of Article 174 knowing fully well that the elections cannot be held immediately continues as the care taker government. Let us take another hypothetical case, where free and fair elections are not possible and caretaker government continues in office because of man made situations. Here the Election Commissioner has a duty to lift the veil, see the design and make all possible efforts to hold the elections so that a responsible government takes place in office. Question then arises as to how a impasse can be avoided when an Assembly or the House of People is dissolved and election can be held immediately so that six month's period is not given a go by, between the last sitting of the dissolved one and the first sitting of the duly constituted subsequent one. One of the solutions can be that an emergent session which is usually described as 'lame duck' session can be convened, and immediately thereafter the dissolution can be notified. In such a situation, the Election Commissioner gets sufficient time to hold the election subject of course to the paramount consideration that it is free and fair one; thereby enabling functioning of the next session of the duly constituted elected body to meet within six months from the date of dissolution. For practical purposes the six months' period then would begin from the date of dissolution.

Free and fair election is the sine qua non of democracy. The scheme of the Constitution makes it clear that two distinct Constitutional authorities deal with election and calling of session. It has been pointed out to us that as a matter of practice the elections are completed within a period of six months from the date of dissolution, on completing the prescribed tenure or on pre-mature dissolution except when for inevitable reasons there is a delay. The Election Commissioner is a high constitutional authority charged with the duty of ensuring free and fair elections and the purity of electoral process. To effectuate the constitutional objective and purpose it is to draw upon all incidental and ancillary powers. Six months' period applicable to elections held on expiry of the prescribed term would be imperatively applicable to elections held after pre-mature dissolution. This of course would be subject to such rare exceptional cases occasioned on account of facts situation (like acts of God) which make holding of elections impossible. But man made situation intended to defer holding of elections should be sternly dealt with and should not normally be a ground for deferring elections beyond six months period, starting point of which would be the date of dissolution. As was observed in Digvijay Mote v. Union of India and Ors., timely election which is not free and fair subverts democracy and frustrates the ultimate responsibility to assess objectively

whether free and fair election is possible. Any man made attempt to obstruct free and fair election is antithesis to democratic norms and should be overcome by garnering resources from the intended sources and by holding the elections within the six months' period."

Reference was made to Article 164(4) of the Constitution to contend that six months' period for holding election is in built in Article 174. It has to be noted that as observed by this Court in S.R. Chaudhuri v. State of Punjab and Ors. the provisions is not really concerned with holding of elections and primarily relates to a requirement to get elected within the time prescribed. The said provision contemplates a situation where a Minister in a Legislature in existence has to be elected, it does not deal with a non-existing House and in the background, there is nothing to do with Article 174.

The second question has really lost its sting because of the submissions made before this Court on behalf of the Election Commission.

So far as applicability of Article 356 is concerned, though in the order the Election Commission has specifically dealt with the possibility of applying that situation, in the written submissions and the arguments made before this Court the view was given a go by; and in our view rightly. Mere non-compliance of Article 174 so far as the time period is concerned, does not automatically bring in Article 356. It is made clear that the order of the Election Commissioner is the foundation and not what is stated subsequently by way of an affidavit or submissions to clarify. But in view of the concession, which according to us is well founded, we need not go into the question in detail. It was submitted by some of the learned counsel that the Election Commission's order otherwise makes out a case for applying Article 356. We are not concerned with those as the Reference only related to application of Article 356 when the requirement of Article 174 is not met. In K.N. Rajgopal v. Thiru M. Karunanidhi, a Constitution Bench of this Court inter alia, observed as follows:

> ".....Article 356 of the Constitution makes provisions in case of failure of constitutional machinery in the State. But when an Assembly is dissolved there is no failure of constitutional machinery within Article 356."

A similar observation was made by one of us (Hon'ble V.N. Khare, J. as His Lordship was then) in Arun Kumar Rai Chaudhary v. Union of India. His Lordship succinctly stated the position as follows:

> "This question came up for consideration before Supreme Court in the case of U.N.R. Rao v. Indira Gandhi and Thiru K.N. Rai Gopal v. M. Karuna Nidhi. The Supreme Court while interpreting Articles 74 and 75 as well as Articles 163 and 164 of the Constitution held that even if the House is dissolved, the Council of Ministers continues. These decisions squarely cover the case before us. Following these decisions we hold that after the Governor of the State of U.. dissolved the Legislative Assembly and directions were issued for holding fresh poll for constituting the Legislative Assembly, the Council of Ministers continues. Further there being no failure of constitutional machinery within the meaning of Article 356 of the Constitution, the contention that the President of India ought to have promulgated President Rule in the State for carrying on the function of the Government must be rejected."

Situations when Article 356 can be resorted to have been illuminatingly highlighted in S.R. Bommai v. Union of India,. The following observations very aptly summarized the position:

> ".....Article 356 is an emergency provision though, it is true, it is qualitatively different from the emergency contemplated by Article 352, or for that matter, from the financial emergency contemplated by Article 360. Undoubtedly, breakdown of the constitutional machinery in a State does give rise to a situation of emergency. Emergency means a situation which is not normal, a

> situation which calls for urgent remedial action. Article 356 confers a power to be exercised by the President in exceptional circumstances to discharge the obligation cast upon him by Article 355. It is a measure to protect and preserve the Constitution, consistent with his oath. He is as much bound to exercise this power in a situation contemplated by Article 356 as he is bound not to use it where such a situation has not really arisen."

It has been further observed:

> ".....He has to exercise his powers with the aid and advice of the Council of Ministers with the Chief Minister at its head (Article 163). He takes the oath prescribed by Article 159, to preserve, protect and defend the Constitution and the laws to the best of his ability. It is this obligation which requires him to report to the President the commissions and omissions of the Government of his State which according to him are creating or have created a situation where the Government of the State cannot be carried on in accordance with the provisions of the Constitution. In fact, it would be a case of his reporting against his own Government but this may be a case of his wearing two hats, one as the head of the State Government and the other as the holder of an independent constitutional office whose duty it is to preserve, protect and defend the Constitution (See Shamsher Singh v. State of Punjab). Since he cannot himself take any action of the nature contemplated by Article 356(1), he reports the matter to the President and it is for the President to be satisfied - whether on the basis of the said report or on the basis of any other information which he may receive otherwise - that situation of the nature contemplated by Article 356(1) has arisen....."

The third question is to be considered in the background of what has been observed supra about scope and ambit of Article 174. It does not relate to holding of elections. Therefore, he question of seeking control or State assistance does not arise. However, the Election Commission and the Governments (Central and or State) have well-defined roles to play to ensure free and fair election. The parameters have been laid down by this Court in several cases e.g. Election Commission of India v. State of Haryana, (1984 (3) SCR 554). Election Commission of India v. Union of India and Ors. (1995) Supp (3) SCC 643), Election Commission of India v. State of T.N. and Ors. (1995 Supp (3) SCC 379). Some of the relevant observations need to be noticed.

In Tamil Nadu’s case (supra) it was observed:

> "The Election Commission of India is a high constitutional authority charged with the function and the duty of ensuring free and fair elections and of the purity of the electoral process. It has all the incidental and ancillary powers to effectuate the constitutional objective and purpose. The plenitude of the Commission’s powers corresponds to the high constitutional functions it has to discharge. In an exercise of the magnitude involved in ensuring free and fair elections in the vastness of our country, there are bound to be differences of perception as to the law and order situation in any particular constituency at any given time and as to the remedial requirements. Then again, there may be intrinsic limitations on the resources of the Central government to meet in full the demands of the Election Commission. There may again be honest differences of opinion in the assessment of the magnitude of the security machinery. There must, in the very nature of the complexities and imponderables inherent in such situations, be a harmonious functioning of the Election Commission and the Governments, both State and Central. If there are mutually irreconcilable viewpoints, there must be a mechanism to resolve them. The assessment of the Election Commission as to the State of law and order and the nature and adequacy of the machinery to deal with situations so as to ensure free and fair elections must, prima facie, prevail. But, there may be limitations of resources.

> Situation of this kind should be resolved by mutual discussion and should not be blown up into public confrontations. This is not good for a healthy democracy. The Election Commission of India and the Union Government should find a mutually acceptable coordinating machinery for resolution of these differences."

To sum up, answers to the questions set out in the Reference are as follows:

1. The provisions of Article 174 are mandatory in character so far as the time period between two sessions is concerned in respect of live Assemblies and not dissolved Assemblies. Article 174 and Article 324 operate in different fields. Article 174 does not deal with elections which is the primary function of the Election Commission under Article 324. Therefore, the question of one yielding to the other does not arise. There is scope of harmonizing both in a manner indicated supra.
2. Article 174 is not relatable to a dissolved Assembly. Similar is the position under Article 85 vis-a-vis House of People. Merely because the time schedule fixed under Article 174 cannot be adhered to, that per se cannot be the ground for bringing into operation Article 356.
3. As Article 174 does not deal with election, the question of Election Commissioner taking the aid, assistance or co-operation of the Center or the State Governments or to draw upon their resources to hold the election does not arise. On the contrary for effective operation of Article 324 the Election Commission can do so to ensure holding of free and fair election. The question whether free and fair election is possible to be held or not has to be objectively assessed by the Election Commission by taking into consideration all relevant aspects. Efforts should be to hold the election and not to defer holding of election.