Chapter - III

President in Parliament: His powers to address Parliament, to approve the Bills and to send Messages.

As we found in our discussion of the controversy about the President's letter to the Prime Minister (in the preceding chapter), the Presiding Officers of Parliament blocked all discussion of the issue, taking the plea that President's name could not be a matter of debate in the Parliament. To circumvent such specious reasoning, the only alternative open to the President is either to send a message to the Parliament to take up the matter for discussion or to directly address the Parliament, narrating the difficulties he is facing in his dealings with the Prime Minister.

In this chapter, our specific interest lies in exploring the President's right to send messages to Parliament in the context of the problems he faces. But, before taking up this issue, we would like to explain the President's powers to address Parliament and to approve the Bills in order to stress that he does not have to depend always on his Council of Ministers in his dealings with the Parliament.

I. President's Power to Address Parliament

Like the British Monarch, the President of India is a constituent part of the Union Parliament, which consists of the President and the two Houses known as the Council of States (Rajya Sabha) and the House of the People.
The President, though himself not a member of Parliament, has numerous powers in regard to its composition, convening of sessions and legislation.

Under Article 87 of the Constitution of India, the President addresses both Houses of Parliament assemble together at the commencement of the first session after each general election to the House of the People and at the commencement of the first session of each year and informs Parliament of the causes of its summons. Besides the opening address, the President under Article 86 is empowered to address either House of Parliament or both Houses assembled together and for that purpose require the attendance of members.

1. Article 79 of the Constitution of India provides: "There shall be a Parliament for the Union which shall consist of the President and two Houses...." The Constitution of India (as modified up to 1st September 1991), (New Delhi: Government of India, Ministry of Law, Justice and Company Affairs, 1991) p. 21.

2. The phrase 'commencement of the session' have been judicially interpreted. The Orissa High Court in its judgement said that the session 'does not commence when the Secretary of the Assembly, under the direction of the Governor, summons the members for taking oath and for electing the Speaker. The session can be said to commence only when the Governor starts reading his address under Article 176(1)'. Saradhamar Supakar Petitioner vs Speaker, Orissa Legislative Assembly, The All India Reporter (Nagpur), Vol. 39, 1952, Orissa 234(235)

3. Article 87 of The Constitution of India, f.n. 1, p. 23.

4. A contingency may arise when in the event of grave emergency it becomes expedient to summon Parliament which may not necessarily in its first session and thus under the provisions of Article 86, the President can address it.
It may be mentioned that a provision regarding the President's power to address Parliament was incorporated as Article 71 in the Draft Constitution of India. This provision was included because it was suggested by the Chairman of the Drafting Committee in the meeting held on December 6, 1947 that a new clause should be inserted to provide that at the commencement of every session the President would address Parliament and inform it of the purposes for which it was summoned.

The provision for the opening of the Legislature by the Executive Head of the State has been taken from the practice obtaining in England where the Monarch opens


6. Cited in B. Shiva Rao, The Framing of India's Constitution: Select Documents (New Delhi: The Indian Institute of Public Administration, 1967), Vol. III, p. 357; During the year 1950 when the Constitution came into force, three sessions of the Provisional Parliament were held. It was felt that to have President's Address as many as three times in a year with a very short interval was merely a repetition of the performance of the previous occasions. Hence, it was considered desirable to amend the constitutional provision so as to provide for the President's address only at the commencement of the first session after each general election and at the commencement of the first session each year and this was done by the Constitution (First Amendment) Act 1951. Cited in R.N. Misra, President and the Parliament (Bombay: Vora and Company, 1978), p. 42.
Parliament with a speech. The Monarch's speech enunciates the policy of the Government and discussion on his speech is initiated by a motion of thanks to him for addressing the Parliament.

The difference between England and India in the matter of addressing Parliament is that while the Monarch's speech in England is delivered or read at the beginning of each session, in India, as stated earlier, the President addresses the House only at the commencement of the first session after each general election and at the commencement of the first session of each year.

In the United States there is no specific provision authorising or making it obligatory for the President to address Congress at the opening session. At the same time, there is no prohibition for him to send or read a message at the opening session of Congress and declare his policies. The Constitution prescribes that the President "shall from time to time give to Congress information of the state of the

Union, and recommend to their consideration such measures as he shall judge necessary or expedient..."  

The President's address in India is generally prepared by the Ministers because it is an authoritative pronouncement of the policy of the Government in regard to all matters whether domestic or foreign. Now the questions arise - whether the President is bound to read that portion of the address which is objectionable and goes against the spirit of the Constitution? What the President should do when members of the Parliament create disturbances and do not allow him to read the address?

(a). **Laying of a Copy of the President's address on the table of the House**

Although Article 87 makes it quite clear that the President is bound to address the Legislature, yet it is not necessary that he should read the address in full. To illustrate the point, we can look into some happenings in the State Legislatures. For instance in February, 1965, the Governor of West Bengal came to address a joint session of the Legislature. But she was not permitted to read her address by the members of the Opposition. She left the House

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and said: 'I lay the copy of the speech on the Table for the information of the members.' Later on, it was contended that the session could not be considered to have begun legally since the Governor had not delivered the address personally. But the Calcutta High Court defended the decision of the West Bengal Governor and declared:

"... When the Governor makes due attempt to perform the duty under Article 176 but fails and walks out of the House and makes up the failure by publication of the address to the members of the Legislature by a well-known method, namely, by laying the address on the table of the House, the duty is merely irregularly performed and such an irregularity cannot be called in question under Article 212(1) ... To hold that Legislature must not be deemed to have met when a Governor is unable to begin or finish the address under Article 176 and is compelled otherwise to publish the address is to put a value on such disturbances which they do not deserve."

Another instance took place in Rajasthan Legislative Assembly in 1966. The Governor, Mr. Sampurnanand, could not read his full address on account of the disorderly atmosphere created by some Opposition members, hence he simply read the last paragraph of his address. The Speaker of Rajasthan


11. Ibid.


Legislative Assembly, Shri Ram Niwas Mirdha, declared that "the Governor's presence in the House met the constitutional requirement under Article 176,\textsuperscript{14} when this case came before the Rajasthan High Court, it declared:

"The speech (of the Governor) was certainly directed to the members of the Legislative Assembly and the Governor came face to face with the representatives of the people and if, in the circumstances that arose as a result of the action of some of the members, the whole of the address was not read, then it was certainly open to the House to say that the address may be taken to have been delivered ...."\textsuperscript{15}

Similarly in 1988, when members of the Opposition made noisy interruptions in the Legislative Assembly of Rajasthan, Governor, Mr. Sukhdev Prasad, read the last paragraph of his address and left the House.\textsuperscript{16}

Therefore, keeping in view the said judgements (of the Calcutta and Rajasthan High Courts), it can be said that when the Governor makes due attempts to perform the constitutional duty under Article 176 and is prevented from discharging his duty due to obstruction, he must be considered to have performed his duty legally if he simply lays down the statement on the table of the House. Since Article 176(1)

\textsuperscript{14. Tribune (Ambala Cantt.), March 3, 1966.}

\textsuperscript{15. Yogendra Nath Handa and Others, Petitioners v. State and Others. The All India Reporter (Nagpur), Vol. 54, 1967, Rajasthan 123 (126).}

\textsuperscript{16. Cited in Bhawani Singh, f.n. 13.}
is a carbon copy of Article 87(1) of the Constitution, this rule be deemed to be applicable in the case of the President also in similar situations.

(b). Contents of the Address and Ministerial Advice

As already pointed out, the Presidential address, like the speech from the throne in England, is prepared by the Cabinet. In England, the Monarch can make suggestions for changes in the draft of his address. However, if his (Monarch's) suggestion for a change in the draft is not accepted, he will have no alternative but to read it. But whatever he reads, responsibility would be that of the Cabinet because in England there is a maxim that 'the Monarch can do no wrong'. For instance in 1841, 'Queen Victoria did not agree with some passages in the address prepared by the Cabinet. She said that she would not like to have them. But at that time the Cabinet insisted on it and she had to read out the address'.

But the position of the Indian President is not wholly identical with that of the British Monarch in this regard. The President can refuse to read out any objectionable portion of the address which goes against the spirit of the Constitution. But he can use this power only on the advice of the Supreme Court of India. As Shri R.N. Misra has said:

17. Hiram Miller Stout, f.n. 7.

"If the advice of the Supreme Court is that the address involves the violation of the Constitution, the President should, in the first instance, ask the Ministry to delete the objectionable part. If the Ministry still insists on retaining the objectionable part, the President would have perhaps no option but to omit the objectionable part while reading it".19

This is exactly what has been done at the state level by the Governor of West Bengal. In March 1969, Shri Dharma Vira, the Governor of West Bengal, refused 'to read out those paragraphs from the address given to him by the United Front Cabinet, which described the dismissal of the previous United Front ministry on November 21 of 1967 as unconstitutional'.20

Shri Dharma Vira justifying himself said that he was right in deleting those portions of the address which questioned a judicial decision. He maintained that those paragraphs contained critical references to the circumstances in which the United Front ministry was dismissed in 1967 and thus constituted a contempt of the High Court of Calcutta which had already upheld the Governor's action of dismissal of Front Ministry in 1967. The Governor was reported to have said:

19. R.N. Misra, f.n. 6, p. 46.

"According to convention he had obligations to the Ministry to read the speech prepared by it and the Council of Ministers too had a counter obligation to him for not including in his address any derogatory remark about his past actions".21

Now the question arises whether it was constitutional or not on the part of the Governor to omit certain portions from the speech prepared by the Ministry. Different opinions have been expressed by different people in this regard.

Justice Sarjoo Prasad justifying the decision of West Bengal Governor said:

"In my opinion the Governor would exercise a wise discretion in leaving out of his address the irrelevant matters. The address is supposed to guide the legislature in the pursuit of the legislative programme of the government and it would be, therefore, unwise to encumber his address by reference to entirely irrelevant issues which have nothing to do with the policy and programme of the State Legislature and may be calculated to mislead the legislature itself. Such an omission in my view is consistent with the exercise of a wise discretion by the Governor".22

Prof. D.N. Banerjee also spoke in favour of the West Bengal Governor. He said that 'the refusal, by the Governor of West Bengal to read the omitted portions of the speech prepared by his Council of Ministers, was neither unlawful nor even constitutionally improper'.23

On the other hand, Shri P.N. Sapru, former member of Parliament and a retired Judge of the Allahabad High Court, held the action of the West Bengal Governor as unconstitutional. He said that 'the Governor's address is the Government's address ... and he (Governor) has no right to interfere with it.'

The conduct of the West Bengal Governor was discussed in the Parliament also. Shri Surendra Nath Dwivedy, the Opposition leader, criticising the action of the Governor of West Bengal said:

"The action of the Governor in West Bengal has really created a situation which is fraught with grave dangers. What has been done in West Bengal on the 6th of March this year is a tragic chapter in our constitutional history... Nowhere in the Constitution or in any interpretation of the Constitution published so far has it been stated that the Governor has the right to omit or say whatever he desires on the opening day."

Shri T. Viswanatham also said:

"... The action of the West Bengal Governor in skipping over parts of the Address to the Assembly and Council members made on the 6th of March is against the spirit and letter of the Constitution and thus disapproves of such action on the part of a Governor."

24. Indian Express (New Delhi), March 10, 1969.
25. Lok Sabha Debates (New Delhi: Lok Sabha Secretariat), 25(15), March 10, 1969, cc. 269-70, 272.
Shri Rabi Ray, the opposition leader, also disapproved the action of the West Bengal Governor and said in the Parliament:

"... He (Governor) refused to read the text of the mandatory Address as drafted by the Cabinet of West Bengal and (thus) raised a needless constitutional controversy with frightful implications for the already strained Centre-State relations and the future of democracy in this country".27

Mr. George Fernandes characterised 'the action of the West Bengal Governor as a commitment of a grave constitutional breach because he had tried to overstep his authority and discretionary power. He also said that the Governor's action had posed a serious threat to the functioning of the democratic system in the country'.28

On the other hand, Shri Y.B. Chavan, the then Minister of Home Affairs held that the Governor had not committed any constitutional impropriety in skipping over certain derogatory references in the Address. He said that 'only the judiciary could pronounce on the legality of what had happened in the past. The Calcutta High Court had already given its verdict and it was for the Supreme Court to decide whether this was correct, and not the legislature.

27. Ibid.

28. Ibid.
For the latter to do so would amount to interpreting the Constitution and it was not competent to do so'.

Shri Govinda Menon, the Minister of Law and Social Welfare, defending the action of the West Bengal Governor, said:

"... I think the Governor was fully within his rights to point out that to have these passages in the speech would not be appropriate ... In the circumstances which prevailed on the 6th of March, the action of the Governor does not call for any condemnation in this House".

Shri J.B. Kriplani also said:

"... Our President is not like the King of England or the Queen of England. We donot want him to be so. I also know that we gave the Governor certain powers ... Whatever was done under exceptional circumstances by the Governor was legitimate and we have no right to condemn it".

According to the Attorney General, the Address by the Governor 'cannot be utilised by the Council of Ministers to cast any reflection on or make any adverse criticism of any act of the Governor done by him as a constitutional head of the State'.

The conclusion that emerges out of this discussion is that the Governor is not always bound to read the whole of the

31. Ibid., cc. 328, 332.
Address. He has a duty to defend and preserve the Constitution. Hence his address should not make any reference to those matters which cannot be constitutionally discussed in the State Legislature. For example, the conduct of any judge of the Supreme Court or of a High Court, in the discharge of his duties, cannot be discussed in the Legislature of a State. Since the portion which the Governor of West Bengal deleted from his Address constituted a contempt of High Court, therefore, there was no other alternative with the Governor except to omit it.

In the same way, the President of India cannot be forced to read the whole of the Address. In fact it is not always possible for the President to read out in his address whatever the Council of Ministers want him to read because he is not merely a mouth-piece of the Council of Ministers. The President's address should be such which is in accordance with the oath which he takes under Article 60 of the Constitution and if the Council of Ministers include anything in his address which violates his oath of office, the President can omit that portion.

(c). **President as the Presiding Officer**

As stated earlier, the President addresses both Houses assembled together or otherwise but the clear provision, with regard to the maintenance of discipline at the time of his or the Governor's address to the Legislature, has not
been provided under the Constitution of India. Taking advantage of this gap in the Constitution, disturbances have been created at the time of their opening addresses. Some instances have already been cited but to add one more is that of March 1958 when 'some members of the Punjab Vidhan Sabha created disturbances and tried to prevent the Governor from reading the address. Then a committee was appointed to decide the issue as to who should enforce discipline at such a meeting. The committee recommended that the power to enforce discipline, at the time of Governor's address, lies in the Speaker who can act as the presiding officer of much larger and popularly elected House'.

Although this incident indicates that the Speaker should act as the presiding officer at the time of Governor's or President's address to the Legislature, yet the opinions and practices have been different. On February 26, 1966, when the Governor was addressing the Rajasthan Assembly, the opposition members started shouting slogans and made demonstrations and the Speaker sat helpless. Then the Governor ordered 'the Serjeant-at-Arms of the Assembly to turn out the shouting members and accordingly, twelve members of the Assembly were forcibly removed from there'.

33. V.K. Varadachari, f.n. 21, p. 149.
Later on, the conduct of the Governor of Rajasthan was discussed in the Parliament. Several opposition members in the Lok Sabha, notably Shri H.N. Mukherjee and Shri L.M. Singhvi questioned the propriety and constitutionality of the action of the Governor of Rajasthan in expelling some members of the State Assembly on that day (i.e. on February 26, 1966). Criticising the action of the Governor of Rajasthan, Shri H.N. Mukherjee said:

"He (Governor) is not entitled to preside over the sessions of the Legislature. The Presiding Officer has got to be an impartial person. The Governor is a party; he is the Head of the Executive; he is their spokesman and he can do nothing except that. But he chooses to control the proceedings ... This is terrible".35

On the other hand, the Minister of State in the Ministry of Home Affairs, Shri Hathi defended the action of the Governor of Rajasthan. He said in the Lok Sabha:

"... While addressing the state Legislature, under Article 176, he (Governor) functions as an organ of the State Legislature. It was therefore open to him ... to take such steps as were necessary for the maintenance of order and decorum ... (Moreover) the legal advice that we have received is that the Governor was incharge of the proceedings and that he could conduct and take whatever action was necessary to conduct the meeting. Therefore, if this view is accepted, which has been accepted by the Government, we do not find that any impropriety has been committed".36


36. Ibid, cc. 7176, 7187.
After the speech of Shri Hathi, the discussion on that matter ended in the Lok Sabha because the Deputy Speaker did not allow any other member of the Lok Sabha to discuss that matter further.

But later on, the Governor's action of expelling twelve members from the Assembly was referred to the privilege committee of Rajasthan Vidhan Sabha. That committee also cleared the Governor, Dr. Sampurnanand, of a charge of breach of privilege in the House.

That matter of expulsion of twelve members from the Rajasthan Assembly was also challenged in writ applications before Rajasthan High Court. But the Court dismissed the writ-petitions holding that 'it was only after the Governor had delivered his Address that the Legislature was given the opportunity to discuss the same and that, therefore, the petitioners could not legitimately claim any right to put questions to the Governor or make any kind of comments before he had addressed the Assembly'. The Court also observed that 'the twelve members were expelled during the Address of the Governor to enable him to discharge his constitutional duty of delivering the address and to enable other members to hear him'.

37. The All India Reporter, f.n. 15.
38. Ibid.
Thus, the Home Ministry of India, the Privilege Committee and High Court of Rajasthan, all defended the Governor's action of expelling the twelve members from the Assembly. But there are some who are not prepared to accept the view that the Governor should be regarded as the controlling authority at the time of his address to the Legislature. They are of the opinion that the Governor should not be given the right to expel the members from the Assembly because it will be in contravention of the Home Ministry's view that the Governor is a part of the Legislature. If one part (Governor) is given the right to supersede the other part (Legislature) then the Legislature and the Governor cannot be treated as of equal importance. As Mr. M.S. Dahiya has observed:

"The Home Ministry has opined that the Governor of a State constitutes a limb of the Legislature and is to be treated as a part and parcel of the Legislature... If it is so, the Governor cannot clip the other part by suspending the M.L.As and the contention of the Home Ministry that the Governor can expel M.L.As does not win our sympathy simply because it is in contravention of its own view that the Governor is a part of the Legislature. On the one hand, the Home Ministry is giving to one part the right to supersede the other part and on the other it is putting both the limbs on equal footing. This is rather strange". 39

Like the Governor's Address, the President's Addresses to the Legislature have also been boycotted and interrupted.

by the members of Parliament several times. On 18 February 1963, when the President of India was addressing the two Houses of Parliament assembled together, five members tried to interrupt the address and walked out in protest against the President's speech being read in English. Later on, a Committee was appointed to consider the conduct of the members who had created disorder in the House. The Committee reported that 'any interruption or walk-out during the President's address would be treated as disorderly conduct, and for that type of conduct a member could be suspended for a period extending to one year'.\(^40\) Thereafter, the House reprimended the three offending members who were directly involved in that case and disapproved the conduct of other two members.

Again, on March 23, 1971 when the President started reading his Address in English to both houses of Parliament assembled together, a few members of the S.S.P. group started creating disturbances. Shri Ram Deo Singh, a member of the Lok Sabha interrupted the President's address and said that he (President) should read his address in Hindi or in his mother tongue. The President said that a Hindi version of his Address would be read by the Vice-President of India. The

interruptions, however, continued for some time and then Shri Ram Deo Singh and some other members of Rajya Sabha left that place.\(^4^1\)

The Lok Sabha showed its serious concern over the conduct of Mr. Ram Deo Singh and decided to constitute a Committee of 15 members to go into the matter in detail and suggest certain guidelines for the future. The Committee of the Lok Sabha recommended in its report that 'a new Article should be inserted in the Constitution to specifically provide that the President presides when he addresses both the Houses of Parliament assembled together. It also suggested that the President should, in consultation with the Chairman of the Rajya Sabha and the Speaker of the Lok Sabha, make rules of procedure for the maintenance of order, dignity and decorum when he addresses the Parliament'.\(^4^2\) The Committee also recommended for similar constitutional provisions to enable Governors to control the conduct of members when they address the State Legislatures.\(^4^3\)

The conclusion is that when the President addresses, under Article 87(1), both the Houses of Parliament assembled together, it is he who should preside over the meeting

\(^{41}\) The Statesman (Delhi), March 24, 1971.

\(^{42}\) J.R. Siwach, Office of the Governor, f.n. 18, p. 194.

because the Speaker presides over the joint sitting only under Article 108 of the Constitution and not otherwise. This meeting (under Article 87(1)) cannot be regarded as the joint sitting of the Houses of Parliament because the session of Parliament commences only after President has delivered his address. Moreover, if the contention, that the Speaker should preside over the meeting of the Houses of Parliament when the President addresses it, is accepted then it would result in subjecting the President to the discipline of the presiding officer, which is not in tune with the status of the Head of the State. The power to address the Legislature should necessarily include the power to conduct the meeting in a proper way and to remove anything that obstructs and interrupts the President to discharge his constitutional duty of addressing the House.

II. President's Power to Approve Bills

The President of India is an integral part of the Parliament and as such plays an important role in legislation. All bills passed by Parliament require his assent to become laws. Article 111, which is concerned with the President's power to assent the bills provides that 'when a Bill has been passed by the Houses of Parliament, it shall be presented to the President, and the President shall declare either that he assents to the Bill or that he withholds assent therefrom; provided that the President may, as soon as possible after the
presentation to him of a Bill for assent, return the Bill if it is not a Money Bill to the Houses with a message requesting that they will reconsider the Bill or any specified provisions thereof and ... the Houses shall reconsider the Bill accordingly, and if the Bill is passed again by the Houses with or without amendment and presented to the President for assent, the President shall not withhold assent therefrom.\(^\text{44}\)

Thus Article 111 requires the President, when a Bill passed by Parliament is presented to him, to declare that he assents to the Bill or withholds his assent or send the Bill back to Parliament for reconsideration with his recommendations. If he assents to the Bill, the legislative process is concluded and the Bill becomes an Act. But what happens when the President declares that he withholds assent from a Bill presented to him for his signature? Is the President bound to act on the advice of the Council of Ministers in the event of his withholding assent from a Bill?

In America also, the Bills passed by Parliament require Presidential assent to become laws. However, the President has only been given 'ten days to decide whether to sign or veto a Bill, otherwise it would become a law without his signature'.\(^\text{45}\) But in India, Article 111 does not provide

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45. A.H. Kelly, W.A. Harbison and Herman Belz, f.n.9, p. 751.
fixed time limit within which the President has to return
the Bill for reconsideration to Parliament. It merely says
'as soon as possible after the presentation to him a Bill'
and this contains an interesting element of vagueness.

In the Draft Constitution of India, it was provided
that the President was to give or withhold his assent or to
return the Bill for reconsideration within a period of six
weeks. But at a later stage, Dr. Ambedkar moved an
amendment that for the words 'not later than six weeks' the
words 'as soon as possible' be substituted. Shri H.V.
Kamath was very critical of this move. He observed:

"Nobody knows what they mean, what 'as soon as'
means. We know in the Legislative Assembly,
ministers are in the habit of answering questions
by saying 'as soon as possible'. When we ask 'when
this thing will be done'? the answer is 'as soon as
possible or very soon'. But six months later, the
same question is put and the answer is again 'as
soon as possible' or 'very soon'. This phrase is
vague, purposeless and meaningless...."

However, that amendment of Dr. Ambedkar was carried.
Hence, under the Constitution, the President can withhold his
assent from any Bill except Money Bills.

In 1954, President withheld his assent to the Patiala
and East Punjab States Union (PEPSU) Appropriation Bill,
which was passed by the Houses of Parliament because by the

46. Constituent Assembly Debates (New Delhi: Lok Sabha
47. Ibid, p. 195.
time the Bill was presented to the President the latter had already revoked the Proclamation under which he had assumed functions of the PEPSU. The information with regard to the withholding of assent by the President was conveyed to the House by the Speaker.

The intention of the Constitution makers in granting the President the power to withhold assent from a Bill, was to prevent the Government from imposing an undesirable law on the country. Though the Constitution (Forty-Second Amendment) Act, 1976 defeated this purpose to some extent and made the President bound to act on the advice of the Council of Ministers in the exercise of his functions, but this does not mean that the President will always be bound to exercise his functions on the advice of his Ministry. The 44th Amendment added a significant clause to Article 74 and thus gave the power to the President to return to the Council of Ministers its own decision for reconsideration.

In the United States, if any Bill is returned and repassed by the requisite majority it is not again presented to the President for assent but it automatically becomes

50. Though, it is a fact that if Parliament, instead of accepting the amendments suggested by the President, passes the Bill again in the same form, the President has to give his assent to that Bill. Ibid, p. 218.
law. But in India, a Bill after reconsideration by the Parliament is again presented to the President and cannot become a Law without his assent. In 1957, the President of India, while Article 356 was in operation in the state of Kerala, returned the Kerala Education Bill, 1957 for reconsideration. The changes (as advised by the President) were incorporated in the Bill and it was again sent to the President for his assent.

The President, who can return to a Parliament a Bill which has already been passed with ministerial support, cannot be supposed to act according to the advice of the Council of Ministers in this regard. It is thus evident that he cannot be regarded as a mere rubber stamp in the hands of his Ministry and enjoys some real power. As Shri S.C. Gangal had stated:

"... Apparently such a request (to reconsider the Bill) on the part of the President could not be on the advice of the Council of Ministers. Also no bill could get through both Houses of Parliament unless it was sponsored or supported by the Ministry, which, in any case, must have a working majority in the Lok Sabha. As such it would be most unlikely for the Ministry to advise

52. B.C. Das, f.n. 43, p. 355.
the President to return to Parliament for reconsideration a Bill which it had sponsored or supported. Hence, in respect of these twin provisions, the President should clearly be acting independently or on his own ...."54

The question here arises is that if the President returns the Bill on the ground that, in the opinion of the Supreme Court, some of its provisions are unconstitutional, then what will the President do if both the Houses of Parliament, instead of accepting the amendments suggested by him, pass the Bill again in the same form without any amendment? Should he give his assent to the Bill which he knows is unconstitutional and thereby violate the oath of his office or should he withhold his assent to that Bill which has been passed again and thereby create a controversy? In this regard one writer has commented that "the proper course for the President in such a situation appears to be that even if he had sought the opinion of the Supreme Court and considers it (the Bill) to be unconstitutional he should not withhold his assent, if the Bill is passed again, because the advisory opinion of the Supreme Court is not binding on the President. The Supreme Court will decide such a measure after enactment, if brought before it in a proper case'.55

Another writer similarly said:

54. S.C. Gangal, 'President's Role in Political System', Times of India (Delhi), 21.7.91.

"There are cases where the Constitutional Head had to give his assent to such a Bill even in the first instance. Dr. Rajendra Prasad, the first President of the Indian Republic, gave his assent to the Bihar Zamindari Abolition Bill, which was declared by the Supreme Court as unconstitutional. Even in the United States, in 1955 President Eisenhower gave his assent to an Appropriation Bill by ignoring certain provisions which he held to be unconstitutional".56

It is a fact that if Parliament, instead of accepting the amendments suggested by President, passes the Bill again in the same form without any amendment, the President is bound to give his assent. But it can also be said that where the President is doubtful of the constitutionality of the Bill, he should withhold his assent from it and should send a note to the Government that its flaws be corrected, as was done by President Zail Singh in the case of the Postal Bill in 1987. He can thus create public opinion in his favour and prevent the Government from imposing unconstitutional laws on the country. This controversy has been discussed later in detail.57

It may also be asked whether the President can send a Bill for reconsideration to the successor House? Actually there is nothing to prevent the President from sending the Bill to the successor House because the dissolution of the Assembly does not effect his powers and the position of the Bill pending for his assent. For example 'the Kerala Agrarian

57. See pp. 89-91 of this Chapter.
Relations Bill, 1961, was passed by the Kerala Assembly on June 10, 1959. The Governor then reserved it for the consideration of the President. Meanwhile, on July 31, 1959, the President issued a proclamation under Article 356 and the Assembly was dissolved. In February 1960, mid-term elections were held. On July 27, 1960 the President (for whose assent the Bill was pending) sent the Bill back with his message requesting the Legislative Assembly to reconsider the Bill in the light of the specific amendment suggested by him. When this came before the Supreme Court, it decided that if the Bill was passed again, the Governor would not withhold his assent therefrom, on the ground that it did not postulate the existence of the same House which passed it. Therefore the validity of the Kerala Agrarian Relation Act could not be challenged on the ground that it was reconsidered by the successor House. 58

The President has also been given the power to sign the Constitution Amendment Bills. The question may be asked whether the President can withhold his assent from such Bills when presented to him for assent? It is a fact that the power of withholding assent which is given to the President by Article 111 has been denied to him by Article 368 because

it simply says that after the Constitution Amendment Bill has been passed, "it shall be presented to the President who shall give his assent to the Bill and thereupon the Constitution shall stand amended in accordance with the terms of the Bill'.

Certain Bills cannot be introduced or proceeded with unless the recommendation of the President has been received. The recommendation of the President is required - (1) for introduction of Money Bills as defined by Article 110(1) and 'for consideration of a Bill which, if enacted, would involve expenditure from the Consolidated Fund of India', (2) for introduction of a Bill relating to formation of new States or alteration of areas, boundaries or names of the existing states, (3) for introduction of a Bill or moving of an amendment affecting taxation in which states are interested, (4) for introduction of Bills in the State Legislature for imposing restrictions on Trade, Commerce and intercourse among States.

In case a Bill, which requires the previous recommendation of the President is introduced without his sanction and is passed by a competent Legislature, it will be consi-

59. Article 368, Constitution of India, f.n.1, p. 110.
63. Article 304, Ibid, p. 81.
dered as valid if subsequently the President gives his assent. It may be asked whether the President would always give his prior recommendation with the aid and advice of the Council of ministers? It is true that President usually gives his prior recommendation on the advice of Council of Ministers, but when the Government introduces any bill in regard to any State, purely on party consideration and which is not in the national interest, then he may use his own judgement instead of accepting the advice of the Council of Ministers.

The President also possesses certain law making powers when Parliament is not in session. Article 123(1) provides: "If at any time, except when both Houses of Parliament are in session, the President is satisfied that circumstances exist which render it necessary for him to take immediate action, he may promulgate such Ordinances as the circumstances appear to him to require". The scope of the ordinance making power is very wide because according to clause (2) of Article 123, such ordinances shall have the same force and effect as an Act of Parliament.

The President also plays an important role in the field of State Legislation. The Constitution of India gives

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64. Article 255, Ibid. p. 70.
65. Article 123(1), Ibid, p. 32.
66. Certain checks are also provided on this power of President by paragraph (a) of clause (2) of Article 123. It provides that every such ordinance "shall be laid before both Houses of Parliament and shall cease to operate at the expiration of six weeks from the re-assembly of Parliament, or if before the expiration of that period resolutions disapproving it are passed by both Houses ...." Ibid.
to the Governor, the power to reserve that Bill for the
collection of the President which in his opinion would,
if enacted into law, derogate from the powers of the High
Court as to endanger the position which that Court is by
the Constitution designed to fill. However, Bills other
than those relating to the High Court, may also be reserved
by the Governor for the consideration of the President.

In this regard one writer stated:

"The powers given to the Governor, under Article
201, for reserving Bills for the consideration
of the President is undefined and hence so exten­
sive that if he wants he can reserve any or every
Bill for the consideration of the President".

Though, under Article 201, Governor can reserve any
bill for the consideration of the President but, in reality
he reserves only those Bills which appear to him either
unconstitutional or contrary to the directive principles
etc.

The President can either withhold his assent or give
it to a Bill which is being reserved by the Governor for his
assent. He can also direct the Governor to return the bill

68. Article 201, Ibid.
69. K.C. Markandan (ed.), Concern of Politics (The Indian
70. See, S.C. Dash, 'President as the instrument of
Bundesexekution', Journal of Constitutional and
for reconsideration to State Legislature, if it is not a Money Bill. The State Legislature will have to consider it within six months from the date of its receipt. And if it is again passed by the Legislature, with or without amendment, it shall be presented again to the President for his assent.

It may also be asked whether the President can return a Bill (which has been reserved for his assent) with a message that the bill be dropped? This question arose on 18 January, 1951, in the Bihar Legislative Assembly, when a message was sent to it by the President, recommending the dropping of the Bihar Black Marketing Bill which had been reserved for his assent. The Speaker ruled, and it seems he was right in ruling, that the message was not inconsistent with the provisions of the Constitution.  

(a). **President Shri Zail Singh and the controversy regarding Postal Bill**

In 1987, the President Shri Zail Singh withheld his assent from the Mail Interception Bill and sent a note to the government with the suggestion that its flaws be rectified. He thus indicated that he had certain reservations with respect to certain clauses in the Bill and that he would not give his assent to it in its present form.

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72. The Mail Bill provides for arbitrary power of interception of mail and postal Articles.
His main objection to the Post Office Bill was that it sought to undermine the letter and spirit of the Constitution and was not in conformity with the Law Commission's 38th report which noted that the freedom of speech must imply freedom of effectively conveying one's views. The president was also of the view that the Bill incorporated only half of the Law Commission's recommendations of 1968 and had not only retained the bad points of Postal Act of 1868 but had also introduced harsher provisions.

Shri Zail Singh's action was truly unprecedented as this was the first time the President had kept a Bill and had publicly expressed his reservations about it contrary to the ministerial advice. Dr. Rajendra Prasad, the first President of India, had also reservations about the Hindu Code Bill and was thinking of returning the Bill to the Parliament but since further consideration of the Bill was dropped, the crisis was averted. Shri Zail Singh also did not like the provisions of the Muslim Women Bill, 1986 but still preferred to give his assent.

The President's decision to ask for clarifications regarding the Postal Bill was appreciated by many. One newspaper in its editorial commented:

73. Cited in Inderjit 'President and Censorship Bill' Tribune (Chandigarh), 3 February 1987.
74. Ibid.
"President Zail Singh's decision to ask for clarifications of the Mail Interception Bill is fully justified. By any yardstick, the bill that the Central Government proposes to enact is draconian and confers such wide powers on the Central and State governments that it virtually ensures that these will be misused to curtail the privacy of the individual ... The President is perfectly within his rights, both constitutionally and politically to suggest that its scope be minimised".  

Shri J. Sri Raman, in his article entitled, "Politics of a Presidential Dissent" also wrote:

"... The President is prima facie within his rights to withhold assent to any Bill passed by Parliament and ask for its reconsideration in the light of his own suggestions. But, the very rareness of a Presidential resort to such a step in a parliamentary democracy of the Indian kind cannot but invest it with political significance whenever the special right may be sought to be exercised ...."  

Subsequently, the Government submitted its explanations in regard to the suggestions it had received from the President for changes in the Bill. But the President did not accept that explanation and again sent a letter to the Communication Ministry expressing his total dissatisfaction with the Government's response. Thus the President ruled out his consent to the controversial Postal Bill and

75. 'Valid Objection' Hindustan Times (New Delhi), 17 Jan., 1987.  
77. Inderjit, see f.n. 73.
kept it pending with himself till his tenure and then left it to his successor to decide the delicate issue.  

III. President's Power to send Messages to Parliament

The President of India is empowered, in accordance with Article 86(2), to send messages to either House of Parliament with respect to a Bill pending in Parliament or otherwise. This right to send messages became a subject of acute controversy in the tense political climate prevailing in India in 1987. This part of the chapter makes an attempt to analyse Article 86(2) and the controversy regarding this Article in detail. The past practice in India and opinions of important segments of society regarding the President's right to send messages have also been discussed in this part.

(a). Article 86(2)

Article 86(2), which is concerned with the President's power to send messages provides that, 'The President may send messages to either House of Parliament with respect to a Bill pending in Parliament or otherwise.'

78. Newspapers reported some time back that the Attorney General was being consulted on the issue of Postal Bill. Later, a front page headline sensationalised the news that the President Shri R. Venkataraman had returned the Post Office Bill without giving assent. The next day this news report was denied. But the fact remains that the two Houses long ago enacted a legislation which was duly forwarded by the Prime Minister to Rashtrapati Bhavan where it is gathering dust. Cited in V.R. Krishna Iyer, The Indian Presidency: Nascent Challenges and Novel Responses (New Delhi: Deep and Deep Publications, 1988), pp. 78-9.
then pending in Parliament or otherwise, and a House to which any message is so sent shall with all convenient despatch consider any matter required by the message to be taken into consideration'.

The right to send messages to Parliament is a feature of the American Presidential system which because of its rigid insistence on the separation of powers provides no other common meeting ground between the Executive and the Legislature, and has been incorporated in the Indian Constitution even though it is of the parliamentary type. It is also to be noted that no provision corresponding to that in Article 13(7) of the Constitution of Eire has been engrafted in our Constitution, to require that the President's address or message must have the approval of the Cabinet.

In England, the Queen can also send messages to Parliament but since the time of George III, this power has remained in disuse except for purely formal purposes. Thus


80. Article 13(7) of the Constitution of Eire says:
"1. The President may, after consultation with the Council of State communicate with the House of Oireachtas by message or address on any matter of national or public importance.
2. The President may, after consultation with the Council of State address a message to the nation at any time on any such matter.
3. Every such message or address must, however, have received the approval of the Government".
the Queen communicates by message only "on formal occasions, such as a request for supply or an intimation of permission to deal with a matter of prerogative or royal property etc....".

In India, when a message from the President for the House under Article 86(2) of the Constitution is received by the Speaker, he shall read the message to the House and give necessary directions in regard to the procedure that shall be followed for the consideration of matters referred to in the message. In giving these directions, the Speaker shall be empowered to suspend or vary the rules to such extent as may be necessary.

(b). Hindu Code Bill and the President's right to send Messages

Differences of opinion between the President and the Prime Minister are not without precedent in our Country. Dr. Rajendra Prasad had some doubts regarding his legislative powers and had sought clarifications from the Prime Minister, Shri Jawahar Lal Nehru, in this regard. In a letter dated 21 March 1950 he wrote:

"The President is not a member of the Parliament but he is a third part of the Legislature. His assent is required to all Bills passed by Parliament


and also to the Bills passed by a State Legislature and reserved by the Governor for his assent... Is this function to give assent to be exercised in all cases by the advice of the Ministry? Is he or is he not entitled on his own account to return a Bill or suggest amendments to it..."\(^\text{83}\)

Pandit Nehru referred that letter of the President to Attorney General, Shri M.C. Setalvad, for his opinion. The Attorney-General in his note dated October 6, 1960 said that both the powers i.e. of giving assent to Bills and the power to return the Bills for reconsideration were to be exercised on the advice of the Council of Ministers.\(^\text{84}\)

Dr. Prasad did not accept that interpretation of Mr. Setalvad. For, in the following year, over the passage of the Hindu Code Bill he again wrote to Mr. Nehru that the provisional Parliament did not have the mandate from the people to enact social legislation of a revolutionary nature. His objections to the enactment of the measure were two: firstly, he thought that the pre-election Parliament, which was formerly the Constituent Assembly constituted for the special purpose of framing the Constitution and then authorised by the Constitution to carry on till elections take place, was indirectly elected and its members lacked the public mandate of the general election.\(^\text{85}\) Secondly, he was of the view that

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\(^{84}\) Ibid, p. 573.

there was no urgency to take up the reform of only one community. He ended his Note with these words:

"I propose to watch the progress of the measure (Hindu Code Bill) in Parliament from day to day and if I feel at any stage that I should inform the Parliament also of my viewpoint. I may send to it a message when I consider it appropriate to do so. My right to examine it on its merits when it is passed by Parliament before giving assent to it is there ...."87

Pt. Nehru did not agree with that view of the President of India. He replied in a letter dated September 15, 1951 that 'the President had no power or authority to go against the will of the Parliament in regard to a Bill that had been well considered by it and passed. The whole conception of constitutional government was against any exercise by the President of any such authority'.88

But Dr. Rajendra Prasad did not accept that contention and in another letter to Shri Nehru dated September 18, 1951, he wrote:

"It seems you are of the opinion that I have no right to inform Parliament of my viewpoint on a Bill pending before it or to examine it on its merits when it is passed by Parliament before giving my assent to it...So far as our Constitution

86. Ibid.
87. See K.M. Munshi, f.n. 83, p. 582.
is concerned, it confers in unequivocal words on the President the right to address and send messages to Parliament, whether with respect to a Bill then pending in Parliament or otherwise ...."89

He further observed:

"... Ordinarily, in case of such a conflict of views, when the electorate has not been consulted and there is difference between the Government and the President regarding the views of the electorate on the point at issue, a reference to the electorate is the democratic solution, and for that purpose even dissolution of Parliament may be resorted to ...."90

Pt. Nehru again referred that letter of Dr. Prasad to Mr. Setalvad and to Shri Alladi Krishnaswamy Aiyanger. The stand taken by the two eminent jurists was more or less the same like that of Pandit Nehru. 91

Inspite of all the clarifications and interpretations by the jurists, Dr. Prasad continued to have his doubts. Shri K.M. Munshi, an eminent constitutional expert, also did not accept the views of the two eminent jurists and later observed in his book:

"The opinion of such distinguished jurists is entitled to great weight, but in the present instance it appears to me that Rajendra Prasad's contentions were not adequately answered. I have

89. Ibid, p. 108.
already given reasons to show that the position of the President of India and that of the Monarch of England cannot be analogous. Even supposing they were similar, the reserve powers of the British Monarch have to be conceded to the President of India. And if some of these reserve powers are conferred on the President by the Constitution, then it becomes difficult to see how he becomes incapable of exercising such powers except on the advice of his ministers". 92

Meanwhile, the Bill also met with strong opposition both from within the Congress and other sections of public opinion and the Government, therefore, was compelled to postpone its consideration till the general elections.

Thus it is evident from the above stated facts that the first President was of the view that he had not only the right to send messages to Parliament but also to dissolve the Lok Sabha in order to give a chance to the electorate to express views on the controversial Bill. Moreover, it was because of Dr. Prasad's opposition to the Hindu Code Bill that the Government had to postpone its consideration.

(c). 1987 Controversy and the President's right to send messages

In 1987, as has been discussed in detail in the preceding chapter, 'The President's right to Information', the President Shri Zail Singh sent a letter to the Prime Minister Shri Rajiv Gandhi listing his woes and lack of propriety on the part of the Prime Minister. But that letter of Shri Zail

Singh leaked out and got published in a leading newspaper.\(^{93}\) Thereafter, the Opposition parties in both the Houses of Parliament sought to raise that matter, but the presiding officers of Parliament did not give their consent and ruled that the name of the President could not be used in any manner to influence discussions on the floor of the House.\(^{94}\) They also maintained that since the whole matter centred around a letter alleged to have been written by the President, any discussion on the matter either by way of a privilege motion or otherwise was bound to bring in the name of the President and as such that could not be allowed.\(^{95}\)

The rulings of the presiding officers of Parliament not only produced cynical reaction among the majority of the public but also disturbed the President. There were widespread rumours that the President was keeping all his options open, including the one to approach Parliament directly under Article 86(2) to demand that his letter to Shri Rajiv Gandhi be discussed.\(^{96}\)

Mr. Arun Shourie, while appreciating the right of the President to send a message to Parliament, said:

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93. *Indian Express* (New Delhi), 13 March 1987.
96. *Indian Express* (New Delhi), 14 March, 1987.
"... Just as perverse conduct of the Council of Ministers to further its parochial interest will entitle the President to act on his own discretion under Article 85, patently self-serving conduct in blocking debate or an issue of national importance - specially one in which the Council or its leader, the Prime Minister, has itself implicated the President - must enable him to act on his own discretion under Article 86." 97

On the other hand, the Prime Minister did not agree with that interpretation of Article 86 and felt that the President should send messages to Parliament only after seeking the assent of the Council of Ministers. Even a section of legal pundits said that the President should send messages to Parliament with the aid and advice of the Council of Ministers. As Shri Soli J. Sorabjee said:

"Under our constitutional scheme, the President has to exercise his functions in accordance with the advice of the Cabinet. He cannot act independently of the Cabinet except in certain exceptional situations, like when the government is dissolved and there is no Cabinet to advise him". 98

Shri K.K. Venugopal, eminent lawyer of the Supreme Court, also said:

"The President has no discretionary power under the Constitution. In regard to all matters where the Constitution confers powers on him, he has to exercise the same on the aid and advice of the Council of Ministers. This would


include also the address to Parliament and sending a message to Parliament under Article 86. He can exercise his own individual judgement only in regard to the area of convention, for example, inviting a leader of a party to form a Ministry or for dissolving Parliament ...."99

But this is not the correct constitutional position; occasions requiring the President to take an independent line of his own cannot be altogether and entirely ruled out. As Shri V. Krishna Iyer, an eminent jurist, has observed:

"... Without being dogmatic or exhaustive the President can act independently not only for sending messages but also for signing the bill or dissolution of Parliament".100

The President's right of sending messages would hardly fit in the general scheme of things if the President is supposed to act on the advice of the Council of Ministers. When the ministers are already there to convey the views of the President to the Parliament, why at all should the President be given this power to send messages directly to the Parliament? The only purpose behind this power of the President seems to be that he may send such of his views to the Parliament as may not be in agreement with those of the Council of Ministers. As Shri Alan Gledhill has observed:

99. Ibid.
100. The Indian Express (N. Delhi), 20 March, 1987.
"The constitution provides that the President may send messages to Parliament, which it is obliged to consider ... The provision in Irish Constitution that such a message must have received the approval of government is deliberately omitted in the Indian Constitution. Surely the intention was that, when he deemed it necessary, the President might put forward publicly an expression of his own views ...."101

Justice M.M. Ismail has also maintained:

"Then there remains the consideration of the question that I have reserved, namely, what would be the consequence of the President not accepting the advice of the Council of Ministers in a particular case? That should depend upon the degree of importance which the parties attach to the issue and how fundamental it is in the opinion of the President to the national interest and in the opinion of the Prime Minister to the policy of his party. If the difference of opinion concerns a comparatively minor matter, one may yield to the persuasion of the other ... However, if each one of them considers the issue vital ... the President, in not accepting the advice of the Prime Minister, may send a message to the Parliament..."102

The conclusion is therefore inescapable that the President of India is not a mere figure head but enjoys some real powers in relation to Parliament. While addressing the Parliament, the President can refuse to read out any objectionable portion of the address which goes against the


spirit of the Constitution. The President has a duty to defend and preserve the Constitution and if the Council of Ministers include anything in his address which violates his oath of office or which is critical of his own actions, the President can omit that portion.

The President has also been empowered by the Constitution to withhold his assent from any Bill, except Money Bill, which has been passed by Parliament and submitted to him for his assent, as has been done by President Shri Zail Singh in 1987 in the case of Postal Bill. Shri R. Venkataraman his successor, also withheld his assent from the Salaries and Pensions of M.Ps (Amendment) Bill of 1990 because it was violative of Article 117(1).

It is a fact that no bill can be passed in Parliament unless it is supported by the majority. A President who can withhold his assent and return to Parliament a Bill which has been passed with ministerial support cannot be supposed to be a mere rubber stamp in the hands of his Ministry. It is thus evident that he does enjoy some real power in this regard.

Moreover, the President is vested with the veto power, in the case of State Legislation, reserved for his consideration. No such reservation of State Bills for the
consideration of the President of America or the Governor General of Australia is done, though both these countries have opted for the federal form of the Government. Thus, it can be said that the President of India plays a significant role in the field of legislation and is not always bound to act according to the advice of the Council of Ministers in all cases.

Our focus of interest is on the President's power to send messages to Parliament in the context in which we have set the problem. And, in this respect also, we have found that the President is not bound to be guided by the aid and advice of his Council of Ministers. It is an extremely important power vested in him which has remained in disuse so far but has great potentiality in any future crisis between the President and his Government.

None of the Presidents have used the power of sending a message to Parliament under Article 86(2) of the Constitution of India. But, in the hypothetical situation in which we have placed our President, he after having utilized his powers under Article 86 and thus having apprised the representatives of the nation about the seriousness of the situation confronting him in relation to the Executive, finds himself nowhere, i.e. the representatives are quite
indifferent/unresponsive to the problem he is facing. He is then left with no other alternative than to dismiss the Prime Minister and dissolve the House if he is convinced that the Country's interests are at stake.