

# **RULES COMMITTEE**

## **EIGHTH REPORTS**



**LOK SABHA SECRETARIAT**  
**NEW DELHI**  
*March, 1957*

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## PERSONNEL OF RULES COMMITTEE

1. Shri M. Ananthasayanam Ayyangar—*Chairman*.
2. Sardar Hukam Singh.
3. Pandit Thakur Das Bhargava.
4. Shri Satya Narayan Sinha.
5. Shri N. Keshavaiengar.
6. Shri Shivram Rango Rane.
7. Shri Ghamandi Lal Bansal.
8. Shri Khushi Ram Sharma.
9. Shri Kotha Raghuramaiah.
10. Shri Satis Chandra Samanta.
11. Dr. N. M. Jaisoorya.
12. Shri N. C. Chatterjee.
13. Shri Frank Anthony.
14. Shri Kamal Kumar Basu.
15. Shri K. S. Raghavachari.

### SECRETARIAT

Shri M. N. Kaul—*Secretary*.

Shri S. L. Shakhder—*Joint Secretary*.

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**EIGHTH REPORT**

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## \*EIGHTH REPORT OF THE RULES COMMITTEE

The Rules Committee held their sitting on the 19th March, 1957, to consider the effect of prorogation of the House on business pending before the House or its Committees.

2. The recommendations of the Committee are contained in this their Eighth Report which the Committee authorise to be laid on the Table of the House.

3. With regard to the amendment shown in Appendix A the Committee observe as follows:

4. The question as to the effect of prorogation of the House on business pending before the House or its Committees has been engaging the attention of the House from time to time. It was contended that under Article 105(3) of the Constitution "the powers of each House of Parliament..... and the Committees of each House shall be such as may from time to time be defined by Parliament by law, and until so defined, shall be those of the House of Commons of the Parliament of the United Kingdom....". As Parliament had not passed any Act in terms of Article 105(3) of the Constitution, the practice obtaining in the House of Commons, U.K. in this regard, prevailed subject to the exception provided for in Article 107(3) of the Constitution. The practice in the House of Commons, U.K. as stated on page 32 of May's Parliamentary Practice (15th Ed.), is as follows:

"The effect of a prorogation is at once to suspend all business until Parliament shall be summoned again. Not only are the sittings of Parliament at an end, but all proceedings pending at the time are quashed..... Every Bill must, therefore, be renewed after a prorogation as if it had never been introduced."

Accordingly, it was argued that the provisions of rules 318 and 319 were, in so far as the detracted from the position stated above, inconsistent with the Constitution.

5. The matter was raised in the Lok Sabha on the 20th July, 1956 when a member objected to the resumption of further discussion on a resolution moved by another member in the last session. The Speaker while allowing the discussion on the resolution to be resumed, observed *vide* his ruling at Appendix C that Article 107(3)

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\*Laid on the Table of the House by Sardar Hukam Singh on the 19th March, 1957

of the Constitution did not specifically state that all items of pending business except Bills would lapse by reason of prorogation of the Houses. Article 118 of the Constitution was independent of Article 105(3) of the Constitution and the practice of the House of Commons, U.K., was accordingly not applicable when the Rules of Procedure of the Lok Sabha framed under Article 118 of the Constitution, made specific provision in the matter.

6. The question of the effect of prorogation of the House on the functioning of Select Committees on Bills was raised by a member in the Lok Sabha on the 26th July, 1956. The Speaker observed *vide* his ruling at Appendix D that article 107(3) of the Constitution provided for all stages of the Bill including the Committee stage. A Committee of the House could deliberate on a Bill even when the House was prorogued, because prorogation had no effect on the pendency of a Bill.

7. The matter was also referred to the Attorney General of India (Appendix B) in order to seek his opinion on the subject. The opinion of the Attorney General is at Appendix E.

8. The Attorney General is of the view that the provisions of rules 318 and 319 of the Rules of Procedure are not inconsistent with the provisions of the Constitution. In regard to the Committees on Bills, he feels that they can continue to function on prorogation of the House in view of the provisions contained in Article 107(3). As regards functioning of Committees not connected with Bills during the inter-session period, the Attorney General is of the opinion that the parent body can authorise the Committees to function by making suitable provisions in the Rules of Procedure. In that case "the power and the authority of the Committees to function will be derived from the parent body" and "there would seem to be nothing incongruous in the Committees functioning when the parent body is unable to function".

9. The Committee agree with the opinion of the Attorney General and suggest that in order to put the matter on a proper footing a new rule confirming the established practice, which has been in existence since the inception of the old Central Assembly, may be incorporated in the Rules.

10. The Committee accordingly recommend that the amendment shown in Appendix A may be made in the Rules of Procedure.

NEW DELHI;  
The 19th March, 1957.

M. ANANTHASAYANAM AYYANGAR,  
Chairman, Rules Committee.

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**APPENDICES TO EIGHTH REPORT**

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## APPENDIX A

### LOK SABHA

*Amendment to Rules of Procedure and Conduct of Business in Lok Sabha (Fourth Edition), as recommended by the Rules Committee.*

#### RULE 319A

After rule 319, the following rule shall be inserted, namely:—

Business before Parliamentary Committee not to lapse on prorogation of House.

“319A. Any business pending before a Parliamentary Committee of the House shall not lapse by reason only of the prorogation of the House and the Committee shall continue to function notwithstanding such prorogation.”



## APPENDIX B

*Copy of letter No. 702-CI/56 dated the 10th August, 1956, from Shri M. N. Kaul, Secretary, Lok Sabha to the Attorney General.*

A question has been raised as to what the effect of prorogation is on the business that was pending before the House on the date of the prorogation. It specifically arose on two occasions, first on the 20th July in connection with the part-discussed resolution of Shri H. V. Kamath which was, under the rules, put down as the first item of business during the next session, and second on the 26th July when Shri Kamath raised a point of order that the Joint Committee on States Reorganisation Bill could not function during the preceding inter-session period.

2. A copy of the ruling given by the Speaker in each case is enclosed [See Appendices C and D]

A copy of the Memorandum prepared by the Lok Sabha Secretariat on the subject for the consideration of the Rules Committee is also enclosed\*.

3. The Speaker desires that before this matter is considered by the Rules Committee you might be good enough to give your opinion on the various points that arise in this connection.

4. The word "Prorogation" is a term of art in Parliamentary procedure; and as we follow the procedure of the House of Commons, unless there is provision to the contrary in the Constitution or our Rules, I would invite attention to the following paragraph on page 32 of May's Parliamentary Practice, 15th edition:

"The effect of a prorogation is at once to suspend all business until Parliament shall be summoned again. Not only are the sittings of Parliament at an end, but all proceedings pending at the time are quashed..... Every Bill must, therefore, be renewed after prorogation as if it had never been introduced."

5. In so far as our Constitution is concerned, there is a clear provision in Article 107(3) that a Bill pending in Parliament shall not lapse by reason of the prorogation of the Houses. It has been argued that the passage quoted from May's Parliamentary Practice should have its full force except to the extent provided in Article 107(3)

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\* Not included in this Appendix.

of the Constitution. In other words, the only exception that can be made is in favour of Bills and not any other kind of business. All other business, namely, pending resolutions and other motions, lapses as a result of prorogation.

6. It is further contended that the Constitution-makers were clear in their mind as to the effect of prorogation and, in so far as they wished to depart from the effect of prorogation as they found in May's Parliamentary Practice, they made specific provision in the Constitution itself. Any limitation on the effect of prorogation can only be done by an amendment of the Constitution itself, and not by rules made under Article 118(1) or 118(2) of the Constitution as rules made under either of those provisions should be consistent with the Constitution. The Rules of Procedure cannot introduce further limitations on the effect of prorogation, as that procedure may result in completely nullifying to a large extent the normal effects of a prorogation as defined in May's Parliamentary Practice.

7. It is therefore argued that Rule 319 of the Rules of Procedure of the Lok Sabha, which provides that a motion, resolution or an amendment, which has been moved and is pending in the House, shall not lapse by reason only of the prorogation of the session, is *ultra vires* of the Constitution, as it protects matters from the effect of prorogation which are not intended to be protected by the Constitution itself, the only protection made being in favour of Bills.

8. It is further argued that part of Rule 318 of the Rules of Procedure is also invalid, as what is protected under Article 107(3) of the Constitution is a Bill which has been introduced in the House and is therefore pending before it, and not notice of a Bill.

9. It is also contended that whenever the House is prorogued, no Parliamentary Committee, which is not connected with the consideration of a Bill, should function during the inter-session period as the parent body itself has been prorogued. It is stated that no Committee in the House of Commons can function outside the session. It is argued that so far as Rule 382 of the Rules of Procedure is concerned, it does not in any way provide for the functioning of Parliamentary Committees during the inter-session period.

10. In this connection, it may be relevant to point out that in the House of Commons, the session lasts for a year and the period of prorogation is for a few days, or at the most a month, while in India the prorogation takes place after every session, that is, it takes place two or three times in a year in order that Government may be competent to advise the President to pass an Ordinance during the inter-session period.

11. The following questions therefore arise for consideration:—

- (i) Under Article 105(3) of the Constitution “the powers of each House of Parliament.....and the Committees of each House shall be such as may from time to time be defined by Parliament by law, and until so defined, shall be those of the House of Commons of the Parliament of the United Kingdom.....”. As no Act of Parliament in terms of this provision of the Constitution has been framed, the matter is governed by the practice of the House of Commons; and, therefore, the powers of the House and its Committees, on the House being prorogued, are determined by the passage cited above from May’s Parliamentary Practice, subject to the only limitation that is made in the Constitution itself, namely, that provided in Article 107(3) in respect of Bills. The question on which opinion is desired is whether on a true interpretation of the Constitution this view is correct.
- (ii) Whether it is open to Parliament under the rules framed either under Article 118(1) or under Article 118(2) to make provision as is now provided in Rules 318 and 319 of the Rules of Procedure. In other words whether Rules 318 and 319 are within the rule-making powers of the House; that is to say, whether the word “prorogation” having been used in the Constitution and being a term of art, its effect can be substantially nullified by making further exception in favour of all business pending before the House on prorogation. In other words, whether it is open to the House to protect all business of which the House is seized at the time of prorogation and to limit the effect of prorogation in respect of notices only.
- (iii) Whether such a view in effect nullifies the normal consequences that follow on prorogation in the House of Commons.
- (iv) Whether Committees of Parliament, which are not connected with Bills, can function during the inter-session period, that is, in the interval between the prorogation of a session and the time of the meeting of the next session; whether it is not incongruous that the parent body cannot function while a Committee goes on functioning.
- (v) Whether Select Committees on Bills which meet after prorogation are protected by the provisions of Article 107(3) of the Constitution.

- (vi) Whether the true construction of Article 107(3) is that Parliament wanted to put it beyond doubt that Bills shall not lapse by reason of prorogation of the House; and in regard to other effects of prorogation, it left the matter to the will and pleasure of the House by making such provisions as it desired under the Rules of Procedure under Article 118(1) or by the Speaker under Article 118(2) of the Constitution, even though the House may go to the extent of protecting all part-discussed business of whatever kind from the effect of prorogation and limiting its effect to notices only, of which the House is not yet seized; and even in the case of notices, an exception has been made in favour of notices for Bills.
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## APPENDIX C

*Ruling given by the Speaker on the 26th July, 1956, regarding the effect of prorogation of the House on pending Resolutions.*

**Speaker:** Regarding Shri Kamath's part-heard resolution which was moved in the last session of Parliament, which session was prorogued after it was adjourned *sine die*, an objection has been raised that along with the prorogation this resolution also—along with others—lapses. Article 107 of the Constitution is referred to. Article 107(3) of the Constitution refers specifically to a Bill pending in Parliament. It states that a Bill pending in Parliament shall not lapse by reason of the prorogation of the Houses. From this it is sought to be inferred that this resolution and other notices will lapse. A provision has been made only with respect to the Bill and, therefore, the others must lapse. But, it does not specifically say so. With respect to that the House of Commons practice is referred to, evidently under article 105(3).

“In other respects, the powers, privileges and immunities of each House of Parliament, and of the members and the committees of each House, shall be such as may from time to time be defined by Parliament by law, and, until so defined, shall be those of the House of Commons of the Parliament of the United Kingdom and of its members and committees, at the commencement of this Constitution.”

Reference has, therefore, been made under sub-clause (3) of article 105 to the practice and procedure in the House of Commons, because no specific provision is made in the Constitution and article 107(3) applies only to Bills. *Campion* has also been referred to.

**Shri R. D. Misra:** *May's Parliamentary Practice* was also referred to.

**Mr. Speaker:** *Campion* and *May's Parliamentary Practice* have been referred to for the purpose of showing that in Great Britain, in the House of Commons, as soon as a session is prorogued, all the pending notices lapse including notices of Bills, even though they might have been part-heard and so on. That has been referred for the purpose of showing that in this case where no provision has been made regarding resolutions that practice ought to be followed and, therefore, the resolution lapses.

As against this, it has been pointed out that in article 118 provision is made for each House, subject to the provisions of the Constitution, to make rules. Rule 319, which has been referred to, makes a provision for the continuation of those resolutions which had been already moved. That rule says that a motion or resolution which has been once moved and pending before the House shall continue. The resolution is sought to be maintained as one in order under rule 319. But objection is taken to rule 319 on the ground that the rules must be consistent with the articles of the Constitution. "Each House of Parliament may make rules for regulating, subject to the provisions of this Constitution, its procedure and the conduct of its business." Whatever force might be there, sub-clause (2) of article 118 has also to be read along with that. The practice embodied in this rule 319, I understand, has continued to be guiding the destiny of this House and also the destinies of the previous Central Legislatures since 1921. Clause (2) of article 118 says—

"Until rules are made under clause (1), the rules of procedure and standing orders in force immediately before the commencement of this Constitution with respect to the Legislature of the Dominion of India shall have effect in relation to Parliament subject to such modifications and adaptations as may be made therein by the Chairman of the Council of States or the Speaker of the House of the People, as the case may be."

Clauses (1) and (2) seem to be independent of each other. Clause (1) says that when new rules have to be framed, they have to be framed subject to the laws of the Constitution. But the Constitution itself says, under clause (2) of this article, that in the absence of any new rules or until new rules have been framed, these rules will continue in operation. Therefore, this seems to be appropriate. The practice embodied in this rule has been there since 1921. Therefore, no new modification has come into existence, and the question does not arise as to whether it is consistent with the Constitution or not.

In this connection, article 105, which has been relied upon may also be referred to. I think that article 118 is absolutely independent of article 105. Definite provision has been made in article 118 regarding the procedure for the Houses of Parliament—rules and regulations relating to the procedure and conduct of business, mentioned in clauses (1) and (2) are complete. Wherever new rules have not been framed, the old rules including the practices will continue. Thus, the general provisions in article 105 stating that

in other respects the procedure of Parliament will apply will not apply to the rules of procedure. It starts with the freedom of speech of a Member and says that no Member of Parliament shall be liable to any proceedings in any court. "In other respects" will apply only where specific provision has not been made but in this case, clause (2) of article 118 covers the matter. That also does not appear to help the hon. Member who has raised this objection.

Under these circumstances it is not necessary to decide the general principle at present, as was rightly pointed out by Shri Gadgil. It is enough for me to come to the conclusion that this motion is not out of order and that it has not lapsed. Further, Shri Kamath says that he gave notice, and if it has not been accepted or balloted, it is not so much his fault as a reading by the office as to what is necessary and what is not necessary. The office found that under rule 319 this motion is quite in order. If this is a matter which should certainly be pursued later on, there is also provision for it here. If any hon. Member is not satisfied with any particular rule on any ground—whether it is not clear, whether it is opposed to the Constitution as laid down or any other ground—the matter may be brought up before the Rules Committee. Therefore, it is enough if I restrict my ruling to this particular issue that has been raised as to whether the motion of Shri Kamath, which is part-heard, has lapsed or not. It has not lapsed.

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## APPENDIX D

*Ruling given by the Speaker on the 26th July, 1956 regarding the effect of prorogation of the House on the working of Select Committees on Bills.*

**Mr. Speaker:** It is not a matter of first impression. The other day the same objection was raised when Shri Kamath's part-heard Resolution was sought to be taken up. Then we referred to rule 319. This relates to a Bill. So far as that is concerned, there is a specific statutory provision in the Constitution itself that on the prorogation of Parliament, a Bill shall not lapse. That means the prorogation has no effect so far as that Bill is concerned. It has only this effect that if the House is adjourned, still the Select Committee can meet. Therefore, prorogation has only this meaning, that the House still continues. Of course, so far as the House is concerned, it cannot sit, on account of prorogation, to transact business, because it is not meeting. But then it has this effect as if the House has merely adjourned. So the Select Committee can still go on. So far as prorogation is concerned, the Bill is not in any way affected.

Further, a Bill means all stages of the Bill. Here we were in the Select Committee stage. The only objection that was raised was that the Select Committee had made substantial alterations. If those alterations had not been made, Shri Kamath would have had no objection; we could start the same thing.

**Shri Kamath:** The same thing.

**Mr. Speaker:** But in the Select Committee it has not been so altered. It has not been sent for circulation. Nothing of the kind. Therefore, we are entitled to go on with this Bill. Even if it should be altered in any manner, this House has jurisdiction to take up this matter. The Select Committee can go on even when the House is prorogued, because prorogation has no effect on the pendency of a Bill. Pendency of the Bill means all states of the Bill. Under these circumstances, I do not agree with Shri Kamath.

So far as rules 102 and 103 are concerned, far from supporting Shri S. S. More, they seem to support the other view.

**An Hon. Member:** Yes.



**Mr. Speaker:** Rule 102 says:

“The sittings of a Select Committee shall be held on such days and at such hour as the Chairman of the Committee may fix.”

Rule 103 says:

“A Select Committee may sit whilst the House is sitting, provided that on a division being called in the House, the Chairman of the Committee shall suspend the proceedings in the Committee for such time as will, in his opinion, enable members to vote in the division.”

These two rules read together only mean this, that normally the Select Committee shall sit without prejudice to the sitting of the House. If perchance, the Select Committee is meeting whilst the House is sitting, it is necessary for the Chairman to adjourn the proceedings in the Committee for such time as will, in his opinion, enable Members to vote in the division. This Committee has been sitting when the House was not sitting. Even if it was sitting when the House was sitting, it was only necessary for the Chairman to suspend the proceedings to enable Members to vote in a division. Therefore, far from standing in the way of this motion being continued, these two rules help towards a decision of this question. The Select Committee can sit though the House is not sitting.

**Shri Kamath:** On a point of clarification for future guidance. Is it your ruling that a Select Committee can sit irrespective of whether Parliament is adjourned or prorogued?

**Mr. Speaker:** Yes, First of all, my ruling is that while the House is adjourned, a parliamentary Committee can sit.

**Shri Kamath:** When prorogued?

**Mr. Speaker:** So far as prorogation is concerned, it has no effect on the pendency of a Bill. That is, the Select Committee's proceedings can go on as if the House had not been prorogued.

Therefore, there is no legal objection to going on with this proceeding.

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## APPENDIX E

*Opinion given by the Attorney General on the issues raised in letter No. 702-CI/EF, dated the 10th August, 1956, from Shri M. N. Kaul, Secretary, Lok Sabha.*

1. The broad question for consideration is whether, having regard to the provisions of articles 85(2)(a), 105(3), 107(3) and 118(1) of the Constitution, it is competent to the Lok Sabha to provide as it has done by rules 318 and 319 that on the prorogation of a session pending notices of intention to move for leave to introduce a Bill and pending motions or resolutions or amendments shall not lapse by reason only of the prorogation of the session. The answer to the question depends on the true construction of the provisions of the Constitution mentioned above.

2. In order to arrive at a true construction of these Constitutional provisions it is essential to appreciate the practice and procedure of the House of Commons in England, in this connection. Further it is equally, if not more, important to know the Constitutional position which prevailed in India before the enactment of the Constitution. In considering article 286 of the Constitution the Supreme Court stated: "In order to properly interpret the provisions of that article it is\*\*\* necessary to consider how the matter stood immediately before the Constitution came into force\*\*\*". (1955 2 S.C.R. 603 to 633). The true effect of the constitutional provisions mentioned in the preceding paragraph can be understood only after a consideration of the Constitutional provisions and practice existing before the Constitution.

3. Article 85(2)(a) provides that the President may from time to time prorogue the Houses or either House.

4. In English constitutional practice there is a clear distinction between an adjournment and a prorogation. Parliament can only commence its deliberations at the time appointed by the King and cannot continue its deliberations any longer than he pleases. The King may prorogue Parliament by having his command signified, in his presence or by commission, by the Lord Chancellor or Speaker of the House of Commons, to both Houses, or by proclamation. Before 1867 prorogation was effected by a writ or commission under the Great Seal. After 1867 Parliament may be prorogued by the Royal proclamation except at the close of a session. (May's Parliamentary Practice, Fifteenth Edition, page 32). A prorogation is thus an exercise of the Crown's prerogative. An adjournment on the contrary is an act of the House itself regulated by it in

any manner it chooses and independently of the Crown and of the other House. (May's Parliamentary Practice, Fifteenth Edition, page 264).

5. The effect of a prorogation in English constitutional law and practice is also well-settled. "The effect of a prorogation is at once to suspend all business until Parliament shall be summoned again. Not only are the sittings of 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". (May's Parliamentary Practice, Fifteenth Edition, pages 32 and 264). An adjournment has on the contrary no such effect and upon re-assembling the House proceeds to transact the business previously appointed, all proceedings being resumed at the stage at which they were left before the adjournment.

6. Notwithstanding the effect of a prorogation stated above several exceptions to the general rule have been made by various methods. Provision for the continuation of impeachment proceedings notwithstanding a prorogation was made by an Act of Parliament (Statute 45, Geo. III, Chapt. 117). Section 8 of the Appellate Jurisdiction Act 1876 provided for the hearing and determination of appeals by the House of Lords during the prorogation of Parliament. A further provision in the same direction was made by the Appellate Jurisdiction Act 1887. A practice has been established not to renew the address or order in the following session when Parliament is prorogued before a report is presented; the address or order is treated as having been in force from one session to another until it is complied with. There appear also to have been instances of orders of a former session having been read in the following session and the papers ordered to be laid before the House. (May's Parliamentary Practice, Fifteenth Edition, page 259). Orders have also been made by a House enabling the promoters of private Bills to suspend further proceedings and to enable the Bills to be proceeded within the following session of the same Parliament. (May's, pages 971-972). The latest instance is of the London County (Improvements) Bill 1947 which was ordered to stand over till the next session. The orders, *inter alia*, provided that "The said orders be Standing Orders of the House". (Parliamentary Debates, Commons 1946-47, Volume 441; pages 1431-1432).

7. Proposals appear to have been made for a provision either by statute or by Standing Orders for the suspension of public Bills from one session to another or for resuming proceedings upon such Bills notwithstanding a prorogation. A number of committees were appointed to examine these proposals. But various considerations.

appear to have restrained the legislature from disturbing the constitutional law by which Parliamentary proceedings are discontinued by a prorogation. (May, pages 566-567). Reference may be made in this connection to the report of a recent committee being the Joint Committee on the Suspension of Bills. The summary of the report, in the Breviate of Parliamentary Papers, 1917—1939, contains the following passage:

“On the subject of carrying Bills over from one to the next Session of Parliament, there were three groups of opinion. First, those members who favoured carrying over Bills; this could be effected by a Standing Order, thus making the experiment tentative and easy to abandon should this prove necessary. Secondly, those who opposed it on the grounds of its novelty, the way in which it would lessen the power of the Opposition, and the increased volume of legislation which it would entail. A third group, while reconciled to the adoption of carrying over, considered that the recommendation to rearrange business in the early part of the Session should first be given a proper trial. There was a general though not unanimous view that a particular Bill should be carried over as an experiment”.

8. It is important to note that it is accepted that the carrying over of public Bills could be effected by Standing Orders. There is a recent instance of a hybrid Bill being carried over from one session to another. In 1931, the then Prime Minister, Mr. Ramsay McDonald, made a motion recommending suspension of the proceedings on the London Passenger Transport Bill “till the next session of Parliament”. It is significant to note that the House ordered that: “This order be a Standing Order of the House”. (Parliamentary Debates, Commons, 1930-31, Volume 257, pages 1050—1056).

9. The position in the United Kingdom appears, therefore, to be that though the normal effect of a prorogation is accepted as being the termination of all pending business the operation of this rule has been curtailed in many respects either by law or practice or order of Parliament. It is accepted that Standing Orders could be made to carry over business from one session to another.

10. The Indian practice prior to the Constitution which is more pertinent may now be examined.

11. Section 63D(2) of the Government of India Act, 1919 conferred power on the Governor-General to prorogue the sessions of either chamber of the Indian legislature. Section 67(1) of the Act enabled rules to be made for regulating, *inter alia*, the course of

business in the chambers of the Indian legislature and section 67(6) of the Act enabled Standing Orders to be made providing for the conduct of business and the procedure to be followed in either chamber of the Indian legislature in so far as these matters were not provided for by rules. Standing Order No. 4 of the First Orders made by the Governor-General in Council was as follows:—

“On the termination of a session—

- (1) All pending notices shall lapse and fresh notice must be given for the next session.
- (2) Bills which have been introduced shall be carried over to the pending list of business of the next session:

Provided that, if the member in charge of a Bill makes no motion in regard to the same during two complete sessions, the Bill shall lapse, unless the Assembly, on a motion by that member in the next session, makes a special order for the continuance of the Bill”.

12. Clause (1) above was amended in 1929 to read as follows:—

“(1) All pending notices, other than notices of intention to move for leave to introduce a Bill, shall lapse and fresh notice must be given for the next session:

Provided that fresh notice shall be necessary of intention to move for leave to introduce any Bill in respect of which sanction has been granted under the Government of India Act if the sanction has ceased to be operative”.

13. The Standing Order mentioned above varying the constitutional consequences of a prorogation remained in force until the Constitution Assembly (Legislative) was set up. The Rules of Procedure and Conduct of Business of the Constituent Assembly (Legislative) repeated the provision in rule 106.

14. It is thus clear that until the commencement of the Constitution it was recognised Indian constitutional practice that the normal rule that all pending business stands quashed by a prorogation could be altered by Standing Orders or Rules of Business.

15. The constitutional provisions mentioned in the opening paragraph have to be construed in the light of the English and the Indian constitutional practice noted above.

16. As stated above article 85(2)(a) of the Constitution enables the President to prorogue the Houses of Parliament from time to time. If the matter rested there the normal effects of a prorogation

would operate and all pending business would be quashed by the prorogation and would have to be initiated afresh in the following session. However, article 107(3) expressly provides that a Bill pending in Parliament shall not lapse by reason of the prorogation of the Houses. This provision has the effect of taking pending Bills out of the normal effects of a prorogation and carrying them over to the next session. In this regard the Constitution itself has provided specifically an exception to the operation of the normal rule as to the effects of a prorogation. The Constitution has also empowered by article 118(1) each House of Parliament to "make rules for regulating, subject to the provisions of this Constitution, its procedure and the conduct of its business". Sub-clause (2) provides that until rules are made under sub-clause (1) the Rules of Procedure and Standing Orders in force immediately before the commencement of the Constitution shall have effect in relation to Parliament in the manner therein provided. Is it not open to either House of Parliament exercising its powers under article 118(1) to provide a rule of procedure laying down further exceptions to the normal effect of prorogation on pending business? If the British Parliament is competent so to provide by Standing Orders and if the legislatures in India prior to the Constitution could so provide by Standing Orders or Rules of Business, why should not the Parliament exercising its power under article 118(1) be competent to do so? It is said that Parliament is not so competent because of the expression "subject to the provisions of this Constitution" in article 118(1). It is argued that these words refer back to the provisions of article 107(3) and that the effect of these provisions is to limit the exceptions that may be made to the operation of the normal effects of a prorogation to the cases mentioned in that article. I do not agree. The words "subject to the provisions of this Constitution" are found in a number of articles in the Constitution. When the operation of an article is made subject to the provisions of the Constitution in order to ascertain whether those provisions contain anything limiting the operation of the particular article. The question, therefore, is: Do the provisions of article 107(3) contain any limitation on the exercise of the power contained in article 118(1)? They do not. They merely provide that certain consequences which would normally follow a prorogation shall not follow in the particular case of a Bill pending in Parliament. Such a provision is very different from a provision stating that except in the case mentioned in article 107(3) Parliament shall not have the power by its rules of procedure to provide for other cases in which the normal consequences of a prorogation may not follow. The suggested reading of article 107(3) is in my view unsound and not permissible. In my view it would, therefore, be competent to either House of Parliament in exercise of

its power under article 118(1) to make rules for the procedure and conduct of its business which may take away from the operation of the normal effect of a prorogation certain cases other than those provided for in article 107(3), such as are dealt with in rules 318 and 319 of the Rules of the Lok Sabha.

17. It may be pointed out that article 105(3) has no relevance to the question under consideration. It refers to the powers, privileges and immunities of each House of Parliament which are to be such as may from time to time be defined by Parliament by law and until so defined are to be those of the House of Commons of the Parliament of the United Kingdom. The question raised relates not to the powers, privileges and immunities of the House but its procedure and the conduct of its business which are matters dealt with in article 118(1) of the Constitution.

18. I shall now answer the question framed:

- (i) As pointed out above article 105(3) of the Constitution has no relevance to the question. The view put forward in this question is not, on the true interpretation of the Constitution, correct.
- (ii) Yes; article 107(3) enacts one exception to the rule that a prorogation has the effect of quashing all pending business. That article, however, does not prevent Parliament from creating further and other exceptions to that rule by the exercise of its power under article 118(1) and 118(2) of the Constitution. As pointed out above there is no provision in the Constitution which fetters or restricts that power so as to prevent Parliament from creating these further and other exceptions. Rule 318 and 319 of the Rules of Procedure are, therefore, competent and valid.
- (iii) The view does mitigate and in conceivable circumstances even nullify the normal consequences of a prorogation. Notwithstanding the well-accepted constitutional implications of a prorogation the House of Commons itself has created exceptions and the creation of further and other exceptions to the rule has been more than once under consideration. If the House of Commons is competent to create such exceptions so is our Parliament because its power under article 118(1) and (2) is not restricted by reason of the provisions of articles 85(2) (a) and 107(3).
- (iv) Committees not connected with Bills can function during the inter-session period if the Rules of Procedure so provide. There would seem to be nothing incongruous

in the committees functioning when the parent body is unable to function. The parent body would by its procedural rules authorise the committees to function so that the power and the authority of the committees to function will be derived from the parent body.

(v) I think they are.

(vi) Yes; the argument set out in the question briefly expresses the view that I have expressed in my opinion.

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