

INTERNATIONAL JOURNAL OF LAW MANAGEMENT & HUMANITIES

[ISSN 2581-5369]

Volume 6 | Issue 6

2023

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The Extent of the Powers of Ceremonial Heads of State: An Overview of their De Jure Powers and Judicial Interpretation of the Same

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ABSTRACT

The Westminster style of parliamentary form of democracy divides the executive power into two distinct offices one being the Head of State and the other being the Head of the Government. The unique balance between these offices coupled with, the other state organs are responsible for the running of the State. Yet whilst, people are usually aware about the duties, powers, and other privileges of their Heads of Governments, the same cannot be said about the Heads of State. Although considered to be largely ceremonial the statutory roles, powers, and the judicial interpretations of such powers differ from country to country. This research paper aims to shed light on this very aspect with respect to the UK, India, and Australia.

Keywords: *Head of State, President, Westminster Parliamentary system, British Monarch, the Dismissal.*

I. INTRODUCTION

If one were to turn to the first page of their Indian passport they will see a message which states, “*These are to request and require in the name of the President of the Republic of India all those to whom it may concern to allow the bearer to pass freely without let or hindrance and to afford him or her, every assistance and protection of which he or she may stand in need- By the Order of the President of the Republic of India².*” This is one of probably few times that the ordinary citizens of India even hear about their President with the other interactions being limited to the Republic Day parades, and the Oath taking ceremony of the President. However, this is not the case with just India, most people across various Westminster parliamentary countries have little to no idea as to what work is it that their Heads of States actually do. Although there stands a public perception that there is little that they do, reality is quite far from it. The roles of Kings, Presidents, and Governor Generals differ with respect to their constitutional roles, customary

¹ Author is a student at MIT WPU School of Law, Pune, India.

² Message on Page one of the Passport of India

roles, and judicial interpretations. The author seeks to analyze the roles of the Sovereign of the United Kingdom, the President of the Republic of India, as well as the Governor General of the Commonwealth Realm of Australia. Through this paper, the author will conduct an in-depth analysis of their roles to better understand their relevancy in the governance of their countries.

II. SOVEREIGN OF THE UNITED KINGDOM

The first office that the author would like to analyze is that of the Monarch or Sovereign of the United Kingdom. As an institution, the office of the Monarch of the United Kingdom has been a near continuous position within the political system of the country officially since 1066, stretching from William the Conqueror till the current monarch King Charles III³. Except for the duration of the period of interregnum from 1649 to 1660 where England was governed as a Republic, England, and later the United Kingdom has always had a reigning monarch⁴. Throughout the years, the monarchy of the United Kingdom has transitioned from an absolute monarchy to an evolved constitutional monarchy where the monarch's role has become more of an influential and subtle one as compared to the authoritarian way with which they operated during the ancient and medieval periods. Yet what makes the role of the British Monarchy truly complex is the fact that the UK has no written constitution which lays down the roles, duties, and powers of the Monarch, Parliament, Executive, and the Judiciary. The entire system of the UK is a perplexing one which works on the balance between judicial interpretations, statutes, and parliamentary customs and conventions. However, there is a way from which the role of the monarch can be interpreted. The author shall rely upon statutes, and precedents established within the UK to give an insight into some of the powers enjoyed by the British Monarch.

(A) Powers of the British Monarch

There is a great amount of secrecy which revolves around the role and powers of the British monarchy. As mentioned previously, since the UK lacks any form of written constitution it is hard to actually know the full extent of the powers of the British Monarchy. The official website of the British Royal Family simply states that, "the Sovereign no longer has a political or executive role, he or she continues to play an important part in the life of the nation."⁵ The website further states that, "While the Sovereign is Head of State, the ability to make and pass

³ *British Monarchy: brush up on 1,000 years of history in 10 minutes*, The Telegraph, (Oct. 09, 2023, 06:49 PM), <https://www.discoverbritainmag.com/british-monarchy-1000-year-history/>

⁴ *Interregnum 1649-1660*, Official Website of the Royal Family, (Oct. 09, 2023, 06:53 PM), <https://www.royal.uk/interregnum-1649-1660>

⁵ *The Role of the monarchy*, Official Website of the Royal Family, (Nov. 18, 2023, 06:12 PM), <https://www.royal.uk/role-monarchy>

legislation resides with an elected Parliament.⁶” By bare perusal of these statements one might feel that the British monarchy has no role at all. However, in recent times there have been instances where this perception of the British monarchy has been challenged. For example in the year 2021, the Guardian revealed that, the late Queen had in fact engaged a solicitor who had put pressure on the government to change text of bills in such a way so as to ensure that the monarch is able to keep her finances private from the general public⁷. This wasn’t an unsolicited one-off incidence but rather one in a series of instances. One might ask how was this possible? To answer this, the author will like to shed light on the concept of “Queen/King’s Consent”.

Queen’s Consent- Simply put, this is a parliamentary convention whereby, if the Parliament is aware of any draft bill which may affect the powers of the crown then in such a situation such draft bill should be put forth before the reigning monarch to get their consent to be discussed in Parliament⁸. (Please note that the Queen/King’s consent **should not be confused with** the concept of Royal Assent which is required for any bill to have the full force of law.) Although, Buckingham Palace states that the Queen’s consent is granted whenever requested, the monarch does have the right to withhold such consent as well. This is what happened in the case of the Iraq War Bill, officially titled the “Military Actions against Iraq Bill, 1999” was bill prepared by a private member of parliament which sought to transfer the power of authorising military strikes from the monarch to the Parliament, the Queen vetoed the said bill by withholding her consent⁹. The Guardian further reported that, this consent has been used on at least 1,000 pieces of legislations by both the then Queen as well as the Prince of Wales (the current King Charles III)¹⁰.

This power is just one example of the monarch’s hidden powers and authorities in the UK. Another power of the monarch that came in controversy recently was the monarch’s power to summon, prorogue, and dissolve Parliament. The matter even went before the Supreme Court of the United Kingdom in the landmark matter of *R (on the application of Miller) (Appellant) v The Prime Minister (Respondent) Cherry and others (Respondents) v Advocate General for*

⁶ Id.

⁷ David Pegg and Rob Evans, *Revealed: Queen lobbied for change in law to hide her private health*, The Guardian, (Nov. 18, 2023, 06:23 PM), <https://www.theguardian.com/uk-news/2021/feb/07/revealed-queen-lobbied-for-change-in-law-to-hide-her-private-wealth>

⁸ Id.

⁹ Robert Booth, *Secret papers show extent of senior royals’ veto over bills*, the Guardian, (Nov. 18, 06:55 PM), <https://www.theguardian.com/uk/2013/jan/14/secret-papers-royals-veto-bills>

¹⁰ David Pegg and Rob Evans, *Revealed: Queen lobbied for change in law to hide her private health*, The Guardian, (Nov. 18, 2023, 07:04 PM), <https://www.theguardian.com/uk-news/2021/feb/07/revealed-queen-lobbied-for-change-in-law-to-hide-her-private-wealth>

Scotland (Appellant) (Scotland)¹¹.

Case- *R (on the application of Miller) (Appellant) v The Prime Minister (Respondent) Cherry and others (Respondents) v Advocate General for Scotland (Appellant) (Scotland)*

Bench- 11 Judge Bench headed by the then President of the Supreme Court of the United Kingdom Lady Hale.

Ratio of Decision- Unanimous judgment by all 11 judges.

Background- This case was a landmark case within the United Kingdom as for the first time since the year 1642 a state authority apart from the monarch herself, had changed a promulgation issued by the Sovereign of the United Kingdom.

Facts- The issue came due to the promulgation of an order of prorogation of Parliament by the then Queen Elizabeth II. On the advice of her then Prime Minister Boris Johnson, the Queen had summoned the Privy Council to order a commission to be formed in her name who prorogued Parliament from the 10th of September, 2019 to the 24th of September, 2019. However, such prorogation was far more than the usual time for which parliament is prorogued. Aggrieved by the same several politicians appealed against the same before the High Court of England & Wales and the Sessions Court in Scotland by challenging the validity of the advice of the Prime Minister rendered to the Queen which prompted her to prorogue Parliament. The High Court of England & Wales, rejected the petition on the grounds that the Courts do not have any justifiable grounds to question the advice given by the Prime Minister to the Queen as the same would be equivalent to the Courts entering the political realm. However, the Sessions Court of Scotland held a different view and stated that the advice rendered by the Prime Minister was inherently unconstitutional and illegal and the same could be challenged. Finally, appeals against both judgments were clubbed and heard by the Supreme Court of the UK by a 11 judge bench, which is the maximum number of judges that the Court can allot to hear any particular matter.

Issues Raised-

The UK Supreme Court identified three crucial issues in the current matter-

1. Is the question of whether the Prime Minister's advice to the Queen was lawfully justiciable in a court of law?
2. By that standard, was it lawful?

¹¹ *R (on the application of Miller) (Appellant) v The Prime Minister (Respondent) Cherry and others (Respondents) v Advocate General for Scotland (Appellant) (Scotland)* [2019] UKSC 41

3. If it was not, what remedy should the court grant?

Judgment-

The Supreme Court of the UK delivered this landmark judgment on each of the aforementioned four issues as follows-

1. Is the question of whether the Prime Minister's advice to the Queen was lawfully justiciable in a court of law?

Judgment of First Issue-

1. At the outset the Supreme Court made it clear that the power to prorogue Parliament was a royal prerogative which is recognized by common law and exercised by the Crown, with in the current case the Sovereign using it in person. The Court made it clear that it **shall not** delve into the aspect of as to whether the Queen had the right or ought to have rejected the advice of the Prime Minister.
2. The Court however, held that since the Queen by parliamentary convention would ordinarily accept such advice, there was a constitutional responsibility upon the Prime Minister to take the interests of all stakeholders including the Parliament, before making such a request to the Sovereign.
3. The Supreme Court held that, holding that such advice by the Prime Minister to the Sovereign cannot be called into question merely on the ground that it is political in nature is unacceptable. The Supreme Court concurred with the view of the Scottish courts that every decision by the executive has some political aspect to the same and this shouldn't be the only reason as to why the Courts cannot decide upon the current matter.
4. The Supreme Court even gave the example of the *Case of Proclamations*¹² wherein despite the 17th century political turmoil between the Parliament and the then Sovereigns, the Court had held that, "the King hath no prerogative, but that which the law of the land allows him" indicating that the prerogative powers of the Crown could not be said to exist without any sort of limitations.
5. The Supreme Court also rejected the argument by the Government that the Prime Minister is only accountable to Parliament, as the effect of the prerogative of prorogation is such that, it grinds the Parliament to a halt and leaves it an position which does not allow it to hold the Prime Minister accountable.

¹² *The Case of Proclamations* (1611) 12 Co Rep 74

6. Finally, the Supreme Court held that it is indeed within the Court's power to deal with the question of the Prime Minister's advice to the Sovereign as if the same is left unchecked, then it will lead to an undermining of the concept of 'parliamentary sovereignty' whereby the executive will have an unfettered power to prorogue parliament without any hindrance or legal limit in place.
2. Was the advice lawful?

Judgment of Second Issue-

1. The Supreme Court reiterated and stressed upon the fact that Her Majesty's Government simply exists because it has the confidence of the House of Commons whose members are directly elected by the people. Hence, the government enjoys no further democratic legitimacy than that and hence, is always answerable to the House of Commons as well as the House of Lords for all of its actions.
2. The Supreme Court held that, the prorogation of Parliament in the run-up to the Queen's Speech this time around was not of normal duration. Furthermore, such prorogation would have frustrated the Parliament from carrying out its constitutional functions.
3. The Supreme Court further pointed out that, the current prorogation came at a time of exceptional change as the UK planned its move to exit the European Union, hence at such a time, the Parliament had the full right to carry out its functions and act as the representative of the peoples' voice.
4. The Court further went on to question as to whether the Prime Minister had any justifiable reason to request to prorogue Parliament for period of two weeks. The Court made it clear that it was not concerned with the *motive* of the Prime Minister but rather was solely concerned with as to whether there existed any legitimate grounds for such a decision that has such a negative effect on the Parliament.
5. The Supreme Court held that upon perusal of relevant minutes of the Cabinet meeting, circulars, and other communications and evidence presented by the Government, no such justifiable ground can be said to exist. Hence, the Court held that such advice was indeed **unlawful**.
3. What remedy should the Court grant?

Judgment of third Issue-

1. The Supreme Court held that, Ms. Miller 's (appellant) request for a declaration that such advice of the Prime Minister is unlawful can be given. Furthermore, the Scottish

Court stated that such prorogation be declared null and void and to be of no effect.

2. The Supreme Court stated that, the Government vehemently opposed the same on the grounds that the process of prorogation is one that takes place in presence of both Houses of Parliament and as such comes within the purview of ‘proceeding of parliament’ under Article 9 of the Bills of Right of 1688 which cannot be brought into question in any court of law¹³.

Aftermath of the Judgment- The judgment was a landmark one, as for the first time had the Supreme Court subjected a decision of the monarch to judicial review albeit indirectly. The biggest reaction to this judgment came in the form of another Act which was the Dissolution and Calling of Parliament Act of 2022¹⁴.

Dissolution and Calling of Parliament Act- The Dissolution and Calling of Parliament Act of 2022 was introduced to repeal and replace the Fixed Terms Parliament Act of 2011. The Fixed Terms Parliament Act had removed the powers of the Monarch to dissolve Parliament and call for a new general election.

The Section 2 sub-section (1) of the Dissolution and Calling of Parliament Act states that, “*The powers relating to the dissolution of Parliament and the calling of a new Parliament that were exercisable by virtue of Her Majesty’s prerogative immediately before the commencement of the Fixed-term Parliaments Act 2011 are exercisable again, as if the Fixed-term Parliaments Act 2011 had never been enacted.*”¹⁵

The afore mentioned landmark *Cherry* case was also technically negated by the Parliament by the use of this Act by way of Section 3 of the Act.¹⁶

“Section 3 states that- *A Court or tribunal may not question-*

- (a) *The exercise or purported exercise of the powers referred to in Section 2.*
- (b) *any decision or purported decision relating to those powers, or*
- (c) *the limits or extent of those powers.*”¹⁷

It is very clear by the literal interpretation of Section 3 that the Parliament has completely restrained the judicial interpretation of the powers of dissolution and recalling of Parliament. Furthermore, the judiciary has also been restrained from putting any sort of limits on the powers

¹³ Bills of Right, 1688, Art. 9, Acts of Parliament, 1688 (United Kingdom).

¹⁴ Dissolution and Calling of Parliament Act, 2022, C.11, Acts of Parliament, 2022 (United Kingdom).

¹⁵ Dissolution and Calling of Parliament Act, 2022, §2, C.11, Acts of Parliament, 2022 (United Kingdom).

¹⁶ Dissolution and Calling of Parliament Act, 2022, §3, C.11, Acts of Parliament, 2022 (United Kingdom).

¹⁷ Id.

of the monarch. Thereby, the decision of the Supreme Court in the 2019 case of *Cherry and Others v. Advocate General for Scotland*¹⁸ is not rendered ineffective. As the Supreme Court itself stated in the aforementioned judgment, the Article 9 of the Bills of Right of 1688 prohibit the Courts from interfering with any parliamentary proceedings. Thus, the Supreme Court of the UK cannot judicially interpret or declare the Act to be unconstitutional.

III. CERTAIN OTHER POWERS OF THE BRITISH MONARCH

The author would now like to state certain other powers of the British Monarch, which can be stated as follows-

- a. Power to declare war.
- b. Power to dissolve Parliament
- c. Grant Royal Assent to Bills passed by Parliament of the UK.
- d. Aid, advise, and warn the Government. (Through weekly audiences with the Prime Minister.)
- e. Prorogue and summon Parliament.
- f. Issue orders in the Privy Council (King-in-Council).

(A) Powers in Other Commonwealth Realm

Apart from the powers, immunities, and privileges enjoyed within the United Kingdom, the Sovereign of the UK is also the Head of State for 15 other Commonwealth Realms, British Overseas Territories, and Crown Dependencies. The British Monarch has a unique status in this regard as the Sovereign is considered as a separate legal entity in each of this Commonwealth Realms where its powers differ according to such nations' constitutions. The author shall show certain powers enjoyed by the British Sovereign in the Commonwealth Realm of Australia as an example-

(Please note that- The word "Queen" in the Australian Constitution applies to all successive monarchs of the UK irrespective of gender.)

Section 58 states that the Governor General of Australia may keep aside any bill passed by both Houses of Parliament for the pleasure of the Sovereign meaning that the Sovereign shall have the right to decide on whether or not to give assent to such bill.¹⁹

¹⁸ *R (on the application of Miller) (Appellant) v The Prime Minister (Respondent) Cherry and others (Respondents) v Advocate General for Scotland (Appellant) (Scotland)* [2019] UKSC 41

¹⁹ Commonwealth of Australia Constitution Act, 1900, §58, Acts of Parliament, 1900 (United Kingdom).

Section 59- Disallowance by the Queen

This section gives a unique constitutional power to the Sovereign to disallow Acts which have received the assent of the Governor General of Australia within a period of two years from the date of receiving such royal assent. It states that, *“The Queen may disallow any law within one year from the Governor-General’s assent, and such disallowance on being made known by the Governor-General by speech or message to each of the Houses of the Parliament, or by Proclamation, shall annul the law from the day when the disallowance is so made known.”*²⁰

Section 61 states that- *“The executive power of the Commonwealth is vested in the Queen and is exercisable by the Governor-General as the Queen’s representative, and extends to the execution and maintenance of this Constitution, and of the laws of the Commonwealth.”*²¹

Section 74 states that in the event that any person wishes to appeal against the decision of the High Court of Australia, the High Court shall be entitled to decide as to whether such appeal can be made to the Privy Council of the United Kingdom. However, if the monarch is satisfied that such appeal should be made before the Privy Council then in such a situation such appeal shall be directly transferred to the Privy Council irrespective of whether the High Court of Australia has given such permission or not.

These are just an example of the various powers and privileges enjoyed by the British Sovereign as Sovereign of Australia. The powers mentioned in the aforementioned Secs 59 and 74 are exceptional in nature that are not enjoyed by the monarch within the United Kingdom as well.

IV. GOVERNOR GENERAL OF AUSTRALIA

The Governor General of Australia serves as the *de facto* Head of State of Australia. He is empowered as the monarch’s official representative to carry out their role, duties, as well as exercise their powers. The Constitution of Australia Act of 1900 establishes the office of the Governor General of Australia u/s 2 of the Act. The Section 2 states that, *“A Governor-General appointed by the Queen shall be Her Majesty’s representative in the Commonwealth, and shall have and may exercise in the Commonwealth during the Queen’s pleasure, but subject to this Constitution, such powers and functions of the Queen as Her Majesty may be pleased to assign to him.”*²² As the section states, the Governor General is empowered to exercise all powers of the monarch of Australia.

(A) Powers of the Governor General of Australia-

²⁰ Commonwealth of Australia Constitution Act, 1900, §59, Acts of Parliament, 1900 (United Kingdom).

²¹ Commonwealth of Australia Constitution Act, 1900, §61, Acts of Parliament, 1900 (United Kingdom).

²² Commonwealth of Australia Constitution Act, 1900, §2, Acts of Parliament, 1900 (United Kingdom).

The major powers of the Governor General of Australia can be stated to be as follows-

Section 5- Sessions of Parliament, Prorogation and Dissolution²³

This section grants the power to the Governor General to summon, and prorogue Parliament. The Governor General also has the right to dissolve the House of Representatives when he deems fit.

This section of the Constitution went on to play an important role in the Constitutional Crisis of 1975 which shall be discussed ahead by the author.

Section 58- Grant of Royal Assent²⁴

This section grants the Governor General the constitutional power to grant royal assent to any bills which are passed by both Houses of Parliament. The Governor General has the power to grant assent, withhold such assent, or reserve any bill for the pleasure of the Sovereign.²⁵

This section also grants the Governor General the power to send back any bill to with any recommendations to any House of Parliament, however, the Houses may or may not act upon such recommendations by the Governor General.²⁶

Section 61- Executive Power²⁷

The Constitution vests the executive power of the Commonwealth Realm in the Monarch and the Governor General, as the monarch's representative.

Section 62- Federal Executive Council²⁸

The Constitution grants the Governor General the power to appoint a Federal Executive Council who shall aid the Governor General in the exercise of his powers and functions.

Section 63- Provisions referring to Governor General²⁹

The section states that, "*The provisions of this Constitution referring to the Governor-General in Council shall be construed as referring to the Governor-General acting with the advice of the Federal Executive Council.*" This section indirectly places an *de jure* assumption that whenever the Governor General exercises any of his powers, he is doing so with the aid and advice of the Federal Executive Council.

²³ Commonwealth of Australia Constitution Act, 1900, §5, Acts of Parliament, 1900 (United Kingdom).

²⁴ Commonwealth of Australia Constitution Act, 1900, §58, Acts of Parliament, 1900 (United Kingdom).

²⁵ *Id.*

²⁶ *Id.*

²⁷ Commonwealth of Australia Constitution Act, 1900, §61, Acts of Parliament, 1900 (United Kingdom).

²⁸ Commonwealth of Australia Constitution Act, 1900, §62, Acts of Parliament, 1900 (United Kingdom).

²⁹ Commonwealth of Australia Constitution Act, 1900, §63, Acts of Parliament, 1900 (United Kingdom).

Section 72- Appointment and Removal of High Court Judges³⁰

The Constitution empowers the Governor General-in-Council to appoint or remove the judges of the High Court of Australia.

(Please Note that- The term ‘Governor General-in-Council’ means the Governor General can only exercise such powers with the aid and advise of the Federal Executive Council of Australia).

(B) The Case study of the Constitutional Crisis of 1975-

The Governor Generals of Australia like their other Westminster counterparts across the commonwealth of nations have mostly exercised their powers and duties with the aid and advise of the Federal Executive Council as mentioned u/s 63 of the Constitution. However, 1975 saw an unprecedented act by the then Governor General of Australia, Sir John Kerr which is today referred to in Australia as the ‘Constitutional Crisis of 1975’ or more simply ‘the Dismissal of 1975.’³¹

Facts-

1. “This crisis happened during the tumultuous times of the Whitlam Government. The government’s legislative programme met resistance in the Senate where the government in power was not enjoying a majority.
2. In 1974, the Opposition majority in the Senate put forth a condition that the passage of the money bills of the Government would only happen if the Prime Minister agreed to immediately call for a fresh election.
3. The Senate not passing the bills approved by the House of Representatives finally led to the Prime Minister requesting a double-dissolution of both houses of Parliament u/s 57 of the Act. The Governor General dissolved both houses and called for a fresh election.
4. By the 18th of May, 1974 the election concluded and although the Whitlam government secured a majority in the House of Representatives but it still couldn’t achieve a majority in the Senate, this left the status quo before and after the election to be quite the same.
5. By the 16th of October, 1975 the majority opposition in the Senate declared that they will only agree to the passage of the Supply bills provided that, the Prime Minister dissolves the House of Representatives, and calls for a fresh election in the House. The

³⁰ Commonwealth of Australia Constitution Act, 1900, §72, Acts of Parliament, 1900 (United Kingdom).

³¹ Cathy Madden, *The dismissal: 45th Anniversary*, Parliament of Australia, (Nov. 21, 09:54 PM), https://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/FlagPost/2020/November/The_dismissal

Prime Minister. The Queen however, through her private secretary pointed to the fact that the Constitution of Australia places the right to appoint and dismiss ministers in the hands of the Governor General and as such she was not in a position to overrule the Governor General³⁴.

5. The crisis however, led to no significant constitutional amendment or judicial interpretation of the powers of the Governor General.

V. PRESIDENT OF INDIA

The President of India serves as the Head of State of the Republic of India. The powers, duties, and functions of the President of India have been modelled by the Constituent Assembly to be akin to a ceremonial Head of State in a Westminster parliamentary style of government. The Presidents of India have certain powers that are granted to it by the Constitution which shall be stated ahead by the author.

(A) Powers of the President of India-

The powers of the President of India are given from Article 52 onward in the Constitution of India. Some of the important powers of the President can be stated to be as follows-

Article 53- Executive Power of the Union³⁵

This Article vests the executive power of the Union in the President of India which he may exercise with or without subordinate advice.

This Article also vests the command of the Indian armed forces in the President of India the exercise of which is regulated by law.

Article 83- This article grants the President the power to dissolve the Lok Sabha.³⁶

Article 123- Ordinances³⁷

The Constitution grants the President of India the power to promulgate ordinances u/art. 123 which are valid for a period of 6 months.

Article 74- Power to send back advice of the Union Council of Ministers.³⁸

The President also has the power to send back recommendations by the Union Council of ministers for reconsideration whenever he/she deems fit to do so.

³⁴ Id.

³⁵ INDIA CONST. art. 53

³⁶ INDIA CONST. art. 83

³⁷ INDIA CONST. art. 123

³⁸ INDIA CONST. art. 74

Article 78- Right to be informed.³⁹

The President also has the constitutional right to be informed by the Prime Minister which also includes the President's right to demand for any information which he may require about the way in which the government is functioning.

Article 111- Assent to Bills⁴⁰

This article grants the President with the power to grant or withhold assent to bills passed by both Houses of Parliament. This also includes the right of the President of India to send back any bill (except for money bills) with any recommendations which he may deem fit. However, such recommendations shall not be binding upon the Parliament.

(B) Certain Instances of use of powers by President of India-

As previously mentioned by the author, the Presidents of India have always used their powers in accordance with the advice of the Union Council of Ministers however, there have been certain instances where the Presidents have used the powers and rights at their disposal-

- a. "In 1987, the then President Giani Zail Singh withheld his assent from a controversial bill (which was later withdrawn).
- b. The President APJ Abdul Kalam during his tenure returned the Office of Profit back to Parliament for reconsideration.
- c. President Pranab Mukherjee in January of 2017, went against the advice of the union council of ministers to commute the death sentence of four convicts.⁴¹"

VI. CONCLUSION

In conclusion, after analysing the powers, functions, and duties of the three Westminster Parliamentary Heads of State it can be said these office bearers face an almost impossible choice of when or when not to use the powers granted to them as Heads of States. Whilst in the UK, the monarch has switched to an almost invisible hidden use of their powers, whereas in the commonwealth realm of Australia the daring use of the constitutional powers by the Governor General is now looked back upon as a dark age.

It therefore can be concluded that it is not easy to quantify the impact that these Heads of States have on the functioning of our democracies. They have a subtle, influencing role on the policy

³⁹ INDIA CONST. art. 78

⁴⁰ INDIA CONST art. 111

⁴¹ Soutik Biswas, *What is India's President Actually for?*, BBC, (Nov. 21, 11:23 PM), <https://www.bbc.com/news/world-asia-india-40772945>

making of the day but that doesn't mean that they are meant to be mere figureheads. The Dismissal went on to show how these Heads of States must also act as constitutional umpires who act when the government is unable to function or acts contrary to law or public policy. Whilst it is true that, Sir John Kerr the Governor General of Australia drew a lot of flak for dismissing the Prime minister, many also agreed that he saved the Australian government from going into a financial crisis by ensuring the passage of the stuck Supply bills which opened up required funds for the government. Hence, the Westminster style of government places a unique duty upon the Head of State wherein the President, Governor-General, or Monarch must ensure that the government functions properly whilst at the same time not intervening beyond a limit and respecting the constitutional, legal, and conventional limits placed on their powers.
