

OUT OF MY MIND: PEOPLE OR PARLIAMENT SOVEREIGN?

Relevant for: Indian Polity | Topic: Parliament - structure, functioning, conduct of business, powers & privileges and issues arising out of these

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Meghnad Desai loves to cook, watch and write about old Bollywood movies and shuttles between London, Delhi and Goa. He pursues controversies on economics, history and anything else which catches his attention. He is also a British parliamentarian sitting in the House of Lords. He has written over 25 books, over 200 articles in learned journals and hundreds of newspaper columns in UK and India.

In March 1975, [Indira Gandhi](#), the then prime minister with a large majority in Parliament, suffered a defeat in the courts. Instead of obeying a mild decision of the court ('refrain from voting in the Lok Sabha'), she imposed Emergency, signed into law by then-president Fakhruddin Ali Ahmed. The shocking thing about the Emergency was that it was perfectly constitutional. Obviously, it is not 'We the People' who rule India. It is the elected majority party acting as the Executive.

The crisis in the UK yields an interesting contrast concerning the question 'Who Rules?' Boris Johnson as Prime Minister chose to prorogue Parliament, truncating the number of days it could meet. Parliament broke for summer holidays on Thursday, July 25, and was to reconvene on September 3. Then Parliament was to break for party conferences and meet again on October 4. It was not unusual to prorogue a Parliament but it requires the assent of the Head of the State.

Johnson advised the Queen to prorogue Parliament on Friday, September 13, thus taking the days following October 4 till October 14 away from Parliament. On the 14th, the Queen was to open the new Parliament session. A five-day debate on the Queen's speech would follow and calendar would move rapidly towards 31st, the deadline when the UK had to exit the European Union— the Deal or no Deal.

His purpose was clear, thwarting Parliament. This was because he has no majority and he knew that Parliament could force him to negotiate a deal or ask for a new exit date to allow time for a Deal. The Opposition wanted a second referendum (which could vote remain, cancelling the original result), or pass a No-Confidence motion which would lead to an Opposition-led government which could cancel or delay Brexit by asking the European Union to extend the deadline.

The Opposition was divided but, when Johnson prorogued, it united. Back from holiday, it passed a motion asking the Prime Minister to negotiate a new deadline in January 2020. Various MPs and some private citizens went to the courts to challenge the prorogation as illegal.

Judges failed to agree. The High Court in Scotland judged the prorogation illegal but the English High Court said it could not rule on a political matter. The Supreme Court of 11 judges unanimously ruled that prorogation was illegal because it prevented Parliament from doing its work. Parliament was Sovereign. The Court cited a judgment from 1611 which said that the King "hath no prerogative but that which the law of the land allows him". This was even when the King

was the sole Executive. Johnson had misled the Queen. Prorogation was illegal and void. Parliament returned on Wednesday, September 25.

The UK Supreme Court distinguished between the Executive (Absolute King or elected Prime Minister) and Parliament, declaring Parliament to be sovereign. The Unwritten Constitution of the UK relies on old judgments and established conventions. The Indian president is chosen by legislators at the Centre and in states. In effect, the president is chosen by the prime minister. In the UK, the Head of State is not chosen effectively by the ruling party but is a hereditary monarch. This is why Indira Gandhi got away with promulgating Emergency signed by the president.

Is Parliament sovereign in India or not? We need to know.

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