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5th August, 1987.

Dear Mr. Venkatraman,

I trust you have seen my column in the Statesman 'As I See It' of the 12th and 26th July 1987 in which I have first advocated and then welcomed your election as President.

* Taking advantage of our old acquaintanceship, I take the liberty of enclosing the typescript of an article of mine which appeared prominently in the Sunday supplement of the Times of India of March 29, 1987.

I believe this article fairly represents the terms of the Constitution as it emanated from the Constituent Assembly of India. It is true that the pernicious 42nd Amendment in this and other respects subverted the Constitution and in my view this change should have been struck down as ultra vires the Constitution.

I appreciate however that you as President, are bound by the amended Constitution as it is now on the statute book. Even so, I would like to point out that the 42nd Amendment does not cover the prerogatives of the Crown that have come to you namely the right to choose and dismiss the Prime Minister at your pleasure and the right to order dissolution over the head of the Prime Minister or to refuse a dissolution when he asks for it.

In the event of a dissolution being asked for by the Prime Minister, it would be perfectly within your powers as President to ask for the resignation of the Government, install a National Government or a Care taker administration as suggested by Rajaji and then call for fresh elections after some months. This is obviously necessary to ensure free and fair elections.

According to the judgement of the Supreme Court in Shamser Singh which has been quoted by Soli Sorabjee in his article entitled "Heresies About the Constitution" which appeared in the Times of India of May 6, 1987 that, notwithstanding the 42nd Amendment, the Supreme Court has preserved these particular powers in your discretion.

Another issue on which your discretion remains unfettered refers

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to the declaration of an Emergency. Article 352 quite clearly says 'if the President is satisfied' it is quite clear that the satisfaction has to be that of the President himself and not of the Government of the day. Therefore such an emergency can only be declared if it is necessary in your opinion as laid down by the Constitution. In my view Dr. Fakruddin Ali Ahmed erred in signing the proclamation of Emergency which was patently uncalled for.

I trust you will not mind my sharing these thoughts with you.

Yours sincerely,

* Encl: Typescript as above.

(M.R. MASANI.)

Mr. R. Venkatraman,
The President,
Rashtrapathi Bhavan,
NEW DELHI.

MRM:KVI.