

Laws and politics of india

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ARTICLE 370: LAWS AND POLITICS While the Constitution recognises in Article 370 the special status of Jammu and Kashmir, the Central Government's policies since 1953 have totally undermined its autonomy. Senior lawyer and political analyst A. G. NOORANI discusses both aspects and suggests a way out of the mess. " I say with all respect to our Constitution that it just does not matter what your Constitution says; if the people of Kashmir do not want it, it will not go there. Because what is the alternative? The alternative is compulsion and coercion... " We have fought the good fight about Kashmir on the field of battle... (and) ... in many a chancellery of the world and in the United Nations, but, above all, we have fought this fight in the hearts and minds of men and women of that State of Jammu and Kashmir. Because, ultimately - I say this with all deference to this Parliament - the decision will be made in the hearts and minds of the men and women of Kashmir; neither in this Parliament, nor in the United Nations nor by anybody else," Jawaharlal Nehru said in the Lok Sabha on June 26 and August 7, 1952. Selected works of Jawaharlal Nehru, Vol. 18, p. 418 and vol. 19 pp. 295-6, respectively. " From 1953 to 1975, Chief Ministers of that State had been nominees of Delhi. Their appointment to that post was legitimised by the holding of farcical and totally rigged elections in which the Congress party led by Delhi's nominee was elected by huge majorities. " - This authoritative description of a blot on our record which most overlook was written by B. K. Nehru, who was Governor of Kashmir from 1981 to 1984, in his memoirs published in 1997 (Nice Guys Finish Second; pp. 14-5). THOSE who cavil at Article 370 of the Indian Constitution and the " special status" of Kashmir constitutionally ought to remember the " special" treatment meted

out to it politically. Which other State has been subjected to such debasement and humiliation? And, why was this done? It was because New Delhi had second thoughts on Article 370. It could not be abrogated legally. It was reduced to a husk through political fraud and constitutional abuse. The current debate is much more than about restoration of Article 370 by erasing the distortions.

It is about redressing a moral wrong. The United Front government's minimum programme, published on June 5, 1996, said " respecting Article 370 of the Constitution as well as the wishes of the people, the problems of Jammu and Kashmir will be resolved through giving the people of that State the maximum degree of autonomy. " Constitutional abuse accompanied political fraud. Article 370 was intended to guarantee Kashmir's autonomy. On December 4, 1964, Union Home Minister G. L. Nanda said it would be used to serve as " a tunnel (sic. in the wall" in order to increase the Centre's power. The State was put in a status inferior to that of other States. One illustration suffices to demonstrate that. Parliament had to amend the Constitution four times, by means of the 59th, 64th, 67th and 68th Constitution Amendments, to extend the President's Rule imposed in Punjab on May 11, 1987. For the State of Jammu and Kashmir the same result was accomplished, from 1990 to 1996, by mere executive orders under Article 370. Another gross case illustrates the capacity for abuse.

On July 30, 1986, the President made an order under Article 370, extending to Kashmir Article 249 of the Constitution in order to empower Parliament to legislate even on a matter in the State List on the strength of a Rajya Sabha resolution. " Concurrence" to this was given by the Centre's own appointee,

Governor Jagmohan. G. A. Lone, a former Secretary, Law and Parliamentary Affairs, to the State Government described in Kashmir Times (April 20, 1995) how the "manipulation" was done "in a single day" against the Law Secretary's advice and "in the absence of a Council of Ministers. The Nehru-Abdullah Agreement in July 1952 ("the Delhi Agreement") confirmed that "the residuary powers of legislation" (on matters not mentioned in the State List or the Concurrent List), which Article 248 and Entry 97 (Union List) confer on the Union, will not apply to Kashmir. The order of 1986 purported to apply to the State Article 249, which empowers Parliament to legislate even on a matter in the State List if a Rajya Sabha resolution so authorises it by a two-thirds vote.

But it so amended Article 249 in its application to Kashmir as in effect to apply Article 248 instead - "any matter specified in the resolution, being a matter which is not enumerated in the Union List or in the Concurrent List." The Union thus acquired the power to legislate not only on all matters in the State List, but others not mentioned in the Union List or the Concurrent List - the residuary power. In relation to other States, an amendment to the Constitution would require a two-thirds vote by both Houses of Parliament plus ratification by the States (Article 368).

For Kashmir, executive orders have sufficed since 1953 and can continue till Doomsday. "Nowhere else, as far as I can see, is there any provision authorising the executive government to make amendments in the Constitution," President Rajendra Prasad pointed out to Prime Minister Nehru on September 6, 1952. Nowhere else, in the world, indeed. Is this the state of things we

wish to perpetuate? Uniquely Ka shmir negotiated the terms of its membership of the Union for five months. Article 370 was adopted by the Constituent Assembly as a result of those parleys.

YET, all hell broke loose when the State Assembly adopted, on June 26, a resolution recording its acceptance of the report of the State Autonomy Committee (the Report) and asked " the Union Government and the Government of Jammu and Kashmir to take positive and effective steps for the implementation of the same. " On July 4, the Union Cabinet said that the resolution was " unacceptable... would set the clock back and reverse the natural process of harmonising the aspirations of the people of Jammu & Kashmir with the integrity of the State" - a patent falsehood, as everyone knows.

The State's Law Minister, P. L. Handoo, said on June 26 that the people " want nothing more than what they had in 1953. " Overworked metaphors (about the clock or the waters of the Jhelum which flowed since) do not answer two crucial questions: Can lapse of time sanctify patent constitutional abuse? Can it supply legislative competence? If Parliament has legislated over the States on a matter on which it had no power to legislate, under the Constitution, it would be a nullity. Especially if the State's people have been protesting meanwhile and their voice was stifled through rigged elections.

Disapproval of Chief Minister Farooq Abdullah's opportunist politics should not blind one to the constitutional issues. The State's Finance Minister, Abdul Rahim Rather, a moving spirit behind the Report, resents suggestions of political timing. The report was placed before the Assembly on April 13,

1999. The State Cabinet endorsed its recommendations and decided last April to convene a special session of the Assembly to discuss it. The Government of India was " once again requested to set up a ministerial committee in order to initiate a dialogue on the report. "

It provides a comprehensive survey of constitutional developments, which is useful in itself for its documentation. It lists 42 orders under Article 370 and gives the following opinion: " Not all these orders can be objected to. For instance, none can object to provisions for direct elections to Parliament in 1966... It is the principle that matters. Constitutional limits are there to be respected, not violated. " The ruler of Jammu and Kashmir acceded to India by an Instrument of Accession on October 26, 1947 in respect of only three subjects - defence, foreign affairs and communications.

A schedule listed precisely 16 topics under these heads plus four others (elections to Union legislature and the like). Clause 5 said that the Instrument could not be altered without the State's consent. Clause 7 read: " Nothing in this Instrument shall be deemed to commit me in any way to acceptance of any future Constitution of India or fetter my discretion to enter into arrangements with the Government of India under any such future Constitution. " Kashmir was then governed internally by its own Constitution of 1939.

The Maharaja made an Order on October 30, 1947 appointing Sheikh Abdullah the Head of the Emergency Administration, replacing it, on March 5, 1948, with an Interim Government with the Sheikh as Prime Minister. It was enjoined to convene a National Assembly " to frame a Constitution" for the

State. Negotiations were held on May 15 and 16, 1949 at Vallabhbhai Patel's residence in New Delhi on Kashmir's future set-up. Nehru and Abdullah were present. Foremost among the topics were " the framing of a Constitution for the State" and " the subjects in respect of which the State should accede to the Union of India. On the first, Nehru recorded in a letter to the Sheikh (on May 18) that both Patel and he agreed that it was a matter for the State's Constituent Assembly. " In regard to (ii) the Jammu and Kashmir State now stands acceded to the Indian Union in respect of three subjects; namely, foreign affairs, defence and communications. It will be for the Constituent Assembly of the State when convened, to determine in respect of which other subjects the State may accede" (emphasis added, throughout).

Article 370 embodies this basic principle which was reiterated throughout (S. W. J. N. Vol. 11; p. 12). On June 16, 1949, Sheikh Abdullah, Mirza Mammad Afzal Beg, Maulana Mohammed Saeed Masoodi and Moti Ram Bagda joined the Constituent Assembly of India. Negotiations began in earnest on Article 370 (Article 306. A in the draft). N. Gopalaswamy Ayyangar tried to reconcile the differences between Patel and Abdullah. A text, agreed on October 16, was moved in the Constituent Assembly the next day, unilaterally altered by Ayyangar. A trivial change," as he admitted in a letter to the Sheikh on October 18. Patel confirmed it to Nehru on November 3 on his return from the United States. Beg had withdrawn his amendment after the accord. Abdullah and he were in the lobby, and rushed to the House when they learnt of the change. In its original form the draft would have made the Sheikh's ouster in 1953 impossible. ARTICLE 370 embodies six special

provisions for Jammu and Kashmir. First, it exempted the State from the provisions of the Constitution providing for the governance of the States.

Jammu and Kashmir was allowed to have its own Constitution within the Indian Union. Second, Parliament's legislative power over the State was restricted to three subjects - defence, external affairs and communications. The President could extend to it other provisions of the Constitution to provide a constitutional framework if they related to the matters specified in the Instrument of Accession. For this, only "consultation" with the State government was required since the State had already accepted them by the Instrument.

But, third, if other "constitutional" provisions or other Union powers were to be extended to Kashmir, the prior "concurrence" of the State government was required. The fourth feature is that that concurrence was provisional. It had to be ratified by the State's Constituent Assembly. Article 370(2) says clearly: "If the concurrence of the Government of the State... be given before the Constituent Assembly for the purpose of framing the Constitution of the State is convened, it shall be placed before such Assembly for such decision as it may take thereon."

The fifth feature is that the State government's authority to give the "concurrence" lasts only till the State's Constituent Assembly is "convened". It is an "interim" power. Once the Constituent Assembly met, the State government could not give its own "concurrence". Still less, after the Assembly met and dispersed. Moreover, the President cannot exercise his power to extend the Indian Constitution to Kashmir indefinitely. The power

has to stop at the point the State's Constituent Assembly drafted the State's Constitution and decided finally what additional subjects to confer on the Union, and what other provisions of the Constitution of India it should get extended to the State, rather than having their counterparts embodied in the State Constitution itself. Once the State's Constituent Assembly had finalised the scheme and dispersed, the President's extending powers ended completely. The sixth special feature, the last step in the process, is that Article 370(3) empowers the President to make an Order abrogating or amending it. But for this also "the recommendation" of the State's Constituent Assembly "shall be necessary before the President issues such a notification".

Article 370 cannot be abrogated or amended by recourse to the amending provisions of the Constitution which apply to all the other States; namely, Article 368. For, in relation to Kashmir, Article 368 has a proviso which says that no constitutional amendment "shall have effect in relation to the State of Jammu and Kashmir" unless applied by Order of the President under Article 370. That requires the concurrence of the State's government and ratification by its Constituent Assembly. Jammu and Kashmir is mentioned among the States of the Union in the First Schedule as Article 1 (2) requires.

But Article 370 (1) (c) says: "The provisions of Article 1 and of this Article shall apply in relation to that State". Article 1 is thus applied to the State through Article 370. What would be the effect of its abrogation, as the Bharatiya Janata Party demands? Ayyangar's exposition of Article 370 in the Constituent Assembly on October 17, 1949 is authoritative. "We have also

agreed that the will of the people through the instrument of the Constituent Assembly will determine the Constitution of the State as well as the sphere of Union jurisdiction over the State...

You will remember that several of these clauses provide for the concurrence of the Government of Jammu and Kashmir State. Now, these relate particularly to matters which are not mentioned in the Instrument of Accession, and it is one of our commitments to the people and Government of Kashmir that no such additions should be made except with the consent of the Constituent Assembly which may be called in the State for the purpose of framing its Constitution. "

Ayyangar explained that " the provision is made that when the Constituent Assembly of the State has met and taken its decision both on the Constitution for the State and on the range of federal jurisdiction over the State, the President may, on the recommendation of that Constituent Assembly, issue an Order that this Article 306 (370 in the draft) shall either cease to be operative, or shall be operative only subject to such exceptions and modifications as may be specified by him. But before he issued an order of that kind, the recommendation of the Constituent Assembly will be a condition precedent. THE HINDUPHOTOLIBRARY Prime Minister Jawaharlal Nehru with Sheikh Abdullah. This unique process of Presidential Orders altering constitutional provisions by a mere executive order ends with the final decision of the State's Constituent Assembly. Ayyangar repeatedly said that the State government's concurrence alone will not do. " That concurrence should be placed before the Constituent Assembly when it

meets and the Constituent Assembly may take whatever decisions it likes on those matters. " (Constituent Assembly Debates; Vol. 8; pp. 424-427).

In 1949, no one knew when Kashmir's Constituent Assembly would be elected. Ayyangar therefore said: " The idea is that even before the Constituent Assembly meets, it may be necessary... that certain items which are not included in the Instrument of Accession would be appropriately added to that list in the Instrument... and as this may happen before the Constituent Assembly meets, the only authority from whom we can get consent for the addition is the Government of the State. " This was explicitly only for that interim period. Article 370 (1) (b) is clear. The power of Parliament to make laws for the said State shall be limited to" (1) matters in the Union and Concurrent Lists corresponding to the broad heads specified in the Instrument of Accession " and (ii) such other matters in the said Lists as, with the concurrence of the Government of the State the President may by Order specify". An Explanation defined " the Government of the State". Similar " concurrence" was required when extending provisions regarding Union institutions beyond the agreed ones. But Article 370 (2) stipulated clearly that if that concurrence is given " before the Constituent Assembly... is convened, it shall be placed before such Assembly for such decision as it may take thereon". Once Kashmir's Constituent Assembly was " convened" on November 5, 1951, the State Government lost all authority to accord its " concurrence" to the Union. With the Assembly's dispersal on November 17, 1956, after adopting the Constitution of Jammu and Kashmir, vanished the only authority which alone could cede: (a) more powers to the Union and (b)

accept Union institutions other than those specified in the Instrument of Accession. All additions to Union powers since then are unconstitutional.

This understanding informed decisions - right until 1957. THE Constituent Assembly of India adopted the Constitution on November 26, 1949. A day earlier, the ruler of Kashmir made a Proclamation declaring that it "shall in so far as it is applicable to the State of Jammu and Kashmir, govern the constitutional relationships between this State and the contemplated Union of India". Article 370 is more than a provision of that solemn document. It is also a sacred compact with the State. On January 26, 1950, the President made his first Order under Article 370, extending specified provisions of the new Constitution to the State.

On April 20, 1951, the ruler made a Proclamation for convening the State's Constituent Assembly. It met on November 5, 1951. Two issues came to the fore. Nehru was eager to secure Kashmir's "closer integration" with India; the Sheikh to ensure popular governance. The Delhi Agreement that followed was announced at a press conference in Delhi on July 24, 1952 by both. This Union-Centre accord had no legal force by itself. Only an Order under Article 370 could confer that - after the Sheikh gave his "concurrence" formally.

The Sheikh, meanwhile, pressed for an Order to redraft "the Explanation" in Article 370 redefining the State government as one headed by an elected "Sadar-i-Riyasat (State President)... acting on the advice" of his Ministers. As for the Sheikh's request, Nehru wrote on July 29, 1952: "It is not a perfectly clear matter from the legal point of view how far the President can issue

notifications under Article 370 several times. " On September 6, 1952, President Rajendra Prasad pointed out the illegality of such a course in a closely reasoned Note. (It is appended to the Report. He questioned " the competence of the President to have repeated recourse to the extraordinary powers conferred on him" by Article 370. " Any provision authorising the executive government to make amendments in the Constitution" was an incongruity. He endorsed Ayyangar's views on the finality of a single Order under Article 370. " I have little doubt myself that the intention is that the power is to be exercised only once, for then alone would it be possible to determine with precision which particular provisions should be excepted and which modified. The President concluded: " The conclusion, therefore, seems to me to be irresistible that Clause (3) of Article 370 was not intended to be used from time to time as occasion required. Nor was it intended to be used without any limit as to time. The correct view appears to be that recourse is to be had to this clause only when the Constituent Assembly (sic) (Constitution) of the State has been fully framed. " That was over on November 17, 1956. But he yielded to Nehru's pressure and made the Order on November 15, 1952. Events took a tragic course.

The Sheikh was dismissed from office and imprisoned on August 9, 1953 (vide the writer's article, How and Why Nehru and Abdullah Fell Out": Economic and Political Weekly; January 30, 1999). On May 14, 1954 came a comprehensive Presidential Order under Article 370. Although it was purported to have been made with the " concurrence" of the State government it drew validity from a resolution of the Constituent Assembly on February 15, 1954 which approved extension to the State of some provisions

of the Constitution of India. The Order sought to implement the Delhi Agreement.

The Report makes two valid points. Why the haste since the State's Constitution was yet to be framed? Besides, the order in some respects went beyond the Delhi Agreement. It certainly paved the way for more such Orders - all with "the concurrence of the State Government", each elected moreover in a rigged poll. Ninetyfour of the 97 Entries in the Union List and 26 of the 47 in the Concurrent List were extended to Kashmir as were 260 of the 395 Articles of the Constitution. Worse, the State's Constitution was overridden by the Centre's orders. Its basic structure was altered.

The head of State elected by the State legislature was replaced by a Governor nominated by the Centre. Article 356 (imposition of President's Rule) was applied despite provision in the State's Constitution for Governor's rule (Section 92). This was done on November 21, 1964. On November 24, 1966, the Governor replaced the Sadar-i-Riyasat after the State's Constitution had been amended on April 10, 1965 by the 6th Amendment in violation of Section 147 of the Constitution. Section 147 makes itself immune to amendment. But it referred to the Sadar-i-Riyasat and required his assent to constitutional amendments.

He was elected by the Assembly [Section 27 (2)]. To replace him by the Centre's nominee was to alter the basic structure. Article 370 was used freely not only to amend the Constitution of India but also of the State. On July 23, 1975 an Order was made debarring the State legislature from amending the State Constitution on matters in respect of the Governor, the

Election Commission and even "the composition" of the Upper House, the Legislative Council. It would be legitimate to ask how all this could pass muster when there existed a Supreme Court of India.

Three cases it decided tell a sorry tale. In *Prem Nath Kaul vs State of J*, decided in 1959, a Constitution Bench consisting of five judges unanimously held that Article 370 (2) "shows that the Constitution-makers attached great importance to the final decision of the Constituent Assembly, and the continuance of the exercise of powers conferred on the Parliament and the President by the relevant temporary provision of Article 370 (1) is made conditional on the final approval by the said Constituent Assembly in the said matters".

It referred to Clause 3 and said that "the proviso to Clause (3) also emphasises the importance which was attached to the final decision of Constituent Assembly of Kashmir in regard to the relevant matters covered by Article 370". The court ruled that "the Constitution-makers were obviously anxious that the said relationship should be finally determined by the Constituent Assembly of the State itself." But, in 1968, in *Sampat Prakash vs the State of J*, another Bench ruled to the contrary without even referring to the 1959 case. Justice M.

Hidayatullah sat on both Benches. The court held that Article 370 can still be used to make orders thereunder despite the fact that the State's Constituent Assembly had ceased to exist. FOUR BASIC flaws stand out in the judgment.

- First, the Attorney-General cited Ayyangar's speech only on the India-Pakistan war of 1947, the entanglement with the United Nations and the

conditions in the State. On this basis, the court said, in 1968, that " the situation that existed when this Article was incorporated in the Constitution has not materially altered," 21 years later.

It ignored completely Ayyangar's exposition of Article 370 itself; fundamentally, that the Constituent Assembly of Kashmir alone had the final say. • Secondly, it brushed aside Article 370 (2) which lays down this condition, and said that it spoke of " concurrence given by the Government of State before the Constituent Assembly was convened and makes no mention at all of the completion" of its work or its dissolution. The supreme power of the State's Constituent Assembly to ratify any change, or refuse to do so, was clearly indicated. Clause (3) on the cessation of Article 370 makes it clearer still.

But the court picked on this clause to hold that since the Assembly had made no recommendation that Article 370 be abrogated, it should continue. It, surely, does not follow that after that body dispersed the Union acquired the power to amass powers by invoking Article 370 when the decisive ratificatory body was gone. • Thirdly, the Supreme Court totally overlooked the fact that on its interpretation, Article 370 can be abused by collusive State and Central Governments to override the State's Constitution and reduce the guarantees to naught.

Lastly, the court misconstrued the State Constituent Assembly's recommendation of November 17, 1952, referred to earlier, which merely defined in an explanation " the Government of the State". To the court this meant that the Assembly had " expressed its agreement to the continued op

eration of this Article by making a recommendation that it should be operative with this modification only. " It had in fact made no such recommendation. The Explanation said no more than that " for the purposes of this Article, the Government of the State means... It does not, and indeed, cannot remove the limitations on the Central Government's power to concurrence imposed by Clause (2); namely ratification by the Constituent Assembly. The court laid down no limit whatever whether as regards the time or the content. " We must give the widest effect to the meaning of the word 'modification' used in Article 370 (1)". The net result of this ruling was to give a carte blanche to the Government of India to extend to Kashmir such of the provisions of the Constitution of India as it pleased.

In 1972, in Mohammed Maqbool Damnoo vs the State of J & K, another Bench blew sky high the tortuous meaning given to the Explanation. It was a definition which had become " otiose". But this Bench also did not refer to the 1959 ruling. Cases there are, albeit rare, when courts have overlooked a precedent. But that is when there is a plethora of them. Article 370 gave rise only to three cases. The first was studiously ignored in both that followed. The court found no difference between an elected S adar and an appointed Governor. There is no question of such a change being one in the character of that government from a democratic to a non-democratic system. " If the Constitution of India is amended to empower the Prime Minister to nominate the Pres ident as Sri Lanka's 1972 Constitution did - would it make no difference to its democratic character, pray? To this Bench " the essential feature" of Article 370 (1) (b) and (d) is " the necessity of the concurrence of the State Government", not the Consti tuent Assembly. This case was

decided before the Supreme Court formulated in 1973 the doctrine of the unamendable basic structure of the Constitution.

GIVEN their record, whenever Kashmir is involved, how can anyone ask Kashmiris to welcome Union institutions (such as the Election Commission) with warmth? Sheikh Abdullah had no cards to play when he concluded an Accord with Indira Gandhi and became Chief Minister on February 24, 1975. At the outset, on August 23, 1974, he had written to G. Parthasarathy: " I hope that I have made it abundantly clear to you that I can assume office only on the basis of the position as it existed on August 8, 1953. " Judgment on the changes since " will be deferred until the newly elected Assembly comes into being".

On November 13, 1974, G. P. and M. A. Beg signed " agreed conclusions" - Article 370 remained; so did the residuary powers of legislation (except in regard to anti-national acts); Constitutional provisions extended with changes can be " altered or repealed"; the State could review Central laws on specified topics (we lfare, culture, and so on) counting on the Centre's " sympathetic consideration"; a new bar on amendment to the State Constitution regarding the Governor and the E. C. Differences on " nomenclature" of the Governor and Chief Minister were " remitted to the p rincipals".

Differences persisted on the E. C. , Article 356 and other points. On November 25, the Sheikh sought a meeting with Prime Minister Indira Gandhi. Her reply not only expressed doubt on the usefulness of talks but also on his commitment to " the b asic features of the State's Constitution"

and to " the democratic functioning" of the government. Hurt, he wrote back ending the parleys. They met at Pahalgam. An exchange of letters, on February 12, 1975, clinched the deal on the basis of the Agreed Con clusions.

This was a political accord between an individual, however eminent, and the Government, like the Punjab Accord (July 24, 1985); the Assam Accord (August 15, 1985); the Nagaland Accord (November 11, 1975); and the Mizoram Accord (June 30, 1986) - e ach between the government and the opposition. It cannot override Article 370; still less sanctify Constitutional abuse. It bound the Sheikh alone and only until 1977. This was explicitly an accord on " political cooperation between us", as Indira Gandhi wrote (December 16, 1974).

On February 12, 1975, Abdullah recorded that it provided " a good basis for my cooperation at the political level". In Parliament on March 3, 1975 she called it a " new political understanding". He was made Chief Minister on February 24, backed by the Congress' majority in the Assembly and on the understanding of a fresh election soon. Sheikh Abdullah's memoirs Aatish-e-Chinar (Urdu) rec ord her backtracking on the pledge and the Congress' perfidy in March 1977 when she lost the Lok Sabha elections. It withdrew support and staked a claim to form a government. Governor's Rule was imposed.

The Sheikh's National Conference won the elections with a resounding majority on the pledge to restore Jammu and Kashmir's autonomy, which was also Farooq's pledge in 1996. The 1975 accord had collapsed. It was, I can reveal, based on gross error. The Agreed Conclusions said (Para 3): " But

provisions of the Constitution already applied to the State of J&K without adaptation or modification are unalterable. " This preposterous assertion was made in the teeth of the Sampat Prakash case. One order can always be rescinded by another. All the orders since 1954 can be revoked; they are a nullity anyway.

Beg was precariously ill and relied on advice which GP's " expert" had given him. He was one S. Balakrishnan whom R. Venkataraman refers to as " Constitutional Adviser in the Home Ministry" in his memoirs. It is no disrespect to point out that issues of such complexity and consequence are for counsel's opinion; not from a solicitor, still less a bureaucrat even if he had read the law. Even the Law Secretary would have insisted on the Attorney-General's opinion. Amazed at what Beg had told me in May 1975, I pursued the matter and eventually met Balakrishnan in 1987. He confirmed that he had, indeed, given