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CRITICAL ANALYSIS OF EMERGENCIES IN INDIA

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ABSTRACT

The Emergency Provisions and the proclamation of Emergencies has often been subjected to scrutiny in the political history of India. There have been arguments both in favour and against the emergency provisions and its implementation. While some were of the opinion that it is essential to safeguard the sovereignty of India and its elected government it has also been argued that the provisions have been misused by the ruling parties for their own selfish motives thus compromising the rights of the people. The debate on the same has been a never ending one since the time the provisions were included in the Constitution. This paper is to critically analyse the purpose intended by the makers of the constitution while including the same in the constitution and various circumstances where these provisions were used contradictory to its actual purpose. It is also intended to put light on the aftermaths of proclaimed emergencies on the lives of the masses of the country.

Introduction

In 2020 India celebrated its 71st Republic Day; the day the longest written constitution of the world came into being. One of the most detailed constitution in the world with contributions from the knowledged entities in their respective spheres. The Constitution under the Seventh Schedule divides legislative powers into Centre, State and Concurrent lists abiding by its federal structure. When there arises a conflict of powers the Centre prevails. The constitution is the guide for the administration of the nation which ensures the interest of the nation as a whole is being safeguarded. There are provisions to handle almost all the situation that could arise in the state or at least could be assumed or interpreted from the provisions. As is there for the emergency. Provided part XVIII of the Indian Constitution. The three different types of emergencies; National Emergency, state Emergency and financial Emergency mentioned in article 352, article 356 and article 360 respectively. Emergency has had a major role to play in the administration system of India and has also influenced the transformation in the political spectrum. There were instances when declaring Emergency was the need of the hour, but at times it was also used as a bait to acquire 'power'. Emergency would be an important chapter

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in the history of modern India. It has often proved to be that part of the constitution which is most prone to misuse unless overlooked by efficient rules and supervisory bodies in place. Emergency has played both the roles of saviour as well as destroyer for the masses of India. At times it was used for their safety and in other it was the tool for oppression and miseries. Emergency provisions provide the otherwise federal government of India the chance to become Unitary and take control over all the delegated authority at times of dire need. Emergency is always considered the last weapon in the armour in federal and democratic countries as it impeded the most prominent right offered to its citizens by the democracy- Right to freedom. Even then there have been instances in Indian political history where proclaimed emergencies threatened the country's envisaged federal structure. Such situations have also given rise to protest and in some instances even the interruption of judiciary. Contrary to the purpose the makers of the constitution presumed, the provision has been put to use in a way which would defeat the purpose of democracy. The main purpose of this article is to go for a ride through the major emergencies proclaimed in India over the years and analyse their purpose and fairness.

National emergencies can be declared on three occasions. They being internal disturbance or armed rebellion, external aggression or when there is a threat to India's security or its territory due to war. There have been three national emergencies in 1962, 1971 and 1975. The emergency of 1962 was the result of war with China. It was the first emergency declared in independent India and was declared by the first Prime Minister of India Jawaharlal Nehru.² This was also the longest emergency in the history of India as it lasted long after the hostilities of war ended. It was in force till 1969. This emergency did not only affect the functions of the legislature and executive but even the judiciary was affected to a great extent.

The next instance of national emergency popped up in 1971. Indira Gandhi had challenged the seniors of her own party and the grand alliance of the opposition. A lot of political turmoil could be witnessed. She won the elections smoothly and went on to become the Prime Minister for the next 5 years. Meanwhile tensions were going on in East Pakistan. Awami League of East Pakistan won the majority seats in the elections resulting in lesser number of seats for Zulfikar Bhutto's party. Pakistan was not ready to let a party from East Pakistan to rule Pakistan

² Srajan Kapil, *Critical Analysis of Emergencies Proclaimed in India*, Legal Service India, (January 1, 2021, 1.19 AM), <http://www.legalserviceindia.com/legal/article-4033-critical-analysis-of-proclaimed-emergencies-in-india.html>.

which refused to accept the election results which resulted in revolt in East Pakistan. This eventually led to conflict between Mukhti Bahini and Pakistan Forces, which later developed into a war between India and Pakistan. At the end of the war Pakistan forces accepted defeat and surrendered to Indian forces. The war ended with the splitting of Pakistan and East Pakistan or Bangladesh became a new independent country. This was a major political victory for Indira Gandhi as she was enjoying immense popularity and support from the masses. The economy of India was in great trouble by then and was a period where most of the world nation were inching towards liberalisation policies. Indira Gandhi government was being criticised for their policies and Garibi Hatao was claimed to have remained in papers.³

Amidst the ongoing criticism Raj Narain, socialist leader, who had lost elections to Indira Gandhi in 1971 filed a petition challenging the validity of her elections to the Allahabad High Court. In the same time another roadblock emerged in front of the Indira Gandhi government in the form of 'Navnirman Movement'.⁴ The issue started when the students of LD College of Engineering Gujarat started protesting against the sharp hike in hostel fees. This protest turned into a widespread demand for the stepping down of the Gujarat government led by Chief Minister Chimanbhai Patel. The government was being criticised for its rampant corruption and the Chief Minister was being called 'Chiman Chor'. The matters went out of control of the government when the protesters came together and organised themselves as the Navnirman Movement. Soon people from other sectors including factory workers joined the protest. The government in its vain attempt to suppress the protests used force resulting in brutalities by Police and supporters of the government. Houses were burnt and protesters beaten up. In response the protesters encroached ration shops and burnt government buildings forcing Indira Gandhi to dissolve the government and announce fresh elections in the state. The same path was followed in Bihar. Students started protesting against the government and were soon led by freedom fighter Jayaprakash Narayanan.⁵ He led a large procession on the streets of Patna demanding 'Total Revolution'. Indira Gandhi called the protests extra-parliamentary and went on to challenge Jayaprakash Narayan to contest against her in the upcoming 1976 general

³ Arun Jaitley, *The Emergency Revisited – Part – I (3-Part Series): The Circumstances Leading to the Imposition of Emergency*, Arun Jaitley, (January 1, 2021, 1.32 AM) <https://www.arunjaitley.com/the-emergency-revisited-part-i-3-part-series-the-circumstances-leading-to-the-imposition-of-emergency/>,

⁴ Adrija Roychowdhury, *Four reasons why Indira Gandhi declared Emergency*, Indian Express, (January 1, 2021, 1.37 AM), <https://indianexpress.com/article/research/four-reasons-why-indira-gandhi-declared-the-emergency-5232397/>.

⁵ Adrija Roychowdhury, *Four reasons why Indira Gandhi declared Emergency*, Indian Express, (January 1, 2021, 1.37 AM), <https://indianexpress.com/article/research/four-reasons-why-indira-gandhi-declared-the-emergency-5232397/>.

elections. Jayaprakash Narayan accepted her challenge and went onto form the National Coordination Committee. This was followed by railway strike by George Fernandes. The nation and its economy were paralyzed.⁶ The Indira Gandhi government went hard on the protests. Thousands were arrested and many more beaten up. The Allahabad High Court took up the petition by Raj Narain, who accused Indira Gandhi of winning the elections using corrupt practices and claimed that she used more funds than permitted by the Election Commission. The court found her guilty and declared her election to the parliament null and void but however was given a chance to appeal before the Supreme Court within 20 days.⁷ The Supreme Court let her be a member of Parliament but restrained her from voting until the court pronounced its decision. Indira Gandhi still held on firmly to her Prime Ministerial Position despite opposition from within her party. Soon Indira Gandhi imposed emergency in India citing internal disturbance posing threat to the security of the country. Then president Fakhruddin Ali Ahmed gave the Emergency assent. It is the most controversial emergency in the history of India.

Many State Emergencies have been imposed in India including the Bihar emergency and subsequent dissolving of the Bihar Assembly which was contended in *Rameshwar Prasad. v. UOI* case.⁸ The dissolution of the government was declared unconstitutional by the apex court. President can impose State Emergency by the report of governor or by himself. State Emergencies imposed in the past has often reflected the Centre's intolerance towards opposing State governments. State Emergency provision has been exploited many times in the past calling for judicial intervention. The 42nd Amendment of the constitution made State Emergency immune from judicial intervention. But the Moraji Desai government introduced 44th Constitutional Amendment which revoked the provisions of 42nd Amendment. The State Emergency can be declared for a period of 2 months which can be extended for a period of 6 months. But after a year the State Emergency would withstand only if the Election Commission certifies that Elections cannot be held in the state.⁹ Political instability, breakdown of Law and Order and rampant Corruption were the common impacts of many State Emergencies imposed

⁶ Adrija Roychowdhury, *Four reasons why Indira Gandhi declared Emergency*, Indian Express, (January 1, 2021, 1.37 AM), <https://indianexpress.com/article/research/four-reasons-why-indira-gandhi-declared-the-emergency-5232397/>

⁷ Adrija Roychowdhury, *Four reasons why Indira Gandhi declared Emergency*, Indian Express, (January 1, 2021, 1.37 AM), <https://indianexpress.com/article/research/four-reasons-why-indira-gandhi-declared-the-emergency-5232397/>

⁸ *Rameshwar Prasad v. UOI*, (2005) 5 SCC 804.

⁹ INDIA CONST. art. 143, § 1.

in the past. The provision has often been misused by the Central Government to suppress the State Governments thus slashing the basic idea of Federal Government.

Financial Emergency has never been imposed in India. President can impose Financial emergency if he is satisfied that the financial stability of the Country is under threat. It can remain in force for a maximum of two months unless approved by the parliament.

Emergency limits the Fundamental Right guaranteed by the Constitution to the citizens, thus making them vulnerable. Most of the Fundamental Rights would be suspended and the citizens cannot move to the Court for its enforcement. During Emergency the only Fundamental Right the citizens can enjoy is the Right to Life and Personal Liberty. The major motive behind including provisions for emergency in the constitution was that, there must be adequate provision in the Constitution which would enable unified, speedy and effective action during situations of emergent nature.¹⁰ There are three questions that need to be answered in context to Emergency provisions; first being, what is the criteria that the president needs to be satisfied with before proclaiming Emergency. Second, are the president's actions under the purview of judicial review and third being, can the advice given by Prime Minister and Cabinet be enquired into by the Court of Law.¹¹

The criteria to be satisfied before proclamation of emergency by the President are manifold. There must be a situation which needs urgent solution so as to protect the sovereignty, integrity, peace, rights of the citizen or the democratic structure. The situation should be of such a nature to prevent which the suspension of Citizens' Rights and freedom are essential. Emergency should be the necessity of the situation rather than one among many available options. The authorities should be able to cite clear reasons for bringing in Emergency provisions into action. The Emergency provisions were removed from the scope of judicial review by the 42nd Constitutional Amendment by the Indira Gandhi government, but was restored by the 44th Constitutional Amendment by the Moraji Desai government. The A.K Roy. V. UOI case of 1982 laid down that the emergency proclaimed is open to judicial review when there is no 'reasonable nexus' between the reasons for the declaration of emergency and satisfaction of

¹⁰ Krishna K Tummala, *The Indian Union and Emergency Powers*, 17 INTERNATIONAL POLITICAL SCIENCE REVIEW, 373, 377, (1996).

¹¹ Krishna K Tummala, *The Indian Union and Emergency Powers*, 17 INTERNATIONAL POLITICAL SCIENCE REVIEW, 373, 377, (1996).

the President.¹² Article 74(2) prohibits the Court from enquiring into the ministerial advice given to the President. However, the Supreme Court in 1994 decided that this article did not prohibit the Court from asking the Centre to disclose the basis on which the President arrived on the conclusion that the way forward to deal with the situation is ‘Emergency’.¹³

There are different arguments relating to the Emergency provisions of the Constitution of India. Some feel that the provisions of the constitution and the amount of flexibility it offers is what is responsible for the rampant misuse of the provisions. On the other hand, some are of the opinion that it is the people who fail the purpose of the provision and not the Constitution. They feel that, most of the times the provisions are not put to use in line with the lines of ideal conventions laid down by the makers of the Constitution, instead is used to align the whims of the people in power. In situation when personal agendas override the interest of a nation as a whole the provisions are bound to fail. Even though there are provisions laid down by the 44th Amendment still there had been occurrences of unjust and unreasonable emergencies in India. There needs to be a proper system with clear rules and a strong foundation to keep a check on the provisions so as to safeguard the basic structure of Indian democracy and its integrity.

¹² A.K Roy v. UOI, (1982) AIR 710, (1982) SCR (2) 272.

¹³ Krishna K Tummala, *The Indian Union and Emergency Powers*, 17 INTERNATIONAL POLITICAL SCIENCE REVIEW, 373, 377, (1996).