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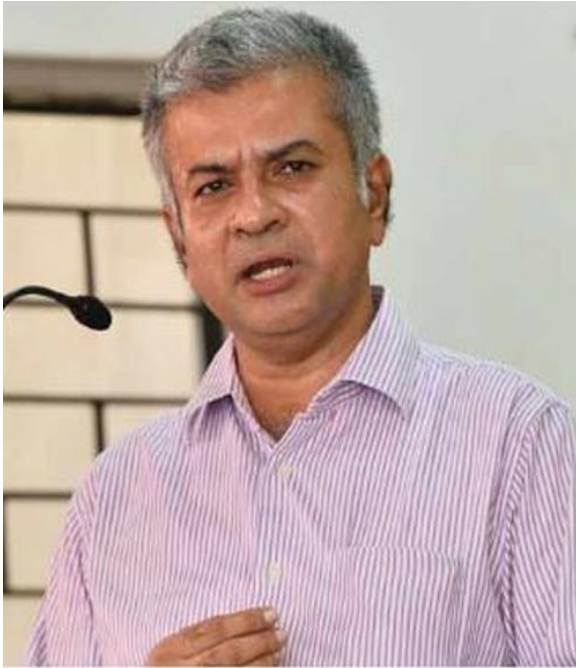
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WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal provided dedicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

# **EMERGENCY: THE DARKEST VISION OF INDIAN POLITICS**

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## **ABSTACT**

On June 25<sup>th</sup> 1975, India witnessed the nationwide emergency. India first time after its Independence witnessed the suspension of its civilian rights i.e. Fundamental Rights, censorship of the press, students, politicians, academicians, journalists or anybody who opposed the government were put behind the bars. India went back to the non- democratic mode after the imposition of Emergency. Prime Minister Indira Gandhi imposed emergency on the grounds of internal disturbances and suspending key fundamental rights guaranteed under the Constitution to every citizen.

This Article focuses on the Constitutional provisions related to the Emergency. The Constitution of India provides for three types of emergency:

- 1) *National Emergency*: Due to war, external aggression or armed rebellion
- 2) *State Emergency*: Due to failure of constitutional machinery in States
- 3) *Financial Emergency*: Provision under Article 360 of the Indian Constitution.

The reference of the Menerva Mill case is provided in the Article. In this case Justice Bhagwati commented that there is no bar to judicial review of the validity of the proclamation of emergency issued by the President under Article 352(1). This Article also focuses on the reason which made the Emergency of 1975 the darkest phase of Indian Democracy with the reference of the Allahabad High Court judgment, convicting Indira Gandhi of electoral malpractices, Justice Sinha disqualified her from Parliament and imposed a six-year ban on her holding any elected post. This particular judgment by the Allahabad HC elevated PM Indira Gandhi to impose the Emergency.

The national emergency of 1975 shows the weaker or dark phase of the Judiciary. Cases like *State*

of *Uttar Pradesh v. Raj Narain*<sup>1</sup> and *A.D.M Jabalpur v. Shiv Kant Shukla*<sup>2</sup> show loophole in the judicial system. Both cases do not recognize the Fundamental Rights of citizens during emergencies. There was a need to change the mechanism and it was done in Kesavananda Bharati's case.<sup>3</sup>

## **INTRODUCTION**

On June 25 1975, India first time after its Independence witnessed the suspension of its civilian rights i.e. Fundamental Rights, censorship of the press, students, politicians, academicians, journalists or anybody who opposed the government were put behind the bars. India went back to the non- democratic mode after the imposition of Emergency. Prime Minister Indira Gandhi imposed emergency on the grounds of internal disturbances and suspending key fundamental rights guaranteed under the Constitution to every citizen.

This was the third national emergency. First emergency was declared in the year 1962 when China invaded India and the second emergency was declared in the year 1971 during the India-Pakistan war. The third emergency period imposed in the year 1975 was considered as the darkest phase of the Indian Political history. This emergency period lasted for 21 months from the 1975 to 1977. It was officially issued by the then president Fakhruddin Ali Ahmed under Article 352 of the Constitution due to prevailing 'internal disturbance'. The Emergency was in effect from 25 June 1975 until its withdrawal on 21 March 1977.<sup>4</sup>

During the emergency, Indira Gandhi evoked Article 352 of the Indian Constitution and granted herself 'extraordinary power' and seized all the fundamental rights and even suspended the right to move to the court in case of the violation of the fundamental rights of the citizens and imprisoned prominent leaders like Morarji Desai, Jai Prakash Narayan, Vijay Raje Scindia and L.K Advani.

After the emergency ended, fresh elections were held which eventually led to the failure of Indira led Congress Government and Janta Party's Morarjai Desai became the first ever non-Congress Prime Minister.

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<sup>1</sup> State of Uttar Pradesh v Raj Narain 1975 AIR 865, 1975 SCR (3) 33

<sup>2</sup> *A.D.M Jabalpur v. Shiv Kant Shukla*, 1976 AIR 1207, 1976 SCR 172

<sup>3</sup> Shreya KS Pandey, Emergency Provison under Indian Constitution, [https://blog.iplayers.in/emergency-provisions-india/#Indira\\_Nehru\\_Gandhi\\_vs\\_Shri\\_Raj\\_Narain\\_An3](https://blog.iplayers.in/emergency-provisions-india/#Indira_Nehru_Gandhi_vs_Shri_Raj_Narain_An3) , (Last seen on December 10, 2023 8:56 PM)

<sup>4</sup> Deepika S, 1975 Emergency: Why June 25 is the darkest chapter in Indian Democracy, <https://www.oneindia.com/india/1975-emergency-why-june-25-is-the-darkest-chapter-in-indian-democracy-2909274.html?story=2>, (Last seen on December 11, 2023 at 5:43 PM)



# CONSTITUTIONAL PROVISION RELATED TO NATIONAL EMERGENCY

The Constitution of India provides for three types of emergency:

- 4) *National Emergency*: Due to war, external aggression or armed rebellion
- 5) *State Emergency*: Due to failure of constitutional machinery in States
- 6) *Financial Emergency*: Provision under Article 360 of the Indian Constitution.

Article 352 provides the National Emergency provision. Under this Article, if the President is satisfied that a grave emergency exist and it can threaten the security of India and any part of India is threatened by war or *armed rebellion*, than the President can proclaim the Emergency in respect of the whole of India or any part of India as may be prescribed in the proclamation.<sup>5</sup> The word '*armed rebellion*' was inserted by the Constitution (44<sup>th</sup> Amendment) Act, 1977.

If the President thinks there can be a situation of war or external aggression or any armed rebellion, than under the provisions of Article 352, proclamation of emergency can be issued even before the actual event occurred. The President can only declare the emergency considering the decision of entire Cabinet including the Prime Minister. It is important that the resolution for the emergency shall be passed by both the houses i.e. Rajya Sabha and Lok Sabha and shall cease to be in operation at the expiration of one month. A proclamation of emergency once approved by Parliament shall remain enforceable upto 6 months from the date of passing second resolution.

*Grounds for the proclamation of Emergency*: The President can proclaim emergency if he is satisfied that the security of India is under threat either by the external aggression or war or armed rebellion. Prior to 44<sup>th</sup> amendment the emergency was only proclaimed on the basis of internal disturbances. In the case *Sarbananda Sonowal v Union of India*<sup>6</sup>, the Supreme Court held that illegal immigrants from Bangladesh resulting the clashes between Indians and these illegal immigrants resulting into loss of lives and property is held to be external aggression which can result to the proclamation of Emergency.

In the case *Minerva Mills v Union of India*,<sup>7</sup> Justice Bhagwati commented that there is no bar to judicial review of the validity of the proclamation of emergency issued by the President under Article 352(1). It was also held that because of any political complexion like Emergency, the

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<sup>5</sup> JN Pandey, Constitutional Law of India, 813(36<sup>th</sup> edition, 2019)

<sup>6</sup> Sarbananda Sonowal v Union of India, AIR 2005 SC 2920

<sup>7</sup> Minerva Mills v Union of India, AIR 1980 SC 1789

court have full right to function if such political complexion raises an issue of constitutional determination. The courts power, however, is only limited to the examination of the limitation conferred by the Constitution. The court cannot go into the questions of adequacy of the facts and circumstances on which government proclaimed emergency. If it is found out that there is no satisfaction of the President while giving assent to the Proclamation of emergency than the power of the government will be constitutionally invalid. Where the satisfaction of the President is absurd or mala fide or based on irrelevant grounds than it would be no satisfaction at all and it would be liable to be challenged before the Court.<sup>8</sup>

## **BACKGROUND OF EMERGENCY**

During the 1971 elections, the main manifesto of the Congress was the ‘Gareebi Hathao’, i.e. ‘Remove Poverty’. Even with this manifesto the Government was not able to stable the economic conditions. The Bangladesh Liberation War drained the Indian Economy and about eight million people crossed over the East Pakistan border into India. This was followed by war with Pakistan and at the same time oil prices increased in the International market which led to an increase in the prices of the imports and increased the inflation level in the Indian Economy. During this phase Industries were also witnessing huge loss and to cut down the government’s expenditure the government froze the salaries of its employees. In 1972-1973 the agricultural output failed because of the lack of monsoon.

In the year 1974 India witnessed huge student protests in Gujarat and Bihar. Students’ protests in Gujarat and Bihar, both of which were Congress ruled States, had far reaching impact on the politics of the two States and national politics. Gujarat protests in January 1974 was joined by many prominent leaders of opposition and Morarjai Desai a prominent leader of Congress (O), announced that he would go on an indefinite fast if fresh elections were not held in the State. Under intense pressure from students, supported by the opposition political parties, assembly elections were held in Gujarat in June 1975. The Congress was defeated in this election. Similarly in Bihar Jai Prakash Narayan played prominent role in the protest. Jayaprakash Narayan demanded the dismissal of the Congress government in Bihar and gave a call for total revolution in the social, economic and political spheres in order to establish what he considered to be true democracy. In 1975 JP Narayan led a peoples’ march to the Parliament. This was one of the largest political rallies ever held in the capital. He was now supported by the non-Congress

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<sup>8</sup> JN Pandey, Constitutional Law of India, 815(36<sup>th</sup> edition, 2019)

opposition parties like the Bharatiya Jana Sangh, the Congress (O), the Bharatiya Lok Dal, the Socialist Party and others. At the same time George Fernandes called nationwide Railways strike and all these instances threatened to paralyse the country.

The Indira led government had many conflicts with the judiciary too. After the *Kesvananda Bharati case*<sup>9</sup> in 1973 the post of CJI was left vacant. The senior most judge of the Supreme Court was supposed to be elected as the CJI but the government appointed Justice A.N Ray as the CJI, setting aside the seniority of three judges before Justice A.N Ray. The appointment became politically controversial because all the three judges who were superseded had given rulings against the stand of the government. Thus, constitutional interpretations and political ideologies were getting mixed up rapidly.<sup>10</sup> Also on 12<sup>th</sup> June 1975 the Allahbad High Court in the case *State of Uttar Pradesh v Raj Narain*<sup>11</sup> held Indira Gandhi for electoral malpractices and violation of the Representation of the People Act, 1951. While convicting Indira Gandhi of electoral malpractices, Justice Sinha disqualified her from Parliament and imposed a six-year ban on her holding any elected post.<sup>12</sup> This order came on an election petition filed by Raj Narain, a socialist leader and a candidate who had contested against her in 1971. The petition, challenged the election of Indira Gandhi on the ground that she had used the services of government servants in her election campaign. The judgment of the High Court meant that legally she was no more an MP and therefore, could not remain the Prime Minister unless she was once again elected as an MP within six months. This verdict prompted PM Indira Gandhi to impose nationwide Emergency. On June 24, the Supreme Court granted her a partial stay on the High Court order – till her appeal was decided, she could remain an MP but could not take part in the proceedings of the Lok Sabha. On the same day Jaiprakash Narayan organized a massive rally on Ramlila maidan, New Delhi and announced a nationwide Satyagraha for the resignation of Ms. Indira Gandhi. Due to all the above reasons government declared the state of Emergency on the night of June 25 1975 with the recommendation of President Fakhruddin Ali Ahmad and declared that there was a threat of internal disturbances and therefore, it invoked Article 352 of the Constitution.<sup>13</sup>

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<sup>9</sup> Kesvananda Bharati v State of Kerala, AIR 1973

<sup>10</sup> 2 NCERT (Politics In India since Independence), 103-106 (First Edition, 2007)

<sup>11</sup> State of Uttar Pradesh v Raj Narain 1975 AIR 865, 1975 SCR (3) 33

<sup>12</sup> Satya Prakash, The court verdict that prompted Indira Gandhi to declare Emergency, <https://www.hindustantimes.com/india/the-court-verdict-that-prompted-indira-gandhi-to-declare-emergency/story-uaDsy0j3B0vSdiPn2md9WO.html>, (Last seen on December 11, 2023 at 11:45 PM)

<sup>13</sup> 2 NCERT (Politics In India since Independence), 108 (First Edition, 2007)

# **WHY EMERGENCY WAS THE DARKEST PHASE OF INDIAN DEMOCRACY**

As soon as emergency was proclaimed the following events happened:

1. Federal structure was demolished and all the powers were concentrated with the Union Government.
2. Union Government restricted the fundamental rights of its citizens.
3. Special power were granted to the government as Emergency was seen as the extra ordinary situation where normal democracy failed.
4. The Cabinet was informed about it at a special meeting at 6 a.m. on 26 June, after all this had taken place.
5. On the midnight of 25<sup>th</sup> June, the electricity to all the newspapers offices were disconnected so that they do not publish anything about sudden imposition of Emergency.
6. The press censorship was imposed. The Cabinet was informed about it at a special meeting at 6 a.m. on 26 June, after all this had taken place. If any journalist dared to write anything against the functioning of the government than he/she was put behind the bars.
7. The government made extensive use of preventive detention. Under this provision, people are arrested and detained not because they have committed any offence, but on the apprehension that they may commit an offence. Using preventive detention acts, the government made large scale arrests during the emergency. The Shah Commission estimated that nearly one lakh eleven thousand people were arrested under preventive detention laws.
8. Arrested political workers could not challenge their arrest through habeas corpus petitions. And the courts were not allowed to entertain the writs. Even Supreme Court over ruled many High Court judgments that even after the declaration of emergency the courts could entertain a writ of habeas corpus filed by a person challenging his/her detention. Thus Judiciary had to accept the government pleas.
9. During the emergency, Parliament made many changes to the India Constitution and an amendment was made in regard to the Allahabad High Court's judgment. An amendment was made declaring that elections of Prime Minister, President and Vice-President could not be challenged in the Court .It was during the emergency only when the forty-second amendment was passed by the Parliament.
10. Elections which were supposed to be held in 1976 were held in 1978 because of the amendment made during the Emergency.

11. During emergency period , Mr Sanjay Gandhi , the Prime Minister's younger son, gained a lot of power despite not holding any official position in the government. Yet, he gained control over the administration and allegedly interfered in the functioning of the government. His role in the demolitions and forced sterilisation in Delhi became very controversial.
12. Emergency directly effected the lives of the common people too. Tortures and custodial deaths were common for these people. Poor people were forced to relocate themselves. The government forced sterilization to common people in order to control the population.<sup>14</sup>

All the above events proved that there was no democracy alive when the Emergency came into force and hence proved to be the darkest phase of Indian Democracy.

## CONCLUSION

Emergency was the period that witnessed a lot of democratic dis-functions in the country. Emergency period proved that India cannot cease its democratic practices because the democratic functioning was resumed within the short span of time. As soon as emergency period was over the Lok Sabha Elections too place. All the opposition leaders, activist , journalists were released from jail. All the opposition party formed the coalition government and formed a single party i.e. '*Janta Party*'. The manifesto of the Janta Party was 'restore democracy' and Jaiprakash Narayan became the prominent personality for the Janta Party to campaign for elections. After the elections the Janta Party emerged victorious and it was the first time that Congress lost in Lok Sabha Elections and Morarji Desai became the new prime Minister of the country.

Before 1975 emergency was proclaimed twice in India. One was proclaimed in the year 1961 when India China war was going and the other in 1971 when India was facing the war with Pakistan. Both these emergencies where declared for the valid reasons as there was a war going on but the emergency proclaimed by PM Indira Gandhi was declared without any necessary reasons. Thus the emergency in 1975 was complete baseless.

The national emergency of 1975 shows the weaker or dark phase of the Judiciary. Cases like *Indira Gandhi v. Raj Narain* and *A.D.M Jabalpur v. Shiv Kant Shukla*<sup>15</sup> show loophole in the judicial system. Both cases do not recognize the Fundamental Rights of citizens during

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<sup>14</sup> 2 NCERT (Politics In India since Independence), 113,115 (First Edition, 2007)

<sup>15</sup> *A.D.M Jabalpur v. Shiv Kant Shukla*, 1976 AIR 1207, 1976 SCR 172

emergencies. There was a need to change the mechanism and it was done in Kesavananda Bharati's case.<sup>16</sup>

## **SUGGESTION**

There should be an amendment made to the Indian Constitution to add the provision related to 'Health Emergency'. During the COVID Pandemic, India witnessed a lot of atrocities in the health sector and saw the failure of the State government during the second wave of the COVID in the month of April 2021. During the health emergency, health sector should directly come under the Union Government and State Government will have no say in this respect. In each and every state Bureaucrats should directly work under the Union government and they should be answerable to the Union only. During the health emergency the Judiciary should be provided with powers to check the functioning of the Government and any unconstitutional act done by government should come under the purview of the Judicial Courts.

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