

Politics of People's Rights: India under National Emergency (1975-77)

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Abstract:

The relationship between the State and people's rights are not plain and symmetrical as apparently, it seems to be. It is sometimes critical and decisive in making and unmaking a political discourse. In contemporary times, democracy is appreciated and valued as one of the most celebrated and core political ideas. Although the values of democracy are applauded at different quarters, it has been observed that the very institution i.e. the State, which is mandated to protect and preserve the principles of democracy, violates it.

During the journey since independence the Nation witnessed a very asymmetrical political development. The Constitution of India, which guarantees a democratic polity and equal rights to its people and is considered as the safeguard for the rights of the people also, furthermore has some provisions that can give immense power to the State machinery. In this context, reference could be made to the Emergency Provisions of the Indian Constitution which empowers the State machinery with massive power that sometimes creates a threat to the enjoyment of rights or leads to the infringement of the rights of the people as well. In this context, the proclamation of emergency in India in 1975 is marked as one of the most crucial experiences that India had since its independence. This paper attempts to scrutinize the nature of the Indian State in dealing with people's rights during the operation of the entire emergency period (1975-77).

Keywords: *State, Democracy, Emergency, Rights, Press censorship, Arbitrary Acts.*

1. Introduction:

The liberal school of political philosophy expanded the 'rights-oriented' dimension of people's social engagements highlighting that 'people are essentially rights-bearing citizens.'¹ The concept of rights has come across various stages and in contemporary times it is closely associated with concepts like democracy, social justice, freedom, etc. These inter-allied ideational concepts have been in the political discourse for centuries, but with the advent of the modern state exercising enormous power (in most of the time legitimate power), the rights-based politics and political discourse move through a topsy-turvy terrain. This has happened largely because of the growth of state power as the state has historically been viewed as an aggregate and legitimate power structure. The State

facilitates as well as regiments people on various counts. There are examples in history as to how people's rights have been violated by repressive states. With the declaration of emergency, the entire political, economic as well as an administrative structure of the State confronted drastic changes affecting the democratic apparatus of Indian State. Keeping these in view, the present study attempts to scrutinize and investigate the role of the Indian state in advancing and curtailing of rights of the people during the imposition of emergency in 1975-77.

2. Methodology:

The analytical method of social research is employed and data collected from archival sources have been presented with scientific and systematic explanations. Secondary sources viz. books, articles, journals along with Government documents and data have been used comprehensively. The present study is qualitative in orientation.

The primary data are collected from the debates of Constitutional Assembly, the debates in Parliament on important Constitutional amendments, the judgements of Supreme Courts on the various Constitutional amendments, on various enacted laws and of executive orders.

3. Indian State and People's Rights- Colonial legacies to the Modern Era:

The correlation between third world countries, i.e. in general reference, Asia, Africa and Latin America with the west had a tremendous impact not only on the anti-colonial movements of the third world countries but at society and politics also even after getting independence from the colonial ruler. It was for the first time that these countries, including India, came across the modern concept of rights, liberty, freedom, justice, and secularism, etc. with the advent of western-based modern education and as a result, they struggled for independence and right to self-governance.

In Indian context, these ideas can be traced back to her independence from the colonial clutch, as the concept of rights, liberty, justice, secularism, etc. have all been incorporated in the newly adopted Indian constitution. The new constitution of India empowered with certain basic rights for its people along with the incorporations of Fundamental Rights, Fundamental Duties and Directive Principles of State policies which are meant for the establishment of the dignity of the people living in India. When the Indian experience is considered, it shows a very asymmetric path consisting of debates and movements between the state and civil society basically on the issue of rights. In a long trajectory way the Indian state took several active initiatives to promote rights, liberty, freedom, justice and equality of the people.

While looking at the Constitutional provisions, Part III of the Indian Constitution, from Article 12 to 35 deals with the 'Fundamental Rights' of the people without any discrimination on the grounds of race, sex, religion, place of birth, language and so on. These rights are incorporated for promoting the notion of democracy which is functional in preventing the establishment of authoritarian and despotic rule in the state and to protect the liberties and freedom of people from the incursion of the state.

Along with the Fundamental Rights, in the Indian Constitution there are provisions of the Directive Principles of the State Policies (DPSP) in Part IV, from Article 36 to Article 51, to establish a social and economic democracy in the state.

The Fundamental Duties of the citizen were incorporated in the Indian Constitution by the 42nd Constitutional Amendment act, 1976, on the recommendation of the Swaran Singh Committee. The fundamental duties are non-justiciable and also applied only to the citizens of India. They work as a reminder to the citizens that while enjoying the rights guaranteed by the state, they must be conscious about their duties to the state, society and community.

4. Violation of People's Right in India- examples of exception:

The Constitution of India, which guarantees a democratic polity and equal rights and is considered as the safeguard for the rights of the people furthermore, has some provisions which give enormous power to the state also. Within the framework of the Indian Constitution, some provisions provide the scope for suspension of democracy and denial of Fundamental Rights, which in many times leads to the debate on the crisis between the state on one side and the rights of the people on the other. With the monopoly over the legitimate use of violence, at times, Indian state turns out to be a centre of violence or creates what is called as 'state-sponsored violence'. Here, in this context, the controversial Acts passed by the Indian government, i.e. Armed Forces Special Power Act, 1958 (AFSPA), Terrorist and Disruptive Activities (Prevention) Act (TADA), Prevention of Terrorism Act (POTA) can be pointed out. All of these above-mentioned Acts portray the coercive nature of the Indian state which seems to be non-democratic in operation and works as the agency of infringement of people's rights to a large extent.

While examining the anti-democratic manner of Indian state and infringement of people's right in the post-independence era, apart from the above-mentioned Acts and laws, the central focus turns to the Emergency provisions under Article 352-360 in Part XVIII of Indian constitution as well as the declaration of emergency under these in 1975. The consistency behind the inclusion of these provisions is to uphold the sovereignty, unity, integrity and security of the country, the democratic political system, and the Constitution. But as a process during the emergency the central government turns out to be absolutely powerful and the states involuntarily become subordinates of the centre. It transforms the federal set up of Indian polity into a unitary one without a single amendment of the constitution.

5. Context of Declaration of Emergency in 1975:

The national emergency in India had been proclaimed three times up to now- in 1962, 1971 and 1975. During the Chinese aggression, it was proclaimed for the first time in October 1962 and was in operation till 1968. As it was in force during the war against Pakistan in 1965, a fresh proclamation wasn't needed at that time. For the second time, the national emergency was proclaimed in December 1971, during the Pakistan war. Yet when the second proclamation of emergency was in force, the third proclamation of national emergency was declared in June 1975. Both the second and third proclamation of emergency was revoked in March 1977. However, the declaration

of national emergency in 1975 is one of the most crucial as well as significant phenomena that has long-lasting political, economic and social impact in the democratic parameter of the post-independent India.

The third declaration of emergency was unilaterally made by the then Prime Minister Indira Gandhi on 25th of June, 1975 and was in operation for 21 months until its withdrawal on 21st March, 1977. It was officially declared by the then President Fakhruddin Ali Ahmed under Article 352, which he was advised by Prime Minister Indira Gandhi without consulting her cabinet and the cabinet was informed only after it had been declared, as a *fait accompli*.

Indira Gandhi became the Prime Minister of India for the first time in 1967 in the fourth general election. As a section of the senior leaders of the Congress party did not prefer her as the Prime Minister, gradually it created a rift between the two sections of people within the same party. In 1969, she was in disagreement with senior party leaders on some issues and the then party president S. Nijalingappa expelled her from the Congress Party. As a very quick response to this, Indira Gandhi launched her division of Congress Party and consequently the original Congress Party got divided into two as the Congress (O), (O- for Organization) and Mrs. Gandhi's Congress (R), (R- for Requisition) continued to be in power with the support of other parties. In the 1971 general election Mrs. Indira Gandhi led Congress swept the poll.

However, the beginning of 1973 brought some alteration in the status-quo of the Prime Minister. According to Bipan Chandra, the deteriorations in the economic situation due to medium-term economic trends, the combination of two successive crop failures, economic recession, rising defence expenditure, growing unemployment, rampant inflation and scarcity in foodstuff and other essential goods created a serious economic crisis.² Former President of India and then a member of Indira Gandhi's cabinet, Pranab Mukherjee further stated that the Bangladesh war of 1971 and the burden of more than 10 million war refugees coming for shelter in India had had a serious impact on the Indian economy and the oil crisis of 1973 added to its troubles. And even if the political unrest which led to the declaration of emergency overshadowed the economic aspects, there is no denying fact that economic hardships- high prices, non-availability of goods and lack of services had prepared the ground for political unrest.^{3,4} Indeed the most distinguished anti-poverty slogan of the government "*Garibi Hatao*" (oust poverty) was remained as mere as a slogan without realising the expectation of the masses.⁵ But the most outstanding breakdown was the judgement of Justice Jog Mohan Lal Sinha of the Allahabad High Court on the petition which Raj Narain had filed against the Prime Minister's election to the Lok Sabha in 1971. In the 258-page judgement Justice Sinha convicted Mrs. Gandhi of having indulged in corrupt campaign practices and declaring her election invalid by saying that, "*the petition is allowed*".⁶ The opposition mob led by Jay Prakash Narayan demanded her immediate resignation as the Prime Minister of India. Mrs. Gandhi refused to resign from her position and appealed to the Supreme Court. The immediate reaction of Prime Minister Mrs. Gandhi was to proclaim a state of emergency on 26th June 1975.⁷ Consequently India witnessed the darkest phase of democracy with massive infringement of rights, extreme suspension of civil liberties and excessive muzzle of the press by unleashing a reign of terror by the state machinery.

6. The Effects of Emergency:

Immediately after the proclamation of Emergency, it was ascertained as a strategy set by Mrs. Indira Gandhi and her group, including Siddhartha Shankar Ray- Chief Minister of West Bengal and her son Sanjay Gandhi. They used the ultimate possible pathway to retain her in power, position and serve her political interests after the Allahabad High Court judgment that barred her from contesting elections for the next six years.

The most imperative thing is that a large section of people was remained indifferent or supported the imposed emergency and responded to it with apathy and positively, acquiescently and obediently; in some cases they even welcomed and supported it but were not overenthusiastic.⁸ Famous journalist and writer Khuswant Singh writes in this context, "... *The Emergency, when first imposed, was generally welcomed by the people. There were no strikes or hartals, schools and colleges re-opened, business picked up, buses and trains began to run on time. People are under the impression that the Emergency administrators were very efficient. They were not.*"⁹

However, it would be wrong to assume that all over the country the proclaimed emergency was able to bring an affirmative message, in fact excluding a small section of the people and government officials almost all parts of the country were on fire on the issue of the imposed emergency. With the immediate consequences of the imposed state of emergency, the ordinary political course of activities was suspended from the very next morning, i.e. 26th of June 1975, enormous power were bestowed to the central government, and amongst all, asking for a revision of the basic democratic nature of Indian state for the extent of the emergency.

6.1. Emergency and civil rights:

Throughout the entire period that the proclamation of emergency was in operation, i.e. 1975-77 allegations were raised against the state machinery, most importantly against Prime Minister Indira Gandhi on the grounds of misuse of these constitutional provisions. The opposition claimed that Mrs. Gandhi eventually knocked down the democratic temperament of the Indian state and by and large tried to drive the entire state machinery in her favor. The imposition of press censorship, pre-censorship, suspension of court proceedings, and abandonment on civil rights happened to be the weapons of government to suppress the voice of the masses. The power of the executives was enhanced overnight which within a very short period began to act as the coercive authority and resultantly very soon a dogma of authoritarian rule started in India. The deadly effects of unchecked and uncontrolled governance during the entire period of Emergency in all spheres of politics, social, media, and economy were later on severely criticized by social activists, political leaders, even by foreign media correspondents, writers, academicians, etc. The government extensively used the police forces across the country to detain thousands of protestors and strike leaders which included journalists, scholars, activists and opposition politicians under preventive detention and were detained without trial for a period of up to nineteen months.

Several other atrocities were reported from the time including forced mass sterilization campaign in the name of family planning and birth control initiated by the Prime Minister's younger son Sanjay Gandhi. It is noteworthy at this juncture that Sanjay Gandhi, who held no office in the government and Congress, significantly emerged as a parallel authority, interfered in all spheres of government and administration.¹⁰ No doubt it was a big step taken by the govt. to control the problem of the fastest-growing population in a developing state like India, but at this point the question can also be raised on the authoritarian role played by the government and at the same time the hidden political agenda behind it.

While the proclamation of Emergency deliberately suspended the fundamental rights guaranteed under the Article 19 of the constitution, the President on 27th of June of the same year issued an ordinance suspending the rights of the people to move to any court for the enforcement of fundamental rights guaranteed under Article 14, 21 and 22. Subsequently the Supreme Court decided that the power of a court to issue a writ of *habeas corpus*- a fundamental attribute of the rule of the law in a democracy- should also be suspended for the entire period of emergency. In July, 1975, the central government introduced the thirty-eighth amendment of the constitution which declared that the proclamation of emergency could not be challenged in the courts.¹¹

6.2. Emergency and the Arbitrary Acts:

Another central feature of the imposed emergency was the extensive exercise of the arbitrary laws and Acts like Maintenance of Internal Security Act (MISA) and Defence of India Rules (DIR). MISA (Maintenance of Internal Security Act) was amended four times through ordinance times during emergency and used for quelling political dissent of Prime Minister Indira Gandhi.¹² Accordingly on the very first day more than hundreds of the listed prominent opposition leaders were arrested under MISA and very soon thousands of people were detained under this act. Indeed the Home Ministry played a very indifferent role to review the MISA detainees.¹³ Arrest even on a larger scale and greater suppression of rights of the people had taken place many times in one or the other part of the country before the declaration of emergency, while the victims, in that time, were renowned political figures or powerful and upper-class opposition leader.¹⁴

According to the original MISA, passed in 1971, a detainee had to be supplied the grounds of his confinement within five days of his arrest and the duration of the detention was up to six months. But the amended MISA stated that, the duration of the detention first increased to a year in the first instance and then to two years. Moreover, the grounds of detention were to be treated as confidential and not to be supplied to those who were arrested. The MISA was also made non-justifiable; that is, the right of a detainee to appeal to the courts for protection against undue arrest or the misuse of the act was taken away. Nor could a court enquire into the grounds of detention, which in any case, were supplied neither to the detainees nor to the courts.¹⁵

Likewise, DIR was also amended in June 1975 to apply the act in case of 'internal security' and 'internal disturbance' instead of applying it only in terms of 'defense in India' and 'external aggression'.¹⁶

The names of the prisoners were not made public, even the newspapers were also forbidden to publish their names in the name of censorship of the press. The operation of MISA was very proactive mostly in the northern

states, basically the states where the JP Movement was strong. During the entire period of emergency i.e. 1975-77 more than 110000 people were arrested and detained under MISA and DIR¹⁷. Some of the arrested leaders were released after some days or months but some remained in jail till nineteen months, i.e., January 1977, till the sudden announcement of the general election by Prime Minister Indira Gandhi.

The 39th Amendment of the Indian Constitution, 1975 placed MISA in the 9th schedule of the Constitution and thereby it became free from judicial review and thus violated the basic structure of the Constitution. The law was repealed in 1977 when the Janata Party government came into power and the emergency was revoked and in the 44th Amendment of the Constitution, 1978 MISA was removed from the 9th schedule.

6.3. Emergency and the Censorship of Press:

The censorship of the press was another harsh reality of Emergency that curbed the rights of the people. The president through a series of ordinances, strict censorship and in some cases pre-censorship was imposed on newspapers, magazines and other publications to control some news and events that reached the people.¹⁸ The chief intent of the government behind this strict pre-censorship was to efficiently control the press from publishing any offensive news against the governmental actions. Editors were instructed very strictly by the censoring authority what kind of news they could publish. In fact, along with the news, cartoons, and photographs or advertisement which might be even slightly critical about the government were also censored.¹⁹ Even in the very first night of imposition of emergency, i.e. 25th June 1975, the electricity to all newspaper offices in Bahadur Shah Zafar Marg, New Delhi's Fleet Street was cut off.²⁰ Most of the newspapers including national and regional, published on 26th of June, 1975, had to keep their pages blank due to the sudden censorship. Eventually, phone tapping of the politicians, journalists, bureaucrats and opposition leaders also became a routine order to tap the conversations and apparently, everyone was under the eyes of the authoritarian regime.

The Shah Commission of Inquiry reported in this context that, "*Consequent upon the declaration of Emergency on June 25, 1975, control the media had become necessary. At the cabinet meeting held at 8.30 P.M. on June 26, 1975, the cabinet, while reviewing the Emergency situation agreed with the recommendation of the Ministry of Home Affairs to impose press censorship. During the 2 or 3 days when the censorship apparatus was being set up power supply to the newspaper offices in Delhi remain disrupted. The government disconnected the electricity to the newspaper offices on the night of June 25, 1975 when Emergency was imposed.*"²¹

The government also imposed censorship over the reporting of all parliamentary and court proceedings. In February 1976, the Prohibition of Publication of Objectionable Matter Act, which was being enforced as ordinance since December 1975, was passed. It prohibited the publication of 'words, signs or visible representations' which might 'bring into hatred or contempt or excite disaffection towards the government established by law in India or any state thereof and thereby cause public disorder,' or 'defame' the President, the vice-president, the prime minister, the speaker of the Lok Sabha, and the governors'. This act made any criticism of the politics or actions of the government, ministers and officials virtually impossible. Nor could this act be challenged in a court.²²In

December 1975, by an ordinance the government abolished the Press Council of India. The All India Radio and Doordarshan were used to disseminate a one-sided version of the news.²³ In fact about a month after the declaration of emergency government drew up a censorship agreement for the foreign correspondents who wanted to continue to cover news from India.²⁴

Even the individual journalists also came under pressure from the government. Several foreign correspondents were expelled from the country for not accepting the censorship or violating the censorship rules. Only who gave a written undertaking to abide by the rules of censorship could continue to report from India.²⁵

7. The Revoke of Emergency:

The emergency was revoked on 21st March 1977 by the newly elected Janata Government. But before that, some rules and regulations of the imposed emergency were made insignificant with the sudden announcement of the general election by the then Prime Minister Indira Gandhi on 19th January 1977. At the same time, the political prisoners and detainees under MISA and DIR, who were still in jail, were released with that announcement and a number of them contested in the 1977 general election and won too.

8. The Shah Commission Report on Emergency:

In the post-emergency era, the newly elected Janata government made a serious attempt to investigate the politics of emergency and announced a commission level inquiry into the matter and resultantly the Shah Commission of Inquiry was appointed on 28th May 1977, under section 3 of the Commissions of Inquiry Act 1952. The basic responsibilities bestowed upon the commission were to inquire about the excesses, malpractices and misdeeds committed during the Emergency or immediately before. Justice J. C. Shah, a former Chief Justice of India headed the commission. But it was remarkable that the nature of the commission was more likely an investigation rather than an inquiry. They finally submitted three reports of their inquiry which presented important substances on the entire political circumstances of the emergency period.

They sorted out the received complaints while investigating through their staff and the more significant was being handled through open hearings for evidence of witnesses. Surprisingly Mrs. Gandhi refused to give evidence before the commission, claiming that she was not legally bound to do so. In fact a case was registered against her in the court of the Delhi magistrate for defying the commission.²⁶

On 6th August 1978 the Shah Commission submitted its final report. Immediately after the submission a committee was formed headed by L. P. Singh to suggest actions based on the report findings. But with the fall of the Janata government in 1980 Indira Gandhi again came to power and she disbanded the L. P. Singh committee and also made sure that all copies of the Shah Commission report in libraries and government institutions were withdrawn and destroyed. Later veteran parliamentarian Era Sezhiyan in 2010 used his copy of the report to edit and published them in a book, 'The Shah Commission: Lost and Regained'.²⁷

9. Conclusion:

The study of the imposition of emergency in India in 1975- 77 lies in the fact that despite being a democratic and republic state, due to the lack of strong opposition and clear majority both in the Centre and most of the states, a Prime Minister could become all-powerful to impose a state of emergency without consulting the council of the minister which is perhaps one of the significant drawbacks of Indian democracy till now. But at the same time it was her son Sanjay Gandhi who has become '*an unconstitutional authority*' and was pointed as equally responsible for all she has done during the emergency.

Significance of the study remains in one more vital factor that people's resistance movement like the JP Movement is the core factor that jolted the socio-political circumstances of India and made chaos and paved the way for Prime Minister Indira Gandhi to declare a state of emergency. But the democratic parameter of the Indian state however becomes so momentous and powerful that the declaration of emergency like situation can be circumvented easily. It can be traced to another success of Indian democracy. Thus it can be summed up that the Indian democracy nevertheless it has faced many obstacles on its trajectory and has passed through some real dark periods, it is still in the right way of success and the coercive nature of the state which sometimes infringed the rights of the people, has bowed down in front of the voice of the people and that is the real power of democracy.

10. Notes and References:

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²Chandra, B. (2003). In the Name of Democracy JP Movement and the Emergency,Penguin Random House India, New Delhi.p16.

³ Mukherjee, P. (2015). The Dramatic Decade the Indira Gandhi Years, Rupa Publications India Ltd, New Delhi, pp48, 50, 53.

⁴Y B Chavan in his budget statement reflect this situation, "during the last few years the conditions have not been favourable; in fact, they have been far from normal in many ways. In each of these years, we had to face new challenges of extraordinary dimensions. I would like to state frankly that in the coming financial year, the economy will be faced with even more challenges. ..." Para 2 & 3, Part A of the budget speech, 1974, cited from Mukherjee, P. (2015). The Dramatic Decade the Indira Gandhi Years, Rupa Publications India Ltd, New Delhi, p50.

⁵ Chandra, B. Mukherjee,M.Mukherjee, A. (2007). 'The JP Movement and the Emergency: Indian Democracy Tested', India Since Independence, Twelfth Reprint, Penguin Books India ltd, India.

⁶ Nayar, K. (1977).The Judgement, Vikas Publishing House, India, pp3-4.

⁷ "The proclamation of a state of emergency was signed by the President on 25 June at 11.45 p.m., 15 minutes before the deadline. Dhavan from the PM's house brought the draft. No officials in Rastrapati Bhavan retired that day before 7 a.m. "A grave emergency exists whereby the security of India is threaten by internal disturbances," the proclamation said. It authorized the government to impose

press censorship, to suspend court proceedings regarding enforcement of civil rights, and so on.” (Nayar, K. (1977). *Emergency Retold*, Konark Publishers Pvt Ltd, India).

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⁹Singh, K. (3rd July, 2000). ‘Why I Supported the Emergency?’. Outlook, India.

¹⁰ Chandra, B. Mukherjee, M. Mukherjee, A. (2007) op.cit.p 326.

¹¹Chandra, B. (2003). Op.cit. p 162.

¹²Kapoor, C. (2015). Op.cit. pp 26, 27.

¹³Ibid, p 38.

¹⁴ Narula, S S. (23-29 September, 2000). ‘More Afterthoughts on Emergency’, EPW, pp3450+3535, 3536.

¹⁵Chandra, B. (2003). Op.cit. p 162.

¹⁶Ibid, p162.

¹⁷ibid, p157.

¹⁸Censorship meant that the media had to follow some previously laid down guidelines and the violation of these was regarded as punishable offence. On the other hand pre censorship meant that the media had to submit the news or other related documents to the censoring authority for approval before it is published.

¹⁹Chandra, B. (2003), Op.cit.pp 157, 158.

²⁰Nayar, K. (2016). *Emergency Retold*, Konark Publishers Pvt. Ltd, India, preface xv.

²¹Sazyan, E. (2010). *Shah Commission Report: Lost and Regained* (ed.), Azahi publication, Chennai, p 34.

²²Chandra, B. (2003). Op.cit.p 158.

²³Ibid,pp 158, 159.

²⁴Kapoor, C. (2015). Op.cit. pp 58, 59.

²⁵Chandra, B. (2003). Op.cit. p 159.

²⁶Kapoor, C. (2015). Op.cit., p 333.

²⁷ Ibid, pp 333, 334.