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# The Political Fiasco of 1975: A Study of the National Emergency

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## ABSTRACT

*“One of the most important causes for the proclamation of Internal Emergency in India in 1975 was the then Prime Minister, Mrs. Indira Gandhi’s belief that following the Allahabad High Court’s judgment against her incited the people and created an inflammatory situation. On 26th June 1975, the government decided that a law should be passed to prevent scurrilous and malicious writings in newspapers and journals, news agencies would be restructured and the Press Council of India wounded up. It was felt that the government’s policy regarding the issuing of advertisements to newspapers and magazines should be reviewed. The censorship on the Press, the only independent media in the country, was thus invoked. The reaction of the so-called independent Press, however, left much to be desired and except a handful, the print media presented a reluctant and disinclined picture. The easiness with which it relinquished its independence shocked everyone. The sterility of the fourth estate in India along with the ethics of the Indira government is discussed in this paper.”*

*“This paper discusses one of the most powerful politicians of India, her most controversial and harsh decision of imposition of Emergency and the response of the press thereto.”*

**Keywords:** Emergency, Constitution, India, Indira Gandhi, Polity

## I. INTRODUCTION

*“I do not believe that a democratic society has the obligation to acquiesce in its own dissolution”*

**- Jayprakash Narayan, August 9, 1975**

Forty years have elapsed after the late Prime Minister Indira Gandhi put an Internal Emergency in India. The emergency’s span from “25 June 1975 to 21 March 1977” is considered independent India’s “darkest time” when all fundamental liberties were deferred and freedom of “speech and expression” was blurred. The emergency was a major flurry to

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the political values respected by the whole nation since independence. The authority beseeched censorship of the press along with the foisting of emergency since it needed to regulate and influence the media to subdue citizens' viewpoints. During that time, the Press was the solely liberated "mass media" in India, as the government-controlled radio and TV. Before discussing the emergency and its impact on the news, we require to consider the "political climate" in the world that contributed to an emergency being declared.

Throughout "post-independent" India, Congress dominated the nation's helm. In the 1950s and through the 1960s, the single-party domination at the Core became expected and unavoidable in any sense. The one-party superiority slowly became one individual and later one-family hegemony from the early 70s onwards. Several years later the Nehru-Gandhi family became associated with political influence in the nation.

Jawaharlal Nehru was India's first prime minister since achieving freedom from British control in 1947. His daughter, Indira Gandhi, managed to come to strength in 1966. "She was a Congress veteran's 'compromise' nominee who did not influence the party organization until she was named the Prime Minister."<sup>2</sup> She was exposed to threats and mockery in Parliament by the opposition and was also alluded to by Dr. Ram Mohan Lohia as "goongi gudiya" (dumb doll or puppet).<sup>3</sup> She faced problems within her party and in governance in her first term as prime minister as her role within Congress remained poor and unstable. She developed slowly, battled off her enemies in the group and outside, and became a dominant figure in the early 1970s. Her electoral invincibility coupled with a variety of other elements contributed to her expanding status in the post-1971 Indian governmental framework.

"The emergency imposed by Mrs. Gandhi between 1975-1977 had its origins in the country's supreme status which she had achieved. The other reasons for enforcing the Emergency were overdependence on her younger son, Sanjay Gandhi, both in emotional ability as well as in administrative ability. Her son, Sanjay Gandhi, wanted India to change to presidential governance and to see his mother as the country's president for life.<sup>4</sup> As political analysts have pointed out time and again, he was no less accountable than Mrs. Gandhi herself for the declaration of Emergency and ensuing machinations."

The print media's reaction to the implementation of internal emergency and pre-licensing can be split into two stages: the commencing reaction was an intense feeling of fear for lack of

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<sup>2</sup> Atul Kohli and Amrita Basu, "The Making of the Modern Indian State, Introduction to Politics of the Developing World, Edited by Mark Kesselman, Joel Krieger and William A. Joseph", (6th Edition), Cengage Learning, (2012), Chapter 2, Section 1 p. 58.

<sup>3</sup> Pranay Gupte, *A Political Biography of Indira Gandhi*, Penguin Viking.

<sup>4</sup> Sunil Sethi, "If Sanjay Gandhi had lived, December 9, 2015, <http://indiatoday.intoday>"

expression, and sentiment of surprise and outrage that media, next to an autonomous judicature, perceived the foundations of self-government to be under attack. Many American newspapers subsequent response has been recognition of the unthinkable. They bowed down to government Demand. There were some brave and dissenting representatives, but their figures dropped in the stand of the administration's relentless assault on their service and economy.<sup>5</sup>

As L.K. Advani, then and later a popular rival figure in the "Morarji Desai and Atal Behari Vajpayee" governments, stressed in a talk, "when Mrs. Gandhi told the media to move, they were creeping". This statement would sum up much of the media response.

"This paper aims to discuss the internal emergency of 1975 and Press censorship thereof and the ethical questions about the act and thereafter on the part of both the Indira government and the members of the Press. While it is obvious that the imposition of Emergency on the nation for political gains was unethical, there is a need to discuss the circumstances which forced such an act. Ethics is not independent of the socio-political situation and this reverberates in the circumstances preceding and following the Emergency." Indira Gandhi's transformation in the democratic arena when she was "meek", nearly conquered the "Congress Circle" at a period when she tried to dominate and exploit her citizens and the press is a path that is certainly not outside of moral criteria. If we view a few of her assertions in ethical viewpoints we can observe the dichotomy. If she looks the patriotic democrat in one sentence ("We'd rather die than sell our national honor") the wily legislator shines out in the other. ("My dad was a statesman, I am a political woman, my dad was a saint, I am not") and in the third, she confesses that "all my games were political games". "The paper will discuss and analyze the causes of Press censorship by the Indira Gandhi during Emergency, her relationship with the press before and during the Emergency, the vivid response of the print media and its fallout on ethical and journalistic standards."

## **II. DECLARATION OF EMERGENCY**

Justice Sinha remained for 20 days in the service of his decision enabling the Congress party to nominate a Prime Minister's successor. Unable to find a suitable replacement, Mrs. Gandhi, applied on June 23rd, 1975 for a "full and utter" stay that would have required her to be a parliamentary voting member, as well as prime minister. On 24 June 1975 Justice Iyer gave "conditional hold" to Indira Gandhi. This judgment gave rise to opposition demands that she would withdraw. On the evening of 25 June 1975, JP Narayan called for a civil

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<sup>5</sup> Sharad Karkhanis, *Indian Politics and the Role of the Press*, Vikas Publishing House, (1981).

disobedience movement to compel the resignation.<sup>6</sup> In retaliation, the Internal Protection Act retaining power was used in the early hours of 26 June to apprehend more than a hundred citizens who supported Mrs. Gandhi and her faction. The detained included JP Narayan, Raj Narain, Jyotimoy Basu (Marxist Revolutionary Party), Samar Guha (Jana Sangha Chairperson).

On 26 June 1975, on her advice as Prime Minister, President Fakhruddin Ali Ahmed, a rubber stamp office holder whom she had been appointed earlier, announced a “State of Emergency”. In her own words, Mrs. Gandhi brought “a grinding halt” to democracy. Under “Article 352” of the Indian Constitution, the authority to call for an emergency was that<sup>7</sup> “the President will declare such an emergency if he is convinced that India’s stability, or some part thereof, has been endangered by invasion, foreign violence, or internal disturbance. However, according to Article 352, the courts are not allowed to examine the authenticity of the grounds on which the emergency was sought. The powers bestowed on the Central Government under this type of emergency have virtually no limit.”

As required by the Constitution, Mrs. Gandhi instructed and President Ahmed agreed that the Emergency would continue every six months before she decided to hold elections in 1977.

### III. FOUR REASONS WHY INDIRA GANDHI DECLARED EMERGENCY

- **NAVNIRMAN ANDOLAN IN GUJARAT**

Students from “L D College of Engineering” in Ahmedabad went on a protest in December 1973 to oppose the increase in “school fees”. A month later, Gujarat University students flared up in demonstrations, grueling the State government’s expulsion. It called itself the Navnirman wave or the regeneration process. Gujarat was ruled by the Congress at this point, under Chief Minister “Chimanbhai Patel”. The administration became infamous for its abuse, and its leader became widely dubbed the “chiman chor” (thief).

“Student demonstrations against the government intensified and staff from factories and people from other parts of society quickly joined in. Clashes with officers, bus burnings, and government agency assaults on ration shops were a regular phenomenon.<sup>8</sup> The central government was compelled to respond upon the opposition by February 1974.” It had dissolved the Assembly and placed the constitution of the President on the Legislature. “The

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<sup>6</sup> D.N. Dhanagare, “Sixth Lok Sabha Election in Uttar Pradesh - 1977: The End of the Congress Hegemony, Political Science Review, (1979)”.

<sup>7</sup> Bipan Chandra, Aditya Mukherjee and Mridula Mukherjee, *India since Independence, the Indira Gandhi Years (1969-1973)* Penguin Books, (1999).

<sup>8</sup> Ranbir Vohra, *The Making of India: A Political History*, (3rd Edition) Routledge Publications, (2015)

last act of the Gujarat drama was played in March 1975 when, faced with continuing agitation and fast unto death by Morarji Desai, Indira Gandhi dissolved the assembly and announced fresh elections to it in June,” mentions historian Bipin Chandra in his book, “India since Independence”.

- **THE JP MOVEMENT**

“A parallel campaign was initiated in Bihar following in the footprints of Gujarat, or perhaps influenced by its performance. In March 1974, a student demonstration broke out in Bihar, to which opposition parties lent their power.<sup>9</sup> Next, it eventually was managed by Jayaprakash Narayan, a 71-year-old freedom activist, popularly named JP. Third, in the Bihar instance, Indira Gandhi did not accept the Assembly’s suspension. In determining her to declare Emergency, however, the JP movement was significant.”

A leader of the fight for independence, JP has been recognized since the days of the democratic revolution for his selfless activism. “His arrival brought a huge boost to the uprising and changed its name as well; what was the ‘Bihar revolution’ until then has now been the ‘JP movement’,” Guha notes. He encouraged students to skip classes and service on increasing social mutual understanding. There have been several conflicts with the military, judges, workplaces, hospitals, and colleges.<sup>10</sup>

JP led a broad procession through Patna’s streets in June 1974, resulting in an appeal for absolute insurrection. He encouraged the protestors to place compulsion on current lawmakers to withdraw, to be apt to take down the authority of Congress. Furthermore, JP traveled through wide parts of North India, attracting scholars, merchants, and intelligentsia parts to his party. Opposition parties that had been crushed in 1971 saw an admired figurehead in JP suitable for standing up against Gandhi. JP also acknowledged the need for these parties organizational ability to address Gandhi constructively.

Gandhi criticized the JP party as “extra-parliamentary” and dared him to confront it in the March 1976 general election. Though JP welcomed the request, and for the reason established the National Coordinating Committee, Gandhi shortly enforced the emergency.

- **THE RAILWAYS’ DEMONSTRATION**

Even as Bihar was blazing in perturbations, a railway strike led by socialist leader George Fernandes paralyzed the country. The strike culminated in the halt of the transport of

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<sup>9</sup> Ibid.

<sup>10</sup>Soli J. Sorabjee, *The Emergency, Censorship and the Press in India, 1975-1977*. Central News Agency (Pvt.) Limited. New Delhi, (1977)

<sup>10</sup>ibid

products and persons, continuing for three weeks, in May 1974. Guha states in his book that as many as ten lakhs railwaymen took part in the protest. “There were militant demonstrations in many towns and cities- in several places, and the army was called out to maintain the peace,” he expresses.<sup>11</sup> Heavily down on the demonstrators came Gandhi’s army. Thousands of workers had been detained and their relatives were forced out of their workplace.

- **THE RAJ NARAIN VERDICT**

“Although political groups, labor unions, students and sections of the intelligentsia had taken to the streets in an agitation against the government of Indira Gandhi, a new challenge appeared before her in the shape of a petition lodged in the Allahabad High Court by communist leader Raj Narain, who had lost his way to Gandhi in the 1971 Raebareli parliamentary election. The petition accused the prime minister of securing the election through unethical activities. It alleged that she spent more money than required and that her campaign was carried out by officials of the government.”

Indira Gandhi was the first Indian PM to appear in a trial held on 19 March 1975. On June 12, 1975, Justice Sinha recited out the “Allahabad High Court” judgment finding Gandhi’s election to the Parliament to be “null and void”, but she was granted a 20-day period to appeal to the Supreme Court.<sup>12</sup>

The Supreme Court on June 24 imposed a conditional hold on the order of the High Court: “Gandhi could enter Parliament, but would not be permitted to vote until the court ruled on her appeal”. “The decisions gave the JP campaign the momentum and persuaded them of their desire for the prime minister’s resignation. However, only senior Congress Party leaders were already of the view that their retirement would be in the party’s favor. However, with the belief that she alone might guide the nation in the situation it was in, Gandhi strongly kept on to the prime ministerial stance.”

24 hours following the Supreme Court’s decision, a law announcing a state of national emergency was drafted and the President promptly inscribed it.<sup>13</sup> In her note to the President seeking the announcement of Emergency, Gandhi wrote, “Information has reached us that indicates imminent danger to the security of India.” In a 1978 conference with journalist “Jonathan Dimbleby”, when Gandhi was questioned about the specific essence of the threat

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<sup>11</sup> Henry Hart (ed.), *Indira Gandhi's India: A Political System Reappraised*, West view Press, (1976).

<sup>12</sup> R.N. Mukherjee, *Democracy - A Failure, Shefocracy - The Solution to Human Welfare* (1984).

<sup>13</sup> Kuldip Nayar, *Sixty Years of Press Freedom: Emergency, A Watershed*.

to “Indian security” that led her to proclaim a “state of emergency”, she responded swiftly, “it was obvious, isn’t it? The whole subcontinent had been destabilized.”<sup>14</sup>

#### **IV. YEARS PRECEDING THE EMERGENCY**

Around 1972-1975 the country’s social and economic situation was in poor shape. While the victory over Pakistan in the war brought much respect from the general public to Indira Gandhi, the conflict and approximately eighty lakhs Bangladeshi escapees had placed a severe burden on our economy.<sup>15</sup> After the conflict, the U.S. administration halted all assistance to our nation, and on the world market, the oil rates had rose multitudinous. This culminated in a general increase in energy prices (23 percent in 1973 and 30% in 1974). Such a persistently elevated degree of inflation had given citizens considerable pain. Also, there was weak industrial growth and high unemployment.

The decision by the government to limit its employees wages and further minimize their expenses contributed and discontented among government workers. Monsoons collapsed in 1972-1973, contributing to an 8% fall in food grain production. There was a common environment of unhappiness with the prevalent financial condition around the region.

#### **DEMONSTRATIONS IN NORTHERN INDIA**

“The student-led demonstrations in Gujarat and Bihar played a crucial role in galvanizing a national public against Congress. Students in Gujarat began protesting against increasing food grain prices and other basic commodities and corruption in the state government in January 1974.<sup>16</sup> The demonstrations became popular with the entry of major opposition parties (including Moraji Desai, a famous political figure and Indira Gandhi’s opponent while he was in Congress), contributing to the establishment of the rule of President in the capital. Demands for new polls escalated. Elections were eventually conducted in Gujarat in June 1975, where the Congress lost.”

In March 1974, Bihar students mobilized to demonstrate against increasing rates, food shortage, unemployment, and misconduct. They requested Jayaprakash Narayan (JP), who had relinquished dynamic politics and engaged in “social work”, to guide them as the campaign gathered momentum. He acknowledged this by bringing the party to the regional stage.

Jayaprakash Narayan ordered the removal of the Bihar Congress government and called for a

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<sup>14</sup> Smt. Indira Nehru Gandhi v. Shri Raj Narain And Anr. (1975) AIR SC 2299.

<sup>15</sup> Max Jean Zins, *Strains on Indian Democracy*, (1988).

<sup>16</sup> R.N. Mukherjee, *Democracy - A Failure, Shefocracy - The Solution to Human Welfare* (1984).

complete change in society's social, cultural, and political realms. A sequence of strikes and demonstrations gathered traction within the campaign. However, the Cabinet declined to withdraw.<sup>17</sup>

Jayaprakash Narayan led a huge political rally in Ramlila grounds, Delhi on "25 June 1975", where he declared a national "Satyagraha" for Indira Gandhi's abdication and told the military, police, and civil servants not to follow unlawful and unethical commands.<sup>18</sup> The administration interpreted this as a goading and feared it would put all the mechanisms of authority to a halt. In addition to the protest led by Jayaprakash Narayan, the Railway workers called for a national protest, headed by "George Fernandes".

### **DEBARMENT OF INDIRA GANDHI AS A MEMBER OF PARLIAMENT**

Indira Gandhi beat Raj Narain from Rae Bareilly district in the 1971 elections. In the Allahabad High Court, Raj Narain later submitted a complaint alleging Indira Gandhi of facultative violence, graft (political) votes, and manipulation of administrative mechanism. She was also interrogated in the High Court, which was the first such case for an Indian Prime Minister. On 12 June 1975, "Justice Jagmohanlal Sinha" held Indira Gandhi at fault during her election campaign for abuse of government machinery and ruled her mandate "null and void", and also prohibited her from contending any elections for the next "six years".<sup>19</sup>

However, the court issued twenty days for Congress to make preparations to substitute Indira as the PM. It was identified by a leading newspaper as firing a traffic ticket for the Prime Minister.

### **V. PROCLAMATION OF EMERGENCY**

"The government reacted to the huge strike on June 25, 1975, by announcing the state of emergency that night itself, claiming that there was a possibility of internal unrest and that a major situation had emerged which rendered the declaration appropriate. PM Indira Gandhi requested that the President declare a state of emergency, and he did so promptly.<sup>20</sup> After midnight, power was withdrawn from all large newspaper facilities, and just two or three days later, after the censorship system had been built up, was restored. Early morning, on the 26 June, a significant number of party members and staff were detained. The Union Cabinet was only told of this at a special conference at 6 a.m. after all this had concluded."

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<sup>17</sup> ND Palmer, *India in 1975: Democracy in Eclipse*, Asian Survey, vol 16 no 5.

<sup>18</sup> *ibid*

<sup>19</sup> K. S. Padhy and R. N. Sahu, *The Press in India*, Kaniska Publishers, New Delhi, (2005).

<sup>20</sup> *Emergency: The Dark Age of Indian democracy*, The Hindu.

## WHAT TRANSPIRED DURING THE EMERGENCY

It is evident from the terms of Article 352 that the emergency was viewed as an exceptional situation under which regular government could not work. Some of the anomalies that took place during the span were-

- a) “The federal distribution of powers no longer remained in order. All the powers were concentrated in the hands of the Union government.”
- b) “Government got to restrict or limit any or all of the fundamental rights of the citizens during the emergency, and it made use of this power quite extensively”.
- c) “All newspapers needed to get prior approval for all their materials to be published. This was known press censorship.”
- d) “Apprehending social and communal disharmony, Rashtriya Swayamsevak Sangh (RSS) and Jamaat-e-Islami were banned. Protests, strikes, and public agitations were also disallowed.”<sup>21</sup>

## SUPERFLUITY DURING THE EMERGENCY

The State had made strong and comprehensive use of the control of emergency incarceration. Individuals had been detained and taken into custody only on the angst that they may execute an offense. In rejecting the decision of a variety of High Courts, the Supreme Court handed down a decision in April 1976 in favor of the statutory legitimacy of these arrests in the case of an emergency. The “Shah Commission”, reports that nearly “1,11,000 individuals” had been detained under protective detention laws. Police torture and custodial injuries had also happened during emergency incidents.

Sanjay Gandhi, the younger son of the Prime Minister, did not control any functionary role at the time. Yet he took command of the bureaucracy and reportedly impeded with the operation of the administration. His involvement in destruction and involuntary sterilization in Delhi was quite contentious.

The Constitution was revised in a dictatorial fashion, especially in the “42nd amendment”, when the administration had a wide “majority in Parliament”. In the wake of the decision of the Allahabad High Court, a provision was rendered specifying that the mandate of the “Prime Minister, the President and the Vice-President” should not be contested by the Court of Justice.<sup>22</sup>

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<sup>21</sup> Coomi Kapoor, *The Emergency: A Personal History*, Penguin Books,(2016).

<sup>22</sup> Time Magazine, 14th July, (1975)

Actions of dissension and opposition existed throughout the war but were rare. Newspapers like the Indian Express and the Statesman campaigned against suppression by leaving “blank spaces” where news stories had been filtered.

### **WAS THE EMERGENCY RATIONAL?**

The emergency was proclaimed assuring the safety of the nation was intimidated due to “internal disturbances”.

**In an “AIR broadcast” on 26 June 1975, Indira Gandhi expressed–** “In the name of democracy it has been sought to negate the very functioning of democracy. Duly elected governments have not been allowed to function. Agitations have surcharged the atmosphere, leading to violent incidents. Certain persons have gone to the length of inciting our armed forces to mutiny and our police to rebel.<sup>23</sup> The forces of disintegration are in full play and communal passions are being aroused, threatening our unity. How can any Government worth the name stand by and allow the country’s stability to be imperiled? The actions of a few are endangering the rights of the vast majority.”

Another side, “JP and other opposition” figures claimed that individuals could openly demonstrate opposed to the administration in a democracy.<sup>24</sup> The campaigns of “Bihar and Gujarat” were mostly nonviolent. Therefore, even though there were any unnecessary accidents, the government had ample regular powers to monitor them. There was absolutely no reason to turn to such an exceptional method. The menace was not to the integration and uprightness of the nation, but the administration of the Congress and to the Prime Minister.

## **VI. THE END OF EMERGENCY AND AFTER**

Eighteen months after the emergency, in “January 1977”, the administration’s officials agreed to conduct elections in March 1977. As a result, both the members and demonstrators were freed from prison. While this gave the rivals a very short time, they soon joined hands to create a new group, the Janata Party, under the guidance of “Jayaprakash Narayan”.

“Highlighting the dictatorial essence and the numerous excesses perpetrated during the emergency, the Janata Party converted the elections into a vote on the history of emergency, at least in North India. The popular view was firmly criticized by the Congress, and the establishment of the Janata Party meant that the non-Congress votes should not be split.”

“The Congress Party was ousted in the Lok Sabha polls for the first time since independence.

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<sup>23</sup> India Today, 1969: *Split Wide Open*, July 2, (2007).

<sup>24</sup> Ranbir Vohra, *The Making of India: A Political History*, (3rd Edition) Routledge Publications, (2015).

The Congress captured just 154 seats in the Lok Sabha, while the Janata Party secured 295 seats (330, together with its allies).<sup>25</sup> Indira Gandhi was defeated in Rae Bareilly, as was her son Sanjay Gandhi from Amethi.”

A significant “constitutional” change introduced by the new authority was to substitute violent uprising in favor of internal disorder, and to make it mandatory for the Council of Ministers to provide recommendations to the President on the declaration of an emergency.

### **GRADUAL CONTROL OF THE EXECUTIVE OVER THE JUDICIARY**

The declaration of the emergency on 26 June 1975 was an effort to overthrow “Indian democracy”. Although a significant part of the “Indian judiciary” had agreed to fight the assault on political organizations such as the media and the courts, a portion of the Supreme Court had withdrawn. The majority decision of “nine High Courts” surrounding Habeas Corpus – that “Article 21” is not the exclusive source of “life and liberty” and that the prisoner has the privilege to “Habeas Corpus” during the time of emergency – was overturned by a judgment of 4:1 of the Supreme Court. The High Courts have demonstrated integrity when it is a question of the right of a prisoner to seek medical attention or communication with his or her family or the right of a lawyer to hold a conference or to continue unilaterally, moved by the High Court Judge. Nevertheless, the Supreme Court had indicated subservience.<sup>26</sup>

As “Justice Jagmohan Lal Sinha” stated that Mrs. Gandhi had been accused of the unscrupulous activity of utilizing administration’s facilities during her run. Acquiring a “conditional stay” of the decision, which would have canceled her mandate and prohibited her from running her position for “six years”, Mrs. Gandhi circumvented her ministers and received a state of “Emergency” from President Fakhruddin Ali Ahmed. 676 members of the party had been arrested before sunrise the next day. Legislative opposition to Mrs. Gandhi’s emergency had never recovered. About 1,10,000 individuals had been arrested since the disaster.

First, the 38th amendment prohibited a “judicial review” of the emergency declaration. Secondly, courts have forfeited authority to listen to election pleas, thereby covering Mrs. Gandhi’s brittle settlement in “Rae Bareilly”. Third, the 41st amendment introduced a full exemption from criminal prosecution for the “Emperor, the Prime Minister, and the provincial governors”. In the context of widespread imprisonments, residence destructions,

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<sup>25</sup> Neera Chandhoke, *The lessons of the JP movement*, The Hindu, June 23, (2000).

<sup>26</sup> Judiciary Under Executive Assault, Pucl Bulletin, July (1981).

compulsory sterilization, and torment, it was not shocking that the administration required systematic protection from a post-hoc judgment. The last provision introduced during the emergency, the 42nd amendment, contained 20 densely packed pages that consolidated government authority and rendered it difficult to contest the judiciary.<sup>27</sup>

### **COMPLETE SUBSERVIENCE OF THE HIGHEST JUDICIARY TO THE EXECUTIVE**

During the monarchical system, the judiciary was subservient to the monarch. Since the constitutions of all countries are nothing but a gradual evolution of the monarchical system the judiciary in its present form also got shadowed by the executive after the dominion withered away. The selection of executives in a democracy originates from corruption. The next and most important pillar i.e. judiciary is likely to malfunction because it is put together by dishonest executives to achieve their objectives. “The proclamation of Emergency on June 26, 1975, was an attempt to destroy Indian democracy. While a large section of the Indian judiciary decided to resist the onslaught on democratic institutions like the press and justice system itself, a section of the Supreme Court surrendered. The unanimous verdict of nine High Courts relating to Habeas Corpus-that Article 21 is not the sole repository of life and liberty and that a detainee has a right of Habeas Corpus during the Emergency-was reversed by a 4:1 verdict of the Supreme Court.<sup>28</sup> The High Courts displayed courage whether it was on the matter of a detainee’s right of medical treatment or his interviews with his relatives, or the right of a lawyers association to organize a meeting or to stay a High Court Judge’s arbitrary transfer. The Supreme Court, however, showed subservience.”

The power to appoint judges to “High Courts and the Supreme Court” of India rested truly with the higher executives who were respected by the legal world for they were the ‘constitution-makers’. The executive took tremendous advantage of this procedure and promoted various judges to the Chief Justice position instead of other senior judges who were more competent and fitting for the rank. A clear example of this was observed when Justice Beg was appointed the CJI instead of “Justice H.R. Khanna” after the latter’s famous dissenter in the 4:1 judgment though the former was junior to him. There were times when it became evident and even quite visible that the executive was manipulating the decisions of the Supreme Court. There was tremendous pressure on the latter and the notable aspect of these episodes was that the Court did nothing against the executive government as it did not have the adequate machinery to implement the orders against the government which controls

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<sup>27</sup> Aziz Z. Huq, *Brenna Centre For Justice*, New York University, USA.

<sup>28</sup> Additional District Magistrate, Jabalpur v. Shivkant Shukla (1976) AIR 1207.

the police.

Justice Khanna, Justice Beg, Justice Chandrachud, and Justice Bhagwati have displayed bravery in the court and have been disciplined for their resistance in the habeas corpus trial. Fourteen high court judges who had taken part in numerous decisions opposed to the government were moved from “one high court to another” without their permission. A record of 52 undesirable judges was compiled. In addition to these measures, the Executive Committee recommended the creation of a Supreme Council over the Judges. It was impossible to expect any justice for less welfare to the common man as long as the judiciary was subservient to the legislature and the executive.<sup>29</sup>

The Supreme Court, post-emergency, suffered a guilt complex due to its emergency position. Amendments were made in the undemocratic laws that were passed during the Dark Age to fit the contemporary circumstances and attempts were taken to rectify everything.

### **EXECUTIVE PLAYING LEGISLATURE FOR TWO YEARS**

The government kept reinforcing the already powerful judicial arsenal it had at its disposal in the matter of preventive detention. Its main batteries were the Defence of India Act and the “Maintenance of Internal Security Act, 1971” (MISA), a preventive detention law that had been enacted by the Parliament as a permanent statute earlier in the same year. The latter was contentious legislation passed by the Indian Parliament in 1971 that granted superpowers to the government of Indira Gandhi and Indian law administering branches – temporary “preventive” arrest of persons, scout and confiscation of properties in the absence of warrants, and controlling – in the battle against “civil and political” unrest in India. During the emergency, external aggression did not act like the only reason for this Act to be applicable but also internal disturbance. It was in complete ignorance of the lawful and fundamental protection of “civil rights”. If the authorities were satisfied that it was necessary to resort to it to effectively deal with emergency then the arrested person could be detained for 12 months. MISA was even amended by four presidential orders during the emergency period furthering the reinforcement of the so-called judicial arsenal.

- “The Central or State governments were equally empowered to make a declaration in respect of any person detained under the Act that it is necessary to detain such person for effectively dealing with emergency”.
- “The arresting authority was not obliged to furnish the grounds for detention to the prisoner (Law of 15 August 1975).”

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<sup>29</sup> R.N. Mukherjee, *Democracy - A Failure, Shefocracy - The Solution to Human Welfare*, p.102 (1984).

- “Communication of the grounds for detention was banned. No news or information linked to this type of arrest could be made public or revealed (25th January 1976).”
- “Duration of preventive detention had now been extended to 24 months (25th August 1976).”

The Supreme Court ( SC) issued a stunning judgment in the habeas corpus case during the 1976 Emergency, which shocked the entire world. India’s then-Attorney General Niren De concentrated on the liberty dimension as contained in “Article 21 of the Constitution”. “His central contention was that since the right to move any Court had been suspended, the detainee had no locus standi and their writ petitions would necessarily have to be dismissed.”<sup>30</sup> Justice Khanna is remembered to have asked him one uncomfortable question the next day. “Life is also mentioned in Article 21 and would Government’s argument extend to it also?” Niren De promptly replied, “Even if life was taken away illegally, courts are helpless”. In this judgment, the SC declared that throughout the Emergency nobody had any right to “life or liberty”.

In January 2011, a bench of Justice Aftab Alam and Justice Ashok Kumar Ganguly pointed out in a judgment that it was Justice Khanna who correctly gave a dissenting decision in the 4:1 ruling that Article 226 is an essential part of the Constitution under clause (8) in which the high courts may give Habeas Corpus writs.

The Indian Government named the Shah Commission to scrutinize and prosecute all the plethora perpetrated in the “Indian Emergency (1975-77)”. The commission deposed hundreds of individuals and created a 500-page study after two years about the entities responsible for the crimes perpetrated during the emergency. It accused Indira Gandhi, her younger son “Sanjay Gandhi, Pranab Mukherjee, Bansi Lal, Kamal Nath” and other civil servants who enabled Sanjay Gandhi to achieve the same and coldly scathed their identities. After Congress got back in power in 1980 it voluntarily took the extraordinary step of destroying every copy of the report that was published.

## **PRESS CENSORSHIP**

The emergency of 1975 has been a watershed in the country and had also affected the press. The constitutional freedoms were revoked and control of the press was confiscated. The implementation of the Emergency and Press Censorship was the murkiest period of democratic India’s newspaper past. The time had its immediate and long-term implications for the public. It was the 1975 censorship that manifested how the media at vast became an

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<sup>30</sup> Jos. Peter D 'Souza, *When the Supreme Court Struck Down the Habeas Corpus*, PUCL Bulletin (2001).

instrument in the fists of the government.

Immediately after this declaration of emergency, the authority consolidated its restrictions on the press, particularly on the “newspapers” that had prestige as liberating and active. The news was formed solely to represent the party in government and its chief, and the “Ministry of Media and Broadcasting” was a “virtual” parody of the German Media Minister, Dr. Goebbels founded by Hitler.<sup>31</sup> The newspapers were not allowed to report anything about the situation of India under emergency, the freedoms being abused, the citizens being persecuted or any other problem even indirectly linked to the government’s behavior in power as it was raised as sedition against the Congress party, and the newspapers opposed this regulation in the first instance, leaving vacant spaces in unreasonable articles. “The guidelines issued by the Chief Censor went beyond the scope of Rule 48 of the Indian Rules of Defense and Internal Security insofar as they prevented editors from leaving editorial columns blank or filling them with quotations from major literary works or national leaders such as Mahatma Gandhi or Rabindranath Tagore.”

Not only was the publishing of court decisions suppressed, but instructions were often issued about how decisions would be released. Propaganda was used to remove the government’s unfavorable news, play government-friendly news, and remove unfavorable news to the political party’s backers.

## VII. CRITICISM

No one with some right of reason will deny that the emergency was a sordid chapter in modern Indian culture in the mid-seventies of the last century. On the night of June 25, 1975, with a “single stroke of the President’s pen”, the world’s greatest monarchy was transformed into a “tin-pot” tyranny. Citing “Article 352 of the Indian Constitution”, Indira Gandhi allowed herself with unprecedented powers and initiated a huge assault on civil autonomy and the democratic enmity. As a neoteric conflict with Pakistan had just taken place, perils to “National Security” were cited by the government. It said the protests and demonstrations had crippled the administration and severely damaged the country’s financial system. Indira Gandhi kept to the guidance of some strong party patriots and her son “Sanjay Gandhi”, who had been a strong political consultant in the face of significant democratic resistance, abandonment, and chaos around the world and the nation. Indira Gandhi sought to reform the laws of the country with the assistance of the senate, where Congress managed a “two-thirds

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<sup>31</sup> Soli J. Sorabjee, *The Emergency, Censorship and the Press in India, 1975-1977*. Central News Agency (Pvt.) Limited. New Delhi, (1977).

majority". She perceived that her ability didn't accumulate fast sufficient, so she used the "President" to issue "extraordinary laws" that completely circumvented parliament, permitting her to "rule by decree". In arrangement to expand "agricultural and industrial" manufacturing, ameliorate communal utility and combat poverty and analphabetism, Indira Gandhi built a 20-point economic program. She has had no difficulty bringing constitutional changes that exempted her from any wrongdoing in her "election fraud trial, striking presidential rule in Gujarat and Tamil Nadu, where anti-Indira Gandhi parties" governed (thereby "state legislatures" were abolished and suspended indefinitely), and imprisoning several rivals.<sup>32</sup> There's no doubt that Indira Gandhi used the Emergency to inflict lasting damage on institutions that underlie or subvert democracy. Ironically, Pandit Nehru had created and nurtured these. The question is, however, whether she alone should be blamed for this depressing development.

### VIII. CONCLUSION

With Pandit Nehru's good leadership, India had a solid nationalistic base. But the members of the legislative assembly had been elitist during that time. The government was operating easily but in their favor, as the majority were analphabets. At the moment the Congress served with the national bourgeoisie. Thus Congress became a social status quo party. 1967 was the turning point when all of a sudden the Establishment parties come to power. This was a cue for Indian politics to democratize. Because of the balance of payments issues, foreign financial institutions have devalued rupees and India started to slip through economic crises.<sup>33</sup> In the 1971 votes, Mrs. Indira Gandhi won the vote with the slogans like 'eradicate hunger'. In 1975 Mrs. Gandhi proclaimed an emergency in India with the violation of Article 356 of the Indian constitution. Economic crises, Bangladesh's development, and central authoritarian rule undermined Indian democracy. Consequently, Indira Gandhi abolished and took over the decision-making positions and responsibilities of the cabinet leaders and ministers. It had observed that the short-term collapse of "democracy" in our nation, since the Supreme Court's expressions, "civil liberties were withdrawn to a great extent; important fundamental rights of the people were suspended; strict censorship on the press was placed, and judicial powers were crippled to a large extent." Thankfully, the Emergency was lifted following the 1977 elections. However, people are entitled to learn about the circumstances that followed the emergency, the real and prevailing factors that contributed to its implementation, explanations for the readiness and ability of the then President "Fakhruddin

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<sup>32</sup> L.K. Advani, *A Prisoner's Scrap-Book*, Ocean Book's Ltd, New Delhi.

<sup>33</sup> Ranbir Vohra, *The Making of India: A Political History*, (3rd Edition) Routledge Publications, (2015).

Ahmed” to give his approval for other relevant matters. The aim of providing this knowledge is not to lift the sleazy history and blame answerable individuals, but to examine the processes and systems that allowed the rapid implementation of emergencies and to remove or change them to deter “future recurrence”. So it is evident in conclusion, that, the 1975 national emergency was a pre-planned Indira Gandhi govt drama to safeguard certain policy objectives.

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