



**Research Article**

**A STUDY OF THE EMERGENCY PROVISIONS IN THE INDIAN CONSTITUTION, THE EMERGENCY OF 1975 AND THE POSSIBILITY OF RECURRENCE THEREOF**

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**ABSTRACT**

The Constitution of India is a written body that defines and confines the powers possessed by the three organs of the Government, i.e., the Legislature, the Executive and the Judiciary. It lays down a clear set of rights and duties India's citizens and its government are to have and perform. Further, the Constitution, in order to prevent damage from an enormously volatile situation prevailing nationwide or any of its territory, includes the provision of "Emergency" under Part XVIII (Article 352 to Article 360). Under Article 352(1) of the Constitution, Emergency can be imposed on the grounds of External Aggression, Armed Rebellion and/or War. The term "Armed Rebellion" was introduced by the 44<sup>th</sup> Constitutional Amendment in the year 1978, with the earlier phrasing being Internal Disturbance, which was clearly wider and vague. Moreover, presently, Fundamental Rights, other than Article 20 and 21 can remain suspended during such a time, whereas earlier, all of them could be. This amendment was introduced to prevent the recurrence of damages caused during the National Emergency of 1975 imposed by the then Prime Minister of India Indira Gandhi, which many believe was uncalled for. The Executive became omnipotent, while Independence of Judiciary was endangered. This study therefore focuses on how the provisions of Emergency evolved post the 1975 Emergency, what transpired during that period and the possibility of its recurrence forty-three years hence. The author relied on secondary sources of information for research.

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**INTRODUCTION**

India achieved independence from the British Rule on August 15, 1947 and the Constitution of India, in its entirety, came into force on January 26, 1950. The Constitution was compiled after many rounds of deliberations between members of the Constituent Assembly, and is therefore a highly inclusive and prolific body defining and confining powers of the State. One notable feature of the Indian Constitution is the provision of "Emergency". The constitution makers were apprehensive that there might be events when the nation may suffer instability and situations may become volatile. Therefore, in order to minimise the damage during such a time, this provision was introduced.

"Emergency", in India can be imposed under three circumstances, viz a threat to the security of India or any part of its territory (Article 352), the breakdown of constitutional machinery in a state (Article 356), and a financial emergency (Article 360). As goes a threat to the security of India or any part of the territory thereof, under Article 352(1) of the Constitution, it can happen due to War, External Aggression or Armed Rebellion.

A breakdown of constitutional machinery in a state, under Article 356(1) of the Constitution, is said to occur when the Government of the state cannot be carried on in accordance with the Constitution. Financial emergency, lastly, is said to have arisen when, under Article 360(1) of the Constitution, the financial stability or credit of India or any part of its territory is threatened. Under any of the aforementioned circumstances, it is the President of India who can proclaim Emergency, on the advice of the cabinet of ministers.

Article 355 of the Constitution of India makes it the duty of the central government to take steps to ensure that all states of India are protected from any form of external aggression and internal disturbance and that government in all states is carried out in accordance with the Constitution. While Article 356 has been repeatedly used and misused on frivolous grounds included-the Centre has seldom resorted to Article 355, because, though it serves as a precursor to Article 356, it comes with an onerous burden. The Centre has powers to send forces to a state reeling under any of the aforesaid situations under this Article.

It is thus established, in a nutshell, that Emergency can be imposed either in the entire country as a whole or a specific part thereof. However, common to both is the fact that the Central Executive becomes comparatively very powerful during Emergency. The framers of the Constitution felt that, in

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an emergency, the Centre should have overriding powers to control and direct all aspects of administration and legislation throughout the country<sup>1</sup>.

During a nationwide emergency, the general state of affairs is absent. Centre-State relations undergo a substantive change, and powers extended to the Parliament are augmented vastly. The rights of the citizens too are adversely affected. Enforcement of Fundamental Rights, other than Article 20 and Article 21 remains suspended, even though enforcement of Article 19 can be suspended only if the emergency has been caused as a result of War or External Aggression, as defines Article 358 of the Constitution. The fact that Articles 20 and 21 cannot be suspended could be made possible only in the year 1978 through the 44<sup>th</sup> amendment.

Prior to the amendment, India had witnessed a long period of 21 months of Emergency under the then Prime Minister Indira Gandhi in which many extremes were committed. This necessitated such an amendment, as the same was allegedly done only to keep the unpopular government of Indira Gandhi in power. It is believed by many that the Emergency imposed in 1975 was absolutely unwarranted, and the damages could have well been avoided. It was the 1975 Emergency that redefined the fate of the Indian Constitution, and India.

Per contra, a state emergency, so to speak, as a result of breakdown of constitutional machinery in a state, can be imposed when the Governor of the state concerned has submitted a report to the President of India asserting the same. The President can proclaim Emergency in a state once he is satisfied about the breakdown. Under Article 356 (1), the President can assume all or any powers of the Government or the Governor or any other body or authority of that state, except for the powers of the concerned Legislature. Moreover, The President can, under Article 356(1)(a), declare that the powers of the State Legislature can be exercised by the Parliament during the emergency.

The present paper is an exploratory study based on which, an objective and descriptive analysis is attempted. The research was doctrinal in nature. Secondary sources, including published articles, research papers and content available on pertinent websites were relied upon to collect the data. Data available on Government websites and relevant work from media houses like Door Darshan News was also taken into account while writing the paper. The interim report of the Shah Commission constituted to investigate into the Emergency of 1975 was also read and reviewed. Moreover, the judgment in inter alia the case *Indira Nehru Gandhi vs Raj Narain and another*<sup>2</sup> was also ruminated on. Interim conclusions were made on various parameters, especially political and constitutional, in addition to other angles of thought.

#### ***Emergency Provisions as mentioned in the Constitution at the time of commencement***

Emergency provisions in India have evolved over a period of time. The provisions at the time of the commencement of the Constitution of India and the provisions now are very different, and have varying seminal impacts if Emergency is imposed. Prior to the 44<sup>th</sup> amendment, i.e. the from the commencement of the Constitution, to the 42<sup>nd</sup> Amendment during the

Emergency of 1975, Article 352(1) provided the imposition of Emergency on grounds of “war, external aggression, and internal disturbance.” An Emergency on the ground of “war” was imposed in the year 1962, when China declared war against India after having expressed intentions otherwise. In 1971 too, when India and Pakistan were at war, the same provision was used to declare Emergency. Such an emergency can be referred to as “External Emergency.” However, Emergency on the ground of “internal disturbance” was imposed only once in the year 1975 by President Fakhruddin Ali Ahmad on the advice of PM Indira Gandhi. Such an emergency can be referred to as “Internal Emergency.”

Controversy arose with the proclamation of emergency on the ground of “internal disturbance” in the country as most people did not feel the need of a step as huge as this. People were of the view that Ms Gandhi had imposed the emergency for her own political motives as her position as the Prime Minister and a Member of Parliament was endangered owing to the judgment of the Allahabad High Court in *State of Uttar Pradesh v Raj Narain’s case*<sup>3</sup> on June 12, 1975. This verdict, aided by a number of other factors including massive poverty led to agitation among people, who then began demanding resignation of the Prime Minister. The agitation was held as “internal disturbance”, and emergency was imposed thus. This instance became a paradigm of the misuse of a ground as vast as “internal disturbance” to impose emergency.

It is understood that “internal disturbance” as a ground can incorporate virtually any kind of aggression underway within the country, even if peaceful. The ground was vulnerable to tremendous misuse, as did Ms Gandhi to her advantage. The provision, through 44<sup>th</sup> amendment, is now replaced by “armed rebellion”, which has a smaller ambit, and thus less prone to misuse. The events that led to the amendment are discussed in sub section 5.2.

Furthermore, Article 352 of the Constitution initially provided that the President can proclaim Emergency only if the Cabinet Ministers have given their assent towards it in writing. However, this provision too was very open ended. The President might as well be convinced to impose Emergency by a select few in the Cabinet, and not the entire cabinet. In such an event, possibilities of constructive and essential dissent could also get withered away. In fact, it is alleged that when Ms Indira Gandhi imposed emergency in 1975, she did not even inform the Cabinet of Ministers about it. The only people she consulted, as is said by a few, were the then West Bengal Chief Minister Siddharth Shankar Ray and her son Sanjay Gandhi among a few others. The decision was entirely theirs and the Cabinet was not taken into confidence regarding the same.

In order to do away with the possibility of recurrence of any such event in the future, Article 352(3) now provides that the President shall proclaim Emergency only if the same has been advised to him by the Cabinet of Ministers, with the communication made and signed in writing. Also, it was mentioned that the President can send such proclamation for reconsideration once.

Another important element in the Emergency Provisions prior to 44<sup>th</sup> Amendment was regarding Fundamental Rights. Earlier on, all Fundamental Rights could be suspended when

<sup>1</sup> M.P. JAIN, INDIAN CONSTITUTIONAL LAW, 700, (7<sup>th</sup> ed.) (2014).

<sup>2</sup> *Indira Nehru Gandhi v Raj Narain*, AIR 1975 SC 2299.

<sup>3</sup> *State of U.P. v Raj Narain*, 1975 AIR 865, 1975 SCR (3) 333.

the National Emergency is imposed. The same was made use of during the 1975 Emergency to an unpredictable degree. Article 358 (1 A) of the Constitution, inserted through the 44<sup>th</sup> Amendment, now provides that Article 20 and Article 21 cannot be suspended under any circumstances whatsoever. Also, Article 19 will be suspended only if the Emergency has been imposed as a result of “war” or “external aggression” and not by “armed rebellion.”

The interim conclusion we can arrive at, therefore, is that provisions of Emergency until the 44<sup>th</sup> Amendment were largely open ended, and were tremendously misused during the 1975 Emergency.

### **The Emergency of 1975**

#### **Before the Emergency**

Lal Bahadur Shastri, the second Prime Minister of India, passed away on January 11, 1966. The Congress Party underwent a major structural change post that. The President of the Congress Party at the time was Kumaraswami Kamraj, who has often been referred to as the “King Maker” of the Indian Politics<sup>4</sup> during the 1960s as he was the person behind elevating both Shastri, and now Indira Gandhi to the post of the Prime Minister of India.<sup>5</sup> It is believed that Mr Kamraj elevated Ms Gandhi to the Prime Minister’s position as he thought she could be manipulated and used to his advantage. However, what happened was just the reverse.

General Elections were held in India in the year 1967 and Congress won a Simple majority winning 54% of the seats, that because of its strong hold in Southern India<sup>6</sup>. Moreover, it was also the first time when at least nine states were being ruled by parties other than the Congress Party. Albeit non-congress parties did come to power, instability gripped them, and Congress returned to power in 1971.

Further, once the Congress won the 1967 elections, Ms Gandhi was not elected the leader of the party unopposed. Morarji Desai stood up against her, and she had to defeat him to become the Prime Minister. Rift entered the party as one faction of the party was against Indira Gandhi, making it the first blow to her.

This rift in the Congress Party deepened at the AICC Meeting held at Bangalore on January 13, 1969. Former President Dr Zakir Hussain had passed away, and the meeting was convened to decide who shall be the next President of India. During the meeting, eminent leaders such as P.N. Haksar openly iterated that Indira empathized with people a lot more than Morarji Desai and S. Nijalingappa did, and was a better politician largely. Nevertheless, Congress decided that Mr Neelam Sanjeeva Reddy will be its Presidential candidate. However, another major announcement that was made on the same day was that of “Nationalisation of Banks.” It was declared that 14 major banks of the country shall be nationalised owing to the fact that they had not been working

for the people. Morarji Desai opposed the move. But as soon as the meeting was over, he was removed as the Finance Minister of the country, but was offered to remain the Deputy PM, a move later considered to be a huge political masterstroke. On July 19, 1969, the Banking Companies (Transfer and Acquisition) Ordinance was promulgated. The Congress Party was never unanimous to do so, yet Ms Gandhi went ahead with it.<sup>7</sup>

Another major surprise came on August 16, 1969; four days before the Presidential Elections were held. Ms Gandhi urged the members to vote the person their conscience called for, apparently referring to V.V.Giri, who contested the elections for the post of the President in independent capacity. It was clear that Ms Gandhi was against Neelam Sanjeeva Reddy becoming the President, who remained the official candidate of the party. The candidate of the Opposition was D.Subba Rao, Former Chief Justice of the Supreme Court of India. S Nijalingappa on his part urged the Swatantra and the Jan Sangh Party to vote for Reddy. However, V.V. Giri won the elections. Indira Gandhi had clearly opened a fight against the Congress itself and was being very dominating in her role as the Prime Minister.<sup>8</sup>

As a result of recent developments, Ms Gandhi was removed from the Congress party on November 12, 1969. The faction supporting Ms Gandhi met at Bombay right after her removal, and formed another party. The new party came to be known as Congress (Reformist). The task at hand for Gandhi was to prove her majority on the floor of the house. To do so, she took support from the Communists, and managed to retain her position as the Prime Minister.

In the new set up, Y.S Chauhan was made the Home Minister. On May 18, 1970, in his capacity as the Home Minister, he proposed in the Lok Sabha that Privy Purses be abolished. The same was passed from the Lok Sabha, but could not manage to get through the Rajya Sabha. An ordinance was therefore promulgated in this regard. However, on December 11, 1970, the abolition of privy purses was held unconstitutional by the Apex court.

1971 Elections neared. But at the same time, in December 1970 itself, the Indo-Pak war went underway. For the first time, India rose against the superpower-the United States of America too, and defeated Pakistan in the war. Bangladesh became a separate state post the war, and, naturally, PM Indira Gandhi was to be credited for it. Apart from this, the much famous slogan “Garibi Hatao”, and Indira’s powerful appeal to the people led her party to victory in the 1971 elections. Congress(R) won a huge mandate of 352 seats in the elections, and Ms Gandhi once again became the Prime Minister of India. The Communist Party stood next with a meagre 25 seats. Congress (R) soon changed its name to Congress (Indira). Devkant Barua went to the extent of saying, “India is Indira, and Indira is India.”<sup>9</sup>

<sup>4</sup> T Ramakrishnan, *Revised Edition of book on Kamraj to be launched*, THE HINDU (Jul 08, 2009), <http://www.thehindu.com/todays-paper/tp-national/tp-tamilnadu/Revised-edition-of-book-on-Kamaraj-to-be-launched/article16550993.ece>.

<sup>5</sup> M G Devasahayam *The Kamaraj Legacy*, THE HINDU (Nov 03, 2014) <http://www.thehindu.com/opinion/open-page/the-kamaraj-legacy/article6646815.ece>.

<sup>6</sup> Election Commission of India, *Statistical Report on General Elections 1967 to the Fourth Lok Sabha Volume I*, [https://web.archive.org/web/20140718185108/http://eci.nic.in/eci\\_main/StatisticalReport/LS\\_1967/Vol\\_I\\_LS\\_67.pdf](https://web.archive.org/web/20140718185108/http://eci.nic.in/eci_main/StatisticalReport/LS_1967/Vol_I_LS_67.pdf).

<sup>7</sup> R.J Venkateswaran, *Indira Gandhi versus Morarji Desai- the real reason for bank nationalisation*, THE HINDU BUSINESS LINE (Feb 07, 2000), <https://www.thehindubusinessline.com/2000/02/07/stories/040708m4.htm>.

<sup>8</sup> Nilanjan Mukhopadhyay, *Past Continuous: How Indira Gandhi used Presidential Elections to cement her own power*, THE WIRE (May 25, 2017) <https://thewire.in/history/indira-gandhi>.

<sup>9</sup> Dilip Dobb, *India is Indira and Indira is India. Who lives if Indira dies?*, INDIA TODAY (Dec 26, 2005), <https://www.indiatoday.in/magazine/cover->

Once in power, Indira Gandhi introduced two major amendments. The 24<sup>th</sup> and the 25<sup>th</sup> Constitutional Amendments were introduced, bringing about major changes to the Constitution. On November 05, 1971, the 24<sup>th</sup> Constitutional Amendment was passed. As per the amendment, the Parliament got indefinite powers to amend the Constitution. This was a clear reversal of the verdict of the Apex Court in *L C Golaknath and others vs State of Punjab and others*<sup>10</sup> (1967) case, as per which amendments were also laws, and so could not be violative of any of the Fundamental Rights.

The 25<sup>th</sup> Constitutional Amendment cleared the way for declaration of Nationalisation of 14 banks and Abolition of Privy Purses as Legal.

Further, in 1972, elections were due in the states of Madhya Pradesh, Maharashtra, Gujarat, Rajasthan and Karnataka. However, Indira also called for early elections to the state of Bihar, Punjab and Haryana. Congress (I) won all the elections. Indira Gandhi became a very powerful politician by this time. Then came the *Kesvananda Bharati vs State of Kerala and others*<sup>11</sup> case, that changed the course of events. The case initially challenged two major land reform acts that were introduced by the Kerala Government, but went on to incidentally put to test the validity of 24<sup>th</sup>, 25<sup>th</sup>, 26<sup>th</sup> and 29<sup>th</sup> Constitutional amendments. On April 24, 1973, it was the only time when a 13 Judge Bench sat to hear the case. By a sharp margin of 7:6, it was held that the Basic Structure of the Indian Constitution cannot be changed. Indira Gandhi could not control the judiciary, at least till this time.

However, Chief Justice of India, Justice S.M. Sikri retired on just the next day when the verdict came. By virtue of seniority, Justice J.M. Shelton should have become the next Chief Justice of India. However, Indira Gandhi rose Justice A.N. Ray to that position, and she could do so as President V.V. Giri, would purportedly do only as Ms Gandhi would ask her to. Justice Ray was junior to three other judges of the Supreme Court, and yet was risen to the position. In protest of this flawed appointment, the three senior judges resigned. Prime Minister Indira Gandhi, after having controlled the Executive and the Legislature completely, now wanted to encroach upon the independence of Judiciary as well.<sup>12</sup>

On December 15, 1973, famous freedom fighter Jai Prakash Narain wrote an open letter to all the MPs. This marked the beginning of another set of protests against the Government.

### ***The Imposition of Emergency***

On one hand, the Indian Constitution was reeling under tough times, on the other inflation in the country rose to unprecedented levels. Indira Gandhi promised the people of India to alleviate poverty as part of her election manifesto, but the situations were just the opposite. To add to the woes of the nation, the Oil Crisis of 1973 occurred. The Organization of Arab Petroleum Exporting Countries, in response to the involvement of the United States of America in the Yom Kippur War, proclaimed an oil embargo. It was a huge shock,

by the end of the March of 1974, prices of Oil Barrel rose from US\$ 3 per barrel to US\$ 12 per barrel. The impact of the crisis was felt in India as well. Prices of oil and petroleum rose to unprecedented levels, and anger against the government became the order of the day.<sup>13</sup>

At the same time, in December 1973, the country was reeling under abject poverty. So much so that in Gujarat, the food bills of students of the L.D Engineering College of Ahmedabad rose up by 20%. Such a striking move, naturally invited a lot of protests. Situations only became worse thereafter. Students of the college formed the Navyuvak Nirmana Samiti, and on December 20, 1973, students carried out a revolt in Ahmedabad. In order to contain the protests, the Police resorted to baton charging as well as firing upon the crowds of students. Many students lost their lives in the incident. Post this incident, even civilians began supporting the students, and on January 07, 1974, virtually the whole of Ahmedabad came out to protest. On January 10, 1974, the police fired at several places in Ahmedabad and Vadodara. The protests spread massively, and on January 20, 1974, sixteen districts of Gujarat called for *Bandh*. The protests continued, and on February 07, 1974; Chhiman Bhai Patel resigned as the Chief Minister of Gujarat, and on March 16, 1974, the Legislative Assembly of Gujarat was dissolved. It is believed, as per media conjecture, that no less than a total of 103 people died in these protests, at least 310 injured and 8000 arrested during the 73 days of protests.

The protests in Gujarat inspired protests in Bihar. Protests took the same shape in Bihar as in Gujarat, and once again force was used to drive the protesting student and civilians. People lost their lives and situations changed only for the worse. It was on April 07, 1974 when Jai Prakash Narain decided to spearhead the protest. Peaceful protests against the Government continued, yet, on April 12, 1974, force was used. 12 students were killed in Gaya on that day. And, after this incident, Jai Prakash Narain proposed to constitute a committee to look into the killings, however, the same was refused. The actions of the police were therein justified. Protests continued, but the Government did not do anything. On October 20, 1974, a rally in the Gandhi Maidan led by Jai Prakash Narayan was organised, and a huge number of people thronged. In November 1974, Jai Prakash Narayan met Indira Gandhi in New Delhi, asking her to bring the Abdul Gaffur government in Bihar to a moratorium. The meeting was not productive.

On the other side, the state of Maharashtra was also on the boil. Workers of the Indian Railways were not being paid adequately, and yet, were made to do inexplicably large amount of work. Finally, under socialist leader George Fernandes, on May 8, 1974, a strike was called. 17 Lakh people are believed to have joined the strike.

On January 08, 1975, West Bengal Chief Minister Siddharth Shankar Ray wrote a letter to the Prime Minister suggesting to her that Emergency must be imposed in order to deal with the students.

Along with the protests, a legal battle was also underway. Raj Narain, leader of the Samyukta Socialist Party who contested

story/story/20051226-india-is-indira-and-indira-is-india.-who-lives-if-indira-dies-786326-2005-12-26.

<sup>10</sup> L C Golaknath and others vs State of Punjab and others, AIR 1967 SC 1643.

<sup>11</sup> Kesvananda Bharati v State of Kerala and others, AIR 1973 SC 1461.

<sup>12</sup> Seniority as the Norm to Appoint India's Chief Justice is a Dubious Convention, THE WIRE (Dec 22, 2016), <https://thewire.in/law/seniority-norm-cji-appointment-thakur-khehar>.

<sup>13</sup> Soroor Ahmed, *The role that Syria, Sinai and Oil Prices played in triggering Emergency*, NATIONAL HERALD, (Jun 25, 2017), <https://www.nationalheraldindia.com/opinion/the-role-syria-sinai-oil-prices-played-in-triggering-emergency>.

the 1971 general elections against Indira Gandhi from Rai Bareilly had alleged that Ms Gandhi indulged in malpractices to win the elections. The case was underway in the Allahabad High Court since July 1971. Meanwhile, on June 12, 1975, Congress lost the Gujarat elections, and went out of power. Simultaneously, Indira Gandhi was held guilty of indulging in corrupt practices to win the election. The Allahabad High Court nullified the election of Indira Gandhi to the Lok Sabha from Rai Bareilly, and declared it to be invalid *ab initio*. It was found that police forces and Officer on Special Duty, Yashpal Kapoor worked for Ms Gandhi. Within half an hour of the declaration of the verdict, the counsel to Ms Gandhi appealed in the court, and Justice Jagmohan Sinha immediately put a stay of 20 days on the implementation of the order.

As a result of the order, Ms Gandhi's membership of the Parliament should have to be taken away. In this event, she would have to resign. However, Ms Gandhi began conducting a large number of rallies to ensure that she did not lose out on public support, until on June 20, 1975, when she finally filed an appeal at the Supreme Court of India. On June 24, 1975, the vacation bench of the Supreme Court of India headed by Justice Krishna Iyer ruled that Ms Gandhi can continue to serve as the Prime Minister of India but she had lost all voting rights in the Parliament.

The entire opposition, meanwhile, was united against the Congress. Jai Prakash Narain continued his protest in the Ram Leela Maidan on June 25, 1975, in which at least 5 Lakh people participated. The call for Indira Gandhi to resign was made, and strongly so. It was invoked in the rally that since the Army and Police are also meant to serve the people, they should join the call against the government.

In order to meet the erupting situations, Indira Gandhi called a meeting at her residence. The ones present in the meeting, apparently, were Sanjay Gandhi, Lieutenant Governor of Delhi Krishna Chandar, Chief Minister of Haryana Bansi Lal, and Union Minister of State for Home Affairs Om Mehta among others. Later, West Bengal Chief Minister Siddharth Shankar Ray also joined the meeting. Late that night, Ms Gandhi met President Fakhruddin Ali Ahmed, and later, Indira Gandhi's Secretary R.K. Dhawan met him, and handed over the Prime Minister's letter to him. The President signed the Proclamation.

That very night, arrests and detentions began taking place. People were being deported to unknown locations. Leaders were sent to unknown locations. Electricity was disrupted, and thus, newspapers could not be published. Censor officers were appointed. Jai Prakash Narain was also arrested from Gandhi Peace Foundation. The Emergency was imposed.

Next morning, the Prime Minister spoke on All India Radio declaring that the President had proclaimed emergency, and it was nothing to panic about.

Threat to national security, along with internal disturbance was cited as reasons behind the emergency.<sup>14</sup>

### ***The Emergency, Revocation and Post-Emergency era***

The beginning of the Emergency in the year 1975 marked the beginning of, arguably, the darkest era of independent India.

Fundamental Rights remained suspended and the Parliament became very powerful. Several extremes were committed during this time.

Large number of arrests were made throughout the 21 months of the Emergency and normalcy remained disrupted. Indira Gandhi granted herself innumerable powers, the biggest use of which was made in avenging the damages she had suffered. Thousands of protesters, who rose their voices against the Government were detained indiscriminately, and not produced in the Courts too. As many as nine High Courts said that even when the Emergency was imposed, a person had the right to challenge his detention. However, the Supreme Court, now headed by Chief Justice A.N. Ray, over turned all of them. In fact, the heights of atrocities committed rose to such a degree that in several cases, detained people were never recovered too. Even the Article 20, providing for protection in respect of conviction for offences and Article 21, providing for Right to Life and Personal liberty too remain suspended, let alone others. This made the Government excessively powerful. Fundamental Rights of citizens were held at ransom, and innumerable extremes committed.

Elections, both to the Parliament as well as the State Legislatures were postponed. The country was, virtually, under the control of one person until then-Prime Minister Indira Gandhi.

Meanwhile, Indira Gandhi had proposed a 20-point economic programme aimed at increasing agricultural and industrial productivity in the country, alleviation of poverty, improvement in public services *et al.* This was later amalgamated with a 5-point infamous programme of the Government, considered generally to be a major political misadventure of Sanjay Gandhi. The programme comprised of "the idea of promoting literacy, family planning, tree plantation, eradication of casteism and abolition of dowry", and became a 25-point programme.

A large number of measures were taken during this time towards achievement of the 25 points, though some were done forcibly. As part of the Family Planning Programme that began in April 1976. As part of the programme, the government began a forced sterilisation drive across the country. People were forcibly vasectomised during this time, and this created fear among the people. In fact, it was reported that even little children were being sterilised as part of the initiative. This led to deaths of a number of individuals too, and the programme was considered to be a failure, by and large.

Another step the Government took was towards alleviating poverty. As part of the programme, surprisingly, slums inside Delhi were being demolished and the people were being forcibly shifted outside Delhi. People living in the Turkman Gate area of Delhi were among the ones affected. On April 18, 1976, when residents of the area, who were mostly Muslim opposed the move, the police fired at them and a number of people were killed during the move. The incident was covered by international media organisations such as BBC and not by any of the Indian owing to censorship on press during emergency. The incident came to be remembered as the "Turkman Gate Demolition incident."<sup>15</sup>

<sup>14</sup> *The Truth of Emergency Parts 1 & 2*, [www.ddinews.gov.in](http://www.ddinews.gov.in); [www.youtube.com](http://www.youtube.com), <https://www.youtube.com/watch?v=QEVRMGu05C8>.

<sup>15</sup> *The Khooni Kissa of Turkman Gate*, THE WIRE (Jun 25, 2015), <https://thewire.in/culture/the-khooni-kissa-of-turkman-gate>.

Apart from this, another major area harmed tremendously during the Emergency was the Media. Press remain censored throughout the Emergency. Government run All India Radio and Door Darshan were used to telecast only such information as the Government wanted. In fact, it is alleged that the content that was to be read on Door Darshan was first scrutinised by Ms Gandhi herself. Officials were replaced and the ones sycophant to Ms Gandhi were put to power. No journalistic ethics were followed, and freedom of press was taken away. It was therefore, clearly understood that Indira and Sanjay Gandhi's efforts to achieve the 25-point programme were not in the interest of people, but in the interest of the Government itself. The argument gets backed by the fact that in order to achieve her political motives, Ms Gandhi brought about major changes into the Constitution of India. A host of amendments were introduced, and passed, since the Congress had the required numbers in the Parliament.<sup>16</sup>

The major amendments introduced to the Constitution during the Emergency of 1975 have been tabulated in Table 1.

**Table 1** Amendments during the Emergency

Amendment number	Date	Crux of the amendment
38	August 01, 1975	Amending Articles 123, 213, 239B, 352, 356, 359 and 360; the amendment enhanced the powers of the President and Governors to issue Ordinances significantly
39	August 10, 1975	Amending Articles 71 and 329, and Schedule 9 and inserting Article 329 A, the amendment placed restrictions on the Judicial Scrutiny of the post of the Prime Minister
40	May27,1976	Amending Article 297 and Schedule 9, the amendment enabled Parliament to make laws vis-à-vis Exclusive Economic Zone and placed mineral wealth with Union Government. All land reforms and other related amendment acts placed in Schedule 9.
41	September 07, 1976	Amending Article 316, the amendment raised retirement age limit of Chairmen and Members of UPSC and State Public Service Commissions from sixty to sixty-two
42	November 02, 1976	Amending articles 31, 31C, 39, 55, 74, 77, 81, 82, 83, 100, 102, 103, 105, 118, 145, 150, 166, 170, 172, 189, 191, 192, 194, 208, 217, 225, 226, 227, 228, 311, 312, 330, 352, 353, 356, 357, 358, 359, 366, 368 and 371F, inserting articles 31D, 32A, 39A, 43A, 48A, 131A, 139A, 144A, 226A, 228A and 257A, inserting parts 4A and 14A, and amending schedule 7, the amendment gave legal backing to all the curtailment of Fundamental Rights during Emergency, adds "Socialist" and "Secular" to the Preamble, and thus brings change to basic structure of the Constitution

Source: The Constitution Amendment Acts, [indiacode.nic.in](http://indiacode.nic.in)

Analysing the aforementioned table, the first interim conclusion we may derive is that the Constitution was excessively tampered with during the Emergency. As evident, most of the amendments were only intended to shield the Prime Minister and to help her continue in her position. The Congress was quick to introduce the 38<sup>th</sup> Amendment to the Constitution within the first two months of imposing the Emergency. Excessive powers were given to the President and Governors to issue ordinances, who would, but naturally, act on the "advice" of the Prime Minister and her council of Ministers.

The 39<sup>th</sup> amendment was absolutely outlandish. The amendment was introduced days before Ms Gandhi's case was to be dealt with at the Supreme Court of India in order to protect her from being tried. The amendment provided that the post of Prime Minister in the country cannot be scrutinised by the judiciary. This led to the Supreme Court losing the power to hold trial for Ms Indira Gandhi.

As has been described in "Indian Constitutional Law" by M.P. Jain, the 40<sup>th</sup> amendment extended immunity to 64 Central and state statutes by including them in the IXth schedule. These statutes pertained to land reform, urban ceiling, and prevention of publication of objectionable matter. This Amendment also

substituted a new Article 297 for the old one with a view to enlarge India's sovereign rights over sea wealth and include therein the concept of exclusive economic zone.<sup>17</sup> The 41<sup>st</sup> amendment furthered the age of retirement of the chairman and other members of the State Public Service Commissions to 62 from the previous 60, thereby making it the same as High Court Judges.

Further, on November 02, 1976, the 42<sup>nd</sup> Amendment to the Constitution was introduced. The 42<sup>nd</sup> amendment rendered all the extremes committed during the Emergency of 1975 legal. The fundamental rights that were curtailed during that time were made to be justified by the passage of the amendment. This amendment is the "most debatable and controversial piece of constitutional amendment ever undertaken in India". However, to correct the wrongs committed via the 42<sup>nd</sup> amendment, the 44<sup>th</sup> Amendment to the Indian Constitution was passed with a change in the government in the year 1978 by the subsequent government as 1975 Emergency was revoked in 1977.

A comparative study of the two amendments is hereby attempted to better analyse the two amendments.

The 42<sup>nd</sup> amendment was, as is evident, was intended to keep an unpopular government in power, and the 44<sup>th</sup> amendment was intended to ensure such a situation does not arise ever again. Eminent jurists have opined that the 44<sup>th</sup> amendment, to a large degree rules out the possibility of Emergency being imposed on frivolous grounds, let aside to keep an unpopular government in power.

21 months of horror and distress finally came to a moratorium on March 23, 1977. Elections were declared on March 12, 1977 and Indira Gandhi lost the elections. The election results were declared on March 22, 1977. Congress could manage 192 seats, but Ms Gandhi and her son Sanjay Gandhi could not manage a seat. Morarji Desai became the next Prime Minister of India.

### **Emergency in the contemporary time**

India as a nation, post-independence, has proven to be a successful democracy. Other countries that have its origins in India, such as Pakistan and Bangladesh have suffered tougher times of instability, dictatorship and sheer unrest, and continue to be so. The Indian democracy per contra, has been relatively in a far better situation.

<sup>16</sup> *The Truth of Emergency Parts 3, 4 & 5*, DD NEWS (Jun 23, 2016) [www.youtube.com, https://www.youtube.com/watch?v=QEVRMGu05C8](http://www.youtube.com/watch?v=QEVRMGu05C8).

<sup>17</sup> M.P. JAIN, INDIAN CONSTITUTIONAL LAW, 1714 (2014)

**Table 2** A comparative study of the 42<sup>nd</sup> and 44<sup>th</sup> Constitutional Amendments

Parameter	The Constitution (42 <sup>ND</sup> Amendment) ACT, 1976	The Constitution (44 <sup>TH</sup> AMENDMENT) ACT, 1978
A. Change In Preamble	1. The words "Sovereign Democratic Republic" changed to "Sovereign Socialist Secular Democratic Republic" 2. The words "unity of the nation" changed to "unity and integrity of the nation"	No Change
B. Parliament And State Legislatures	1. Extended the life of Lok Sabha from five to six years 2. Changes were made to quorum in the Houses of the Parliament, and the subject was made procedural from substantive 3. Article 103 was amended, changing the procedure to decide question of disqualification of member, same was put in the domain of the executive alone 4. Court's power to decide what is an office of profit under Article 102 (1) (a) had been taken away  5. Amended Articles 105 and 194 dealing with Privileges of MPs/MLAs , dropped reference to House of Commons 6. Immunity granted by The Parliamentary Proceedings (Protection of Publication) Act, 1976 taken away as law repealed during Emergency	1. Reduced the life of Lok Sabha back to five years 2. Status Quo restored, original Articles 100(3) and 100(4) and 189 (3) and 189 (4) restored 3. Article 103 amended again, now, once again President was to disqualify members but with opinion of Election Commission 4. Court's power to decide what is an office of profit under Article 102 (1) (a) restored 5. Amendment to Articles 105 and 194 canceled, further amended to cancel any ref. To House of Commons in future as well 6. Immunity re-instated and put on firmer foundation by way of insertion of Article 361 A
C. Executive	1. Advice of Council of Ministers made compulsory upon President by way of amending Art. 74 2. Amended Articles 77 and 166, barred Courts from requiring production of Business Rules	1. Proviso added to Art. 71 (1) giving President option to send proposal of Ministers back for re-consideration, made it compulsory if re-sent to him 2. Status Quo prior to CA 42 restored
D. High Courts And Supreme Court	1. Article 139 A added, provided power to Supreme Court to withdraw cases from High Court(s) and decide them by itself 2. Provision was made for appointment of distinguished Jurists as judges of High Courts 3. Article 226 amended to curtail Writ Jurisdiction of High Courts 4. Article 225 amended imposing restrictions on Original Jurisdiction of High Courts vis-a-vis revenue and collection thereof 5. Issue of Interim Orders by High Courts amended 6. Power of superintendence of High Courts over tribunals divested	1. Article 139 A upheld with modifications, now, SC can withdraw cases suo motu or on application of parties 2. Provision of appointment of distinguished jurists as High Court judges repealed 3. Amendment to Article 226 canceled 4. Status quo for Article 225 restored 5. Article 226(3) introduced providing for issue of interim orders in the absence of another party with reservations 6. Power of superintendence of High Courts over tribunals restored 7. Article 134 A inserted, and verbal changes introduced to Arts. 132, 133 and 134 (1) (c) 8. Article 132 (2) repealed as infructuous Article 257A repealed
E. Federalism	Article 257 A added, granting Centre power to deploy armed forces anywhere if grave need be	
F. Fundamental Rights & Directive Principles	1. Amendment to give primacy to Directive Principles of State Policy (declared unconstitutional by SC in <i>Kesavananda</i> ) 2. Article 31 D was added to enable Parliament to make law to prevent and prohibit anti national activities or formation of anti national associations	1. Amendment turned the wheel full circle, Directive Principle of State Policies became subservient to Fundamental Rights 2. Article 31 D was repealed 3. Article 19(2)(f) deleted 4. Article 31 was omitted, became Article 300 A NO CHANGE
G. Fundamental Duties	New Article 51 A was inserted providing for Fundamental Duties	
H. Emergency	1. President could now impose Emergency in the entire country or a part thereof, to give effect to which necessary changes were brought to Arts. 353, 358 and 359 2. President could now "vary" an Emergency proclamation by subsequent proclamation 3. Article 356 now provided that proclamation of state emergency to stay in operation for one year from previous 6 months and Presidential satisfaction made final and conclusive 4. Article 357 provided that laws made for state by Parliament not to stop operating immediately after revocation of Emergency but state legislature to formally pass a legislation to that effect	1. NO CHANGE 2. NO CHANGE 3. Status quo restored 4. NO CHANGE 5. Major changes brought to Article 352: a. "internal disturbance" substituted by "armed rebellion" b. Article 352 (5) inserted by CA 38 making satisfaction of President to proclaim Emergency "final" and unquestionable in any court of law withdrawn 6. Article 359 amended to provide that operation of Arts. 20 and 21 cannot be suspended 7. Scope of Article 358 restricted, suspension of operation of Article 19 only when Emergency imposed on grounds of "war/external aggression"; new clause added providing a law only in relation to Emergency to be covered under Article 358 8. Article 360 (2) amended so as to include some more safeguards to imposition of Financial Emergency; Article 360 (5) inserted by CA 38 providing for Presidential satisfaction final and conclusive dropped
I. Amendment Of The Constitution	Article 368 (4) & (5) added, providing that Constitutional Amendment cannot be called in question in any court of law (declared unconstitutional by SC)	-
J. Elections		Article 329 A providing for special provisions for elections to Parliament of Prime Minister and Speaker added by CA 39 now repealed

Source: M.P. Jain, Indian Constitutional Law 7<sup>th</sup> Edition

Speaking of the possibility of another National Emergency like the one of 1975, it looks highly unlikely.

The Constitutional Law of the land has evolved with time, and the electorate is well aware of its rights. With time, the Judiciary has become an organ of paramount importance. The

“procedure established by law”, as mentioned in Article 21 has been interpreted the same as American “Procedural Due process of law”<sup>18</sup>, and the Lex loci has been evolved as incorporating the principles of natural justice.

Furthermore, the Indian media and the social media both have become platforms of intellectual debate and discussion. The media is very active, and no political power would ever successfully curtail this immensely strong pillar of the Indian democracy. In fact, it will not be an overstatement to say that India is going through a period of media-activism. Media in India shapes the elections and nudges political parties to power. The importance of the role media plays in today’s time can simply not be overemphasized.

Other than the conventional understanding of “media”, the pervasive presence of “social media” and its ever increasing spread is another factor that must not be ignored. Social media has emerged as a significant platform for people to exchange views. In a well-aware society, the Government cannot override the Constitution and commit such a breach.

Moreover, the 1975 Emergency was a lesson to political parties. The current BJP Government, in 2015, marking the 40<sup>th</sup> anniversary of the Emergency of 1975, condemned the then Congress government for doing so. The Prime Minister of India, Narendra Modi, on many-an-occasion, has come down heavily on the Congress Party for having committed such an extreme.

In conclusion, one can say that an Emergency not based on a valid rationale looks unlikely, even though a situation that demands such a step can arise any time, considering India’s relations with its neighbours and other international disturbances. The emergency can be a menace, as much a necessity.

## CONCLUSION

June of each year brings back the horrific memory of indeed one of the darkest episodes of the Indian democracy- the Emergency of 1975. In the historical analysis of events that led to the imposition of the Emergency in 1975 under Article 352 (1), and all that ensued thereafter, views expressed by a number of authors show-India today concedes that such a situation must not recur. The Constitution was made a plaything at the hand of the then government. The amendments to the Constitution, and most importantly the 42<sup>nd</sup> amendment which came to be known as the Mini Constitution, for it altered the very fundamentals of the Indian Constitution, did tremendous damage to the law of the land. But naturally, the same was not well received by the electorate and Ms Gandhi was voted out of power in the General Elections subsequent to the revocation of the Emergency. The next government therefore had the onus of ensuring that no such happening recurs in India ever, and the 44<sup>th</sup> amendment was introduced thus. The 44<sup>th</sup> amendment corrected the wrongs committed by the previous amendments, and rejuvenated the spirit of the Constitution. Since then, imposition of Emergency has been made a stricter endeavour, besides, it is simultaneously ensured that people’s rights are not breached uncontrollably even if the Emergency is in operation.

As regards the possibility of an Emergency in the contemporary situations, in conclusion, the provision therefor should remain dormant. No wonder, Emergency must indeed be imposed if situations to that effect actually have arisen, however, Emergency like the one of 1975 should never be imposed again for it shall cause irreparable harm to the principle of constitutionalism on which the Indian Democracy stands. Also, in the views of a large number of authors, some of which had been cited previously, there is little possibility that such recklessness can occur again, for a wave of “media-activism” has spread in India, and the electorate today is aware of its rights. As the Apex Court has enunciated in *Bhuth Nath v Union of India*<sup>19</sup>, borrowed from *Goldwater v Carter*<sup>20</sup>, the subject of Emergency and President’s satisfaction therefor is a political question, and though overruled in *Minerva Mills*<sup>21</sup>, the voter will never allow such an extreme to sustain.

## References

### Case Laws

1. *Indira Nehru Gandhi v Raj Narain*, A.I.R 1975 S.C. 2299.
2. *State of U.P. v Raj Narain*, 1975 A.I.R. 865, 1975 S.C.R. (3) 333.
3. *L C Golaknath and others vs State of Punjab and others*, A.I.R. 1967 SC 1643.
4. *Kesvananda Bharati v State of Kerala and others*, A.I.R. 1973 S.C. 1461.
5. *Maneka Gandhi v Union of India*, A.I.R. 1978 S.C. 597.
6. *RC Cooper v Union of India*, A.I.R. 1970 S.C. 564.
7. *Gold water v Carter*, 444 U.S. 996.
8. *Minerva Mills v Union of India* A.I.R. 1990 S.C. 1789.
9. *Bhuth Nath v State of West Bengal*, AIR 1974 SC 806.

### Newspaper and Magazine Articles

10. T Ramakrishnan, *Revised Edition of book on Kamraj to be launched*, The Hindu (Jul 08, 2009), <http://www.thehindu.com/todays-paper/tp-national/tp-tamilnadu/Revised-edition-of-book-on-Kamaraj-to-be-launched/article16550993.ece>.
11. M G Devasahayam *The Kamaraj Legacy*, The Hindu (Nov 03, 2014) <http://www.thehindu.com/opinion/open-page/the-kamaraj-legacy/article6646815.ece>.
12. R.J Venkateswaran, *Indira Gandhi versus Morarji Desai- the real reason for bank nationalisation*, The Hindu Business Line (Feb 07, 2000), <https://www.thehindubusinessline.com/2000/02/07/stories/040708m4.htm>.
13. Dilip Dobb, *India is Indira and Indira is India. Who lives if Indira dies?*, India Today (Dec 26, 2005), <https://www.indiatoday.in/magazine/cover-story/story/20051226-india-is-indira-and-indira-is-india.-who-lives-if-indira-dies-786326-2005-12-26>.
14. Nilanjan Mukhopadhyay, *Past Continuous: How Indira Gandhi used Presidential Elections to cement her own power*, THE WIRE (May 25, 2017) <https://thewire.in/history/indira-gandhi>.
15. Soroor Ahmed, *The role that Syria, Sinai and Oil Prices played in triggering Emergency*, NATIONAL HERALD, (Jun 25, 2017),

<sup>18</sup> See *Maneka Gandhi v Union of India*, AIR 1978 SC 597 ; *RC Cooper v Union of India*, AIR 1970 SC 564.

<sup>19</sup> *Bhuth Nath v State of West Bengal*, AIR 1974 SC 806.

<sup>20</sup> *Gold water v Carter*, 444 US 996.

<sup>21</sup> *Minerva Mills v Union of India* AIR 1990 SC 1789.



<https://www.nationalheraldindia.com/opinion/the-role-syria-sinai-oil-prices-played-in-triggering-emergency>

16. Seniority as the Norm to Appoint India's Chief Justice is a Dubious Convention, THE WIRE (Dec 22, 2016), <https://thewire.in/law/seniority-norm-cji-appointment-thakur-khehar>.

#### **Books**

17. M.P. Jain, *Indian Constitutional Law*, 700 (7<sup>th</sup> ed. 2016) (Lexis Nexis Publications).
18. Durga Das Basu, *Commentary on the Constitution of India*, 147 (9<sup>th</sup> ed. 2016) (Lexis Nexis Publications).

#### **Websites**

19. The Truth of Emergency Parts 3, 4 & 5, DD NEWS (Jun 23, 2016) [www.youtube.com](http://www.youtube.com), <https://www.youtube.com/watch?v=QEVRMGU05C8>
20. The Truth of Emergency Parts 1 & 2, [www.ddinews.gov.in](http://www.ddinews.gov.in); [www.youtube.com](http://www.youtube.com), <https://www.youtube.com/watch?v=QEVRMGU05C8>.

#### **Reports**

21. Election Commission of India, *Statistical Report on General Elections 1967 to the Fourth Lok Sabha Volume I*, [https://web.archive.org/web/20140718185108/http://eci.nic.in/eci\\_main/StatisticalReports/LS\\_1967/Vol\\_I\\_LS\\_67.pdf](https://web.archive.org/web/20140718185108/http://eci.nic.in/eci_main/StatisticalReports/LS_1967/Vol_I_LS_67.pdf).

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