

# Analysis of Emergency Provision in Indian Constitution in Relation with 1975 Emergency

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**Abstract:** *The 1975 Emergency in India represents a defining moment in the country's history, marked by the invocation of Emergency Provisions enshrined in the Indian Constitution. These provisions, particularly Article 352, granted the ruling government extraordinary powers to address perceived internal disturbances and maintain national security. However, the declaration and implementation of the Emergency have been subjects of intense debate and scrutiny, with critics highlighting the period as a time of political repression, suspension of civil liberties, and authoritarian governance. This study explores the aims and objectives of the 1975 Emergency, delving into the motivations of the ruling dispensation and the extent to which the Emergency Provisions were used beyond their stated intent. By examining primary sources, historical accounts, and scholarly analyses, the research critically assesses the impact of the Emergency on Indian democracy, including its effects on democratic institutions, civil society, and political culture.*

**Keywords:** 1975 Emergency, Indian Constitution, Emergency Provisions, Article 352, National Emergency, Political repression, Civil liberties, Authoritarian rule

## I. INTRODUCTION

The world's longest and most comprehensive constitution, the Indian Constitution, carefully lays out the rules governing the biggest democracy in the world. Its pages are filled with clauses intended to protect the country's integrity, security, and democratic values—even during serious emergencies. Among these are the Emergency Provisions, which are contained in Articles 352, 356, and 360 and give the national government unprecedented authority to address crises that are thought to pose a threat to the stability of the country.

The 1975 Emergency, which brought about a turbulent period in Indian history, serves as a sobering reminder of the importance and ramifications of these Emergency Provisions. The 1975 Emergency, which was instituted under Prime Minister Indira Gandhi, was a time of broad censorship, political persecution, and the suspension of civil liberties. Examining the Indian Constitution's Emergency Provisions and their importance in preserving democracy is essential to comprehending the events of that era and the reforms that followed.

The Indian Constitution's Article 352 outlines the process for declaring a national emergency. It gives the President the authority to declare a state of emergency in the event that armed revolt, war, or external attack threatens the security of India or any of its territories. The 1975 Emergency, often known as the "Internal Emergency," was declared due to "internal disturbance," a clause that has been interpreted broadly, which has raised problems.

## II. HISTORICAL BACKGROUND

Apart from the National Emergency, Article 356 permits the implementation of President's Rule, which is also called State Emergency. In this scenario, the President takes over the state's governance in the event that it is believed that its constitutional machinery has malfunctioned. Invoking this law allowed the ruling regime to consolidate authority and control over a number of opposition-led state administrations during the 1975 Emergency. Article 360 of the Constitution, on the other hand, addresses financial emergencies and gives the President the power to declare a state of emergency in the event that India's credit or financial stability is in jeopardy. Even with the severe economic hardships of the 1970s, this clause was not used in the Emergency of 1975.

There was a lot of backlash against the 1975 Emergency Proclamation and its actions both domestically and globally. Many places denounced the suspension of basic rights, the widespread detention of political opponents, press censorship, and the establishment of authoritarian government. To stop the abuse of the Emergency Provisions, the Constitution underwent major revisions following the Emergency. The 44th Amendment Act of 1978 aimed to place more stringent restrictions on the government's power to declare a national emergency, making sure that such measures are only appropriate in situations when there is a real threat to the security of the country. The 1975 Emergency's legacy serves as a sobering lesson, highlighting the necessity of strong checks and balances within the constitutional structure to stop authoritarian inclinations from eroding the country's democratic foundation.

### **III. METHODOLOGY**

The nature of this research paper is theoretical; hence the data has been collected through secondary source, for example, reference books, internet, journals, etc. have been widely consulted to develop the plan of the research paper. The study employed a simple framework in identifying the contemporary definitional elements of "reasonable apprehension" and the role excluded by the Supreme Court of India while exercising its criminal jurisdiction in the matters of concerning private defense of the body under the criminal laws of India.

### **IV. EMERGENCY PROVISIONS AS MENTIONED IN THE CONSTITUTION AT THE TIME OF COMMENCEMENT**

Over time, emergency provisions in India have changed. The provisions of the Indian Constitution today differ significantly from those at the time of its adoption and will have different, profound effects in the event that a state of emergency is declared. Article 352(1) of the Constitution allowed for the imposition of an emergency on the grounds of "war, external aggression, and internal disturbance" prior to the 44th Amendment, or from the time the Constitution was enacted until the 42nd Amendment during the Emergency of 1975. In 1962, despite having previously stated otherwise, China declared war on India, leading to the imposition of an emergency under "war" conditions. The Emergency Declaration was made using the same provision in 1971, during the conflict between India and Pakistan. One term for this kind of situation is "External Emergency." However, President Fakhruddin Ali Ahmad only ever declared a state of emergency once in 1975, following PM Indira Gandhi's advice, under the pretext of "internal disturbance." One term for this kind of situation is "internal emergency."

The declaration of emergency in the nation due to "internal disturbance" caused controversy because most people did not think such a drastic measure was necessary. Many believed that Ms. Gandhi had declared a state of emergency for her own political purposes because the June 12, 1975, ruling in the State of Uttar Pradesh v. Raj Narain case had put her position as Prime Minister and Member of Parliament in jeopardy. People became agitated after this ruling and other circumstances, such as extreme poverty, contributed, and they started calling for the prime minister's resignation.

Since the agitation was deemed to be an "internal disturbance," an emergency was declared. This incident came to symbolize how an extensive ground like "internal disturbance" might be abused to declare an emergency. It is acknowledged that the term "internal disturbance" can refer to almost any form of aggression occurring within the nation, even if it is nonviolent. Both the land and Ms. Gandhi might be greatly abused, in her favor. The 44th Amendment has replaced the clause with "armed rebellion," which has a more limited scope and is therefore less likely to be abused.

Moreover, the original language of Article 352 of the Constitution stated that the President could only declare an emergency if the Cabinet Ministers approved it in writing. Nevertheless, this clause was also extremely ambiguous. It would be better for a few members of the Cabinet to persuade the President to declare a state of emergency than the entire Cabinet. Opportunities for necessary and constructive disagreement may also disappear in such a situation. In fact, it is said that Ms. Indira Gandhi neglected to even notify the Cabinet of Ministers when she declared a state of emergency in 1975. As some have said, she only conferred with her son Sanjay Gandhi and the then-West Bengal Chief Minister Siddharth Shankar Ray. They made the decision totally on their own, and the Cabinet was not consulted in the process.

Article 352(3) now states that the President may only declare an emergency if the Cabinet of Ministers advises him to do so and the message is made and signed in writing. This eliminates the chance that any similar incident would recur in the future. It was also indicated that the President may submit a proclamation of this kind for review just once.

Regarding fundamental rights, the Emergency Provisions before the 44th Amendment contained another significant feature. Earlier, when the National Emergency is declared, all Fundamental Rights may be suspended. To varying degrees, the same was utilized during the 1975 Emergency. Since the 44th Amendment added Article 358 (1 A) to the Constitution, it is explicitly stated that Articles 20 and 21 cannot be suspended in any way. Furthermore, Article 19 won't be suspended until the Emergency was declared in response to "war" or "external aggression" rather than "armed rebellion."

Thus, our best guess at this point is that the Emergency provisions in place prior to the 44th Amendment were essentially unrestricted, and they were abused greatly during the Emergency of 1975.

#### **V. THE EMERGENCY OF 1975: BEFORE THE EMERGENCY**

On January 11, 1966, Lal Bahadur Shastri, India's second prime minister, passed away. After then, there was a significant structural shift inside the Congress Party. Kumaraswami Kamraj, the President of the Congress Party at the time, is widely regarded as the "King Maker" of Indian politics in the 1960s since he was instrumental in promoting both Shastri and Indira Gandhi to the position of Prime Minister of India. Ms. Gandhi was reportedly elevated to the prime ministership by Mr. Kamraj because he believed he could exploit and take advantage of her. On the other hand, the exact opposite occurred.

Due to its stronghold in Southern India, the Congress party secured a simple majority and 54% of the seats in the 1967 Indian general elections.<sup>1</sup> Additionally, it marked the first instance in which political parties other than the Congress Party were in control of at least nine states. Even though non-congress parties did gain power, they were quickly overthrown by instability, and Congress regained control in 1971.

At the AICC Meeting in Bangalore on January 13, 1969, this division within the Congress Party grew even more profound. The purpose of the gathering was to choose the future President of India after the passing of former President Dr. Zakir Hussain. Prominent leaders like P.N. Haksar expressed candidly during the discussion that Indira was a superior politician overall and had far greater empathy for people than Morarji Desai and S. Nijalingappa. Congress still chose to nominate Mr. Neelam Sanjeeva Reddy as their presidential candidate. But the "Nationalization of Banks" declaration was another significant one that was made the same day. Due to their lack of public service, it was announced that 14 of the nation's main banks would be nationalized. Morarji Desai objected to the action. However, as soon as the meeting was done, he was no longer the nation's Finance Minister and instead received an offer to continue as Deputy PM—a decision that was later hailed as a major political coup. The Banking Companies (Transfer and Acquisition) Ordinance was enacted on July 19, 1969. Ms. Gandhi carried out the decision even though the Congress Party was never in agreement to do so.

Four days prior to the presidential election, on August 16, 1969, there was still another significant surprise. Ms. Gandhi advised the participants to cast their votes for the candidate that their conscience demanded, ostensibly in reference to V.V. Giri, who ran independently for the presidency. It was evident that Ms Gandhi opposed Neelam Sanjeeva Reddy, the party's official candidate, winning the presidency. D.Subba Rao, a former chief justice of the Indian Supreme Court, was the opposition's candidate. On his side, S Nijalingappa encouraged the Jan Sangh Party and Swatantra to support Reddy. But V.V. Giri emerged victorious in the polls. It was evident that Indira Gandhi had declared war on the Congress and was acting very assertively in her capacity as prime minister.

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.

<sup>1</sup> Election Commission of India, Statistical Report on General Elections 1967 to the Fourth Lok Sabha Volume 1, [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).

Y.S. Chauhan was appointed the Home Minister in the new arrangement. In his capacity as Home Minister, he moved to abolish Privy Purses in the Lok Sabha on May 18, 1970. The Lok Sabha approved the same, but the Rajya Sabha was unable to approve it. As a result, an ordinance was issued in this respect. On December 11, 1970, the Apex court, however, ruled that the prohibition of privy purses was unconstitutional.<sup>2</sup>

1971 Elections were getting closer. However, concurrently, the Indo-Pak war began in December 1970. India conquered Pakistan in the war, rising for the first time against the superpower, the United States of America. After the war, Bangladesh became its own state, and Prime Minister Indira Gandhi was rightfully given credit for it. In addition, Indira's potent appeal to the populace and the well-known catchphrase "Garibi Hatao" helped her party win the 1971 elections. After the elections, Congress (R) secured a massive mandate of 352 seats, and Ms. Gandhi was re-elected as India's prime minister. With a pitiful 25 seats, the Communist Party was positioned next. Congress (Indira) quickly replaced Congress (R). Devkant Barua went to the extent of saying, "India is Indira, and Indira is India."

The 24th and 25th Constitutional Amendments, which Indira Gandhi introduced when she came to power, significantly altered the Constitution. The 24th Amendment was passed on November 5, 1971, and it gave the Parliament unlimited authority to amend the document. This marked a clear reversal of the Apex Court's decision in the 1967 case of I.C. Golaknath and others vs State of Punjab and others<sup>3</sup>, which held that amendments were laws and could therefore not violate any of the Fundamental Rights.

The 25th Amendment to the Constitution made it legal to declare 14 banks nationalized and to abolish the Privy Purse. Moreover, elections were scheduled for 1972 in the states of Gujarat, Rajasthan, Madhya Pradesh, Maharashtra, and Karnataka. But Indira also demanded early elections in the states of Punjab, Haryana, and Bihar. The elections were all won by Congress (I). By this point, Indira Gandhi had grown to be a very strong political figure. Then followed the case of Kesavananda Bharati vs. State of Kerala and others<sup>4</sup>, which turned the whole thing around. The lawsuit began by contesting two significant land reform laws that the Kerala government had passed, and it then tested the legality of the 25th, 26th, 29th, and 24th constitutional amendments. The case was heard by a 13-judge bench only once, on April 24, 1973. It was decided, narrowly (7:6), that the Indian Constitution's Basic Structure cannot be altered. At least up until this point, Indira Gandhi was unable to exert authority over the courts.

But when the decision was made the very next day, Justice S.M. Sikri, the Chief Justice of India, announced his retirement. Justice J.M. Shelton ought to have taken over as India's Chief Justice going forward due to his seniority. But Justice A.N. Ray was elevated to that position by Indira Gandhi, and she was able to do so because President V.V. Giri supposedly only allowed her to do so at Ms. Gandhi's request. Despite being elevated to the position, Justice Ray was inferior to three other Supreme Court justices. The three senior judges resigned in protest over this erroneous appointment. Prime Minister Indira Gandhi sought to undermine the judiciary's independence after seizing total control of the legislative and executive branches.<sup>5</sup>

Renowned liberation warrior Jai Prakash Narain addressed an open letter to every Member of Parliament on December 15, 1973. Another round of protests against the government started at this point.

## VI. CONCLUSION

Every June, the horrifying memories of the Emergency of 1975—truly one of the darkest periods in Indian democracy—resurface. According to several writers' historical analyses of the events leading up to Article 352 (1)'s declaration of emergency in 1975 and everything that happened after, India now acknowledges that a situation like this shouldn't happen again. The government of the day turned the Constitution into a toy. The Constitution was amended, and the most significant change was the 42nd amendment, also referred to as the Mini Constitution since it changed the core principles of the Indian Constitution and severely damaged the rule of law. 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

<sup>2</sup> AIR 1971 SC 530.

<sup>3</sup> AIR 1967 SC 1643.

<sup>4</sup> AIR 1973 SC 1461.

<sup>5</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-thakurkhehar>.

of the Emergency. The next government therefore had the onus of ensuring that no such happening recurs in India ever, and the 44th amendment was introduced thus. The 44th 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.

In conclusion, the provision should stay dormant in light of the potential for an emergency in the current circumstances. Of course, in cases when circumstances warrant it, an emergency declaration such as the one from 1975 should never be issued again since it would seriously undermine the foundational idea of constitutionalism that underpins Indian democracy. Additionally, many authors—some of whom have already been cited—agree that there is little chance that such carelessness will happen again because "media-activism" has gained traction in India and the voter is aware of its rights. Although overruled in *Minerva Mills*, voters will never tolerate such an extreme, as the Apex Court stated in *Bhuth Nath v. Union of India*<sup>6</sup>, citing on *Goldwater v. Carter*<sup>7</sup>. The topic of emergency and the President's satisfaction thereunder is a political one.

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<sup>6</sup>AIR 1974 SC 806

<sup>7</sup>444 US 996.