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DEMOCRACY AND EMERGENCY RULE IN INDIA: POLITICAL CHANGE UNDER MRS. GANDHI

The University of Oklahoma PH.D. 1980

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THE UNIVERSITY OF OKLAHOMA

GRADUATE COLLEGE

DEMOCRACY AND EMERGENCY RULE IN INDIA:

POLITICAL CHANGE UNDER MRS. GANDHI

A DISSERTATION

SUBMITTED TO THE GRADUATE FACULTY

in partial fulfillment of the requirements for the

degree of

DOCTOR OF PHILOSOPHY

BY

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Norman, Oklahoma

1980

DEMOCRACY AND EMERGENCY RULE IN INDIA

POLITICAL CHANGE UNDER MRS. GANDHI

APPROVED BY

DISSERTATION COMMITTEE

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INTRODUCTION

This is a study of political change - the Indian Emergency of June 1975 to March 1977. It examines the events that led up to the Emergency and the political and constitutional changes instituted under it. This examination should contribute to an understanding of the dilemma posed by the subversion of democratic political systems through ostensibly constitutional means.

All constitutional democracies recognize the need to circumscribe under conditions of crisis the functionings of democratic processes. Most democracies are designed to function in time of peace. In times of crisis democratic constitutional governments must be temporarily altered to whatever degree necessary to overcome peril and restore normal conditions. To this end, democratic governments arm themselves, under their constitutions, with extraordinary powers to deal with such threats to the security of the nation as could not be dealt with within the framework of normal democratic procedure. The institution of an emergency government with expanded powers is treated in the advanced democracies of the west as a temporary departure from normal democratic processes. Such governments are reconciled with constitutional democracy only because they are regimes established for the sole purpose of meeting genuine threats to the security of the nation, threats which could not otherwise be dealt with effectively; and most importantly they are acceptable only if there is a firm expectation that democratic conditions will be restored when the threat diminishes.

Currently, the concession of emergency powers to the executive is among the most abused of all democratic constitutional provisions. This is particularly so in the developing nations. In these nations, emergencies are declared with such frequency that they are more often the norm than the exception, and democratic rule is displaced by authoritarian rule. Emergencies are invoked not just when the security of the nation is jeopardized but, even more frequently, when the authority of the rulers is challenged. As, the Inter-American Commission on Human Rights has asserted in its study of the "State of Siege" on Latin America, such a state is most often invoked on the pretext of a threat to the security of the nation when, in fact, the threat amounts to no more than a challenge to the personal power of those in office. [1]

The Indian Constitution, like those of other democracies, provides for the assumption of authoritarian powers by the government under such crisis conditions as war, external aggression and internal disturbances. When such crises arise, normal democratic procedures may be suspended by a declaration of emergency. The most recent occasion when an emergency was declared was on June 25, 1975. Citing internal disturbances as threats to the security of the nation, the President of India, Dr. Fakhruddin Ali Ahmad, acting on the advice and recommendation of the Prime Minister, Mrs. Indira Gandhi, declared a state of emergency.

During the 21 months the Emergency lasted, several changes were made to the Indian political system that sanctioned a fundamental shift away from democratic institutions and processes and toward authoritarianism.

The emergence of authoritarian rule in India, and particularly the ease with which it was imposed and maintained, raise disturbing questions about the vulnerability of democracy to subversion by those brought to power by democratic means. This study seeks answers to these questions by an examination of the Indian Emergency in terms of the events, institutions and processes that spawned and sustained it.

The case study method was selected because the author is convinced that a detailed examination of those factors that impaired the functioning of democracy in India would illuminate the larger issue of the fragility of democracy in emerging nations.

The Indian example is noteworthy for several reasons. First, it is perhaps the only known instance in which authoritarian rule was ended through the unlikely means of democratic elections. In late January 1977, Mrs. Gandhi dissolved the Lok Sabha, the Lower House of the Indian Parliament, and called for General Elections to be held in March. The victory she fully expected would have conferred political legitimacy on her autocratic regime and thereby strengthened it. But the Opposition succeeded in portraying the electoral confrontation as a referendum on "dictatorship versus democracy" and the public which had appeared on the surface to have accepted the Emergency, if not with enthusiasm, at least with equanimity, opted for democracy and dealt Mrs. Gandhi and her Congress Party a crushing defeat.

The victory by the Opposition paved the way for the restoration of democracy in India. With democratic rule reestablished, the new government set up a Commission of Inquiry, headed by J. C. Shah, a former Chief

Justice of India to look into the

> "Subversion of lawful processes and well established conventions, administrative procedures and practices, abuse of authority, misuse of powers, excesses and/or malpractices committed during the period when the Proclamation of Emergency made on the 25th June 1975 under Article 352 of the Constitution was in force or in days immediately preceding the said proclamation." 2

The report of the Commission provides detailed data on many of the actions of the Emergency government of Mrs. Gandhi. It is unlikely that such well documented information relating to emergency rule in other developing nations will be available.

The second reason the Emergency is especially noteworthy is that until the Emergency, India was an open polity with a free and lively press. There is abundant research material regarding the nature and conditions of Indian democracy prior to the institution of the 1975 Emergency.

Third, the problems of Indian democracy are similar to those which face democracies in other emerging nations. These include extreme poverty, low level of education, high birth rate, divisive plural tendencies, uninformed public opinion, absence of effective opposition to government and pervasive corruption. In differing degrees all developing nations share all or most of these problems. Their role in influencing the course of democracy in India has relevance to the prospects of democracy elsewhere.

Finally, the strengths of Indian democracy are also worthy of our attention. For years, against all odds, Indian democracy had seemed to survive while elsewhere most other post war democracies of Asia and Africa collapsed. The termination of the Emergency is itself evidence of its strength.

The study posits the following theses:

(1) that the Indian political system, as envisaged by the Constitution at the time of independence, in 1947, was a constitutional democracy;

(2) that the Emergency of 1975 was the logical and inevitable culmination of a trend towards personalization of power that had become pervasive under Mrs. Gandhi, particularly since the V General Elections of 1971; and

(3) that the Emergency witnessed a systematic perversion of the fundamental principles of constitutional democracy leading to the institutionalization of an authoritarian government in place of the democratic system adopted at independence.

It is not possible in a study of this nature to abide strictly by any single conceptual framework or model frequently employed in the field of comparative politics. As Rajni Kothari, a leading Indian political scientist pointed out in 1977,

> "Thanks largely to a series of illfated moves over the last ten years, politics in India has been transformed from a conscious act of intervention in the historical process, informed by a set of values, into a game in which power became an end in itself. During this period the political system progressively lost its institutional moorings and sensitivity to the larger social reality. It gradually became the playground of a few individuals whose number kept shrinking and whose capacity to monitor people and events and to implement policies at various levels progressively diminished....." 3

The major focii of this study are power and political institutions, within the constitutional framework of democracy. These focii are, of course, traditional to political science, but their treatment in this study illuminate not merely the existing structure of political institutions within a particular constitutional order but the process of political change, involved in the realignment of power relations among such institutions. While seeking answers to the central problem of the replacement of democracy by authoritarianism, the study will examine briefly the nature of the Indian socio-economic and constitutional frameworks and evaluate the political institutions and processes adopted at the time of independence for achieving the democratic ideals of freedom, equality and justice.

The study consists of four parts.

Chapter One deals with the general topic of Indian democracy. At the time of Indian independence, in 1947, India faced a host of problems inimical to the successful functioning of democracy - mass poverty, widespread illiteracy, a barely viable economy, a rigidly stratified social structure and divisive plural tendencies. The Indian democratic dilemma was to find ways and means to achieve rapid social and economic progress without sacrificing the democratic institutions and processes she had adopted under her constitution. These institutions and processes were inspired by the Western liberal tradition India had been exposed to through her most recent educational and political experience under the British; however, in the historical perspective, they were, by and large, alien to her political and social traditions. The major portion of this chapter

is devoted to the discussion of the basic structure of the Indian democratic system - in particular, those features which were radically transformed by Mrs. Gandhi. These include the separation of power among the branches of the government, judicial review and the guarantee of the fundamental rights of the individuals. Those fundamental rights most adversely affected by the Emergency were the right to liberty, the freedom of speech and expression (including the freedom of the press) and the right to constitutional redress against legislative and executive excesses. An examination of these features is crucial to an understanding of the Emergency if the Emergency is viewed, as it is in this study, not merely as a temporary crisis government but as an attempt at institutionalization of a process of political change - from democracy to authoritarianism.

Chapter Two moves from the general to the particular. The focus is on the aggrandizement of power by Mrs. Gandhi. In some respects, this is the pivotal chapter of the study, because it highlights the process of political change that ultimately culminated in the Emergency. This chapter examines the transformation of the Congress Party, particularly the nature of its leadership, the erosion of the autonomy of local and state political machinery leading to the concentration of decision making at the centre, the breakdown of the Indian tradition of consensual politics, the emergence of a radical idiom in politics, the growth of repressive legislation and legislation to alter the balance of power among political institutions, the personalization of power by Mrs. Gandhi and the public's loss of faith in the Government's ability to solve problems. These changes combined with

the frequent resort to coercive power both by the Government and the Opposition were the factors that led inexorably to the proclamation of emergency on June 25, 1975.

Chapter Three focuses on the actions of the emergency regime. The Emergency was a period during which individual liberties were repressed, freedom of the press destroyed, judicial review delimited and rule of law denied. A series of hastily drafted bills and constitutional amendments lent "legality" to the measures that sought to institutionalize authoritarian rule in India. Massive coercive powers of the State were manifest everywhere, especially in the implementation of the sterilization program of family planning under which more than eight million people were sterilized in one year, many involuntarily, and in the arrests of tens of thousands of political opponents of the government. The arbitrariness of State power found its clearest expression in the Attorney General's declaration to the Supreme Court that "if a man is taken to prison today and he is told he will be hanged the day after, even in such a case, during the emergency, the courts cannot do anything." [4] This chapter will critically evaluate the actions of the emergency regime that institutionalized authoritarian norms and procedures in Indian politics.

Chapter Four sums up the significance of the Indian Emergency and offers specific recommendations for the political system so that similar crises could be avoided in future.

I should add a personal note concerning my interest in this topic and my initial research into it. My interest in evaluating the emergency rule in India was aroused primarily because of my presence there at the time of the Proclamation. During the four months of my stay there, I witnessed the tame and tragic transformation of a once vibrant, though unruly, democracy into what a Wall Street Journal article referred to "as the World's largest banana republic." [5] As the oppressive emergency rule took hold with relative ease, it seemed to me, as it did to most observers in those days, that Indian democracy could never recover from the blow Mrs. Gandhi had dealt it. It was natural under the circumstances that I would want to explore the decline and fall of democracy in India. I am grateful to my dissertation Committee and especially to Dr. Stephen Sloan, its chairman, for the active encouragement I received from them regarding my decision to study the Emergency.

The Study draws on a lifetime familiarity with the Indian society and the political system it has supported since independence in 1947. Over the years, I have had the opportunity to meet with and discuss political and administrative matters with all classes of Indians - from Ministers, politicians and senior administrators to the impoverished laborer, obsessed only with survival. Even in the immediate aftermath of the proclamation of the Emergency when the mood in India was, as the New York Times put it, one of "caution and fear," [6] I was able to discuss the implications of the Emergency with various individuals among whom were the senior public servants entrusted with the task of enforcing the draconian emergency measures. These discussions were inevitably off-the-

record and informal, - not interviews in the traditional sense of the word. They were most valuable to me since, at a time when rigid censorship hid it from public view, I was made aware of the abuses of authority by the government. It was only because of my knowledge of the manner in which power was exercised both during and before the Emergency, that I saw what was happening not as a brief and benevolent dictatorship but as the systematic denigration of democratic processes. It helped me to maintain perspective, enabling me to perceive that the causes of the Emergency lay not just in the events immediately antecedent to the declaration of the Emergency but that they stretched back to Mrs. Gandhi's accession to undisputed leadership of both the Party and Government. I have chosen not to identify the many invaluable sources of much of my personal information about the Emergency. I have, instead, cited published material regarding similar or in some cases the same incident.

Finally, some comments on the other source materials I have found most useful for this study. For the political events that are discussed in this study I have depended heavily on newspaper reporting. The Indian newspapers provide reliable information on the events leading up to the Emergency. However, because of the censorship imposed on Indian newspapers following the declaration of Emergency, for information on events in India, during the Emergency, the British journalistic reports, the Indian Opposition and underground newsletters and, until they were silenced, a few Indian journals, offer dependable coverage. From late January 1977, when censorship in India was partially lifted to accomodate the forthcoming Elections in March, and especially after all censorship was ended

with Mrs. Gandhi's defeat at the polls and the lifting of the Emergency, the Indian newspapers again provide substantive information, not just government propaganda. A list of newspapers, scholarly journals, party periodicals and journals of news and opinion which I found most informative and useful is provided in the Bibliography.

The most detailed and documented data on the attempted institutionalization of the authoritarian emergency regime and the abuses of power that it engendered, come from the report of the Commission of Inquiry set up by the post Emergency Janata Government and headed by former Chief Justice J. C. Shah to look into the abuses of power by the Emergency government. The availability of these data is what makes the discussion of the actions of the Indian Emergency particularly convincing.

NOTES: INTRODUCTION

1. See Protection of Human Rights in Face of the Suspension of Guarantees or a State of Siege (Washington, D. C.: Inter-American Commission on Human Rights, 1964).

2. Government of India, Ministry of Home Affairs, Shah Commission of Inquiry, 3 Vols. (1978) 1:1.

3. Rajni Kothari, "Retrospect and Prospect," Seminar 212 (April 1977), p. 12.

4. Financial Express, 15 December 1975.

5. Wall Street Journal, 17 July 1975.

6. New York Times, 16 July 1975.

CHAPTER I

DEMOCRACY IN INDIA

On June 26, 1975 a state of emergency was imposed on India. Acting under Article 352 of the Indian Constitution, the President issued the following proclamation [1]:

> In exercise of the powers conferred by Clause One, Article 352 of the Constitution, I, Fakhruddin Ali Ahmed, President of India, by this proclamation declare that a grave emergency exists, whereby the security of India is threatened by internal disturbances.

Clause One, Article 352 states [2]

> If the President is satisfied that a grave emergency exists whereby the security of India or of any part of the territory thereof is threatened whether by war or external aggression or internal disturbance, he may by proclamation, make a declaration to that effect.

This state of emergency was the first of its kind to have been imposed on India since she gained independence in 1947. Twice before, in 1962 and 1971, states of emergency had been proclaimed, but on both these occasions the objective had been to meet threats to the nation's security from external aggression. As a matter of fact, the state of emergency declared in 1971 during the Bangladesh crisis was still in force when the 1975 Emergency was declared.

The proclamation of the Emergency was preceded by the predawn arrests of hundreds of opposition leaders and a power cut which stopped the presses of Delhi's most prominent newspapers. In a brief broadcast to the nation

immediately following the president's proclamation of the Emergency, Mrs. Gandhi explained that the Emergency had been declared to meet internal disorders threatening the security of the nation. She referred to "a deep and widespread conspiracy" by the opposition to create country-wide disturbances, including large-scale violence, "new programs that challenged law and order" and incitement to the military and police by "certain persons." [3] By afternoon, new press guidelines were issued which barred the publication of all unauthorized, irresponsible or demoralising news items, anything "likely to bring into hatred or contempt or excite disaffection towards the government, and any attempt at denigrating the institution of the Prime Minister." Further, all news items relating to internal developments were to be passed by the government censor and newspapers were obligated not to publish any reports or comments on the Emergency, arrests, deployment of police or army, meetings, reactions, etc. [4]

Under the Emergency, basic individual freedoms of speech and expression, assembly, association, domicile, travel, etc. were suspended as was the citizens' right to move any court of law for the enforcement of fundamental rights, such as those guaranteeing equal protection under the law, freedom from arbitrary arrest and detention, and the protection of life and personal liberty.[5] A new ordinance, promulgated on June 30, reduced further the structure of civil liberties by removing a prisoner's right to be informed of the grounds of his detention under the Maintenance of Internal Security Act, and by stipulating that detainees could be incarcerated without trial for up to 12 months provided all such cases were reviewed every four months.[6]

By the end of the week, 26 organizations of both left and right had been banned, in what was described as a bid to curb the activities of communal and political groups that believed in the cult of violence. Reliable estimates put the number of those arrested during that week at around 5,000 [7] and soon, with the rigid censorship in operation, the press was all but reduced to putting out government handouts on the far reaching economic and social reforms being announced daily by the emergency regime.

Although many of the opposition leaders were in jail, within the month, both Houses of parliament were called into session to ratify the emergency declaration as required under the Constitution. Both Houses first voted to suspend, in view of the emergency, the relevant rules of procedure and transact only government business. [8] The proclamation was the very first issue taken up for consideration. Enabled by the unprecedented majority it enjoyed in Parliament, the ruling Congress Party voted overwhelmingly to approve the emergency declaration, whereupon the leaderless opposition parties, protesting the suspension of parliamentary rules and the censorship of the news accounts of the parliamentary proceedings, walked out in a boycott of the session. Parliament then passed with little discussion or opposition a sweeping economic program requested by the government. It also enacted amendments to several statutes and to the Constitution all aimed at institutionalizing the emergency rule.

There was little immediate resistance to the imposition of emergency rule in India. "Hardly a cheep of dissent breaks the silence" the Manchester Guardian Weekly had declared, on September 27, of the reaction to the

Emergency. To the masses, living below the subsistence level and concerned but with survival, the Emergency, at first, was an irrelevant abstraction they did not fully comprehend. The arrests of political leaders they knew little about or the censorship of newspapers they could not read would appear to have been of no immediate moment to them. Similarly, the abridgement of civil liberties meant little to them since they had never really enjoyed their benefits to the extent that the affluent, the educated and the more politically conscious Indians had. The latter, while not wholly satisfied with the administration's justification for the Emergency or the changes being initiated under it did realize the justice of the government's claim that the steps taken in connection with Emergency were permitted by the Constitution. K. Brahmananda Reddy, the Home Minister, emphasized this in his address to the opening session of the parliament, in July, when he said that the emergency provisions of the Indian Constitution were intended to face, within the framework of the Constitution, the threat to the working of the Constitution. The declaration of the Emergency was, therefore, functionally, a perfectly constitutional act which involved no detraction from the allegiance one owed to the Constitution. [9] Mrs. Gandhi, too, defended the Emergency in the Lok Sabha on July 22, as not only within the constitutional framework, but as action "undertaken not to destroy the Constitution, but to preserve the Constitution, preserve the Parliament and to preserve democracy." [10]

As stated earlier, the Indian Constitution does provide for the institution of an emergency government with expanded powers to meet conditions

of crisis. There is also general agreement that there was, indeed, pervasive social, economic and political unrest in India on the eve of the Emergency. The political situation, in particular, was volatile with the Prime Minister of the country on the verge of being removed from office for electoral offences. Whether the overall situation was of such crisis proportions as to justify the imposition of a state of emergency is however, an open question which is outside the scope of this study. But even if we were to concede that the declaration of the Emergency was not only permitted under the law, but also necessary to prevent major political disorder, in light of what ensued, it still cannot be viewed as an attempt at the preservation of the constitutional order. The basic theme of this study is that, under Mrs. Gandhi, the Indian political system was transformed from a basically democratic one to a predominantly authoritarian one and that this process of political change intensified during the Emergency. That this transformation was achieved, for the most part, through statutes and constitutional amendments and, therefore, "legal", in a formal sense, still does not attenuate the adoption of such measures as which amounted to violations of, if not the letter of the law, certainly the intent and spirit of constitutional democracy embodied in the Indian Constitution. However, before there can be a meaningful discussion of the process of transformation of the Indian political system under Mrs. Gandhi it is necessary to arrive at an understanding of the nature of Indian democracy and its constitutional framework. Such an examination is undertaken in this chapter.

The Background

India, like most non-Western nations that achieved independence following World War II became a democracy primarily through the expedient of introducing democratic political institutions without having undergone the requisite democratic transformation in the social and cultural outlook of her people. The Constitution with its commitment to democratic ideals of liberty and equality was construed as the instrument for the transformation of society into a democratic one. It was not, as many of its Western counterparts were, the result of a protracted struggle for liberty and equality on the part of the masses. The democracy that India achieved at independence was therefore a democracy imposed from above. The liberty that had concerned her during the struggle for independence was primarily liberation from foreign domination rather than the liberty of the individual. As for the notion of equality as understood in democratic thought, it was alien to her social tradition, based as it was on the caste system which not only did not discourage inequality but, indeed, provided religious sanction to the basic inequality of individuals. Until her recent exposure to and experience with democracy, the Indian political tradition was largely authoritarian, contrary to the claims that have been made on behalf of the supposedly strong democratic traditions that prevailed in the "Village Republics" of ancient India. [11]

From the time Sir Henry Maine's "Village Communities of the East and West" appeared in 1871, the theory of a harmonious Indian village community that owned and cultivated land in common exercised the imagination of many students of Indian culture and tradition. Other writers

following Maine's lead made even greater claims on behalf of the ancient Indian villages and wrote of the spirit of cooperation, consensus and even democracy that was said to have characterized these village "republics." [12] As self-sufficient units, many of these villages did withstand the vicissitudes of time and provided stability to the social structure; but they were far from the vigorous democratic units they were asserted to be. Professor A. S. Altekar, a leading Indian anthropologist, in his study of the history of village communities in India has cautioned against exalting the villages of old as preeminently democratic:

> History shows us that our village communities were never in historic times republics...In the Vedic times it appears probable enough that each village community was an independent republic, but throughout the historical period the community was always subordinate to and constituent of larger political units.
>
> The word republic again is very unfortunate. It conveys notions of democracy, or equal rights, of general election and so on. Nothing of the kind took place in our villages. There was no idea of equality. We in modern times should never forget that democratic notions were never prevalent in our village communities. 13

All available data on these so-called republics indicates that except perhaps in an unrecorded golden age they were little more than tribal oligarchies. The Buddhist literature refers to 7,707 kings within the Lichchavi republican assembly (Gana) who, according to Altekar, were the descendants of the first Kshatriya settlers who founded the republic. The non-Kshatriyas merely carried out the orders of the aristocratic decision makers. The Youdheyas, Sakyas and Koliyas, other alleged

republics, were similar oligarchies. Participation in the political process was restricted to those who met various conditions of eligibility. Among the Youdheyas, for instance, only those who presented an elephant to the state were qualified to participate in the affairs of the state. [14]

Far from supporting a democratic tradition, the Indian ideal was monarchical. Early Indian literature abounds with references to the kingless state as a state without notions of law, justice, or duty. Hindu political theory took a Hobbesian view of human nature, which was expressed rather graphically by the doctrine of Matsya-Nyaya - the principle that the stronger fish devours the weaker. It was generally agreed that society would be helpless and incapable of progress unless it had at its helm a king who possessed the power of danda - coercive sanction (literally meaning the rod of punishment). Sircar observes that danda, as interpreted by the mythical sage Manu, is "obviously the very principle of omnipotence, comparable to the majestas of Bodin or the Summa potestas ... of Grotius ... it is absolute with jurisdiction over all, uncontrolled by any entity..." [15]

The wielder of danda was the king. He was entrusted with the protection of the subjects and the preservation of law. Because he stood between society and its destruction he was treated with great deference. The Ramayana describes a kingdom without a king as a forest without pasture, a river without water and cattle without a cowherd. In the sixth century A.D., Kautilya in his Arthasastra, the great Indian treatise on statecraft, extolled the merit of sovereignty and upheld Rajniti - or reason of state - as the highest value. Autocratic government would seem

to be the only type that has existed in the Indian historical perspective. As Malcolm Hause has pointed out

> "...The basic principle of power in early India was authoritarianism - a concept that was unquestionably accepted to the Buddhist doctrine of status quo, to the Hindu's cyclical concept of history, to the Muslim theory of stable authoritarian rule, and to the Brahman philosophy of moral validity in the acceptance of one's station in life. The orthodox tradition in regard to leadership was the acceptance of authority... There was no concept of freedom of the individual nor of his inalienable rights - the popular theme of Western political thinkers..." 16

Whatever rights the individual possessed was related to the performance of caste obligations. [17] Also, the Hindu polity did not postulate an institutional relationship between the ruler and his subjects. The only bond between them was the paternal feeling which the ruler had towards his subjects and the filial affection and regard which they had for him. [18]

The political authoritarianism of Hindu India continued through the Muslim period into the British. The three centuries of Mughal rule that preceded the British period in India has been described by the English historian Vincent Smith as "an absolute despotism tempered by rebellion and assasination." [19] The British, for their part, pursued a highly centralized system of administration and in their assertion of absolute power kept alive the tradition of authoritarian rule in India. Further, aside from suppressing the very worst abuses of Hindu India, the British, by and large, left undisturbed the socio-cultural and religious traditions of India. Nor were the Indian subjects of the British Raj granted the

political and constitutional rights that Englishmen possessed. By late nineteenth century, however, as the British Civil Service in India was opened up to the Indians and as increasing number of Indians travelled to England for their education, the British political tradition of liberal democracy entered the mainstream of political thought in India. Furthermore, the Indian National Congress founded in 1885, which subsequently became the leading proponent of Indian independence was for years dominated by English-educated Indian liberals whose system of values in the political realm was conditioned by their exposure to and admiration of Western democratic institutions. [20] Not surprisingly, it was therefore to the West that India looked for inspiration in her adoption of a democratic political system.

In the West, most democratic movements had arisen historically in reaction to the absolutism of the monarch and as such, the democratic constitutions these movements inspired provided for limitations on the arbitrary exercise of executive power. The Indian Constitution too provided for similar restraints against unlimited state power. Of these the most important were the constitutional guarantee of certain rights of the individual, the protection of the rights by an independent judiciary and the accountability of the rulers to the ruled. In short, it was a system of constitutionalism or limited government that was embodied in the Indian Constitution at the time of its adoption and that which Mrs. Gandhi sought to transform.

Stanley de Smith, the English scholar in his work on the constitutions of the new states within the Commonwealth, has aptly described

constitutionalism thus:

> "A contemporary liberal democrat, if asked to lay down a set of minimum standards, may be very willing to concede that constitutionalism is practised in a country where the government is genuinely accountable to an entity or organ distinct from itself, where elections are freely held on a wide franchise at frequent intervals, where political groups are free to organize in opposition to the government in office, and where there are effective legal guarantees of fundamental civil liberties enforced by an independent judiciary; and he may not easily be persuaded to identify constitutionalism in a country where any of these conditions is lacking." 21

The political system India adopted in 1947 possessed all the distinguishing characteristics of constitutional democracy that de Smith enumerates. The government was accountable to the governed; there was provision for free, fair and periodic elections based on universal adult franchise; political opposition was allowed to exist and to function freely; there was constitutional recognition and guarantee of the fundamental rights of the citizen; and finally there was an independent judiciary that safeguarded these rights.

Since the essence of constitutional democracy was the creation of bulwarks against tyranny, only under extreme conditions of crisis were the restraints on state power allowed to be suspended under such a system -- and then, only for the duration of the crisis. [22]

It has been contended, particularly by authoritarian rulers in developing nations, that the task of national integration and economic modernization constitutes a continuing crisis warranting suspension of limitations on executive power and the assumption of dictatorial powers

by the government. [23] The resulting regimes are justified as "basic democracies," "tutelary democracies," "guided democracies" etc., on the grounds that they help create conditions conducive to the evolution of full and genuine democracy. These conditions have been cited as higher standard of living, mass education, substantial middle class, industrialization and urbanization. [24]

The problems that India faced at independence were enormous. None of the conditions considered necessary for the successful functioning of democracy prevailed. To start with, the geographic entity that was to be the Indian Union had never in its history been unified under a common sovereignty nor did it share a common history. The sole common factor, in the past, had been the Hindu religion of the majority of the people and in later years the British administrative system that spanned the land. At the time of India's transition from "Empire to Nation," [25] there were, in the subcontinent that was to be partitioned into India and Pakistan, 562 Princely States that acknowledged British Paramountcy but were not subject to British rule. Only the nine Governor's Provinces, covering fifty-six percent of the total land area was directly under the British crown. Understandably, the very first task the Indian nation faced was, to put it tritely, to create the Indian nation. [26] This task was not made any easier by the partition of the subcontinent into India and Pakistan on communal grounds. The partition unleashed a tragedy of immeasurable proportions. Up to a million are estimated to have lost their lives and at least another ten million been made homeless as Hindus and Muslims fled across the borders to escape the terrible massacre -- the Hindus to India and the Muslims to Pakistan.

The other demons attending the birth of democracy in India may be summarized as follows: widespread poverty with one of the lowest per capita incomes in the world; illiteracy rate of 84% for the total population; barely viable agriculture and industry; a rigidly stratified social structure with hundreds of castes, and some fifty-five million "untouchables"; great diversity of ethnic and cultural types of people speaking fifteen different major languages and some 800 other languages or dialects; inadequate transportation and communication systems; inexperienced political leadership; an administrative structure oriented to tax collection, police and other regulatory tasks and a rapidly increasing birth rate. [27]

In light of the conditions that prevailed in India at the time of Independence, the problems she faced in her choice of a democratic path towards development were many. She had to find ways and means to achieve rapid economic and social progress without sacrificing democratic institutions and processes; to promote national integrity without having to create an allpowerful center; and to preserve social and cultural diversity while encouraging political unity. [28]

As the process of "modernization" [29] proceeded, India, like other devloping nations, was exposed to what Eqbal Ahmad has referred to as "a triple dislocation - political, social and economic - in telescoped time. "

> Politically, this dislocation is marked by the erosion of traditional authority, an increasing search for freedom from domination...by the gradual rise to political consciousness of a hitherto complacement and atomized peasantry, by their hook-up with modern, ideological counter elites,

> and their growing, collective expectation of justice, opportunity, and participation in national life. Socially, it is characterized by the emergence of new classes...and by cleavages of world views.... Among its economic manifestations is the demand not only for rapid, balanced economic development, but also for the equal distribution of wealth; and for the distribution of austerity where there is not enough wealth to distribute.
>
> In ideological terms, the triangular character of this revolution is indicated by simultaneous appeal of nationalism, populism and socialism - movements which were historically separate and, at first, even mutually exclusive in Europe. 30

The Constitutional Framework

The subject of what features are basic to the Indian constitutional system was raised and argued extensively in 1973, in the landmark case, H. H. Kesavananda Bharati vs. State of Kerala. [31] The central issue in this case was the scope of Parliament's power to amend the constitution, particularly as it pertained to the amendment of the provisions of Fundamental Rights. The case was a sequel to an earlier case, I. C. Golaknath and others vs. the State of Punjab. In the Golaknath case the Supreme Court had, in 1967, denied Parliament the right to amend Fundamental Rights except within the limits established by the Constitution. Thereupon, Parliament, in an attempt to reverse the effects of the Golaknath decision enacted certain amendments to the constitution which had the effect of curtailing judicial review, reducing the scope of Fundamental Rights and of declaring that "notwithstanding anything in this Constitution, Parliament may in exercise of its constituent power amend by way of addition, variation or repeal, any provision of this Constitution..." [32] During the Bharati hearings which took up 68 days, the major themes of Indian

democracy were all explored: the limitations on Parliament; the scope of judicial review; the amendability of the constitution and the nature of Fundamental Rights. The judges unanimously conceded to the Parliament the right it claimed to amend any article of the Constitution. However, a narrow majority qualified this general power of the Parliament to amend the Constitution by holding that such amendment may not affect the "basic structure" of the Constitutional framework.

There was no unanimity as to what this "basic structure" was. However, a majority of justices were willing to acknowledge the primacy of certain features over others even when they differed on the extent of Parliament's power to modify those features. Among the features considered most distinctive were: supremacy of the constitution; republican and democratic form of government; secular and federal character of the government; separation of powers between the legislature, the executive and the judiciary; and the fundamental rights and directive principles of state policy directed towards the attainment of a welfare state. [33]

The Indian political system was, under the Constitution, a secular republic. The government, itself a creature of the Constitution, was made representative and responsible. Representatives to the Union parliament and the state legislatures were expected to be elected in free and fair elections based on the principles of proportional representation and universal adult franchise, to be held at intervals not to exceed five years. [34] The three major limitations on powers of the government were: (1) division of power between the centre and the states and between the executive, the legislature and the judiciary; (2) guarantee of the funda-

mental rights of the citizens; and (3) judicial review. As this study discusses in detail, in a later section, there was, during Mrs. Gandhi's tenure as Prime Minister and in particular during the 1975 Emergency, a systematic denigration of many features of Indian democracy, especially the limitations imposed by the Constitution on the arbitrary and unaccountable exercise of power by the Government.

The principle of federalism governed the relations between the Union and the States and it mandated the allocation of law making powers among them. Three lists of subjects spelt out such division of power: The Union List contained entries with respect to which the Center was granted exclusive power to legislate; the States List enumerated the subjects for exclusive legislation by the states, and the concurrent List identified subjects marked for legislation by both the Center and the States. [35]

Union power of legislation extended over such matters as defence, foreign affairs, currency, taxation, foreign and interstate trade and commerce, incorporation of trading companies, banking and insurance, mines, industries and major sections of the communications industry, certain aspects of national health and education, and a limited number of educational institutions. The states legislated exclusively in certain vital areas such as agriculture and irrigation, maintenance of law and order, most aspects of health and education and with respect to roads, waterways and intrastate trade and commerce. The concurrent List contained subjects such as general laws, public welfare, labor matters, trade monopolies, regulation of essential commodities and economic and

social planning. These were areas in which states could legislate to the extent the Center had not enacted statutes in the interest of uniformity.

Over the years, the powers at the disposal of the states had shrunk vis-a-vis the center as the roles of the central administrative services, the Planning Commission and the Finance Commission had expanded and taken over responsibilities formerly theirs. [36]

In addition to the division of powers between the center and the states, a further separation of powers existed between the three branches of government -- the legislature, the executive and the judiciary, entrusted, respectively, with the task of enacting, implementing and interpreting the law of the land. A system of checks and balances was formulated with the objective of preventing any one branch from becoming too powerful. Under this system, the President was the constitutional head of state and as such, enjoyed executive immunity and was not answerable to any court. [37] In the exercise of his functions, he was aided and advised by a Council of Ministers, headed by the Prime Minister. [38] As the head of state, the President possessed in theory vast powers, since all actions by the executive were performed in his name. In reality, however, executive power was wielded by the Prime Minister who was the head of government and the Council of Ministers. Only under conditions of extreme crisis when normal functioning of government was impossible did there exist the possibility of the President exercising real as against merely ceremonial power. Legislative control over the executive

even extended to impeachment of the President for abuse of office. [39] The Prime Minister and the cabinet were collectively responsible to the legislature which was ultimately responsible to the people who were expected to exercise control over their representatives through their ballot power. Legislative actions, however, were subject to judicial review when their constitutionality was challenged. [40] But though the judiciary could void legislative and even executive acts for violating constitutional provisions, Parliament possessed under Article 368 the power to amend the constitution itself. Through such amendments, judicial verdicts could be effectively nullified. The power of amendment of the Constitution was one of the most grossly abused powers during the Emergency and Mrs. Gandhi resorted to it frequently to circumvent and even curb the power of the judiciary. The judiciary, as established by the Constitution, was fully independent and even though the justices of the Supreme Court and the high courts were appointed by the president, until Mrs. Gandhi's time there had been no attempt to politicize the selection process. [41]

The Indian Constitution recognized the exercise of extraordinary powers by the executive under the following circumstances: emergency due to war, external aggression or internal disturbances; emergency due to the failure of constitutional machinery in the states; and financial emergency whereby the financial stability of India is threatened.

Article 352 of the Constitution empowers the President to proclaim a state of emergency if he is satisfied that a grave emergency exists

whereby the security of India is threatened by war, external aggression or internal disturbance (clause 1). He may do so even before acts of aggression or disturbance occur if he is satisfied there is imminent danger of such occurences (clause 3). A proclamation of emergency may be revoked by a subsequent proclamation, and, unless it is laid before and approved by both Houses of Parliament within two months, it ceases to be effective (clause 2).

A declaration of emergency in India removes the checks and balances of the federal system of limited government and virtually transforms it into a unitary one. The expansion of Union power may occur in several ways:

(a) The Union Executive may give directions to any state as to the manner in which the executive power of that state is to be exercised (Article 353 (a)).

(b) The Union Parliament may legislate on subjects which in normal times are the exclusive domain of the states (Article 353 (b)).

(c) The Parliament may through legislation confer upon the Union Executive such power and impose upon it such duties as it deems essential to carry out the extended Union responsibilities vis-a-vis the states (Article 353 (b)).

(d) The President may modify the constitutional provisions governing the allocation of revenues between the Union and the states (Article 354).

(e) The Parliament may prolong its normal life for a period not exceeding one year at a time and not extending in any case beyond a

period of six months after the proclamation has ceased to operate (Article 83 (2)).

(f) The constitutional guarantees of individual rights of freedom of speech, association, assembly, rights of property, etc., are withdrawn and the State, including legislative, executive and local authorities, may while the emergency lasts abrogate or impair these rights (Article 358).

(g) The President may suspend by executive order the rights of citizens to move the courts for the enforcement of the Fundamental Rights enumerated in Part III of the Constitution (Article 359 (1)). Any such Presidential order would have to be placed "as soon as may be, after it is made" before each House of Parliament for approval (Article 359 (3)).

What constitutes an emergency is left undefined. All the Constitution says is that the President must be satisfied that such a situation exists. This is a peculiarly subjective criterion, and even if it is conceded that no constitution can anticipate the various kinds of crises that may beset a nation, it still needs to be emphasized that the broad discretion granted to the Executive under the Indian Constitution in determining when an emergency exists leaves great scope for abuse. Presidential satisfaction had hitherto been treated in practice as final on the point. But a Constitutional amendment passed during the Emergency now lends legal sanction to this practice by placing the subject of presidential satisfaction beyond judicial scrutiny once and for all. [42]

It is true that all executive ordinances have to be approved by the Parliament and that a proclamation of emergency becomes ineffective unless ratified by Parliament within two months, but even this requirement affords little protection if the ruling party enjoys a dominant majority in the Parliament, as the Congress Party did in India.

The Constitution also says little about the termination of a state of emergency beyond that it may be revoked or that it might become inoperative unless approved by Parliament. Presumably there is nothing in the Constitution barring a ruling party from prolonging an emergency indefinitely. The attractiveness of this disturbing possibility to the ruling party is enhanced by the power granted to Parliament to extend its life throughout a declared emergency; thus elections could be postponed indefinitely -- or avoided entirely. The two previous emergencies together lasted for over nine years. The first emergency was declared October 10, 1962, in the wake of the Chinese attack on India, and not lifted until January 6, 1968. The second one, declared December 3, 1971, during the Indo-Pakistan hostilities over the Bangladesh war of secession was operative along with the third one, declared on June 26, 1975. While it is to the credit of the Indian leaders and the Congress Party that the exercise of extraordinary emergency powers by the Union Executive had been kept to a minimum, at least until the latest emergency, the danger nonetheless persists that under different leaders such powers could be grossly abused.

It is almost unprecedented in more established democracies for the constitution to grant, even in times of war, such extensive powers to

the Union government. The Indian Constitution, though inspired by the western liberal democratic principle of limited government, does demonstrate, as do those of most other developing democracies, a marked authoritarian bias, especially in times of emergency.

The declaration and guarantee of certain Fundamental Rights provided the citizens their greatest protection against arbitrary exercise of state power. These rights were by no means absolute: express limitations were placed on their exercise by the Constitution itself. The Legislature was enjoined from enacting laws which would transgress the limitations set by the Constitution. The executive, in its dealings with the citizens was required to observe the procedures and formalities set forth under the Constitution.

The Fundamental Rights of the citizens were classified under seven categories: (1) Right to Equality [43]; (2) Right to Freedom [44]; (3) Right against Exploitation [45]; (4) Right to Freedom of Religion [46]; (5) Cultural and Educational Rights [47]; (6) Right to Property [48]; and (7) Right to Constitutional Remedies. [49]

The following section will focus on the Right to Freedom and the Right to Constitutional Remedies since these were the two fundamental rights most severely affected under the Emergency.

Articles 19-22 guarantee the right to freedom of the individual. In all, Article 19 confers seven freedoms on all Indian citizens: freedom of speech and expression [50]; freedom of assembly; freedom to form associations or unions; freedom of movement throughout the terri-

tory of India; freedom of residence and settlement in any part of India; freedom to acquire, hold and dispose of property; and the freedom to practice any profession or to carry on any occupation trade or business.

Clauses 2-6 of Article 19 also empowered the state to impose reasonable restraints on certain specified grounds in respect of each freedom provided for by the Article. Thus, for example, the right to freedom of speech and expression may be subject to reasonable restrictions in the interests of the sovereignty and integrity of the nation, the security of the state, friendly relations with foreign states, public order, decency or morality and as it relates to contempt of court, defamation or incitement to an offence. All the other freedoms were similarly hedged with a host of qualifications. Within the established limits, the state was empowered to enact legislation derogating from the rights of the individual. The point which is emphasized here is that the Constitution, in its attempt to balance the claims of the individual to freedom with the interests of the community already provided the state considerable latitude to restrict the freedoms of the citizen.

Article 20 afforded the citizen convicted of an offence, protection against arbitrary and excessive punishment by explicitly providing against ex-post facto laws, double jeopardy, and self incrimination.

Article 21 provided that "no person shall be deprived of his life or personal liberty except according to procedure established by law. [51] Within months of the adoption of the Constitution in 1950, the scope of this article came up for interpretation before the Supreme Court, in

A. K. Gopalan vs. State of Madras. [52] Gopalan, the leader of the opposition in the Lok Sabha was detained by the government of Madras under a provision of the Preventive Detention Act of 1950 enacted by Parliament, in accordance with Article 22 of the Constitution. He applied for a writ of habeas corpus contending that the Act violated certain of his Fundamental Rights, including his right, under Article 19 to move freely throughout the territory of India. The two major issues the court was called upon to decide were (a) the meaning and scope of the term "personal liberty" used in Article 21 as against the term "freedom" in Article 19 and (b) the meaning and scope of the phrase "procedure established by law."

A majority of the judges held that Article 19 did not apply in the case of an individual detained under Article 21 since the two articles deal with two separate aspects of liberty -- Article 19 with the enjoyment of liberty within the limits laid down by the law and Article 21 with the deprivation of liberty according to established legal procedures. According to the Court, Article 21 dealt with the rights of a person who had already been deprived of his liberty or life since it merely laid down that such deprivation shall conform to law. The right to freedom of movement, guaranteed under Article 19, on the other hand, was a right, the court held, that belonged to a free individual. Therefore, even though the rights under Article 19 may be lost in the process of deprivation of liberty recognized by Article 21, no challenge to Article 21 solely on that ground could be entertained.

On the second question relating to the meaning of "procedure established by law," it was contended on behalf of Gopalan that the phrase was more than a mere procedural provision and that it implied principles of natural justice. The court, however, did not concur with this argument either.

> "Normally read, and without thinking of other Constitutions, the expression "procedure established by law" must mean procedure prescribed by the law of the State... To read the word "law" as meaning rules of natural justice will land one in difficulties because the roles of natural justice as regards procedure, are nowhere defined.... 53

and again,

> ...I am unable to agree that the term law in Art. 21 means the immutable and universal principles of natural justice. "Procedure established by law" must be taken to refer to a procedure which has a statutory origin, for no procedure is known or can be said to have been established by such vague and uncertain concepts as immutable and universal principles of natural justice. In my opinion, "law" in Article 21 means "positive or State-made law."

The Gopalan decision set the precedent of judging violations of liberty based not on the merits of the impugned law or act but based on their adherence to constitutional proprieties. One critic has complained:

> Almost at the inception of the Constitution, at the very threshold of its life, one of the main articles declaring life and liberty as fundamental rights became still-born .... Life and liberty have no effective protection against legislation in India. 55

Article 22 guaranteed three rights -- the right of every person arrested to be informed as soon as may be of the grounds of arrest; his right to consult and to be defended by counsel of his choice and his right to be produced before a magistrate within twenty-four hours and to be remanded to custody beyond that period only by order of the magistrate.

These rights, which are in the nature of constitutional safeguards against arbitrary arrest, were denied only to two categories of those arrested: enemy aliens and those detained under a law providing for preventive detention for reasons enumerated under the Constitution.

Endeavoring to cope with the perennial problems of assuring the security of the nation and of preserving law and order within a society not habituated to the precepts or practice of democracy, the Indian government was compelled at the time of independence to incorporate restrictive provisions to the grant of individual rights. The period between August 5, 1947 when independence was achieved and January 26, 1950 when the Constitution was formally adopted was one of intense turmoil in India. The communal riots and bloodshed that accompanied the partition of the subcontinent into India and Pakistan, the war with Pakistan over the status of Kashmir, a communist-led insurgency in the state of Hyderabad, a severe famine and a host of other administrative difficulties that confronted the nation appear to have compelled the constitution-makers to qualify the grant of rights more than is customary under democratic constitutions.

The right of the individual to personal liberty was circumscribed, under the Constitution, by the provision for preventive detention, even during times of peace. Preventive detention sanctioned the loss of personal liberty of an individual through executive action if law enforcement authorities were satisfied that, if not detained, such individual would engage in activity that was considered prejudicial to the interests of the community. The statute authorizing such detention specified the grounds which justified preventive detention. These included the defense of India, the relations of India with foreign powers, the security of India, the security of the state, the maintenance of public order, and the maintenance of supplies and services essential to the community.

An individual confined under a preventive measure was denied the constitutional safeguards accorded those detained under ordinary law. These safeguards, provided under Article 22, ensured the rights of the detainee to be informed "as soon as may be" of the grounds of arrest, the right to consult and to be defended by legal counsel of his choice, the right to be produced before a magistrate within twenty-four hours of such detention and the right not to be detained beyond the twenty-four hour period except by order of the magistrate. Compared to this, the protection afforded the preventive detenu was meagre at best. Every case of preventive detention had to be authorized by law. The detenu was to be informed of the grounds of his detention "as soon as may be," and was to be afforded the "earliest opportunity" to make representation against the detention order. The Constitution, however, made a distinction

between the right to be informed of the grounds for the detention and the right to information about the facts behind the grounds since the authorities were granted the right to withhold facts if they were convinced that the disclosure of such facts would not be in the public interest. Whether the detenu could make an effective representation against the detention order without being informed of the facts of the case was an issue that obviously did not deter the inclusion of this provision.

The major safeguard against the arbitrary exercise of the power of preventive detention by the executive was the provision that ordinarily no preventive detention may extend beyond three months unless an advisory board, consisting of members qualified for appointment as judges of a high court, found sufficient cause for detention beyond that period. The executive authorities were required to refer to the advisory board within 10 weeks of a detention all cases in which they sought detention of the individual beyond the three months. Unless, before the expiration of the three months, the board rendered an opinion favoring such an extension the detenu had to be set free at the end of the period. The exception to this requirement was spelt out in clause 7(A) of Article 22 under which Parliament may by law prescribe the "circumstances" under which and the "class or classes of cases" in which detention over three months may be authorized without reference to an advisory board.

Government rationale for the need for preventive detention in India was that popular opinion in India being as yet uninformed in the advantages

of democracy, the government had to act with severity against malefactors since the example of successful defiance of law would be more damaging to the development of a democratic political culture than it would be in the West. [56] In case after case, the courts while upholding the authority of the state to pass legislation authorizing preventive detention cautioned against the invasion of personal liberty that such detention represented. Typical are the following statements on preventive detention by Supreme Court Justices Mukherji and Patanjali Sastri.

> "...This is undoubtedly unfortunate but it is not our business to speculate on questions of policy or to attempt to explore the reasons which led the representatives of our people to make such a drastic provision in the Constitution itself which cannot but be regarded as a most unwholesome encroachment upon personal liberties." [57]

and

> "Preventive detention is a serious invasion of personal liberty and such meagre safeguards as the constitution has provided against the improper exercise of the power must be jealously watched and enforced by the court." 58

Such hopes were soon belied, and the Preventive Detention Act became the most familiar weapon with which government sought to suppress public disorder. Worse still, similar legislation, but without even those slender safeguards that the Preventive Detention Act provided, were subsequently enacted that substantially expanded the scope for abuse of state power to curtail the liberty of the individual.

Following the declaration of the emergency during the Sino-Indian War in 1962, the Defence of India Act, was passed which conferred on

the Executive sweeping powers that further reduced the scope of individual rights. Section 45 of the Act provided for the preclusion of judicial review of the orders or acts by the government in exercise of the powers conferred by the Act. The Defence of India Rules (DIR) framed under the Act consisted of 156 rules that provided for the regulation of virtually all aspects of life -- travel, trade, communication, publication, occupation, finance, etc. Rule 30 of the DIR expanded the scope of preventive detention by empowering the central and state governments to detain an individual to prevent him from engaging in acts prejudicial to the defence of India, civil defence or public safety.

In 1967, the Defence of India Act was withdrawn and two years later the Preventive Detention Act lapsed. Both had been enacted as statutes of limited duration and therefore required legislative sanction for periodic extensions. In 1969, when the Preventive Detention Act was due to expire, the Administration, enjoying as it did only a plurality in Parliament, was in no position to extend its life. For a brief period there was no all-India preventive detention law, though several state governments soon enacted such legislation. After the 1971 General Elections when the Congress Party once again commanded an overwhelming parliamentary majority, preventive detention was reintroduced at the all-India level. Not only was the Defence of India Act reinstated that year but another statute, of a permanent nature, was also enacted. This was the Maintenance of Internal Security Act. As discussed in Chapters Two and Three of this study both these Acts were employed widely, especially during the Emergency, to curtail the rights of the individual.

Another right that needs to be specially mentioned here is the right recognized by the Constitution to constitutional remedy for the enforcement of Fundamental Rights. Article 32 recognized the right of the citizen to move the Supreme Court by "appropriate proceedings" for the enforcement of an individual's Fundamental Rights. The Court possessed wide jurisdiction, being empowered by the Constitution to issue directions, or orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari for the enforcement of the right infringed. [59] Under this provision the Supreme Court was

> "...constituted the protector and guarantor of Fundamental Rights, and it cannot, consistent with the responsibility so laid upon it, refuse to entertain applications seeking protection against infringement of such rights." 60

Article 226 granted the High Courts similar powers to issue direction, orders and writs for the enforcement of Fundamental Rights or "for any other purpose." Parliament was also authorized to empower subordinate courts to exercise, within the local limits of their jurisdiction all or any of the powers exercisable by the Supreme Court.

The constitutional right to move the courts for enforcement of the other Fundamental Rights was allowed to be suspended only during an emergency. During the Constituent Assembly debates Dr. Ambedkar, the Chairman of the Drafting Committee, underscored the significance of this Article thus:

> "If I was asked to name the particular article in this Constitution as the most important without which this Constitution would be a nullity I could not refer to any other article except this one. It is the very soul of the Constitution and the very heart of it." 61

Where the courts were called upon to decide on the "reasonableness" of the restrictions imposed on the Right to Freedom under Article 19 they were expected to adjudge it for each case on its own merits; no abstract standards were provided by the Constitution. The factors the courts were to consider in arriving at a decision were stated thus:

> "The nature of the right alleged to have been infringed, the underlying purpose of the restriction imposed, the extent and urgency of the evil sought to be remedied thereby, the disp portion of the imposition, the prevailing conditions at the time should all enter into the judicial verdict." 62

In respect of the constitutional provision on individual's rights, under the Indian Constitution, there are then three features not commonly found in advanced democracies. Firstly, there is an elaborate enumeration of limitation of these rights, in an attempt to strike a balance between individual's rights and social needs of the community, between freedom and control. Secondly, the Constitution recognizes preventive detention as a legitimate curb on the individual's right to liberty, even in times of peace. Finally, the right to constitutional remedy against violation of Fundamental Rights was itself a Fundamental Right.

In the Bharati case, commonly referred to as the fundamental rights case, the Court was unclear on its stand on Fundamental Rights. From

a reading of the eleven separate judgements of the thirteen-member Bench one gathers the impression that the Court believed that while Parliament could abridge all of the Fundamental Rights, they may do so only in such a manner that the basic structure of the constitutional system was not affected. The right to property, a fundamental right and the right at issue in the case was not considered by the court as an essential element of the Constitution. Therefore Parliament in its plenary capacity could, the Court held, alter the nature of this right. Following the verdict there was considerable confusion as to which of the rights were fundamental and which not. But while constitutional scholars argued the finer points of the verdict, the belief that the Court had conceded to the State unlimited power to amend and abridge or even abolish Fundamental Rights gained wide currency among the public. In a sense, such a belief contributed substantially to the meek acceptance by the informed public at large of the wide ranging attack on citizen's rights during the Emergency.

The Fundamental Rights were complemented by a set of "Directive Principles of State Policy." These were in the nature of directives to central and state governments and to all governmental agencies to consider the principles set forth in this section of the constitution, in the enactment and implementation of laws. Sixteen principles were enumerated which embraced a broad spectrum of state activity. During the drafting of the Constitution Dr. Ambedkar spoke of the purpose of this provision.

> "In enacting this part of the Constitution, the Assembly is giving certain directions to the future legislature and the future executive to show in what manner they are to exercise the...power they will have. ...(T)hey should be made the basis of all legislative and executive action that may be taking hereafter in the matter of the governance of the country." 63

The principles, though they were considered vital in providing direction to the governance of the nation, were made expressly non-justiciable.

In the Bharati case the importance of both the Fundamental Rights and the Directive Principles were emphasized:

> The Fundamental Rights and the Directive Principles constitute the "conscience" of our Constitution. The purpose of the Fundamental Rights is to create an egalitarian society, to free all citizens from coercion or restriction by society and to make liberty available for all. The purpose of the Directive Principles is to fix certain social and economic goals for immediate attainment for bringing about a non-violent social revolution. . . . Without faithfully implementing the Directive Principles, it is not possible to achieve the Welfare state contemplated by the Constitution. 64

Over the years the Indian political system was subjected to many radical changes. Its constitutional framework was amended time and again and in the process the checks it provided against abuse of power were whittled away. The very first amendment to the Constitution, in 1950, was passed with the objective of restricting the scope of two Fundamental Rights -- the right to freedom of speech and expression and the right to property. It also created the IX Schedule to the Constitution which pro-

vided absolute protection from judicial scrutiny to the statutes included therein, even those acts and statutes already declared by the courts as constitutionally objectionable.

When Mrs. Gandhi became Prime Minister in 1966, the Constitution had been amended on seventeen occasions. Most of these amendments were, however, minor ones relating to matters such as the reorganization of territorial units, the recognition of official language, the redefinition of former foreign enclaves like Goa and Pondicherry and other similar organizational and administrative issues. Only four of these amendments affected the democratic character of the Constitution. The First Amendment imposed three additional restraints on the freedom of speech and expression, relating to friendly relations with foreign states, public order and incitement to an offence. It also provided more comprehensive protection to land reforms and created the IX Schedule. The Fourth Amendment precluded judicial review of the adequacy of compensation for property compulsorily acquired for a public purpose. The Sixteenth Amendment curtailed further the freedom of speech and expression, in the interests of the sovereignty and integrity of India. The Seventeenth Amendment redefined the term "estate" to include certain types of land holdings which the Supreme Court had ruled were outside the scope of the term. Interestingly, the Amendment also provided that cultivating landowners would be compensated at full market value for loss of land incurred through all future land legislation.

During Mrs. Gandhi's term as Prime Minister the Constitution was amended a total of twenty five times. The political institutions and

processes underwent major changes and the system that emerged was vastly different from that which is described in this chapter. The manner in which the transformation of the Indian political system was accomplished is discussed in the chapters that follow.

NOTES: CHAPTER I

1. The Deccan Chronicle (Hyderabad), Special Supplement, 26 June 1975.

2. The Constitution of India. art. 352.

3. Text of the broadcast published in The Deccan Chronicle, 26 June 1975.

4. For accounts of the early attempts at censorship see New York Times, 29 June 1975 and 3 July 1975; and Manchester Guardian Weekly, 5 July 1975.

5. The Constitution of India. arts. 358 and 359.

6. Text of ordinance in The Deccan Chronicle, 1 July 1975.

7. Ibid., 5 July 1975.

8. Ibid., 22 July 1975. Among the suspended measures were the question-hour, calling attention motions and private members resolutions as well as the normal procedures relating to the requirements of notice of bills and amendments, and the period of notice, printing and publication of all parliamentary papers.

9. Ibid.

10. Ibid., July 23, 1975. Mrs. Gandhi's explanations for the Emergency are proferred in Times (London), August 14, 1975, in New York Times, August 16, 20 and 25, 1975, and in her interviews with the editors of Saturday Review, August 8, 1975, with the editor of Blitz, August 23, 1975 and on the NBC (New York) reproduced at length in Statesman, August 25, 1975; and in the official publication Preserving our Democratic Structure: Prime Minister Explains Reasons for Emergency (New Delhi, Directorate of Advertising and Visual Publicity, 1975).

11. An interesting discussion of this theme is undertaken in Ernest S. Griffith, et. al., "Cultural Prerequisites to a Successfully Functioning Democracy; A Symposium" American Political Science Review 50 (March 1956): 101-37.

12. Jaya Prakash Narayan himself was a leading proponent of the theory of the democratic nature of the village Republics of ancient India. See his "Building up from the Village" in Socialism, Sarvodaya and Democracy (New Delhi: Asia Publishing House, 1964).

13. Cited in E.M.S. Namboodiripad, Economics and Politics of India's Socialistic Pattern (New Delhi: People's Publishing House, 1966), p. 329.

14. A.S. Altekar, State and Government in Ancient India. (Delhi: Motilal Benarsidass, 1958), p. 124.

15. B.C. Sirkar, "Some Basic Ideas of Political Thinking in Ancient India," The Cultural Heritage of India, Vol. 2 (Calcutta: The Rama Krishna Mission Institute of Culture, 1962), p. 513.

16. E. Malcolm House, "India under the Impact of Western Political Ideas" in Studies in Indian Democracy, edited by S.P. Aiyar and R. Srinivasan, (Bombay: Allied Publishers, 1965), p. 16.

17. S.P. Aiyar "Constitutionalism in India," Ibid., p. 686.

18. T.V. Mahalingam, South Indian Polity (Madras: Univ. of Madras Press, 1955), p. 19.

19. Vincent Smith, Oxford History of India (Oxford: Oxford Univ. Press, 1967).

20. The National Congress and its leaders are vividly portrayed in Pattabhi Sitaramayya, The History of the Indian National Congress 1885-1935 (Bombay: Padma Publications, 1946-7).

21. Stanley A. deSmith, The New Commonwealth and its Constitutions (London: Stevens, 1964), p. 106.

22. The subjects of constitutionalism and the suspension of restraints on power in a constitutional democracy have not received the attention from scholars that they merit. Among the books which do address these matters are Carl J. Friedrich, Constitutional Government and Democracy: Theory and Practice in Europe and America (Boston: Ginn and Co., 1950) and Constitutional Reason of State: The Survival of the Constitutional Order, (Providence, R.I.: Brown University Press, 1957). Clinton L. Rossiter Constitutional Dictatorship: Crisis Government in the Modern Democracies (Princeton: Princeton University Press, 1948); Charles H. McIlwain, Constitutionalism: Ancient and Modern, rev. ed. (Ithaca: Cornell Univ. Press, 1947);

Fredrick M. Watkins, The Failure of Constitutional Emergency Powers under the German Republic (Cambridge, Mass.: Harvard University Press, 1939); B.O. Nwabueze, Constitutionalism in the Emergent States (Madison: Fairleigh Dickinson Univ. Press, 1973); and Aaron S. Klieman, Emergency Politics: The Growth of Crisis Governments (London: Institute for Study of Conflicts, 1976).

23. Frequently, the masses, impatient with the slowness and the chaotic conditions they associated with democratic processes and with the memory of only an authoritarian political tradition, have submitted even enthusiastically to the imposition of authoritarianism. In India too, there has always been an ambivalence towards democracy even among the intelligentsia. It is probable that so long as the authoritarianism is confined primarily to the political domain there would be only limited opposition to it in India.

24. Seymour Lipset, "Some Social Requisites of Democracy" American Political Science Review, 53 (January, 1959) pp. 69-105.

25. The challenges that face the new nations in their transition to independence and in many cases, to democracy are discussed in the book by this name. Rupert Emerson, From Empire to Nation (Cambridge, Mass.: Harvard Univ. Press, 1960).

26. The formation of the Indian Union is brilliantly recounted in V.P. Menon, The Transfer of Power in India (Bombay: Orient Longmans, 1957).

27. Carl C. Taylor, et. el., India's Roots of Democracy. New York: Fredrick A. Praeger, 1965).

28. The political challenges confronting India and other new democarcies is discussed also in Raghavan Iyer "Strengthening Political Democracy in New States" in Democracy in the New States, edited by Prabhakar Padhye (New Delhi: Congress for Cultural Freedom, 1959).

29. There is a vast body of literature on the phenomenon of "modernization" whereby traditional societies aspire to the political and economic values of the more industrialized and economically advanced nations and fashion a framework of institutions and process toward that end. See Gabriel Almond, and James Coleman, The Politics of the Developing Areas (Princeton: Princeton Univ. Press, 1960); Ralph Braibanti and Joseph Spengler, Tradition, Values and Socio-economic Development (Durham, N.C.: Duke Univ. Press, 1961); S.N. Eisenstadt, Modernization: Protest and Change (Englewood Cliff, N.J.: Prentice Hall, 1966) and Post Traditional Societies (New York: W.W. Norton and Co., 1972); Samuel Huntington, Political Order in Changing Societies (New Haven, Conn.: Yale Univ. Press,

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33. For the Bharati verdict and a summary of opinions presented in the case see Surendra Malik, ed., Fundamental Rights Case: The Critics Speak (Lucknow: Eastern Book Co., 1975).

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35. The three lists are embodied in the Seventh Schedule to the Constitution. An excellent account of the Indian federal system is given in M.C. Setalwad, Union and State Relations under the Indian Constitution (Calcutta: Eastern Law House, 1975).

36. Ibid.

37. On the powers of the Indian presidency see T.K. Tope "The President and the Council of Ministers," in Alice Jacob, ed., Constitutional Developments since Independence, pp. 17-33; and S.L.L. Aiyar "The President and the Cabinet," All India Reporter (Oct. 1975), p. 81-3.

38. Ibid., the President's relations with the Council of Ministers is dealt with in the Constitution of India under Arts. 74, 75, and 78.

39. Constitution of India, art. 86.

40. The power of judicial review is treated in Arts. 13; 32; 131-136; and 246 of the Constitution. Art. 13 refers to judicial review with respect to violation of Fundamental Rights; Art. 32 vests in the Supreme Court the power to enforce Fundamental Rights; Arts. 131-136 relating to the jurisdiction of courts vests in the Supreme Court the power to review legislation of the center and the States; and art. 246 deals with the allocation of power between the center and the States and its subjection to judicial review.

41. Constitution of India, Art. 124.

42. Ibid. Thirty-Eighth Amendment. The Amendment introduced a new clause in art. 352 which read "Not withstanding anything in the Constitution (a) the satisfaction of the President . . . shall be final and conclusive and shall not be questioned in any court on any ground. (b) . . . neither the Supreme Court nor any other court shall have jurisdiction to entertain any question on any ground, regarding the validity of (i) a declaration . . . by the President . . . ; or (ii) the continued operation of such proclamation."

43. Constitution of India, arts. 14-18.

44. Ibid. arts. 19-22.

45. Ibid. arts. 23-24.

46. Ibid. arts. 29-30.

47. Ibid. arts. 25-28.

48. Ibid. art. 31.

49. Ibid. art. 32.

50. The Indian Constitution does not provide separately for the Freedom of the Press, but treats it as an element of the Freedom of Speech and Expression.

51. The corresponding provision in the U.S. Constitution reads "No person shall be deprived of life, liberty and property without due process of law."

52. A.I.R. 1950 sc 27.

53. Ibid. p. 184-6.

54. Ibid.

55. M.K. Nambyar, "Life, Liberty and Property," in S.P. Aiyar and R. Srinivasan, eds., Studies in Indian Democracy, p. 260. Also see David H. Bayley, Preventive Detention in India: A Case Study in Democratic Social Control (Calcutta: Firma K.L. Mukhopadhyay, 1962); and B.P. Srivastava "Right against Arbitrary Arrest and Detention under Article 19 of the covenant as Recognized and Protected under the Indian Law." Journal of the Indian Law Institute II (1969) 29-56.

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57. A.K. Gopalan **vs State of Madras**, 92.

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60. Constitution of India, art. 32.

61. Constituent Assembly Debates, Vol. VII, p. 953.

62. State of Madras vs V.G. Row A.I.R. 1952 sc 196, 200. Also see S.N. Ray, Judicial Review of Fundamental Rights (Calcutta: Eastern Law House, 1974); and Sarojini Reddy, Judicial Review of Fundamental Rights (New Delhi: National Publishing House, 1976).

63. Constituent Assembly Debates VII, p. 382.

64. Malik, Fundamental Rights, p. 232.

CHAPTER II

INDIAN DEMOCRACY AFTER 1966: PATTERNS OF DECLINE

As stated earlier, a major assumption underlying this study is that the Emergency was not an isolated act precipitated by any one event immediately preceding it but that it was the logical culmination of an authoritarian trend in Indian politics which had developed under Mrs. Gandhi.

Mrs. Gandhi's predecessors as Prime Minister, Pandit Jawaharlal Nehru and Lal Bahadur Shastri had also enjoyed and exercised immense power and authority. But, they were both scrupulously democratic in their approach to government and not even during the worst days of the wars with Pakistan and China fought during their administrations was there an emergency of the kind Mrs. Gandhi imposed in 1975, under which the guarantee of citizens' rights, the commitment to the rule of law and principle of due process were all abandoned. Pandit Nehru, who was Prime Minister from 1947 until his death in 1963 was so revered and loved by the masses that had he not been the committed democrat that he was, he too could have usurped early all power and transformed the Indian political order into an authoritarian one in the manner that Sukarno of Indonesia or Kwame Nkrumah of Ghana did in their respective nations. Instead, the Indian democratic experiment appears to have succeeded on the whole when Mrs. Gandhi succeeded to power as Prime Minister of India in 1966, almost twenty years after independence.

What happened between then and 1975 when she imposed a full fledged authoritarianism under the guise of an emergency forms the subject matter of this chapter. Only through an examination of the major events that preceded it can the Emergency be understood as a deliberate attempt at institutionalization of an authoritarian system of rule. Many of the changes instituted under Mrs. Gandhi, especially after she had established her preeminence on the political scene following an unprecedented electoral victory in 1971 reveal an unmistakeable trend away from democratic norms and practices and a corresponding predilection for authoritarianism. The Emergency of 1975 was the end product of a cumulative process of political change under Mrs. Gandhi which witnessed the vitiation of the rules by which Indian politics until then had been played.

Among the earliest changes to Indian politics under Mrs. Gandhi was the radicalization of the political idiom, brought about by her adoption of a seemingly populist ideology. In reality, the espousal of a radical platform was primarily a tactical ploy on her part to wrest power away from the Congress party elders who had elevated her to power and had then sought to control her. By skillfully portraying herself as a radical reformer thwarted in her attempts by these "reactionary" Congress elders, she succeeded in discrediting them and in eliminating their influence in party affairs.

The ideological polarization within the Congress which resulted in a split within the party and in her rise to prominence also signified the demise of the politics of consensus which for years had kept the

various factions within the party at peace. The new political process, furthermore, represented a marked departure from the principles of collective leadership that had been an important feature of Congress Party politics until then. The character of the Party leadership also underwent a major change. Both at the national and state levels party leaders were nominated not for the strength of their political bases but on the degree of their loyalty to the Prime Minister. Since they were beholden to her for their elevation to power (and even more importantly, for continuance in office), they acquiesced in her efforts to aggrandize power, beyond that envisioned in the Constitution. The presence of these weak and inexperienced leaders on the political scene, especially at the State levels, bred instability which in turn contributed to the widespread political and economic malaise preceding the Emergency.

Despite her willingness to depart from established policies and practices to restructure the party and government process, there was, as is discussed in this chapter, a singular reluctance on her part to undertake meaningful economic reforms. The section on the economy discusses briefly her so-called populist economic reforms such as the nationalization of the banks, the abolition of privy purses to princes, the nationalization of wholesale wheat trade, etc., none of which touched in a meaningful manner the causes of rural poverty.

This chapter chronicles the spread of economic malaise and political unrest as the gap between Mrs. Gandhi's promise of economic progress and its fulfillment widened and served to heighten popular opposition to her.

It also reviews the growth of repressive legislation which served as precursors to the notorious Constitutional Amendments enacted during the Emergency. Finally, it discusses the emergence of a unified opposition in India in the months preceding the Emergency, the series of scandals that plagued the Administration and undermined faith in it, and Mrs. Gandhi's conviction for electoral offenses and opposition demands for her resignation which provided the immediate cause for the Emergency of June 1975.

The Early Days

At the time of Prime Minister Jawaharlal Nehru's death in May 1964, there was considerable apprehension of a battle for succession. Such a crisis, it was widely recognized, could lead to a split within the Congress Party (which had ruled India since independence) and even spell the end of democracy. The Congress Working Committee, commonly referred to as the "High Command", not unaware of the dangers posed by an all out scramble for power by the contenders, agreed in principle to avert such a crisis by choosing the successor to Nehru through a method of consensus. Kamraj, the influential President of the All India Congress Committee (AICC) played a major role in persuading the Party to settle on Lal Bahadur Shastri, a former Home Minister and a close associate of Nehru as its choice to succeed Nehru. [1]

Shastri's tenure as Prime Minister was brief, lasting only 19 months. With his untimely death in January 1966, the whole issue of succession

was reopened. Kamraj again played a decisive role in the selection of a candidate. This time, he favored Mrs. Indira Gandhi over Mr. Morarji Desai, the other leading aspirant for the position. In the contest for leadership of the Congress Parliamentary Party, with the help of Kamraj and the regional leaders of the Party, Mrs. Gandhi secured 355 votes to Desai's 169 and thereby became the Prime Minister of India. [2]

In her rise to the leadership of the nation, Mrs. Gandhi had enjoyed a unique position. She was the daughter and the closest confidante of Pandit Nehru, who had been an authentic hero to most Indians. She had, like the rest of the family, been deeply involved in the nationalist movement for independence. She had even undergone at a young age the imprisonment by the British required of all national heroes. Since 1955, when she was named to the High Command, she had been actively involved in party politics and had even served as the President of the AICC in 1959. [3] When Mr. Shastri became the Prime Minister, he felt the compulsion to include her in his cabinet despite his conviction that Mrs. Gandhi did not care for him; [4] to keep alive the link with the Nehru legend Shastri made her his Minister for Information and Broadcasting. At a time when regional, linguistic, and communal hostilities were still much in evidence, Mrs. Gandhi was seen as a truly progressive democrat committed to secular values and acceptable to all minorities and all regions of India. Further, the Congress Party leadership saw in her not only a nationally viable candidate, but one whom they believed they could control, at least until the next General Elections, scheduled for 1967. For, though

she had begun to develop, within the party, her own coterie of loyalists, they were as yet neither numerous nor influential enough to pose a threat to the continuing influence of the High Command on the national scene -- or so, the High Command believed.

From the start, however, Mrs. Gandhi exhibited a degree of independence that surprised the party leaders who had expected her to be a willing instrument of their influence. The instances described below offer some idea about Mrs. Gandhi's method of leadership even in the early days of her rise to power.

Within weeks of becoming the Prime Minister, Mrs. Gandhi sanctioned the bifurcation of the northern state of Punjab into Hindi speaking Haryana and Punjabi speaking Punjab. What is interesting about this decision is that it reflected a clear departure from the policies of her predecessors who had both insisted on preserving the unity of Punjab even though most other Indian states had been reorganized, in 1956, along linguistic lines. [5] For over a decade, the coercive politics engaged in by the proponents of a divided Punjab had been denounced and denied. But Mrs. Gandhi acceeded to the demands with an alacrity that showed little respect for past policies or practices.

Then in June 1966, without consulting either the Cabinet or the Party leadership, at the urgings of the U.S. Government, the World Bank, and the leading members of the Aid India Consortium, she made the decision to devalue the rupee - by 57.5 per cent. [6]

Her next show of independence occurred when she took on a party stalwart, Atulya Ghosh, Chairman of the State Congress Committee in

West Bengal. Under his leadership, the Congress party had declined in strength in West Bengal as the National Congress had stood by helplessly, reluctant to interfere. Soon after Mrs. Gandhi was made the Prime Minister, several members of the West Bengal Congress Party, claiming Mrs. Gandhi's support, split away from the Party to form a rebel group -- The Bangla Congress; the Central party leadership, however, continued to support Ghosh. In the 1967 elections in West Bengal, because of the divisions within the Congress ranks, the Congress lost its majority. A United Front ministry comprising the Bangla Congress, the Communists and other splinter groups was formed, with Ajoy Mukherji, the Bangla Congress leader, as the Chief Minister. [7]

As the foregoing events make abundantly clear Mrs. Gandhi obviously did not concur with the party's belief in the need for collective leadership nor for the need to act within the constraints imposed by the policies and practices of the past.

Politics of Ideology

The IV General Elections was the first major test of strength for Mrs. Gandhi since she had become leader of the Congress Party and the Prime Minister of the nation. By then, Congress dominance of Indian politics seemed so pronounced that it was as if the Indian political system had evolved into a one party democracy. The Congress monopoly of power at the Center was affirmed during the very first General Election itself, held in 1952. In that Election, Congress captured 74 per cent of the seats in the Lok Sabha and about 45 per cent of the popular vote. [8]

The II General Elections, in 1957, reaffirmed Congress popularity, with the Party winning 75 per cent of the seats and 47 per cent of the vote. [9] The figures for the 1962 Election show no major change in Congress' strength; the Party again won 73 per cent of the seats in the Lok Sabha and polled 45 per cent of the votes cast. [10] Though the Congress did not capture a majority of the popular vote in these elections it was, nonetheless, able to muster substantial parliamentary majorities, primarily because the opposition vote was fragmented among a large number of parties. For example, in the 1962 General Elections there were about a dozen parties competing for power against the Congress; the party second in strength to Congress in the 494 member House was the Communist Party with only 29 seats, to the Congress Party's 361. [11]

But in 1967 the Congress monolith showed signs of strain. In the 518 member Lok Sabha, Congress won only 282 seats, far fewer than it had before. Many of the top leaders of the party suffered severe losses. The inner circle of the Congress Party bosses, who were collectively referred to as the "Syndicate" fared badly as their regional bases collapsed. In Tamilnadu, the home base of Kamraj the "kingmaker", the Congress managed to win only 49 out of 234 seats and in the process lost out to a regional force, the Dravida Munnetra Kazhagam (DMK). In Uttar Pradesh (U.P.), C.B. Gupta's forces lost control, in West Bengal, Atulya Ghosh and his faction were routed, S.K. Patil lost out in Bombay and Jag Jivan Ram's home state, Bihar, also did not return a Congress majority. Of the leading Syndicate members, Mr. Morarji Desai alone came out unscathed

in Gujerat. In all, eight states and two Union territories refused to return the Congress to power. These were Bihar, Uttar Pradesh, Orissa, Punjab, Rajasthan, W. Bengal, Kerala and Tamilnadu and the centrally administered territories of Delhi and Manipur. It was a period of disarray within the Congress. As the party dominance waned nationally, Mrs. Gandhi was prevailed upon, in the interests of party unity, to accept Mr. Morarji Desai in her cabinet and to offer him the position of Deputy Prime Minister. [12]

Over the next two years, relations between Mrs. Gandhi and the party leadership or the Syndicate worsened as she began to chafe at their efforts to direct national policies. As Kuldip Nayar, the prominent Indian journalist has written:

> "Mrs. Gandhi felt ... confined. Though after the debacle of many of the elders in the elections she was in a stronger position, it was not easy to resist the pressure of the old guard. She sensed that there would be an open clash one day. The elders controlled the party, but she held the reins of government.." 13

In May 1969, Zakir Hussain, the President of India died and the intra-party crisis that had somehow been contained until then finally erupted. [14] The party's choice to succeed Dr. Hussain was Neelam Sanjeeva Reddy, a prominent Congressman, who was a former Chief Minister of Andhra Pradesh and, at the time of Hussain's death, the Speaker of the Lok Sabha. Mrs. Gandhi appears to have been convinced that the Syndicate, in a last ditch effort to reassert its authority, was mounting a conspiracy to

engineer her downfall by naming Reddy as President. Fearing desertion from her ranks should the Syndicate reestablish its dominance and suspecting that Mr. Reddy might then call upon Desai to form the central ministry, Mrs. Gandhi set about preparing the defeat of Mr. Reddy's candidacy, and with it, the destruction of the Congress' old guard. [15]

In July 1969, at the All India Congress Committee (AICC) session in Bangalore, Mrs. Gandhi appears to have made her first major move to put distance between her and the Party leadership through ideological polarization of the party membership. She placed before the Congress Working Committee what she described as "just some stray thoughts hurriedly dictated" but which was in effect a comprehensive economic policy paper largely modelled after the programs of the leftists in the party. It proposed (1) a ceiling on unproductive expenditure; (2) nationalization of banks; (3) special efforts to develop backward areas; (4) appointment of a monopolies commission; (5) greater autonomy for public sector undertakings; (6) the building of a corps of professionals to manage the public sector; (7) the reservation of most consumer industries for the small scale sector; (8) the exclusion of foreign capital from fields in which Indian technological knowhow was available; (9) special assistance to rural cooperatives; (10) a ceiling on incomes and on urban property; (11) nationalization of the import of raw materials; (12) special rural programs; (13) agrarian land reforms; and (14) a minimum wage for agricultural labor. [16] Mrs. Gandhi's "stray thoughts" are significant in that they constituted the first public declaration of her affiliation with the leftists within the Congress. As Masani has commented, for the

first time in her career she had staked her political future on an ideological issue. [17] Despite reservations by some of the Working Committee membership, the "stray thoughts" however, were unanimously adopted as a statement of economic policy of the Congress party and a confrontation was avoided for the time being.

Mrs. Gandhi next tried to counter the Syndicate's choice of Mr. Sanjeeva Reddy as successor to the late Dr. Zakir Hussain, by proposing the name of Jagjivan Ram, a member of her cabinet. As she explained it to the Congress Parliamentary Board, she felt that the nomination of Ram, a Harijan (untouchable) would be most appropriate during Mahatma Gandhi's birth centenary year, since Gandhi had led the fight for the uplift of the untouchables in India. Her arguments did not prevail, however, and when the vote was taken by the Board on July 12, 1969, Reddy won over Ram by a 5 to 2 majority with Ram, a board member, abstaining. [18]

When Mr. Desai voted with the majority of the Parliamentary Board in favor of Mr. Sanjeeva Reddy, Mrs. Gandhi acted against him. Claiming that he had come to be identified with "certain basic approaches and attitudes" not in consonance with the national mood, she relieved him of his Finance portfolio thereby precipitating his resignation from the deputy prime ministership as well. Within an hour of Mrs. Gandhi's takeover of the Finance portfolio she asked the Ministry to draft a bank nationalization ordinance in a day's time. Both the Finance Secretary as well as the Governor of Reserve Bank were of the opinion that nationalization of banks at that time was neither "feasible" nor "desirable."

The Deputy Chairman of the Planning Commission D.R. Gadgil was not even consulted. The Cabinet itself was consulted only perfunctorily. Its members did not take even five minutes to give their approval. [19] In less than a week's time after Mr. Desai's removal as the Finance Minister, fourteen of the largest national banks which together accounted for more than half of the total deposits and credits in the economy were nationalized. Bank nationalization was projected by the administration as evidence of Mrs. Gandhi's commitment to the common man against monied interests. The strain of stridency that has characterized all recent Indian politics at the national level can be traced to this period. As Nayar states:

> A new insidious kind of campaign to judge people's commitment started those days ... Everywhere, more so in Mrs. Gandhi's camp the question asked often ... was "what is your commitment?
>
> What was vaguely meant was that those who were with Mrs. Gandhi were "progressive, pure and purposeful" and those who were on the other side were "rightists, reactionaries and retrograde." 20

As the date for the presidential election drew nearer, Mrs. Gandhi decided to break with party discipline and not support Mr. Reddy. She refused the Congress President Mr. Nijalingappa's request to issue an appeal to party members on behalf of the official Congress nominee, Mr. Reddy. Instead, she paved the way for a so-called "vote of conscience." Citing "deep anguish" at the alleged electoral arrangements being made by the Congress with the Jan Sangh and the Swatantra Party which she

declared amounted to compromise with political parties totally opposed to Congress principles and programs, she declined to issue the whips that would have devoted party discipline and support. Next, she and her supporters got behind the opposing candidacy of Mr. V. V. Giri, the acting President, who had earlier announced his candidacy as an independent. Mr. Giri won a narrow victory with the help of several opposition parties and Mrs. Gandhi too won yet another victory over the Syndicate.

In her battle with the party leadership, the mainstay of Mrs. Gandhi's support within the party during this period came from the Socialist faction within the Congress, the Congress Forum for Socialist Action (CFSA).

Founded in 1962 following the Third General Elections, as the Congress Socialist Forum, its initial membership was confined to seventeen members of the Parliament whose mission was "to bring about greater ideological awareness and homogenity in the ranks of the Congress." [21] Despite some success in organzing units at the State and local levels, until the Fourth General Elections of 1967, it remained essentially a discussion and study group with little influence over the party leadership. In 1967, a large number of younger and more radical Congress candidates were returned to Parliament and the Socialist group within the Congress, now strengthened, reorganized itself as the CFSA.

The new leaders of the CFSA, among whom were many former Communists, were markedly more radical than their predecessors. They not only introduced new organizational, procedural and membership rules but also

brought with them a firmer ideological commitment to socialism. In her search for political allies against the Syndicate, Mrs. Gandhi found the CFSA a convenient base of support, and some of their populist programs found their way into her "stray thoughts" and helped foster her image as a radical reformer. The Forum, for its part, expecting to benefit from her dependence on them, extended full support to her. This support, which she eagerly accepted, had the effect of pushing her, despite her naturally pragmatic bent, into grand radical posturings which fostered and exacerbated ideological tensions. Her populist platform succeeded in discrediting the Syndicate as reactionaries, and to that extent, benefitted her initially. However, since she herself possessed neither the will nor the commitment to carry out the meaningful radical reforms which her rhetoric implied, it ultimately was damaging to her because it resulted in the public's loss of faith in her.

Mrs. Gandhi's alliance with the CFSA is important only in that by her espousal of their radical programs and even more so, their rhetoric, she raised public expectations beyond the system's ability to provide. It bred cynicism and public frustration which found its expression in agitational politics directed against her government. And, therefore, even though, after she had established her preeminent position in Indian politics she brought about the disbandment of the Forum, her alliance with it and her adoption of their radical style of politics had an adverse effect on Indian politics.

The rift between the two factions within the Congress Party - Mrs. Gandhi's and the Syndicate's - simmered until November 1969, when the Party leadership expelled Mrs. Gandhi for indiscipline and called on the Congress Parliamentary Party to elect another leader. They had sorely underestimated her strength and when the leadership issue was put to the vote Mrs. Gandhi won 220 out of 282 votes of the Congress members in Parliament. [22] The 62 members who had voted against her split away to form their own parliamentary party. The two wings came to be referred to popularly as Congress (O) for old or organizational and Congress (R) or (N) for ruling or new. The victory assured the Prime Minister control of the legislative wing of the party though the organizational element of the party still remained under Syndicate control.

The battle for control of the Congress Party signified a major transformation of the party idiom from one of conciliation to that of conflict. Instead of the principles of consensus, compromise and accomodation that had characterized government policies and actions until then the politics of confrontation dominated the government approach thereafter. The element of hysteria that entered the Indian political scene at this time through the populist demagoguery of Mrs. Gandhi made rational action on enduring problems most difficult. The result was a series of political and economic crises which had become all pervasive by the eve of the Emergency.

Though she had won a conclusive victory over the Congress Party hierarchy and established her authority over its parliamentary wing, Mrs. Gandhi

was cognizant of the fact that the party machinery at the state and local levels was still outside of her control. To remain in power after the next elections, scheduled for 1972, she would have to either wrest control of the party apparatus from these party bosses or bypass the regular party channels and build up her own. She chose the latter path. In order to establish her appeal among the masses she adopted populist themes, and articulated them in radical rhetoric. She succeeded in portraying her battle for the control of the Congress machinery as the conflict between progressives and reactionaries, between Left and Right. As Kuldip Nayar has remarked:

> Between the Right and the Left once stood the massive Congress Party, in which were men of every political hue except the darkest. Then came the split and there was no longer a giant at the center. 23

Both factions, in their search for electoral allies, moved away from the center, Mrs. Gandhi toward the Left to stay in power and the old guard Congress party to the Right in an effort to pull her down. Moderation, the imperative of Indian democracy lost ground as Mrs. Gandhi, in her quest for power, endowed radicalism with respectability.

The role that the Congress Party had performed since independence also underwent a change. In 1961, Rajni Kothari, a leading Indian political scientist, had described the Congress Party thus:

> The Congress is more than a party, it constitutes an entire party <u>system</u>. The conflicts and alignments within the Congress

> are of greater political import than its conflicts with the opposition groups. The operative political categories in India are factions within the ruling party organized on different lines and interacting in a continuous process of pressure, adjustment, and accomodation...
>
> ...It is at the level of factions that the true nature of the Congress and its distinctiveness from other parties is also revealed. For it is at this level that one can see how close the Congress is to society: it reflects all the major social divisions and interest groups. It is also at this level that traditional institutions find entry into the political process. 24

So long as there was collective leadership within the Congress, it allowed representation within it of a broad range of interests and viewpoints. Within the councils of Congress there were consultations and discussions among members in which differing viewpoints were represented, prior to formulation of policies. Such a system, as critics have pointed out, did tend to frustrate all attempts at effective implementation of policies that were opposed by important elements within the party. But at the same time it also managed to provide the diverse interests represented within the party with a sense of participation in the political process and thereby obligated them to work within the political framework for the furtherance of their interests and objectives.

New Followers for Old Leaders

In furtherance of her quest for increased power, Mrs. Gandhi carried out a major restructuring of the government. The ministry most radically

reorganized was the Home Ministry. Sixty of the 100 sections within the ministry, including those that had responsibility for the All India Administrative Services, the Central Bureau of Investigation and the Intelligence Bureau were transferred to the Cabinet Secretariat under Mrs. Gandhi's immediate and direct control. Not satisfied with this limited transfer of authority over Home Affairs to her Secretariat she took charge of the entire ministry, adding the Home portfolio to her other responsibilities and giving her direct authority over all police and security matters as well. The reorganization of the Home Ministry succeeded in bringing under her personal control all major administrative, police and intelligence services. The aggrandizement of power by Mrs. Gandhi was already under way.

Mrs. Gandhi was also determined to dominate the Congress party apparatus. To achieve this she realized that she would have to assume control over the appointment of members of the Congress High Command, consisting of three major organs: the Working Committee, the Congress Parliamentary Board and the Central Elections Committee. [25]

The control of the party presidency was the first and most crucial step in asserting control over the party since the Congress Party president enjoyed enormous powers to appoint members to the major Party organs. Of the 20 members of the Working Committee, 10 were appointed by the Congress president. All eight members of the Parliamentary Board were selected by him upon authorization of the Working Committee, the members being generally selected from among the Working Committee members. The

Elections Committee which was the ultimate authority in the selection of Congress candidates to contest the elections to the Center and the States consisted of 15 members, eight of whom were the members of the Parliamentary Board picked out by the party president. Since the split of 1969, Mrs. Gandhi was careful to choose as presidents of the party only the most loyal to her. And through them she succeeded in influencing the composition of the important party organs. These organs were then used far more aggressively than at any time in the past, to assert central control over party affairs at all levels, "over the mass organizations, the legislative parties in the states, and national and state legislative elites." [26]

No amount of centralization of power within her own party or within her administration could by itself bestow on her the undisputed leadership of the party, the government and the nation that she sought. She knew that she had to first overcome her reduced majority in Parliament and the Congress' weakness in the States. To this end, in December 1970, she announced her decision to hold elections a year earlier than the scheduled expiration of the five year term of the legislature. Ignoring regular party machinery especially at the state and local levels, she embarked on a campaign which was intensely personal in nature. Flying all over the country in Air Force planes and helicopters she electrified the nation with her campaign slogan of "garibi hatao" (abolish poverty). In the six weeks the campaign lasted she addressed over 250 large public gatherings and hundreds more of smaller roadside audiences. [27]

The election was an unequivocal victory for Mrs. Gandhi. Her party won 350 seats in Parliament out of a total of 521 providing her with the two-thirds majority with which she could change even the most major constitutional provision. The magnitude of her victory was such that the Communist Party of India (Marxist) which was second won only 25 seats and the pro-Moscow Communist Party of India, her allies, were next with only 23 seats. [28]

The elections had established Mrs. Gandhi's preeminent position in Indian politics. It was a peculiarly personal victory for her and it represented the demise of party politics in India as it had functioned until then. Mrs. Gandhi perceived her support in that election as deriving directly from the masses to her personally and not to the party as such. She therefore no longer considered herself beholden to the party or its traditional practices. Whereas in the past, the Prime Minister had derived strength and support from the party and considered himself responsible to it, following this election Congress Party politics was thoroughly transformed. Soon, for all intents and purposes the Party behaved as the creature of the Prime Minister, prompting Morarji Desai's remark, "Step by step (Mrs. Gandhi) has reduced her party to an assembly of imbeciles without courage." [29]

Her choice of Congress Party presidents and other functionaries, the Union Cabinet Ministers, the Chief Ministers of States and even her choice, in 1976, of Fakhruddin Ali Ahmad to be President of India all evidenced a departure from Congress party politics of earlier days,

when only leaders with strong bases of political support rose to the top. Under Mrs. Gandhi's new politics the reverse occurred as she tended to favor and elevate to positions of leadership those who had no independent political bases of their own and therefore would be beholden solely to her for their continuance in power.

Aside from old party stalwarts like Chavan, Swaran Singh and Jagjivan Ram at the center, whose political bases were so secure that their claims to power could not be overlooked, most of the newer leaders at the center and the states were those whose base of support was Mrs. Gandhi herself. Whereas in the past, the Chief Ministers of States were chosen by the state legislative party concerned, Mrs. Gandhi adopted the method of nominating the candidates for Chief Minister for each state where the Congress Party had a legislative majority. Her choice was then formally ratified by the Congress legislative party of that state. Her nominees were frequently former members of the Union Cabinet, who were personally loyal to her but had only limited bases of power in their home states. [30] Their credibility and authority was so weak that they constantly had to turn to New Delhi for political support to continue in office. Veteran state congressmen who had resented the imposition of leadership from above managed, in due course, to mount challenges to the incumbents. As factionalism increased in almost every state, many of Mrs. Gandhi's nominees with no strong local support of their own could not survive the challenge to their power. Of greater significance to the Emergency itself is that as Stanley Kochanek has written

> "inept Chief Ministers had to spend all their time trying to stay in power and were unable to cope with the problems generated by thirty months of economic crises, food shortages and uncontrolled inflation. Agitations that originated as localized expressions of grievance against incompetent leaders blosommed into large movements, which ultimately came to challenge the political power of the Congress at the center." 31

The size of her 1971 election victory carried certain dangers as well. More than at any other time in the recent past the victory identified Mrs. Gandhi closely with India's future. No longer would she or her party be able to blame the opposition for obstructing reforms. Henceforth, they alone would be held responsible for solving the nation's myriad ills since only they possessed the needed power.

Mrs. Gandhi's aggrandizement of power which the new "leaders" did not oppose meanwhile continued as she assumed responsibility for the Ministry of Information and Broadcasting, bringing the list of ministries she now headed to four - Home, Planning, Atomic Energy and Space, and Information and Broadcasting.

Growth of Nondemocratic Legislation

Mrs. Gandhi's election manifesto had declared,

> It will be our endeavor to seek such further constitutional remedies and amendments as are necessary to overcome impediments in the path of social justice. 32

And in the interests of what she deemed social justice she pushed through parliament three major amendments to the constitution.

The Constitution (24th Amendment) Act 1971 was enacted to accord parliament aboslute power to amend the constitution. The purpose was to counter the effect of the Supreme Court verdict in the Golaknath case which had categorically denied to Parliament the power to amend Part III of the constitution relating to Fundamental Rights.

The 25th Amendment was an attempt to remove the effects of the Supreme Court verdict on the Bank nationalization case. The court had struck down the initial measure authorizing the nationalization on the ground that it made hostile discrimination against the banks and violated certain features relating to their fundamental right to property and the adequacy of compensation to them. The amendment omitted the word "compensation" from the constitutional provision dealing with the compulsory acquisition of property for public purposes and replaced it with the word "amount" to eliminate the normative implications of the former. [33]

Another provision had the result of denying the right to property the status of a fundamental right entitled to special protection, by declaring that no law giving effect to the Directive Principles of State Policy relating to the "proper distribution of material resources." [34] and "the prevention of concentration of wealth" [35] shall be voided on the ground that they violated the fundamental rights of equality, and of property. And finally, the amendment also provided that if a law contained the declaration that it was in furtherance of the Directive Principles concerned, it may not be impugned on grounds that it does not give effect to such policy. The amendment thus sought to bar judicial

review of any legislation purporting to further property related directive principles.

The 26th Amendment terminated the privy purses and privileges of the ex-rulers of the former Indian states. The princes were derecognized by the expedient of deleting all constitutional provisions according them, the purses and the privileges.

As proof of her commitment to the common man, the elimination of princely privileges had been included in Mrs. Gandhi's election platform even though a similar measure had failed in the previous parliamentary session. As a radical populist measure it was largely symbolic but it is nonetheless illustrative of Mrs. Gandhi's approach to legal and constitutional obligations.

At the time of Indian independence over 550 princely rulers had been prevailed upon to merge their principalities into the Indian Union under an agreement whereby they and their heirs were guaranteed under the Constitution certain privileges in return for the sovereignty they forswore. These included the annual payment of privy purses in varying amounts, the recognition of their titles, immunity from prosecution, exemption from all taxes, and from requisition of their properties by the State, free medical care, free driving licenses and personal license plates for their vehicles, postal and telegraph concessions, public holidays on their birthdays (within the borders of their former kingdoms), the right to display their flags and the right to military honours, to gun salutes and to armed escorts and guards. Over the years there was

increasing popular criticism of such generous accomodation of royal privileges within a supposedly democratic system. In response to such criticism, the Congress Party had set for itself the objective of abolishing the privileges. None of the previous attempts by the government to renegotiate the terms had succeeded, however, and it was Mrs. Gandhi who, after her break with the Syndicate settled on the solution of amending the Constitution to deny the princes their Constitutional guarantees. The Bill she had introduced in the previous session recognizing the princes received more than the two-thirds majority in the Lok Sabha but failed by one vote in the Rajya Sabha. An executive order was then promulgated which derecognized them and nullified all the constitutional guarantees which had earlier been extended to them. It was this executive order that the 26th Amendment replaced.

The battle cry of the Emergency that the Constitution should not be allowed to stand in the way of "progress" was fashioned here in the early days of Mrs. Gandhi's rise to absolute power.

Of the various pieces of legislation enacted during this period the one that abridged individual freedom the most was the Maintenance of Internal Security Act (MISA). It was passed in 1971, and of all the excesses of the Government under the Emergency the most oppressive was the indiscriminate employment of MISA to intimidate and punish opponents of the regime. The original justification for the passage of the MISA legislation was that the Government required special authority to deal with the extraordinary situation created by the influx of millions of refugees from Bangladesh among whom were believed to be numerous agents

of Pakistan. The Statement of Objects and Reasons of the Bill, as set forth before the Lok Sabha on June 3, 1971 by K. C. Pant, the Minister for Home Affairs, read as follows:

> In view of the prevailing situation in the country and developments across the border there is need for urgent and effective preventive action in the interest of national security. It is therefore considered essential to deal effectively with the threats to the defence of India and to the security of India, especially from external sources, espionage activities of foreign agents. Since existing laws available to deal with security have not been found to be adequate, the Maintenance of Internal Security Ordinance, 1971, has been promulgated. It is now proposed to replace the Ordinance by an Act. 36

The final language of the Act, however, did not confine its applicability to aliens indulging in anti-national activity. Instead, the Act was rendered comprehensive in scope and, in practice, it was mostly employed for tackling ordinary law and order problems for which no special legislation should have been required and for silencing political opposition. The MISA gave additional powers of preventive detention to the Executive. Central and state governments were empowered under the Act, to issue detention orders for a period up to one year to prevent an individual from acting in a manner prejudicial to the defence of India, the security of the state, the maintenance of public order or the maintenance of essential supplies and public services.

The principal safeguards against the enhanced powers of preventive detention conferred on the Executive were as follows: First, the detenu was to be informed of the full grounds of detention, normally within five days and in exceptional cases within 15 days. Second, the Government was required to place before a three man advisory board whose members qualified as judges of High Court, within 30 days of a detention order, the grounds for the detention, and the Board was obligated to render within 10 weeks of the detention order its opinion as to whether there was sufficient grounds for continued detention. Third, in all cases of detention by a subordinate authority, lower than the State government, the period of all such detention was limited to 12 days unless confirmed by the Advisory Board. Finally, the detenu retained his right under natural or common law to move the High Court, in a writ of habeas corpus, for relief against the detention order passed against him. [37]

Despite these safeguards which were incorporated into the provisions on preventive detention in the Act there was considerable opposition to the passage of the Act from the opposition parties. Atal Bahari Vajpayee, the Jan Sangh leader, protested: "This is the beginning of a police state and a blot on democracy. It is the first step towards dictatorship ... these provisions will not be used against foreign spies but against political opponents." [38] N. K. Krishnan, a Communist Party member also clearly foresaw what would ensue:

> "...experience has amply proved that such sweeping draconian powers in the hands of the bureaucracy have been used for 20 years

> and naturally, will be used, not against anti-national elements... but against political workers, against trade union workers... We say that these powers are going to be used not against people who endanger the security of this country but against political workers, against trade union leaders." 39

The Home Minister sought to allay such fears with repeated assurances that MISA would not be used for purposes other than what it was intended for -- to deal effectively with threats to the defence and security of India. "It is a serious assurance" he declared, "that this bill will not be used against legitimate trade union activities or legitimate political activity." [40] The Emergency belied these assurances, as detailed in the next chapter.

At about the same time, the Defence of India Act of 1963 which was withdrawn in 1967, was reinstated as the Defence of India Act of 1971, again, in the wake of the Bangladesh crisis. It was so frequently resorted to by Mrs. Gandhi since then that on June 24, 1974 an editorial in the Overseas Hindustan Times titles, "Dangerous Addiction to DIR" caustically observed that it was being used for "wholly unintended and even miscellaneous purposes," even "to raise the price of bread."

In December 1974, by which time Mrs. Gandhi had become habituated to the use of preventive legislation to resolve law and order issues, a new measure, the Conservation of Foreign Exchange and Prevention of Smuggling Act (COFEPOSA) was enacted to extend the scope of MISA and enable the Government to carry out raids against and authorize detention

of suspected smugglers and hoarders. At the time of its passage, the Act provided for similar safeguards as were included in the MISA.

The Economic Stalemate

1970-71 was an excellent year for agriculture. A record harvest provided a sizeable reserve of food grains and kept food prices reasonably stable. Industrial production had also begun to pick up after two relatively stagnant years and foreign exchange reserves remained favorable. As the year progressed, Mrs. Gandhi's popularity was further enhanced as a result of the decisive Indian victory over Pakistan in the Bangladesh war of national liberation. She enjoyed more power and prestige than even her father, Pandit Nehru had. She had both the country and the parliament on her side. The time was propitious to implement all those measures of basic reform of the economy that either had not been enacted or if enacted had only lain in books and gathered dust. But, strangely, in place of the dynamic action the masses had a right to expect of her, an inexplicable paralysis seemed to afflict Mrs. Gandhi and her government.

The Congress under Mrs. Gandhi had a mandate, but apparently no programme. As J. D. Sethi, an Indian economist, has explained, the Congress would appear to have mastered the technique of winning elections, while losing the technique of governing the country. [41] Commenting on the situation, B. G. Verghese, a prominent Indian newspaper editor, wrote that Mrs. Gandhi seemed

> unwilling to lead, afraid of her own majority... If the country is adrift and the government rudderless it is because there has been a failure of leadership. The Prime Minister has no program, no world view, no grand design. Thus bereft of a frame she has merely reacted to events and failed to shape them. This has been her tragedy. 42

There was no coherent public program, no attempt to bring about quick and lasting reforms to effect social and economic progress. Mrs. Gandhi's preoccupation seemed to be purely political. With great deftness she had destroyed the faction within the Congress that posed a challenge to her power and had become the undisputed leader of the Party. Her appointments within it tended to create a group of Congress leaders who had no independent popular bases of their own, whose fortunes were very much tied to her own and whose loyalties to her consequently bordered on sycophancy. And, while there were still a few leaders with independent support of their own, their influence within the government steadily diminished, and if they had reservations about government policy they were astute enough to keep these to themselves. One-party dominance had led to one-person dominance over the Party, and as a result both cabinet and Parliament had lost much of their vitality and independence.

It was also difficult for the Government to take badly needed action on land reform, debt liquidation, bonded labor, food procurement and distribution and agricultural taxation, since the Congress Party derived substantial political support from the rural elite who would be most adversely affected by such measures. The official ideology of the Party

being socialism, a great many agrarian reforms were legislated amidst radical rhetoric, but they were unaccompanied by any determined action to enforce them. For years there had been no need to even try to act on controversial issues since whatever their own predicament, the rural poor seemed not to question the Congress' right to rule. The Party, symbolized by Mrs. Gandhi, represented authority to them, and the authoritarian character of the Indian political and social tradition did not encourage protest against authority.

But the middle classes, whose expectations were higher and whose values were less traditional, became progressively more restive. For them, Congress had made too many promises and raised too many hopes, and when economic stagnation set in Congress found itself the focus of their discontent.

The Indian approach to economic planning lay in the adoption of a "mixed economy" by which the government hoped to avoid the totalitarianism associated with complete state control of all phases of economic activity, as well as the social injustices related to total laissez-faire. Ever since independence, in pursuit of a policy of economic self-sufficiency, the economic plans had always been biased in favor of heavy industries. Import substitution rather than export orientation underlay the emphasis on heavy industries and the large capital investments it mandated. The emphasis on heavy industry resulted in the neglect of agriculture [43] which in turn had serious consequences for a nation in which over eighty per cent depended on agriculture for their livelihood. Even after more

than two decades of independence, the problem of mass poverty persisted. Elimination of abject poverty was the cry to which the electorate had responded and given Mrs. Gandhi her overwhelming victory. Momentous economic reforms were therefore expected since Mrs. Gandhi now possessed all the strength in Parliament that she needed to push her programs through.

The Union budget for 1971-1972 presented shortly after the elections, offered a partial fulfillment of the promises Mrs. Gandhi had made during her campaign. The budget provided for a number of special schemes for the benefit of the poor and the unemployed. A crach scheme for rural employment with a cost of half a billion rupees, a number of special employment schemes for the educated unemployed, costing a quarter of a billion rupees and other similar projects were allocated for in the budget outside of the provisions already made in the current five year plan. To deal with the ever-present problem of land reforms, a Central Land Reforms Committee was set up and this committee established new guidelines on ceilings on landholdings. Many states followed with legislation incorporating the new guidelines. But again, as always before, little was done to implement the enactments. It produced very little surplus land that could be distributed among the landless and small peasants. As the realization sunk in that effective reforms still would not be forthcoming, the mood of buoyant optimism that had accompanied the elections of 1971 was replaced by a sense of despair. Of course, some of the causes of the economic malaise that set in before the Emergency

were not of Mrs. Gandhi's making. Ten million refugees had poured into India during the Bangladesh crisis and India had provided for them, depleting her slender food reserves. The OPEC oil price increase had crippled the foreign exchange reserves; three successive years of drought and the high price of grain in the world markets also exacerbated the economic situation.

When the need of the hour was the effective implementation of meaningful economic reforms, especially agrarian reforms, Mrs. Gandhi's efforts were directed towards the expansion of the public sector through the acquisition of ownership and control of vital segments of industry still in private hands. During this period she nationalized the general insurance companies, the entire coal mining industry and even the wheat trade.

The nationalization of the wheat trade was an out and out economic disaster. In April 1973, the government took over the procurement and distribution of wheat, thereby eliminating the role of the private traders in an effort to cut out middle men, insure fair prices and end speculation and hoarding. The measure caused angry resentment among farmers and traders, a breakdown in supply and a booming black market. Within a year the price of wheat had risen 36% and severe shortages had developed to the point where, in March 1974, government was compelled to end its take-over of the wheat distribution and release it to private hands. [44] In the meanwhile, large amounts of wheat had to be bought on the world market at the prohibitive prices then prevailing, and this worsened further the

already precarious foreign reserve situation. Between 1972 and 1973 the cost of food grain rose nearly 13%; during the following year prices rose another 29%, compared to only moderate increases in preceding years. [45]

As the economic situation worsened, the Government resorted with ever-increasing frequency to deficit financing. As B. S. Minhas, a leading Indian economist has pointed out, political and financial discipline was permitted to sag:

> The old procedure of fixing ceilings on drought assistance to the States was dispensed with ... Billions of rupees were pushed out in drought relief. Money did not seem to matter. Promises for financing all "worthwhile" schemes were freely distributed. 46

By the Fall of 1974 the economic scene was dismal on all fronts. There was runaway inflation, widespread unemployment and severe shortages of essential commodities. Labor unrest was pervasive. According to the Ministry of Finance, Economic Survey, 1975-76, six million man-days were lost just between July and September, 1974. Industrial production declined as a result of power cuts, drops in productivity, under-utilization of capacity and labor unrest. The balance of trade deficits continued to deteriorate. A drought of calamitous proportions continued into a third straight year. In West Bengal alone, according to the Relief Minister of the state, Mr. Santosh Roy, 15 million people in the rural areas were reported to be "either starving or living on one meal a day. [47] In Bihar about six and a half million tribals were said to be living on

the starvation line. There were similar conditions in other states as well. In all, eight states out of the 22 states of the Union reported famine conditions. Reports such as the one below were not uncommon in the Fall of 1974:

> In Assam, famine had affected about 92 per cent of the rural population in Goalpara District alone. About 300,000 people in Dhubri were subsisting on wild roots and leaves. In addition, cholera had broken out and an unaccounted number had perished. The Sub-divisional relief committee was looking after hardly 4,000 people on 200 grams of rice and 100 grams of atta (wheat flour) per head per week. This lasted barely two days. For the other days of the week, the people had to fend for themselves. 48

Large scale violence sparked by high food prices and severe food shortages occurred in state after state. Under the circumstances, it is not surprising that the violent political agitations in Gujerat and Bihar, on the eve of the Emergency, started out as protests against the intolerable economic conditions within those states, before they expanded in scope to cover political issues as well.

The Economic Survey presented to the Parliament by the Finance Ministry in early 1975 underlined the extent of economic stagnation. Whereas the growth of national income at constant 1960-61 prices was estimated at having increased from the previous year by less than one percent in 1974-75, the rise in wholesale prices between April and December of 1974 was 27.2 percent. [49]

To comprehend the magnitude of the economic despair prevailing in the country, one needs only to look at the figures on the devastating economic performance of the nation under Mrs. Gandhi as compiled by Ashok Mitra, a distinguished Indian economist and former chief economic adviser to the Government of India. His figures show that between mid 1972 and mid 1975 consumer prices in India rose by 80% and that in the decade since 1966 the compound rate of growth of farm output was barely 1% a year, industrial growth actually declined by two-thirds compared to the growth rate registered in the preceding decade. [50]

A Problem of Integrity

While confidence in Mrs. Gandhi's administrative ability began to wane, scandals began to plague the Administration and even her personal integrity came under question. The major scandals of this period are treated below since they contributed to the decline in the public esteem which Mrs. Gandhi and her Administration had hitherto enjoyed: [51]

The still unresolved "Nagarwala affairs" was the first major public scandal that affected Mrs. Gandhi personally and it set the stage for the fading of her charisma. According to the charges, 1971, during the Indo-Pakistan war, Nagarwala had imitated the voices of Mrs. Gandhi and the head of her Secretariat, P. N. Haksar over the telephone and persuaded Ved Prakash Malhotra, the chief cashier of a New Delhi branch of the state-owned State Bank of India to take out six million Rupees from the bank valuts and hand it over to him "for Bangladesh". He was

arrested and within five days was sentenced to four years rigorous imprisonment on charges of impersonation and cheating.

The unheard of speed with which the case was disposed of aroused immediate suspicion which only increased when, while still in custody and awaiting a retrial that had been granted to him, Nagarwala died of an apparent hear attack. A physician present at the post mortem let it be known to newsmen that he had his suspicions about the fatal heart attack. Shortly thereafter, two police officers who were actively involved in the Nagarwala investigation also met with untimely deaths -- one, also of a heart attack, and the other when run over by an automobile.

Ugly rumors soon began to circulate as the public wondered if chief cashier Malhotra may not have acceeded to Nagarwala's request for the money only because he was used to such requests from Mrs. Gandhi. With the death of the principal, the case was dismissed and no further disclosures ensued. However, Mr. Malhotra, the errant cashier subsequently became an active Congress worker and this rise to prominence within the party gave currency to the belief that he had been rewarded for his silence and loyalty.

A more damaging scandal involved the murder in January 1975 of the Railways Minister L. N. Mishra, in Samastipur, in Bihar. [52] While he was inaugurating a new railway link between Samastipur and Muzzafarpur, a bomb exploded under the rostrum of which Mishra and the other dignitaries were seated injuring about twenty people including Mishra and his brother J. N. Mishra, who was also a leading Bihari politician. A most confusing

sequence of events ensued, culminating in the death some hours later of L. N. Mishra, who thereby became the first public figure to be assassinated sine Mahatma Gandhi in 1948.

While both the Mishra brothers had been hurt in the explosion, J. N. Mishra had been treated at the hearby hospital in Samastipur, whereas the Railway Minister had been taken by train to Patna 150 kilometers away and from there by car to Dinapur several more kilometers distant. On arrival in Dinapur he was operated on for the internal injuries, allegedly sustained during the explosion. He did not survive the surgery.

Questions on everyone's lips related to why he had not been taken to the local hospital as his brother had been and how he could have died only hours after a doctor in attendance at the Samastipur railway station, where the explosion ahd occurred, had pronounced that the Minister had suffered only minor skin abrasions. Also, a team of surgeons who had arrived in Samastipur from the medical college at neighboring Darbhanga had been prevented from examining Mishra, allegedly by his staff members, whose identities remained unrevealed. Questions were also raised over the laxity of security arrangements, particularly in view of repeated forewarnings the police had received that certain persons were conspiring to harm Mishra, possibly in Samastipur itself. The mysterious circumstances surrounding his death prompted a leading newspaper to editorialize on the event **thus**: "But if it turns out that it is not the act of some senseless maniac, or even a disgruntled individual, then it has the most disturbing implications for the state of health of the polity." [53]

The major reason why government complicity was suspected in Mishra's death was that Mishra by then had become a source of deep embarrassment to the Administration. He had been implicated in an earlier well publicized scandal, the so-called "Licence scandal" that had dominated the previous parliamentary session. It was discovered at that time that 21 members of Parliament had signed and sent a memorandum to the Ministry of Commerce recommending the issue of import licenses to several private firms in Pondicherry. Except for the signature of one member, Tul Mohan Ram, all the other signatures were discovered to be forgeries.

The licences covered items like automobile engines and parts, scientific, medical and surgical equipment, film and studio equipment, whisky, brandy, and gin -- some of these items carrying 200 to 300 percent markup in the open market. Mishra, who at that time was the Foreign Trade Minister, was alleged to have taken a close and continuous interest in the grant of the licences and according to a Central Bureau of Investigations report on the matter, Mishra had demanded of the Commerce Ministry officer in charge a "quick finalization" of the issue of the licences. [54]

When the winter session of the Parliament had adjourned in December, less than a month before Mishra's death, opposition leaders had presented a memo to Mrs. Gandhi asking for a fuller inquiry into the matter, by a parliamentary committee. In addition, there were other charges of corruption and highhandedness against him. In fact, at the time of his death, he was under investigation by a commission of inquiry, headed by a former Chief Justice of India, K. Subba Rao. The commission was

sponsored by the widely respected public interest group, Citizens for Democracy, founded by Jaya Prakash Narayan, who was a leading opponent of Mrs. Gandhi.

There appeared to be little that Mrs. Gandhi could do to remove him from office. For one thing, as the chief fund raiser for the Congress he had knowledge of all the illegal contributions to the party coffers. Much of it came from large corporations in return for licences, exemptions, price increases and the like. According to some reports, industrialists were even forced to finance the Congress, under threat of nationalization. [55] J. R. D. Tata, one of the top industrialists of the country, had openly accused the party of collecting funds illegally: "Has not the ruling party" he had asked publicly, "condoned economic misdeeds and corruption by openly collecting illegal contributions, mostly in black money, for its election funds?" [56]

Furthermore, Mishra had been the Minister for Railways when a major railwaymen's strike, which will be discussed later in this chapter, was broken a year earlier, through the use of extraordinary force by the Administration. He was perhaps the most controversial figure in Mrs. Gandhi's cabinet and many perceived that Mrs. Gandhi stood to benefit the most from his death.

Mishra was the most vivid symbol of corruption in the Gandhi administration. However, of the charges of corruption levelled against prominent figures associated with her, the one that affected her most personally centered around her son Sanjay's attempt to build a "people's

car." [57] In 1969, the Government of India decided to proceed with the manufacture of a low priced car Maruti, named for the son of the Hindu Wind God. The Government received 18 applications, including many from established industrial and engineering groups. The licence was awarded to Mrs. Gandhi's then 22-year old son Sanjay, whose only qualification for the undertaking was a brief apprenticeship in a Rolls Royce plant in Great Britain. From its inception, the project was embroiled in controversy as charges of nepotism, and highly questionable business and financial dealings were repeatedly raised. At one time a fifth of the membership in Parliament had demanded an inquiry into the Maruti affairs, but the demand had been dismissed outright by Mrs. Gandhi.

The project was an unmitigated disaster. Only a few prototypes -- faulty at that -- were ever manufactured. Frequent infusions of credit from nationalized banks however kept it afloat. Despite its sorry record, Maruti subsidiaries were allowed to be set up and they received lucrative government contracts for "consulting services" and for the manufacture of roadrollers. The people never did get to see, let alone own, a people's car, though Sanjay reportedly managed to amass a large personal fortune through his Maruti dealings.

Ordinarily, a scholarly work on political change would not have to concern itself with scandals or rumors such as described above. However, in the highly charged Indian political climate preceding the Emergency, all these scandals -- the Nagarwala affair, the licence scandal, the Maruti project and the Mishra assassination -- took on major significance. To

the public, they reflected pervasive corruption in high places and cumulatively they resulted in a steep erosion of faith in government integrity. Most importantly, for the first time in Indian politics, the issue of corruption acquired a political dimension, offering the basis for a new mass movement.

This movement started out in Bihar, under the leadership of Jaya Prakash Narayan, as a protest against corruption and incompetence against Congress leaders but soon spread to other states and eventually became a catalyst of forces opposed to Mrs. Gandhi. By June 1975, the word corruption had taken on such emotive content that when Mrs. Gandhi was found guilty of "corrupt" electoral practices and her election set aside, the opposition received overwhelming public support when it demanded her resignation from office.

Mrs. Gandhi had contributed much to the loss of trust in the Government through her frequent flouting of conventions and norms that had grown up within the democratic process of India. Of her transgressions in this area, the one that aroused the most opposition was her appointment in April 1973, of a Chief Justice of the Supreme Court to succeed the retiring Chief Justice S. M. Sikri.[58]

Since independence, it had become customary for the senior most judge of the Court to be nominated as the successor to the retiring Chief Justice. Had convention been followed, Justice S. M. Shelat would have been the choice. But in an unprecedented departure from accepted

practice Mrs. Gandhi nominated Justice A. N. Ray, who was junior not only to Justice Shelat but to two other Judges as well, K. S. Hegde and A. N. Grover. What made this nomination even more controversial was that only a day earlier the Supreme Court had handed down the verdict in the famous Kesavananda Bharati case - the Fundamental Rights case. The superseded Justices had all held that Parliament did not have the right to amend the basic features of the constitution while the newly nominated Chief Justice had sided with the government position on each and every issue -- and there were many of them -- that had been raised by the case. Mrs. Gandhi's decision was widely condemned as an attempt to politicize the judicial process. Mohan Kumaramangalam, her Minister for Steel and Heavy Engineering, but more importantly the chief leftist theoretician of the Party defended the choice thus:

> Certainly, we as a government have a duty to take the philosophy and outlook of the Judge in coming to the conclusion whether he should or should not lead the Supreme Court at this time. It is our duty in the Government honestly and fairly to come to the conclusion whether a particular person is fit to be appointed the Chief Justice of the Court because of his outlook, because of his philosophy as expressed in his expressed opinions, whether he is a more suitable or a more competent judge. This is our prerogative... 59

The Supreme Court Bar Association chose to view the incident as a purely political act that was "a blatant and outrageous attempt at undermining the independence and impartiality of the judiciary" and to make it "subservient to the executive and subject to political pressures

and dependent on Government patronage and influence." [60]

Others, including one of the superseded justices, K. S. Hegde, saw behind the act a more sinister motive by the Communists "to capture Congress from within and pervert the Constitution." Citing the entry of several former Communists into the Congress Party since the 1969 split, Hegde cautioned that the supersession of the judges was not an isolated act:

> The various steps taken by our Government since the 1971 elections bear witness to the enormous influence wielded by the Communists. . . . The people are being systematically cheated of their rights. They are deprived of their freedoms one by one. The destruction of the independence of the judiciary is an act of treachery and a fraud on our Constitution . . . Unless the people shake off their lethargy and find out the realpolitik behind the recent developments they will soon find themselves deprived of all their rights. We are on the way to dictatorship. [61]

The three superseded justices resigned in protest and they and the outgoing Chief Justice S. M. Sikri boycotted the swearingin ceremony of the new Chief Justice. The issue of supersession, as Kuldip Nayar had succinctly stated, came down to the basic issue of should the judge uphold the laws or the social philosophy of the ruling party? [62]

The Ascendancy of Agitational Politics

The politicization of the judicial process was an issue that aroused public ire, especially among the better educated Indians. They were

already restive as the Congress appeared utterly incapable of anything but intrigue and petty manipulative politicking. For them, the Congress had made too many promises and raised too many hopes. As economic stagnation set in, the ruling party found itself the focus of their discontent. There was more frequent resort to civil disobedience, a legacy of the Indian independence struggle and therefore sanctified by it. The belief that government would respond only to violent agitations gained greater currency as strikes, protests, demonstrations, etc., often ending in violence, increased. As public protests increased, so did the frequency with which government resorted to restrictive legislations infringing on the right to personal liberty. There was also a buildup of paramilitary forces which were widely deployed to quell disturbances. Few educated Indians would have denied on the eve of the Emergency that Indian society was near-anarchical and in need of discipline and order or that government was becoming ever more repressive.

The opposition, meanwhile, was able to capitalize on the popular groundwell of discontent and gain in strength. For years opposition to Congress had come from a motley assortment of parties ranging in ideology from the reactionary right to the extremist left, without coherent programs or popular leaders. Over the previous year, however, this opposition succeeded more than at any time previously in forging a coalition against the Congress. The leading force behind this development was Jaya Prakash Narayan, an aging idealist who in 1974, after an absence of nearly 20 years, returned to active politics in his home state of

Bihar to denounce the inefficiency and corruption of the ruling Congress Party and to press for its removal.

The 72 year old Narayan, or "J. P." as he was more commonly referred to, was a veteran of the nationalist struggle, an authentic hero in the eyes of many. Long a crusader for morality in politics, he inspired the special kind of respect Indians bestow on unconventional political figures who work outside the mainstream of partisan politics. His status as a Gandhian without party affiliation and his reputation for integrity and selflessness gave his "People's Movement" tremendous respectability. The response to it was overwhelming and it soon became a catalyst of forces arraigned against the Congress. Opposition parties as diverse as the right-wing Jan Sangh and the leftist communists extended their support to his movement. With "J. P." at its helm, the opposition now appeared to achieve what it had hitherto lacked -- political legitimacy. The importance of Narayan, Verghese has stated, is that he emerged when the people decided that the time had come to rethink where India was going. He dared to ask the question, "Where are we going?" [63]

The opposition coalition had no more concrete program than the Congress Party, but it seemed not to matter as its campaigns against corruption and misgovernment echoed popular sentiment. It scored impressive victories in the states of Bihar, Uttar Pradesh and Gujerat and through massive public protests and hunger strikes forced the government to concede to many of its demands.

The political agitation that enveloped Gujerat for almost a year and a half is of crucial significance for an understanding of the political forces that resulted in the Emergency. As Francine Frankel has remarked, "The Gujerat uprising can be considered a political watershed. It marked the collapse of shared consensus on legitimate methods of conflict resolution between the government and opposition groups." [64]

The trouble in Gujerat began in January 1974, when students at the L. D. Engineering College in Ahmedabad, the state Capital, rioted against a fifty per cent increase in their mess bills. [65] During the protest, they set fire to the college mess hall and attacked the rector's house. The Chief Minister of the state, Chiman Patel, ordered riot police to the campus to quell the riot. In the action that ensued, many students were severely beaten by the police and over a third of the student body was arrested. This in turn led to the formation of a city wide students strike association, the Vidyarthi Lagni Parishad.

The Parishad called for a shutdown of all colleges and schools until the authorities met its demands relating to the release of the arrested students, the resignation of the education minister and relief from the high mess bills. Confrontation between the student forces and police followed. Meanwhile, large segments of the urban middle class, driven to despair by high food prices and shortages of essential commodities, which they blamed on the policies of the Congress administration in power joined forces with the students and issued a call to Chiman Patel to deal severely with the profiteers, hoarders and black marketers responsible for the dismal food situation within the state. Large

scale rioting followed and violence spread to other cities. What had started out as a student protest against higher prices soon took on political overtones as organized interest groups and political parties entered the fray determined to bring about the resignation of the Chief Minister and the dissolution of the state Assembly.

As violence escalated, elements of the Border Security Force and the Central Reserve Policy were rushed in by the central government to augment the state police, but to no avail. Even the Indian Army units which had been sent in at the request of the state government could not restore order immediately. Meanwhile, the Chief Minister whose resignation had by now become a non-negotiable demand by the protestors began to lose ground within his party and his own cabinet. On February 9 after four members of the cabinet had joined in the demand for Patel's resignation and still with no end in sight to the violence, Mrs. Gandhi prevailed upon the Chief Minister to resign. The State Assembly was dissolved and President's rule imposed on the state.

The resignation of the state Chief Minister only hardened the protestor's determination to press for their demands for the dissolution of the Assembly and for fresh elections to it. The agitation turned increasingly ugly, but Mrs. Gandhi was determined not to capitulate to the protestors' demands. However, when 95 of the 168 members of the Assembly resigned, the central government had no choice left, and dissolved the Assembly on March 15.

While the Gujerat political agitation was gathering momentum, another protest movement was gathering force in Bihar. Here again, the protest was initially spearheaded by the students and centered around the generally depressing economic situation that prevailed in Bihar the second most populous state in the nation. By any standards, the Bihar economy was one of the most backward in the country, as evidenced by the per capita income which was about 35 percent below the national average of Rs. 645 per year. Two-thirds of the state population lived below the national poverty line defined at Rupees 20 per month at 1960 constant rupee. [66]

The student forces led by the student wing of Jan Sangh, in cooperation with that of the Samyukta Socialist Party demanded the resignation of the Ministry and the dissolution of the Assembly for their responsibility for the high inflation, food shortages and unemployment within the state. As in Gujerat, the students soon attracted the support of much of the non-Congress opposition ranging from the right wing Jan Sangh to the Congress (O) and the Communist Party of India (Marxists). More importantly, the movement attracted the support of Jayaprakash Narayan, who announced his decision to reenter active political life after an absence from it of nearly twenty years. He soon became the uncontested leader of the people's movement in Bihar with his call for a "total revolution" -- political, economic, educational, cultural and moral -- to cleanse the body politic of corruption. The Bihar agitation was in many respects even more damaging to the Congress Party than the Gujerat movement, since J. P.'s leadership lent it a respectability it would otherwise have lacked.

The Jan Sangh, in particular, benefitted immensely from its association with J. P. Within the non-Communist opposition, the Jan Sangh had the largest cadre and the most effective organizational apparatus. But although it had managed to extend its influence in the northern states, among the urban middle class, the trading community and the comparatively affluent portions of the peasantry, it still was viewed by many as merely a front for its militant wing -- the Rashtriya Swayam Sevak Sangh. Being associated in the public mind with economic conservatism and Hindu chauvinism it had, until the Bihar agitation, failed to acquire a positive national image. Now, however, with their participation in the coalition headed by J. P., the Jan Sangh began to attain the national respectability they needed to become a viable opposition force to the ruling Congress.

As the Gujerat and Bihar protests intensified, another potentially more damaging crisis threatened the Gandhi Administration. In April 1974, the National Coordination Committee for Railway Unions, the official spokesman for over one and a half million railway workers announced its decision to launch an indefinite strike from May 8. The workers' demands were embodied in a nine point charter of demands that included parity in wages with workers in public sector undertakings (entailing a doubling of wages) increased dearness allowance, eight hour work days, and supply of subsidized food grains. In his efforts to pressure the Government to concede to the demands, George Fernandez, the then President of the All India Railwaymen's Federation [67] and the convenor of the

Coordination Committee, had received the support of most of the non-Congress opposition, including the Jan Sangh. This appears to have convinced Mrs. Gandhi that the proposed strike was politically motivated aimed at aggravating the prevailing political and economic chaos in the country. She therefore decided on preemptive measures to deal with it.

In the early hours of May 2, a week before the strike was to have commenced, she invoked the Defence of India rules (1971) and the Maintenance of Internal Security Act to declare the strike illegal and to take into custody Mr. Fernandez and other members of the Coordination Committee and about 600 railway employees. The Government alerted the Army, the Territorial Army and the Border Security Forces for deployment in the running of the railways. In the confrontation that followed extraordinary police force was brought to bear to break up the strike. In all, over 20,000 striking railwaymen were arrested under DIR and MISA, thousands of families were forcibly evicted from their quarters and hundreds of thousands more lost their old age pensions and other privileges. [68]

To the opposition, the fierceness of Mrs. Gandhi's response to the railway strike presented clearest proof yet that she would not abide by the rules and conventions that had governed Indian democracy. So the opposition pressed harder and Mrs. Gandhi responded with increasing harshness. By early 1975, the J. P. movement, as the opposition movement by now was being referred to, began spreading to other states -- Haryana, West Bengal, Uttar Pradesh and Andhra Pradesh. Within her own party itself, a group of about forty members of parliament began pushing

for a meaningful dialogue between J. P. and her over the basic problems of corruption, unemployment and inflation -- all problems which the J. P. movement emphasized in its struggle.

Election Verdicts -- Gujerat and Allahabad

In Gujerat where President's rule had continued since it was imposed in March 1974, the Opposition reintensified when Morarji Desai announced an indefinite fast from April 7, 1975 "for restoring the people's right of electing their representatives before the end of May." [69] On April 13, after Morarji had been on fast for almost a week, Mrs. Gandhi announced that elections to the Gujerat legislature would be conducted by June 10.

For the elections the opposition decided to join forces and present a united front against the Congress Party. The Janata (People's) Front, under Morarji's leadership and with J. P.'s support was formed and it consisted of the Old Congress, whom Mrs. Gandhi had regularly attacked for spreading violence and disorder in the country, the Jan Sangh, the Socialist Party, and the Bharatiya Lok Dal. The Front succeeded in arriving at a common strategy and under its unified leadership decided to field, in almost each constituency, only a single candidate so as not to fragment the opposition vote. The dispersion of votes among myriad opposition parties which in the past had benefitted the ruling Congress did not occur this time, and the opposition coalition inflicted an astounding defeat on the Congress. [70] Despite an intensive campaign by Mrs. Gandhi, which featured 90 speeches by her across the state, the Congress won only 75 seats in the 182 member Assembly, a sharp drop from

the 140 seats it had won in the then 168 member House, that the party had won barely three years ago. The Janata Front did not win an absolute majority either, winning a total of only 86 seats. However, with the help of another opposition party, outside of the Front, which had 12 seats the Front was able to form a government.

The Gujerat elections had two major implications. First, a unified opposition succeeded in wresting supremacy from the Congress thereby strengthening the possibility of similar united opposition fronts against the Congress in other elections as well. Secondly, and equally important, it was an omen to the Congress Party that Mrs. Gandhi's charisma was on the wane. She had staked all her power, prestige and popularity in the election campaign; in an effort to identify with the local populace she had even worn her sari in the traditional Gujerati style. [71] But for once, it seems, the people were not taken in by the promises she held out and they turned their backs against her and her party. Under the changed political conditions, it appeared that the Congress could no longer count on her to inspire the public support which it needed. In the absence of strong organizational machinery at the state and local levels it had been Mrs. Gandhi's personal popularity which had won for the Congress much of its recent electoral successes. Now, as J. P. put it, the Gujerat election appeared to prove that the "Indira wave" was over. [72]

As the Congress loss in the elections in Gujerat became apparent, another event occurred which ultimately proved to be the catalyst to

the situation that resulted in the Emergency. On June 12, 1975, in a momentous judgement, Mr. Justice Jag Mohan Lal Singh of the Allahabad High Court set aside Prime Minister Indira Gandhi's election in 1971 to the Lok Sabha holding her guilty of corrupt election practices under the Representation of the People Act. He debarred her from contesting any election under the Act for a period of six years, but, on the plea of her counsel, stayed the operation of the judgement for 20 days. [73] The verdict climaxed one of the most protracted election cases, lasting over four years. The petition filed by her leading opponent Raj Narain, in April 1971, a few days after the mid term poll, challenged Mrs. Gandhi's election from Rae Bareli constituency, in Uttar Pradesh. In that election, Mrs. Gandhi had won handily having received 183,309 votes; Raj Narain of the Samyukta Socialist Party had polled only 71,499 and the remaining two candidates together had received barely over 21,000 votes. [74]

The five major charges out of the 14 that Raj Narain had listed in his petition were that:

1. Mrs. Gandhi had secured the services of a gazetted officer of the Government of India for election purposes;
2. She and her election agent had incurred or authorized expenses beyond the limit permitted by law;
3. She had used a religious symbol, the cow and calf, for the election;
4. She had procured the assistance of Government officials of Uttar Pradesh (UP) for making arrangements for her election meetings; and

5. She had procured the services of the members of the Indian Air Force to fly around for campaign purposes.

Of these five charges, Mrs. Gandhi was found guilty of charges one and four. The Court held that she had committed corrupt practices as defined in Section 123 (7) of the Representation of the People Act. She had obtained the assistance of Yash Pal Kapoor during the period of January 7-24, at a time when he was still an employee of the Central Government on special duty in the Prime Minister's Secretariat. She had also, the Court found, procured the assistance of UP Government officials such as the District Magistrate, the Superintendent of Police, the Public Works Department Engineers and other officers to build rostrums and make other arrangements at her election meetings in Rae Bareli during the campaign.

Immediately following the verdict, Mrs. Gandhi's counsel sought and obtained an order from the Court staying the operation of the verdict for 20 days. In that application it was stressed that the stay was needed to avoid a vacum in leadership and a new leader of the Congress Parliamentary Party had to be elected before Mrs. Gandhi ceased to be a member of the Parliament and the leader of the Congress Party in Parliament. [75]

When the stay was granted it was at first perceived by the public as well as the opposition as merely an enabling measure to facilitate a smooth transition of Congress Party leadership and the filing of an appeal to the Supreme Court by Mrs. Gandhi. The stay was used, however, for vastly different purposes. When the Congress Parliamentary Party

met after the verdict it was not to elect a new leader but rather to pass a unanimous resolution proclaiming the party's confidence in Mrs. Gandhi. "This meeting," the resolution stated "reiterates its fullest faith and confidence in her and firmly believes that her continued leadership as Prime Minister is indispensable." [76] The resolution made no reference to the Allahabad High Court judgement or any of the issues raised by it. A series of similar statements and resolutions issued forth from Ministers, Members of Parliament, Chief Ministers and other Congress leaders praising her progressive, dynamic and indispensable leadership and imploring her to stay on as the nation's leader. In a memorandum to the President of India 16 Chief Ministers of States noted

> "This is not just a legal matter. Mrs. Gandhi is not only the Prime Minister, but she also symbolises in herself the resurgent India of today and the aspirations of the people, particularly the poor masses and the minorities. Now, more than ever, when the country is passing through severe economic strain, when communal subversive and divisive forces are out to create conditions of chaos and confusion and when there are still threats of external aggression by forces hostile to us, the nation needs her leadership and guidance. Under the circumstances, it would be a tragedy of great national magnitude if she has to lay down her office of Prime Minister-ship at this juncture. This would bring about conditions of instability not only at the national level but also in various states.
>
> In our view, therefore, Mrs. Gandhi must and should continue as the Prime Minister of India, in the overall national interest." 77

In another outpouring D. K. Barooah, the Congress Party President, coined the new slogan "India is Indira, Indira is India" highly reminiscent of the Nazi slogan about Hitler and Germany. But, as effusive expressions of support were voiced by her backers, equally loud calls from her critics for her resignation were also heard.

There were mammoth shows especially in New Delhi of "public" support for Mrs. Gandhi where a rash of "solidarity rallies" were staged in front of the Prime Minister's residence. The Shah Commission, which looked into the abuses of the Emergency, later found overwhelming evidence that the supposedly spontaneous rallies and demonstrations in support of the Prime Minister had been carefully stagemanaged with the full cooperation of the Delhi Administration and various municipal agencies. [78] On the day after the verdict, for instance, the entire fleet of Delhi Transport Corporation buses were taken off the road to ferry supporters back and forth from the Prime Minister's residence. Some buses were even sent to neighboring states of Haryana, Uttar Pradesh and Punjab to bring in the supporters as thousands of commuters were stranded in the city at busstands waiting for buses that never came. The Delhi Electric Supply Undertaking and the Delhi Municipal Committee were likewise coopted for the task of keeping Mrs. Gandhi in power through popular supplication. [79] As the opposition leaders charged at the time and the Shah Commission later concluded, there seemed to have been not the slightest regard for the inconvenience caused to the citizens or for the blatant misuse of official machinery to drum up crowds to display faith in the Prime Minister.

For their part, the opposition was equally determined to bring about Mrs. Gandhi's removal from office. Their protests in the beginning were confined to a 12 hour sit-in by a small but prominent group of leaders in front of the President's house, the Rashtrapathi Bhavan, and statements in the national press and in their respective party organs denouncing Mrs. Gandhi's continuance in office. The opposition leaders directed their efforts at this time to prevail upon the President to dismiss the Prime Minister and install a new government. Such efforts were strictly within constitutional bounds and, contrary to Mrs. Gandhi's later assertions it was not the opposition but the Congress Party which dragged the issues arising from the Allahabad verdict into the streets and masked it, as an editorial pointed out at the time, in partisan rhetoric and ideological passion. [80] Some of the supporters of the Prime Minister were reported to have burnt an effigy of Justice Sinha for having caused "so much trouble to the Congress by his verdict." [81] Posters castigating the judiciary and Justice Sinha surfaced on city walls, especially in Delhi. One even went so far as to inquire: "Is Mr. Sinha a CIA agent?" [82]

The issue of the Prime Minister's political future was without doubt rapidly being moved out of the court system and into the streets. On June 20, Congress organized the biggest ever solidarity rally of people from all over India pledging support to Mrs. Gandhi and urging her to continue in office. The All India Congress Committee (AICC) which organized the rally set the attendance at one and a half million

and even the more conservative police estimates set it at 800,000 to a million. [83] Rhetoric at the rally was by no means designed to cool political passions. Declaring that a well organized and calculated conspiracy of "big interests" was at work to force her removal from the political scene, Mrs. Gandhi hinted darkly that these forces would not limit their attacks to character assassination but would even go to the extent of making attacks on her life. [84]

Then on June 24 the eagerly awaited order on Mrs. Gandhi's application to the Supreme Court for an "absolute and unconditional stay," during the pendency of her appeals to the Supreme Court, was given. Describing his own order as "provisional," Justice V. R. Krishna Iyer, the vacation judge during the summer recess, ruled that Mrs. Gandhi could not draw any remuneration or participate or vote as a member of the House but would be entitled to sign the register kept in the House and address both Houses of Parliament and discharge other parliamentary functions in her capacity as the Prime Minister. [85] In effect, he made a distinction between her two roles, as a member of the Parliament elected from Rae Bareli constituency and as the Prime Minister. While suspending her privileges as a member of the House, since her election to the House had been set aside, he nonetheless allowed her to exercise her privileges and function in her role as Prime Minister during the pendency of her appeal.

The opposition, however, was not content to draw so fine and subtle a distinction as the one Justice Iyer had. Instead, in view of

Mrs. Gandhi's failure to receive the "absolute" stay she had sought, the opposition decided to intensify its efforts to bring about her removal from office. The very same means Mrs. Gandhi had employed to generate support for her continuance as Prime Minister was what the opposition, too, settled upon to bring about her removal. The Indian political scene at this time provided an observer with continuous drama, though none knew then whether it was mere farce, theater of the absurd or the tragedy it turned out to be in the end.

Events followed in rapid succession, seemingly inexorably, and yet toward a conclusion no one at the time sensed in full. It came as no surprise to the public, conditioned by recent events to tumultous political agitations, when the opposition, buoyed by its Gujerat electoral victory, announced on June 25 its decision to launch a nationwide struggle, from June 29, to press for Mrs. Gandhi's resignation. It seemed then that the general political unrest had characterized much of Indian politics in the preceding months would intensify in the coming months unless Mrs. Gandhi submitted to the demands for her removal from office.

What no one foresaw was that on the night of June 25 and 26 she would declare an end to the democracy which permitted the public, the opposition and the press their right to express disapproval of her continuance in office.

NOTES: CHAPTER II

1. The manoeuvres behind Shastri's succession as Prime Minister is recounted in Kuldip Nayar, India after Nehru (Delhi: Vikas Publishing, 1975). Chapter I and in Chapter 3 of Michael Brecher, Nehru's Mantle: The Politics of Succession in India (New York: Fredrick A. Praeger, 1966).

2. See Michael Brecher, Nehru's Mantle, Chapter 8 for a detailed account of Mrs. Gandhi's elevation as Prime Minister.

3. Both Desai and Shastri believed that Pandit Nehru intended for his daughter to succeed him and that in order to groom her he had arranged for the outgoing AICC President, U. N. Dhebar to name her as the next AICC President. See Kuldip Nayar, India, the Critical Years, rev., and enlarged ed. (Delhi: Vikas Publishing, 1973) pp. 24-25.

4. Nayar, India after Nehru, p. 9.

5. India, Ministry of Home Affairs, Report of the States Reorganization Commission (New Delhi, 1955). Eleven unilingual states were created by the States Reorganization Act. These were Andhra Pradesh (Telugh), Assam (Assamese); Kerala (Malayalam); Madras (Tamil); Mysore (Kannada); Orissa (Oriya); West Bengal (Bengali); and Madhya Pradesh, Rajasthan, Bihar and Uttar Pradesh (Hindi). Bombay and Punjab were retained as bilingual states at the time, though in 1959, during Mrs. Gandhi's tenure as AICC President, Bombay was divided into two states, Maharashtra (Marathi) and Gujerat (Gujerati).

6. Nayar, India after Nehru, p. 75 and Critical Years, pp. 112-16.

7. The events surrounding the West Bengal Congress Party election debacle is recounted in Atulya Ghosh, Split in the National Congress (Calcutta: Jayanti Publications, 1970).

8. Two excellent works on the Congress Party are Stanley Kochanek, The Congress Party in India (Princeton: Princeton Univ. Press, 1968) and Myron Weiner, Party Building in a New Nation: The Indian National Congress (Chicago: Univ. of Chicago Press, 1967).

9. See Indian Election Commission's Report on the General Elections in India and the All India Congress Committee's General Election surveys for statistical information.

10. For a summary of results see Myron Weiner, "India's Third Annual General Elections" Asian Survey 2 (May 1962) p. 3-18. Also Report on the III General Elections in India 1962.

11. "India's voters throw out old timers" Statesman, Feb. 24, 1967.

12. According to Zareer Masani, the Chief Ministers of Madhya Pradesh, Uttar Pradesh, Andhra Pradesh and Mysore, who together controlled over half of the votes in the Congress Parliamentary Party threatened not to support Mrs. Gandhi's candidacy unless she appointed Desai as her Deputy. Indira Gandhi: A Biography (New York: Thomas Y. Crowell, 1975) p. 174.

13. Nayar, India after Nehru, p. 93.

14. The best account of the split in the Congress ranks is in A. M. Zaidi, The Great Upheaval (New Delhi: Orientalia, 1972).

15. T. V. Kunhikrishnan, Chavan and the Troubled Decade (Bombay: Somaiya Publications, 1971) p. 303.

16. Masani, Indira Gandhi, pp. 197-198

17. Ibid., p. 198.

18. Nayar, Critical Years, p. 40.

19. Ibid., p. 82.

20. Ibid., p. 51.

21. For an appraisal of the political influence of the CFSA see Francine Frankel, India's Political Economy, 1947-1977: The Gradual Revolution (Princeton: Princeton Univ. Press, 1978) pp. 462-65.

22. Nayar, India after Nehru, p. 154.

23. Nayar, Critical Years, p. 329.

24. Rajni Kothari, "The Party System" The Economic Weekly 13 (June 31, 1961) p. 849. This was the fifth in a series of 6 articles titled Form and Substance in Indian Politics which appeared in the Economic Weekly between April 29 and June 10, 1961. Also see his "The Congress System in India" Asian Survey 4 (December 1964); pp. 1161-73.

25. An excellent account of the organizational structure and the distribution of power within the Congress Party is given by Kochanek in The Congress Party of India, especially chapters 9, 10 and 11 dealing with the Working Committee, Congress Parliamentary Board and the Central Elections Committee respectively.

26. Stanley Kochanek "Mrs. Gandhi's Pyramid: The New Congress" in Henry C. Hart, ed., Indira Gandhi's India: A Political System Reappraised. (Boulder, Colo.: Westview Press, 1976) p. 100.

27. Figures cited in Francine Frankel, India's Political Economy, p. 454.

28. For an account of the Fifth General Elections see People's Victory: An Analysis of the 1971 Elections (New Delhi: Indian National Congress, 1971).

29. Oriana Fallaci "Mrs. Gandhi's Opposition: Morarji Desai" New Republic (August 2 and 9, 1975) p. 14.

30. This newly adopted system and its effects are described by J. C. Johari in Reflections on Indian Politics (New Delhi: S. Chand 1974) pp. 243-311.

31. Kochanek "Mrs. Gandhi's Pyramid" p. 111-12. In the space of less than two years Mrs. Gandhi's nominees in Andhra Pradesh, Bihar, Gujerat, Rajasthan and Uttar Pradesh were all embroiled in bitter political infighting and had to be replaced. See Kochanek "

32. Quoted in Nayar, Critical Years, p. 375.

33. In interpreting article 31 on the fundamental right to property, the Supreme Court held in Bela Banerji vs West Bengal Settlement Kanungo Cooperative Credit Society Ltd. (AIR 1954, sc 119) that compensation meant "just equivalent". The Fourth Amendment enacted after this verdict had sought to render the adequacy of compensation nonjusticiable. However, later verdicts, often contradictory as to scope of the meaning of the term compensation, increased the confusion and at the time of the Amendment there was still no authoritative opinion.

34. Constitution of India, art. 39 (b).

35. Ibid., art. 39 (c).

36. The Statesman, June 4, 1971.

37. Details of the bill in Ibid., May 8, 1971.

38. Ibid., June 17, 1971.

39. Ibid., June 26, 1971.

40. Ibid., June 27, 1974.

41. J. D. Sethi, India in Crisis (Delhi: Vikas, 1975). pp. 55-6.

42. B. G. Verghese, "The Hour of Decision" Hindustan Times, Sunday World, March 24, 1974.

43. Even though about eighty percent of the population lived off the land the allocations for agriculture in the three most recent five-year plans were 12.7 percent for agriculture and 7.7 percent for medium and major irrigation, in the III 5-year plan; 17.1 and 6.8 percent respectively in the IV plan, and 12.7 and 7.3 percent respectively in the V and current 5-year plan. A probing series of three articles on the deficiencies of Indian economic planning appeared in the Hindustan Times in 1974. See B. S. Minhas, "Where Planning Went Wrong"; "Radicalism and Demagogy"; and "Mistaken Priorities: Some Remedies", Overseas Hindustan Times, May 23, May 30 and June 6, 1974.

44. New York Times, 29 March 1974.

45. Government of India, Ministry of Finance Economic Survey 1975, p. 92.

46. Minhas "Radicalism and Demagogy".

47. Overseas Hindustan Times, 3 October 1974.

48. Ibid.

49. Ministry of Finance Economic Survey, 1975-76.

50. Ashok Mitra "Gandhi Decade" Economist (London), 24 January 1976, p. 32.

51. The accounts that follow are pieced together primarily from contemporary newspaper accounts. A work that deals solely with the decline in public morality is G. S. Bhargava's India's Watergate: A Study of Political Corruption (New Delhi: Arnold Heinemann Publishers, 1974).

52. Hindustan Times, 10 January 1975.

53. Overseas Hindustan Times, 16 January 1975.

54. Ibid., 5 December 1974.

55. Oriana Fallaci "Indira's Coup", New York Review (September 18, 1975) pp. 14-21.

56. Overseas Hindustan Times, 17 April 1975.

57. For details of the Maruti Venture, see Kuldip Nayar, The Judgement: Inside Story of the Emergency (Delhi: Vikas, 1977) pp. 195-203.

58. The Indian newspapers carried lengthy reports on the event along with analysis of its implications. See Statesman 25 April 1973. Also N. A. Palkhivala, A Judiciary Made to Measure: A Collection Of Nationwide Protests against Supersession of Justices Shelat, Hegde and Grover (Bombay: M. R. Pai, 1973); Rajeev Dhavan and Alice Jacob, eds., Selection and Appointment of Supreme Court Judges: A Case Study (Bombay: N. M. Tripathi, 1978) and Kuldip Nayar Supersession of Judges (Delhi: Vikas, 1973).

59. Nayar, Supersession of Judges, p. 78-92.

60. Ibid., p. 28.

61. Ibid., pp. 52-53.

62. Ibid., p. 37.

63. Mrs. Gandhi is reported to have been so incensed by the continuing criticism of Verghese, her former Press Secretary, that she is known to have pressured K. K. Birla, the Hindustan Times owner, to dismiss Verghese as the editor of the paper.

64. Frankel, India's Political Economy, p. 527.

65. For detailed account of the Gujerat agitation see Dawn E. Jones and Rodney W. Jones "Urban Upheaval in India: The 1974 Nav Nirman Riots in Gujerat," Asian Survey 16 (November 1976) pp. 1012-33 and John R. Wood "Extra Parliamentary Opposition in India: An Analysis of Populist Agitations in Gujerat and Bihar" Pacific Affairs 48 (Fall 1975).

66. The Bihar agitational movement is the focus of "India's Opposition Parties Find a Leader" South Asian Review 8 (January 1975) p. 91-96.

Also see K. Singh, "New Wave from Old India: Opposition Movement of J. P. Narayan" New York Times Magazine 30 March 1975, and V. S. Nargolkar, Crusade for Revolution (New Delhi: S. Chand 1975).

67. Fernandez later became the Minister for Labor in the post-Emergency Janata government.

68. Overseas Hindustan Times, 30 May 1974.

69. Ibid., 17 April 1975.

70. For details of the Gujerat elections see Marcus Franda "The Gujerat Election 1975" (Hanover, N. H.: American Universities Field Staff Reports, September 1975) and Ghanshyam Shah "The 1975 Gujerat Assembly Elections in India," Asian Survey 16 (March 1976) pp. 270-82.

71. Overseas Hindustan Times 29 May 1975.

72. Deccan Chronicle, 14 June 1975.

73. The verdict was extensively covered in the Indian Press on 13 June 1975.

74. The case is reviewed in detail in Shivlal ed., The Prime Minister's Poll Case and other Judgements (New Delhi: Election Archives, 1975).

75. Overseas Hindustan Times, 19 June 1975.

76. Deccan Chronicle, 20 June 1975.

77. Ibid., 21 June 1975. The memo itself was signed by 13 Chief Ministers, while three others, the Chief Ministers of West Bengal, Andhra Pradesh and Maharashtra, concurred with the sentiments expressed but were unable to sign it since they were not present at the meeting where the statement was signed.

78. The Shah Commission of Inquiry has documented the abuse of Central and Delhi Municipal agencies to organize rallies in support of the Prime Minister. See Shah Commission of Inquiry, Interim Report 1 (Delhi: Ministry of Home Affairs, 1978), p. 17-20.

79. Ibid.

80. Overseas Hindustan Times, 26 June 1975.

81. Deccan Chronicle, 15 June 1975. Mrs. Gandhi's remarks on it, as reported in the same news story is a classic expression of the conspiracy theory: "If anything of this type has been done, it must have been engineered by my opposition to give me a bad name."

82. Overseas Hindustan Times, 26 June 1975.

83. Deccan Chronicle, 21 June 1975.

84. Ibid.

85. The Hindu, 25 June 1975.

CHAPTER III

DEMOCRACY REVERSED: JUNE 25, 1975 - MARCH 21, 1977

The proclamation of Emergency issued by the President of India on the night of June 25, 1975 declared the existence of "a grave Emergency . . . whereby the security of India is threatened by internal disturbances." [1] In her address to the nation the following morning, the Prime Minister, Mrs. Gandhi also stressed the threat to internal stability to justify the imposition of the Emergency. She also referred to the effects of internal disorder on the economy and remarked:

> "The threat to internal stability also affects production and prospects of economic development. In the last few months the determined action we have taken has succeeded in largely checking the price rise. We have been actively considering further measures to strengthen the economy and to relieve the hardship of various sections, including the poor and vulnerable and those with fixed incomes. I shall announce these soon." 2

Though the threat to internal stability had been profferred as justification for the declaration of the Emergency, it was the opportunity for economic progress under the Emergency that was emphasized more during its early stages. As mentioned before, there was on the eve of the Emergency, widespread anger, discontent and cynicism at the Government's failure to bring about social and economic justice. Rising prices, shortages, black marketing and corruption were symptomatic of the economic blight that had set in, and, contrary to the official line, the acts of public protest that threatened law and order were not the result of

any widespread opposition conspiracy but were rather the explosive expressions of deep economic discontent. Obviously aware of this, in the days that immediately followed the declaration, Mrs. Gandhi directed much of her energy toward tackling basic economic problems that the Congress had complacently left unresolved. Significantly, her first major act of the Emergency period was the announcement of a comprehensive economic program designed to give some immediate relief to all sectors of society, but particularly to the poor.

Her new program, comprising 20 points, was promulgated by presidential ordinance on July 1. [3] It looked most impressive in print, promising something to almost everyone. The poor were promised land reform, abolition of bonded labor, liquidation of rural debts, extension of credit and review of laws on minimum agricultural wages. The middle class received income tax relief and stood to benefit from ceilings on urban property which, if properly implemented, would have released much of such property which the wealthy now held. The rich were promised liberalized investment procedures and received disavowals of higher taxes and further nationalizations. Finally, since it was student protests which had sparked the wider opposition movements in both Gujerat and Bihar, students received the promise of books, stationery and essential commodities at controlled prices.

Other measures authorized the confiscation of smuggler's properties, the appointment of special squads for evaluating conspicuous urban construction and for preventing tax evasion with summary trials and deterrent

punishment for those found guilty of economic offenses. The new measures aimed at ending the scourge of "black money" (undeclared income) and corruption and thereby attempted to reverse the popular image of government as both incompetent and corrupt. To reinforce the new image, Mrs. Gandhi initiated a crackdown on corruption and inefficiency among public servants, resulting in forced retirements and in dismissals of some. The crackdown was seen as evidence of the Government's determination to improve the performance of the large government bureaucracy and in the beginning it fetched impressive results; government servants reported to work on time, and absenteeism declined so sharply that it was reported that in many offices there were not enough chairs to accomodate what had become a superfluous work force. [4]

What was significant about the new measures was they took into account the major grievances of all sectors of society, and in particular those of the rural poor, who had supported the Congress Party in the past but had abandoned it in large numbers during the Gujerat elections. Also, in contrast to similar programs in the past, there was on this occasion a determined effort, at least in the early stages, to implement the proposals.

Meanwhile, inflation which was well under control even prior to the Emergency, was by the year's end near zero compared to the 30 percent rate of the previous year. [5] Not only did consumer prices fall but shortages of essential commodities also eased throughout the country, partly by decree and partly because many would-be hoarders and profiteers, frightened by the summary punishment meted out to a few of their

kind, released their stocks to the market. The country had a record harvest that year, and this too assisted in keeping the prices of essentials in check and their supply assured. Industrial production also picked up since strikes and all other forms of labor unrest had been prohibited. Finally, shielded from all public criticism and political opposition, the Government appeared to function more smoothly and more aggresively than at any time in the recent past. As a worried democrat put it "if she keeps this up, we might have a dictatorship by popular will." [6]

In sum, there was in the early days of the Emergency definite economic improvement and in combination with the political calm, albeit spurious, that had descended over the country, it seemed then that despite her assault on democracy, Mrs. Gandhi might yet come out of it all unscathed. The reversal of her conviction by the Supreme Court in the meanwhile, legitimized her continuance in office once again. [7] Parliament, dominated by her party, maintained the rubber stamp character it had acquired under her leadership and seemed willing to endorse and enact whatever reforms she sought. So long as the Government could keep alive the public hope that the Emergency would accomplish fundamental reforms no popular opposition towards her or the Emergency seemed likely to emerge.

Over the months, however, old habits returned. The new discipline slackened, and as with the programs in the past, the much heralded 20 point program, too, remained for the most part unexecuted. At the same time, the Administration appeared more interested in institutionalizing authoritarian political rule through political and constitutional changes

than through meaningful economic reforms whose success probably would have assured popular support for authoritarianism. Worst of all, in the absence of any check on the use of Government's power, the nature of authoritarianism practiced under the Emergency turned increasingly despotic.

The actions of the Emergency which reflect the institutionalization of authoritarianism are grouped under three sections. The first section approaches the question of constitutional development that occurred during this period. It examines the major constitutional and statutory amendments enacted under the Emergency which violated basic democratic concepts. Of these, the most notable was the 42nd Amendment to the Constitution, enacted in December 1976. This amendment is discussed in detail because, with its fifty-nine amending clauses, it transformed virtually all the basic features of Indian democracy discussed in Chapter 1. It also provided that no amendment of the constitution could be challenged before a court of law in the future. [8]

The second section deals with the denial of citizens' liberty through restrictive legislation such as the MISA and the DIR and through various administrative abuses. The manner in which preventive detention was employed and the family planning program was administered represented not only a violation of the citizens' rights but of their human dignity as well. This section is a study in the abuse of power and offers a critical evaluation of the ways in which the powers of State were used to harrass and intimidate the citizens and to deny them the protection guaranteed under the Constitution.

The third and final section of this chapter deals with the destruction of the freedom of the press in India under the Emergency. Strictly speaking, it is an extension of the earlier section since this section is also concerned with the violation of a citizen's right, the right to freedom of speech and expression. As exemplified in the freedom of the press, it is, however, more than the right of an individual; it is the right of a democratic society because without this right there can be no articulation of public opinion to inform and guide the actions of the government. The existence of this right is acknowledged by all democrats to be crucial to a functioning democracy; the thoroughness with which it was sought to be destroyed during the Emergency offers irrefutable proof of the Administration's intent to subvert basic democratic principles. Consequently, the subject of the destruction of the freedom of the press is treated separately.

Emergency and the Law

During the eleven years that Mrs. Gandhi served as Prime Minister, 25 Amendments to the Constitution were passed, some of which radically transformed the nature of the Indian political system. Of these amendments the one that represented the most dangerous assault on the Indian constitutional democracy was the 42nd Amendment enacted during the Emergency.

Passed in November 1976 by the Parliament with an overwhelming majority, it introduced changes of such far reaching implications that H. V. Kamath, a member of the Parliament who had also been a member of the Constituent Assembly that drew up the Indian Constitution, was

impelled to describe it "as neither amending nor mending, but simply ending the Constitution." [9] It sought to make fundamental alterations to the legal and political order, amending existing provisions that dealt with judicial review, fundamental rights and directive principles of state policy, powers of the president, the courts and the administrative agencies, and the amendability of the Constitution. It also introduced a new concept, that of fundamental duties, and provided for the creation of administrative tribunals for the adjudication of various disputes. It even modified the preamble to the Constitution to include the terms "socialist" and "secular" in the description of the Indian republic. The changes proposed by the Amendment, especially the major ones, merit a detailed examination since the cumulative effect of these changes was the attempted institutionalization of an authoritarian regime characterized by legislative supremacy and executive unaccountability.

Art. 368 of the Constitution, which dealt with the amendment of the Constitution, was modified so as to preclude judicial review of amendments except on purely procedural grounds. The provision sought to overcome the restraint on the amending power of the legislature, arising out of the Bharati case. In that case, the Supreme Court had ruled that Parliament did not possess the power to alter the "basic structure" of the Constitution. Consequently, amendments which the courts felt violated this stricture could have been declared invalid under existing provisions.

The 42nd amendment explicitly declared Parliament's prerogative to amend any part of the Constitution including Part III which dealt with

the fundamental rights of the citizen. The new addition to Art. 368 said in part: "No amendment of this Constitution (including the provisions of Part III) . . .shall be called in question in any court except upon the ground that it has not been made in accordance with the procedure laid down by this Article." [10] By this provision, the 42nd Amendment virtually eliminated whatever feeble limitations had existed in respect of the Amendment of the Constitution by Parliament. With the Bharati verdict thus effectively overturned, [11] many of the changes that the 42nd Amendment proposed did indeed affect the "basic structure" of the Indian Constitution.

The guarantee of fundamental rights, the essence of constitutional democracy, was altered in scope and effect. A new provision elevated directive principles over fundamental rights by providing that legislation purporting to further the former could no longer be challenged on the ground that it violated the latter. Thereby, the directive principles, which at the time of the adoption of the Constitution were envisioned as embodying the ideals of socio-economic justice to guide legislation, but were nonetheless made expressly nonjusticiable under the Constitution, were given precedence over those rights designated as fundamental and extended special protection. Henceforth, the aspirations of the community, as embodied in these directives would prevail over even the right to life and liberty.

Interestingly, the courts had already begun, in recent times, to recognize the superiority of these principles over fundamental rights; this was a clear departure from earlier judicial rulings which favored

fundamental rights in cases involving conflicts between the two. In 1952, Justice S. R. Das, speaking for aunanimous court, in Champakam Dorairajan's case had said

> The Directive Principles of State Policy which by Art. 37 are expressly made nonenforceable by a court cannot override the provisions found in Part III which, not withstanding other provisions, are expressly made enforceable by writs, orders or directions under Article 32. The chapter on Fundamental Rights is sacrosanct and not liable to be abridged by any legislative or executive act or oder except to the extent provided in the particular Article in Part III. The Directive Principles of State Policy have to conform to and run subsidiary to the chapter on Fundamental Rights. In our opinion, that is the correct way in which the provisions found in Part III and Part IV have to be understood. 12

But successive constitutional amendments protecting from judicial review legislation designed to secure the public good and to implement the directive principles had resulted in an altered approach by the courts, especially the Supreme Court, to the question of conflict between rights and directives. This was best reflected in the Bharati case, in Justice Mathew's statement:

> ...The Fundamental Rights themselves have no fixed content; most of them are mere empty vessels into which each generation must pour its content in the light of its experience. Restrictions, abridgement, curtailment, and even abrogation of these rights in circumstances not visualized by the Constitution makers might become necessary, their claim to supremacy or priority is liable to be overborne at particular stages in the history of the nation by the moral claims embodied in Part IV. Whether at a particular moment in the history of the nation, a particular Fundamental Right should have priority over the moral claim embodied in Part IV or must yield to them is a matter which must be left to be decided by each generation in the light of its experience and its values. 13

In that case, the Court upheld the validity of Article 31c enacted by the 25th Amendment which altered the nature of the directive principles embodied in clauses b and c of Article 39. These directives were distinctly property-related laying down the principles that the ownership and control of material resources of the community must be distributed as to best serve the common good and that the operation of the economic system must not result in concentration of wealth and means of production, to the common detriment. Laws to further these directives had remained, until the 25th Amendment, open to judicial challenge on grounds of their inconsistency with fundamental rights. Article 31c ruled out any challenge to such laws on grounds that they violated the rights to equality, freedom and property guaranteed by articles 14, 19 and 31 respectively.

In the Bharati verdict, the Supreme Court sanctioned the elevation of the two property-related directive principles the fundamental rights. Not content with this, Mrs. Gandhi now acted to extend the same degree of protection from judicial review to all the directive principles under the Constitution. The amended Article 31c of the 42nd Amendment declared that no law giving effect to the policy of the State toward securing all or any of the directive principles shall be voided on the ground that it is inconsistent with or takes away or abridges any of the rights conferred by Articles 14, 19 or 31. It further declared that no law containing a declaration that it is for giving effect to such policy shall be called in question in any court on the ground that it does not give

effect to such policy. The only safeguard, if needed it may be referred to as such, was that where legislation embodying the directives is passed by a State Legislature it was to receive the assent of the President of India before becoming the law.

The citizen's freedom was further circumscribed by the Amendment by the introduction of a new provision relating to so called "anti-national activities" and "anti-national associations." [14] All legislation enacted for the purpose of preventing and prohibiting such activity or association was placed beyond judicial review on grounds of conflict with the three fundamental rights. "Anti-national" activity was defined very broadly to cover any activity (1) which was intended towards or in support of cession or secession of part of the territory of India; (2) which threatens or disrupts the sovereignty and integrity of India, or security of the State or unity of the nation; (3) which is aimed at the overthrow of the State by force; (4) which seeks to create internal disturbance or the disruption of public services; and (5) which disrupts or threatens harmony between different religions, racial, language, or regional groups, or castes or communities. [15] The power to make laws banning "anti-nationalism" was vested exclusively in the Parliament. State legislatures which had shared with the center the right to impose reasonable restrictions on the freedom of association in the interests of public order and morality and the sovereignty and integrity of India were barred from enacting anti-national legislation; only the Center was allowed to determine the measures required to combat anti-nationalism in India.

There was very little protection against abuse of the extended powers that the Center assumed through the Amendment. Judicial review was severely curtailed by a series of amending provisions, as was the right of the citizen to constitutional remedies. Furthermore, the judicial system suffered a reduction in power at all levels.

The Amendment altered the existing pattern of judicial review whereby the constitutionality of central and state laws could be challenged in either the Supreme Court or the High Courts. The direct access to the Supreme Court that the citizen enjoyed whenever his fundamental rights were affected was limited. A new provision stated that where such violation occurred as a result of state laws the citizen may move only the High Courts in the first instance "unless the Constitutional validity of any central law is also in issue in such proceedings." [16] Until now, the original jurisdiction of the Supreme Court had extended to all cases of violations of fundamental rights whether from central or state laws. The effect of this measure was to reduce the scope of the citizen's right to constitutional remedies for the enforcement of fundamental rights guaranteed by Art. 32.

At the same time, the new provision also took away the power of the High Courts to rule upon the validity of central laws by mandating that, in the future, only the Supreme Court may decide questions of the constitutionality of legislation by the Center. [17] Since, under the Indian political system, central legislation extended over far more fields than did legislation by the states the effect of this particular provision

would have been to make justice more remote and expensive for the average citizen. Additionally, the increased work-load for the Supreme Court that this measure was bound to create and the inevitable delays in judicial determination of cases resulting from it would no doubt have inhibited the citizen further from seeking judicial enforcement of his rights.

The writ powers of the High Courts were severely curtailed by the substitution of a new Article 226 in place of the existing one. The former Article 226 conferred broad powers to the High Courts to issue writs "in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, or any of them, for the enforcement of any of the rights conferred by Part III and for any other purpose." The Amendment deleted the phrase "for any other purpose" from the Article and thereby confined the writ jurisdiction of the High Courts to issues affecting fundamental rights; the courts would no longer be allowed to grant writ remedy to the citizen for invasion of other legal rights. The new Article 226 also specified that the grounds for the issue of a writ must be "injury of a substantial nature" [18] or a "substantial failure of justice." [19] No longer would violation of the citizen's rights constitute, by itself, grounds justifying the issue of writs by the High Courts. There would also have to be proof of the "substantial" nature of the injury resulting from it, with the burden of such proof presumably resting on the citizen protesting the invasion of his fundamental rights.

The Amendment curbed judicial review in other respects as well. It altered the existing provision on the requirements of majority needed

to resolve challenges in court to the validity of central and state laws. First, it provided for a minimum of seven judges at the Supreme Court and five at the High Court levels to determine the constitutionality of all impugned statutes. [20] Secondly, and more importantly, the Amendment laid down that a two-thirds majority of the bench would be needed to strike down as invalid any legislation. [21] Assuming benches of seven in the Supreme Court and five in High Courts, the judicial majority required to rule against existing statutes would be five to two and four to one, respectively. In effect, it granted a judge deciding in favor of the government twice as much judicial power as one ruling against the government.

The powers of the judiciary were further circumscribed by the provision for the establishment of administrative tribunals to adjudicate disputes relating to the recruitment and conditions of service of persons appointed to administrative services, and with respect to matters such as tax, foreign exchange, land reforms, industrial or labor disputes, parliamentary and state legislature elections, and the production, procurement, supply and distribution of essential goods. [22] Follow up legislation was expected to establish the precise jurisdiction, power and authority of the tribunals and the rules of procedure for them to follow. The tribunals, once set up, would enjoy exclusive adjudicatory authority to the exclusion of the High Courts with respect to matters under their jurisdiction. [23]

The powers of the presidency too were affected. The new amendment eliminated whatever discretionary powers may have been vested in President, as the constitutional head of state, under the earlier provisions. Whereas the existing provision had merely stated that there would be Council of Ministers to aid and advise the President, without specifying whether he was bound by such advice or not, the 42nd Amendment explicitly declared that the President could act only in accordance with the advice proffered by the cabinet. [24]

Several other changes were proposed by the Amendment which also effectively expanded the powers of the Center. The center-states power relationship was revised with the Center assuming legislative responsibility for areas which had hitherto been within the states' domain. Entries 1, 2 and 3 of the State List were amended so as to deprive the states in large measure of their power relating to the maintenance of public order, the police and the administration of justice within the states. [25] Prior to this Amendment, except during times of Emergency public order within the state was the sole responsibility of the state (except for the use of the armed forces within the state). Also, in general, deployment of Union forces by the center was undertaken only after consultation with the states and with their consent. The new measure empowered Parliament to decide regarding the

> "Deployment of any armed force of the Union or any other force subject to the control of the Union or any contingent or unit thereof in any State in and of the civil power; powers, jurisdiction, privileges and liabilities of the members of such forces while on such deployment." 26

Parliament could henceforth determine unilaterally whether, when and how to deploy Union forces "in aid of the civil power" in any state. While such deployment lasted, state control over the state police, which until now had been complete, would be curtailed so as to make it subject to the presence of the Union forces within the state.

Entry 3 of the State List was also amended and the states were deprived of the exclusive power they had possessed until now to legislate with respect to the administration of justice and the constitution of all courts except the Supreme Court and the High Court; the new measure granted Parliament concurrent powers to enact legislation dealing with such matters. [27] Parliament could hereafter participate in the constitution of the district courts and even the subordinate civil and criminal laws and also enact laws with respect to administration of justice at any level. Where central legislation conflicted with state laws, as spelt out under Clause (1) Art. 254, the former was to prevail.

Four other exclusive state subjects were transferred to the concurrent List. These were education, forests, protection of wild animals and birds and weights and measures, except establishment of standards. [28] Finally, a new concurrent power, reflecting the regime's newest priority was created with respect to "population control and family planning." [29]

The commitment to population control was evident in another, rather strange measure under which the Lok Sabha strength was frozen, until 2001, as not to exceed the maximum allowed under existing provisions. The strength of the House and the allocation of seats to the states and

Union Territories would "be based on 1971 figures until the relevant figures for the first census taken after the year 2000 have been published." [30] The Indian scheme of proportional representation which took into account the demographic changes as reflected in the census compiled each ten years was thereby arbitrarily modified and the Parliament barred from recognizing such changes for thirty years.

The life of the Parliament was extended from five to six years. [31] This measure seems to have had no immediate purpose since the Constitution already provided for the indefinite prolongation of the life of the Parliament, during times of emergency. In fact, the Parliament that enacted the 42nd Amendment was already in its sixth year; it is probable that this new provision was adopted to foreclose future legal challenges to recent parliamentary activity on grounds that the mandate of this Parliament to conduct normal legislation had expired.

The 42nd Amendment also eliminated all quorum requirements for the passage of laws. [32] In the past, at least one-tenth of the total number of members of each House was required to constitute a meeting of that House; in the absence of a proper quorum the Chairman or Speaker or person acting as such was obligated to adjourn the House or to suspend the meetings until there was a quorum. [33] The amending feature by deleting these two requirements relating to quorum for the conduct of parliamentary business paved the way for substantial mischief in the field of lawmaking. The passage of legislation considered by no more than a handful of legislators was a distinct possibility in the future.

The 42nd Amendment, as the foregoing account suggests, represented without doubt the institutionalization of authoritarian rule in India.

The Emergency also introduced certain statutory changes which were designed solely to protect Mrs. Gandhi from the threats arising out of her conviction for electoral offences as well as from any litigation in the future. These changes included the amendment to the Election Laws and the 38th, 39th and 40th Amendments to the Constitution in August 1975.

The Election Laws Amendment Act of 1975 provided that the case of every person found guilty of a corrupt practice shall be submitted to the President for final determination as to whether such person shall be disqualified and if so for what period. [34] The President thereby was empowered not only to reduce the period of disqualification, but even to remove it altogether. This provision, the Law Minister, H. R. Gokhale, informed the Parliament, was an attempt "to make the provisions of the Representation of the People Act, 1951, relating to disqualifications on ground of corrupt practice more equitable." [35]

The amendment also altered with retrospective effect the definition of candidate, since the existing provisions, Mr. Gokhale explained, were "ridiculous and anomalous." [36] The new provision defined a candidate as a person who had been or claims to have been duly nominated as a candidate at any election. [37] The point of time at which a person was to be regarded as a candidate at an election, for purposes of election laws, was thereby specified as being the date of his nomination. Under the

earlier provision a candidate could be viewed as such even as early as the date of the publication of the notification calling the election if he had held himself out as a prospective candiate. The new provision had the result of altering the effective date of Mrs. Gandhi's candidacy in the disputed elections of 1971 to February 1 and not December 29, as the Court had held. Yashpal Kapoor's activities in her behalf which the Court had ruled to be a corrupt electoral practice no longer could be deemed as such, since, as per the amendment Mrs. Gandhi was not a candidate at the time of the act and consequently he could not have acted in furtherance of the candidacy.

Other sections of the amending bill altered, also with retrospective effect, earlier provisions relating to corrupt practices with reference to the use of and appeal to religious and national symbols and to the assistance by government officers for the furtherance of a candidate's election. Mrs. Gandhi of course, had been absolved of the charge directed at her by her opponent, Raj Narain, that she had indulged in the corrupt practice of making a religious appeal to the electorate by the use of the Congress Party symbol of "cow and calf." So as to avoid similar challenges in the future the new provision asserted that "no symbol alloted uner the Representation Act shall be deemed to be a national or religious symbol." [38]

In respect of the corrupt practice of assistance by government officials the relevant section in the amending bill read

> "provided that where any person, in the Service of Government . . . . in the discharge or purported discharge of his official duty, makes any arrangement or provides any facilities or does any other act or thing, for, to, or in relation to any candidate or his agent or any other person acting with the consent of the candidate or his election agent (whether by reason of the office held by the candidate or for any other reason, such arrangement facilities or act or thing shall not be deemed to be assistance for the furtherance of the prospects of that candidate's election." 39

With the law changed, the offenses for which Mrs. Gandhi was convicted, that of having obtained the assistance of gazetted officers of the State Government of Uttar Pradesh and the assistance of Yash Pal Kapoor, a gazetted officer in the Government of India, for the furtherance of her election prospects, no longer existed. Consequently, her conviction could not be sustained if the legality of these retrospective alterations were upheld. [40] Should it not be upheld, she could still escape the stiff penalty of six years' debarment from contesting any election as the President could now reduce or remove the disqualification imposed by the courts. Since the then President Fakhruddin Ali Ahmed was widely recognized as a man of no independent stature but merely her "candidate," the changes to the election laws virtually assured her continuance in office as Prime Minister. Despite the Law Minister's assertion that "it was not the case of an individual but of preserving an institution and functioning of democracy," [41] the changes left no room for doubt that the main beneficiary of these changes was Mrs. Gandhi herself.

More changes to the law of the land followed, once again benefitting Mrs. Gandhi the most. A day before her election appeals case came up for

hearing before the Supreme Court, the 39th Amendment to the Indian Constitution was passed which introduced two new provisions that had a direct bearing on her legal problems. Clauses 4 and 5 of the new Article 329A read as follows

> (4) No law made by Parliament before the commencement of the Constitution (Thirty-sixth Amendment) Act, 1975, in so far as it relates to election petitions and matters connected therewith, shall apply or shall be deemed over to have applied to or in relation to the election of any such person as is referred to in clause (1) to either House of Parliament and such election shall not be deemed to be void or ever to have become void on any ground on which such election could be declared to be void or has before such commencement, been declared to be void under any such law and notwithstanding any order made by any court, before such commencement, declaring such election to be void, such election shall continue to be valid in all respects and any such order and any finding on which order is based shall be and shall be deemed always to have been void and of no effect.
>
> (5) Any appeal or cross appeal against any such order of any court as is referred to in clause (4) pending immediately before the commencement of the Constitution (Thirty-ninth Amendment) Act, 1975, before the Supreme Court shall be disposed of in conformity with the provisions of clause (4).

The new article also provided that the election of a person who held the office of Prime Minister or Speaker at the time of election or that of a person who was subsequently appointed to such office could not be called

> "in question except before such authority . . . or body and in such manner as may be provided for by or under any law made by Parliament and any such law may provide for all other matters relating to doubts and disputes in relation to such election including the grounds on which such election may be questioned."

The effect, of course, was the creation of a new forum, under parliamentary law, for dealing with election disputes relating to the Prime Minister and the Speaker. The amending bill likewise placed election disputes arising out of the election of the President and Vice President of India above the law courts through the new Art. 71. Until now election matters concerning these high officials had remained within the purview of the High Courts and the Supreme Court, as in the case of other legislators. But with the newly adopted electoral law changes judicial scrutiny of the fairness of the elections of these four officials was totally eliminated. Provision was made in the bill to the effect that the validity of any law creating the new forum to decide upon the matter could not be called in question in any court of law. [42] Further, even where an election petition had been filed against a candidate who was not at the time of the petition either the Prime Minister or the Speaker should he be subsequently appointed to one of these posts, under the amended act, the pending petition would automatically abate even if the Supreme Court had the petition under advisement. [43] Piloting the Bill through Parliament, the Law Minister had declared that it was not only morally justified but had the strongest legal foundation. It was improper, he explained, that the election of these high authorities should be the subject matter of dispute before an "outside authority." [44] By "outside authority" he presumably meant the Courts. The measures being proposed, he emphasized, were "to protect this great democracy. It was a timely action to foil the attempts of the anti-democratic forces to destroy democracy." [45]

Finally, the 39th Amendment also amended the IXth Schedule so as to bring within its scope 38 Acts (entries 87-124) which by virtue of their inclusion in the Schedule would be extended protection from judicial scrutiny. These Acts which the Administration referred to as "progressive legislation conceived in the interests of the public" and, "imperiled by litigation" [46] included the Representation of the People Act and other electoral laws, the Maintenance of Internal Security Act, the Conservation of Foreign Exchange and Prevention of Smuggling Act, and several State and Central laws dealing with social and economic issues.

The 40th Amendment gave further protection to the Prime Minister who, the Law Minister took pains to point out, held "a pivotal position under our democratic and republican form of government." [47] It gave the Prime Minister legal immunity in respect of the exercise of her powers and duties, a protection hitherto available only to the President and State Governors. The legislation amended Article 361 of the Constitution to the effect that no criminal proceedings may be instituted against the President, the Governors or the Prime Minister, even after they left office, for acts done before entering the office or during their term of office. Only their actions after they left office would not enjoy this protection.

In regard to protection from civil action, they would enjoy immunity from litigation while they remained in office. There would be no bar, however, to the institution of proceedings against them after they left office, even in respect of any of their acts while in office. Until

now, not even the President and the Governors had enjoyed immunity from civil proceedings. The only special consideration they had enjoyed in this regard was that a two month notice period was required to be given before instituting civil proceedings against them. [48] Though the Amendment, which too was made retrospective in effect, did extend the immunity enjoyed by the President and the Governors, the major beneficiary here again was Mrs. Gandhi, who as Prime Minister was given extended immunity from all criminal proceeding and limited immunity from civil actions, protections she had not enjoyed previously.

An earlier Amendment had already succeeded in denying the judiciary the power to adjudicate an emergency declaration. The 38th Amendment now made "nonjusticiable" the "satisfaction" of the President before his declaration of an emergency. [49] The Law Minister justified the measure on the grounds that there were matters which could not be subjected to judicial scrutiny and were for political judgement only. [50] Referring to the Articles 352, 356 and 360 which dealt respectively with the President's powers to proclaim an emergency on account of external aggression or threat to internal security; to take over a state administration on the breakdown of the constitutional machinery in the state; and to declare a financial emergency if the financial stability of the nation was threatened, Mr. Gokhale, the Law Minister, said that the "satisfaction" of the President "is, on the face of it not justiciable." However, he proceeded, because the validity of a proclamation under Art. 352 had been challenged on prior occassions and because "litigation of this nature involves a waste of public time and money it is proposed to

amend these three articles so as to make the satisfaction final, conclusive and not justiciable on any ground." [51] Henceforth even a patently mala fide declaration would enjoy full protection from judicial review. Art. 123 under which the President could promulgate ordinances when Parliament was not in session as well as Articles 213 and 239(B) under which the Governors of States and administrators of Union territories enjoyed their powers to issue ordinances were also amended to place beyond the purview of the courts the "satisfaction" of these officials before they issued ordinances.

Another change that this bill introduced enabled the President to issue concurrent proclamations of emergency, thus eliminating any future challenge to the 1975 Emergency on grounds that it was superimposed over another emergency and hence illegal. [52]

The 38th Amendment also sought to expand the power of the Executive to derogate from the citizens' fundamental rights, during times of emergency. The earlier provisions had merely granted the President the power to suspend the right of the citizen to move courts during an emergency for the enforcement of his fundamental rights and to suspend all pending proceedings for the period during which the proclamation was in force or for such shorter period as specified in the order. An addition to Article 359, that pertained to the status of fundamental rights during an emergency, barred the citizen, for all times, from challenging any executive measure taken during an emergency that may have violated his fundamental rights, even his right to life and personal liberty. [53]

This provision accordingly assured that there would be no need for the executive to ever account for even mala fide violations of the citizens' rights committed during the period that the emergency lasts.

The sweep of these retroactive amendments effected several changes, altered the notion of executive accountability, and exhibited total contempt for the rule of law in a democracy. First, an election that a High Court had voided was retroactively validated. Second, lifelong immunity from criminal prosecution was granted to certain high officials, including the Prime Minister, for all acts committed, not only while in office but even before. Third, all possible legal challenges to the declaration of Emergency was ruled out. Fourth, judicial review of several laws, including the MISA, the COFEPOSA and the Representation of the People Act was eliminated. And, finally, the citizen was deprived of all redress against the violation of his fundamental rights during an Emergency by any law or executive action no matter how oppressive.

Emergency and the Citizen

Following the proclamation of the Emergency the Maintenance of Internal Security Act (MISA) was amended on three separate occasions by the Government and the few safeguards that the detenu retained under it were all virtually eliminated. The MISA (Amendment) Act of August 5, 1975, which replaced earlier presidential ordinances issued on June 29, 1975 and July 16, 1975, provided for a new category of detentions -- "for dealing effectively with the emergency." Provided the detaining authority made a declaration that the detention was necessary for this

purpose, the detenu could be held for a maximum of one year without being informed of the grounds for the detention order. [54] Detention may extend even beyond that period, but only after pursuing the normal course such as supplying him with the grounds for the detention and refer the detention to advisory boards etc. [55] The amendment also provided that the revocation of a detention order shall not constitute a bar against the issue of another detention order against the same person. [56] Further, no MISA detenu was allowed to be released on bail, bail bond or otherwise; [57] nor could they seek relief under "rules of natural justice" nor claim a "right to personal liberty by virtue of natural law or common law." [58] Another major provision authorized the attachment of properties of a person against whom a detention order had been made and who had failed to surrender himself, or had absconded or was in hiding. [59] As a result of these amendments MISA detenus were effectively prevented from approaching the courts for relief either because no grounds had been given to them or because the detention order had violated "canons of natural justice" or "natural or common law."

The only safeguards against the wholesale abuse of the powers of preventive detention by authorities at all levels of government were (a) that where declaration of the need for detention to deal with the Emergency was issued by an authority, lower than the State Government, it was to cease in effect unless confirmed by the State Government within 15 days, after a review; (b) that the appropriate government would review the need for continued detention within four months of the date of deten-

tion and thereafter at intervals of four months; and (c) that where an order of detention had been made by a State Government or by an subordinate authority, the State Government was required to send to the Center a report on the detention within 20 days. [60]

In January 1976 the MISA was again amended. The new provisions further eroded the safeguards against abuse that the original Act had included. The amendment stipulated that an individual whose detention had been revoked or disallowed earlier may be redetained and that no person against whom an order of detention had been made shall be entitled to the communication of the grounds of detention or be afforded the opportunity to make representation. [61] It further mandated that the grounds on which an order of detention had been made shall be treated as confidential and shall be deemed to refer to matters of state and that it shall be against public interest to disclose the grounds. [62] Finally, it required the Central Government to obtain details on detentions from the State Governments. [63] The major objective of this amendment was to eliminate those safeguards which would have offered detenus relief from detentions ordered under the Act.

The MISA underwent a third and final "emergency amendment" in August 1976. This amendment related to detentions in connection with the Emergency and was made applicable with retrospective effect from June 29, 1975, the date the MISA was first amended during the Emergency, by presidential ordinance. It extended the maximum period all such "emergency detentions" from 12 to 24 months. [64] The cumulative effect

of the amendments to MISA was the virtual elimination of all restraints against the abuse of preventive detention powers by the Government particularly as it related to detentions under the new provision 16A, of the Act that authorized detentions to deal with the Emergency. The Shah Commission's conclusions on the use of MISA emphasizes the indiscriminate use to which it was put during the Emergency:

> MISA was used as a weapon against all kinds of activities, not even remotely connected with the security of the State, public order or maintenance of essential supplies. Government servants accused of corruption or misbehavior, petty traders violating licensing conditions, persons involved in land disputes, contractors supplying inferior material for construction works, those contesting Government decisions in a civil court, those selling milk and other commodities at inflated prices, workers in factories pressing their demands or criticizing the management, persons accused (not convicted) of committing irregularities or defalcation in cooperative societies and banks, those not cooperating in family planning programs of the Government or refusing to get themselves sterilized -- all came within the all pervading sweep of the MISA. Particularly in U.P., MISA was used extensively against those alleged to be opposed to family planning or not actively cooperating with the program of family planning. Thus MISA was used for purposes totally beyond the purview of --- the Act. 65

The Defence of India Act too was used extensively for similar purposes. The Defence of India (Amendment) Act of July 1975 incorporated words like "internal security" and "internal disturbances" into the preamble to the Act thereby granting the Administration greater latitude for its employment. The other preventive detention measure which was used, though not as widely as the MISA or the DIR [66] was the Conservation of Foreign Exchange and Prevention of Smuggling Act (COFEPOSA) originally passed in December 1975.

The COFEPOSA Amendment of August 1975 provided that no person detained under the Act may be released on bail, bail bond or otherwise; [67] that no detention order under the Act may be held invalid or inoperative merely because some of the grounds of the detention order are vague, nonexistent, not relevant, or invalid for any reason; [68] and, that if detention is made for dealing with the Emergency no grounds need be conveyed to the detenu and no review of the charges by the Advisory Board may be permitted. [69] Within a year of the Emergency, over 2,000 alleged smugglers had been detained and their property worth more than a crore of rupees had been seized and attached. Sixty thousand raids were conducted on the premises of suspected smugglers, black marketeers and hoarders and, since "illegally acquired property" had been made subject to confiscation under the 20-point economic program passed by Parliament, these raids led to the confiscation of property worth hundreds of millions of rupees more. [70]

There was extensive abuse of the various preventive detention measures during the Emergency. The aggrieved party was denied all relief by the inclusion of COFEPOSA and MISA in the IXth schedule,[71] in August 1975, thereby rendering them nonjusticiable. The Shah Commission has reported that the manner in which MISA was used was "nothing short of perversion and mockery of its provisions" and that all the safeguards that had been promised when the bill was enacted had been totally disregarded. [72] The same can be said of the use of COFEPOSA and Defence and Internal Security of India Rules (DISIR) by the authorities during the Emergency.

Among the thousands of those detained, there were many who were guilty of no more than belonging to opposition political parties or to groups and organizations that had been banned. In fact the banning of several political organizations contributed substantially to the widespread abuse of preventive detention by the Government.

In what was described as a bid to curb the activities of communal organizations and political groups believing in the cult of violence, the Government of India, on July 4, 1975, banned 26 organizations. [73] The ban was imposed under the Defence of India Rules and it included the Rashtriya Swayam Sevak Sangh (RSS), the Jamat-E-Islami (JEI), the Ananda Marg, the Communist Party of India (Marxist-Leninist) (CPML) and groups allied to these and other splinter groups which, as described below, were attracted to the notion of violence to bring about political change.

The most influential of the banned organizations was the R.S.S., which was widely believed to dominate the Jan Sangh by providing it not only with the hard core of its leadership but with its ideological inspiration as well. [74] The RSS was founded in 1925 reportedly to enable the Hindu Community to cope with the communal riots and crises widely prevalent in those days. It preached a form of militant Hindu nationalism and trained youths into a cadre-based para-military organization with emphasis on military drill and use of swords and lathis (wooden clubs). It was banned in February 1948 after the assasination of Mahatma Gandhi along with other communal and para-military organizations. The ban was revoked after a few months following assurances by the then

RSS leader Golwalkar that it would abjure politics and would confine its activities in the future to purely cultural and social matters. However, after the formation of the Jana Sangh Party, the RSS developed such close ties to it that in the popular mind the two were inextricably linked. Over the years the RSS had espoused doctrines of extreme Hindu cultural chauvinism under the rubric of "Indianization," though in the more recent past it had succeeded in moderating many of the extremist views earlier adopted by it.

The Jamat-E-Islami (JEI) [75] was regarded in official circles as a Muslim counterpart to the Hindu RSS. Like the latter, it was influenced by a well defined communal orthodoxy that could not unreservedly accept the secular principle that Indian democracy had embraced. Though far less influential politically than the RSS, it nonetheless was a thorn in the side of the Government because of the constant threat it posed, along with the RSS of provoking communal upheavals.

The Ananda Marg [76] and the thirteen organizations associated with it which were banned under the July 4 order embraced a peculiarly esoteric politico-religious doctrine, the Progressive Utilization (Proutist) theory, propounded by the Ananda Marg founder, P. R. Sarkar. The Marg was opposed to nonviolence, nationalism, communism and democracy. It preached an esoteric doctrine which held the ideal government to be a dictatorship of Sadvipras (loosely translated as the morally and spiritually enlightened). It organized its members into four hierarchical

categories with distinct roles and responsibilities and indulged in secret rituals and para-military drills and exercises which captured the imagination of many and gained it a considerable following said to number close to 250,000, including 60,000 overseas. Its greatest strength was in West Bengal and Bihar, particularly among members of the administrative services. Initially, it confined its activities to educational and welfare matters but later seems to have become progressively more political. At any rate, in official circles it was suspected of planning and perpetrating violent activities and even assasination and murder of defectors from its ranks.

The CPI (M.L.) and eight other Maoist agrarian terrorist groups, loosely referred to as "Naxalites" [77] subscribed to revolutionary violence to bring about a more just society in place of the present "oppressive" system. The original CPI (M.L.) was formed in April 1969, as India's third communist party. It claimed to be based on Mao's thoughts and teachings and saw the principal contradiction in India as that between feudalism and the masses of peasantry. Its leadership was dominated by the communist leaders who had survived the abortive Naxalbari and Srikakulam peasant uprisings of 1967-1968 and it espoused the Maoist tactics of "peoples' war" as the only means to destroy feudalism. The CPI (M.L.) departed from the other two Indian communist parties - the pro Moscow Communist Party of India (CPI) and the independent Communist Party of India - Marxists (CPI (M)) in its rejection of the parliamentary route to power which the other two had accepted.

In the intervening years since 1969, the Indian Maoists too had succumbed to factionalism and splintered into the various groups banned on July 4. These factions engaged in sporadic guerilla activity directed against the feudal landowners in rural India, especially in Andhra Pradesh, but were always overwhelmed by the superior government forces. It is true that they did pose a security problem to the authorities, but it was one of modest proportions because of the party's numerical and organizational weaknesses.

On August 5, the Mizo National Front and other allied organizations, including the Mizo National Army, were banned for indulging in activities in furtherance of their objective of achieving an independent Mizoram comprising the Union territory of Mizoram and the adjacent Mizo and Kuki inhabited areas of Manipur and Tripura.

The ban charged the outlawed organizations of "indulging in activities prejudicial to the internal security, public safety, and maintenance of public order." Under the order, any person who managed or assisted in managing any of these organizations, promoted or assisted in promoting a meeting of any members of these organizations, attended any such meeting, published any notice or advertisement relating to any such meeting, invited persons to support these organizations or assisted the operations of these organizations in any other manner was liable for action under the law.[78] Following the ban order, the police all over India raided and sealed the offices of the organizations and made scores of arrests.[79]

What is interesting about the outlawing of these organizations, is that most of the outlawed groups could have been banned, even without an Emergency, under the provisions of the Indian Penal Code. The fact that they had been allowed to function in the open was largely a matter of police tactic since it was believed by the Government that a ban might only serve to drive them underground. So long as such groups continued to operate in the open they could be penetrated by informers and spies, thereby making it easier for the law enforcement authorities to keep track of their activities and take requisite legal action against them as and when necessary. Now, in the wake of the emergency declaration, these tactical considerations were cast aside. Thousands of individuals were detained merely on grounds that they belonged to or were sympathetic to the banned party or organization.

> The conclusion is inevitable that after the Government of India issued a notification banning certain organizations, VIZ, RSS, JEI, Ananda Marg, CPML and others, most of the State governments acted almost in a frenzy, detaining persons on the slightest suspicion of association with these organizations even though, in many cases, no reasonable grounds were available to detain them. In this they were repeatedly goaded by the Government of India, who continued to give directives to the States to launch a vigorous drive against these organizations on all fronts. 80

The detention of individuals based on their political affiliations was not confined during the emergency to those belonging to the banned parties. Among those arrested in the predawn hours of June 26, were most of the leaders of the Lok Sangharsha Samiti (People's Struggle

Committee), the coalition of political parties which had been set up only the previous day to force the resignation of Mrs. Gandhi. On June 21 opposition leaders had begun to formulate plans for a nationwide protest against Mrs. Gandhi's continuance in office. Then on June 24, when the Supreme Court denied Mrs. Gandhi's petition for an unconditional stay of the operation of the Allahabad High Court verdict setting aside her election, the opposition parties decided to intensify their struggle against her. Five political parties set up the Lok Sangharsha Samiti and declared their decision to launch a "nationwide struggle" from June 29 to press for Mrs. Gandhi's resignation.

The five parties were Congress (O), Jana Sangh, Bharatiya Lok Dal, Socialist Party and Akali Dal. The Dravida Munnetra Kazhagam, the party in power in Tamilnadu and the Communist Party (Marxist) also attended the opposition meeting on June 24 and indicated that they would convey their formal association with the Samiti at a future date. Jaya Prakash Narayan, the inspiration behind the Bihar Lok Sangharash Samiti and a leading critic of Mrs. Gandhi was also present at the meeting and accorded it his wholehearted support. The Samiti was set up under the chairmanship of Morarji Desai with Nanaji Deshmukh, a top Jana Sangh leader as secretary and Asoka Mehta, President, Congress (O) its Treasurer.

Barely a fortnight before, a similar convergence of opposition parties in the Gujerat elections had resulted in the defeat of Mrs. Gandhi's congress party there. Those elections, as well as the

Bihar movement, had demonstrated to the opposition that despite their heterogenous ideological orientations they could agree upon a joint strategy and develop a common leadership to work against the Congress and the monopoly of power that the Congress wielded. It is reasonable to assume that this lesson had not been lost on Mrs. Gandhi either. In the climate of heightened political crisis that prevailed in India following the pronouncement of the Allahad High Court verdict, the appearance of a national united political coalition with the sole stated objective of forcing her removal as Prime Minister must have indeed seemed ominous to her.

Her response was a preemptive strike against the leaders of the movement as well as other political figures, including dissidents within her own party. Those arrested in the first hours of the Emergency included Jaya Prakash Narayan, Congress (O) leaders Morarji Desai and Asoka Mehta, BLD leaders Raj Narain and Charan Singh, Jana Sangh leaders L.K. Advani and Atal Behari Vajpayee and Congress Parliamentary Party General Secretary Ram Dhan and Congress Working Committee member Chandra Sekhar who along with other dissident Congressmen had stayed away from the party meeting called on to pledge loyalty to the Prime Minister. [81] The opposition was totally unprepared for the massive arrests of its leadership. Only hours before he was arrested, Morarji Desai, in an interview with the Italian journalist Oriana Fallaci, had expressed incredulity at her query as to whether Mrs. Gandhi might not have him arrested. He had vehemently denied the possibility and declared that she'd commit suicide first. [82] He was, of course, mistaken.

During the period of emergency thousands of individuals were detained purely on political grounds. As the Shah Commission report states:

> Soon after the declaration of Emergency a large number of persons alleged to be members or sympathizers of the non-CPI Opposition Parties was detained. A large number of detenus in Madhya Pradesh, Gujerat, Karnataka, Rajasthan, Delhi, Maharashtra and, to some extent Bihar and U.P. were members of the Jan Sangh and its sympathizers. The Bharatiya Lok Dal Party members came in for special attention in Orissa, U.P. and Haryana. The Dravida Munnetra Kazhagam was the subject of a concentrated onslaught in Tamil Nadu when more than 400 of its members were detained under the MISA out of a total of 570 political detentions in that State. 83

The purpose of the arrests was to cripple the opposition, though this was vehemently denied by the Government as the reason for the detentions. In its letter to Mrs. Gandhi dated November 6, 1975, the Lok Sangharsha Samiti commented on the arrests:

> You say the Opposition Parties have not been banned, and they are free. But when the leaders and workers of these parties are arrested and put behind bars, when Parties cannot hold meetings to place their point of view before the people or answer the calumny spread by the Ruling Party and the Government, when the views of the Parties cannot be reported in the Press, and the people have no way of knowing what the Parties are doing or thinking -- do Parties function freely? Or is it that they have been consummately consigned to the limbos? 84

MISA was not only invoked against political opponents and so-called extremists but even against ordinary criminals and "anti-social elements" and economic offenders. Here again, the Shah Commissions' conclusions are pertinent:

> Persons were detained under MISA for alleged criminal activities relating to more than five years before the detention and in several cases the alleged offences mentioned in the grounds pertained to an even remoter period dating back up to 15 or 20 years . . .
>
> ...In many cases the detenu was shown as having been acquitted by the court in respect of several offences, yet these were made the grounds for detaining him under the MISA. . .
>
> All kinds of petty criminals, those involved in offences under the Excise Act, Prohibition Act, Gambling Act, Indian Arms Act ... and minor offences like ordinary theft, assault, "eveteasing", criminal trespass, etc., were detained under MISA for long periods in States like Madhya Pradesh, U.P., Bihar, Gujerat, Maharashtra, Delhi, Andhra Pradesh as well as, to a lesser extent, in other states. 85

The figures compiled by the Shah Commission on the detentions under MISA, and DISIR, reproduced in Table I, express the enormity of the assault on personal liberty of the individual under the Emergency. [86]

TABLE I

ARRESTS AND DETENTIONS IN VARIOUS STATES/UNION TERRITORIES DURING EMERGENCY

Sl. No.	Name of State/ Union Territory	Detentions Under MISA	Arrests Under DISIR
1	2	3	4
1	Andhra Pradesh	1135	451
2	Assam	533	2388
3	Bihar	2360	7747
4	Gujarat	1762	2643
5	Haryana	200	1079
6	Himachal Pradesh	34	654
7	Jammu & Kashmir	466	311
8	Karnataka	487	4015
9	Kerala	790	7134
10	Madhya Pradesh	5620	2521
11	Maharashtra	5473	9799
12	Manipur	231	228
13	Meghalaya	39	20
14	Nagaland	95	4
15	Orissa	408	762
16	Punjab	440	2423
17	Rajasthan	542	1352
18	Sikkim	4	--
19	Tamil Nadu	1027	1644
20	Tripura	77	99
21	Uttar Pradesh	6956	24781
22	West Bengal	4992	2547
23	Andaman & Nicobar Islands	41	88
24	Arunachal Pradesh	--	1
25	Chandigarh	27	74
26	Dadra & Nagar Haveli	--	3
27	Delhi	1012	2851
28	Goa, Daman & Diu	113	--
29	Lakshadweep	--	--
30	Mizoram	70	136
31	Pondicherry	54	63
	TOTAL	34988	75818

The manner in which the detention powers under the amended MISA and other preventive measures was used during the Emergency constitutes, without doubt, an excess that affected virtually the entire nation. Yet, the abuse of authority that aroused the greatest popular resentment against the Emergency and found its expression in the vote against Mrs. Gandhi and her Congress Party in 1977 relates to the forced sterilization campaign undertaken by the Government. Sterilization, as Professor Morris Jones has stated, stood out as the "most scandalous infringement of a peculiarly intimate personal liberty" and the "mark of deep private pain" that the Emergency occasioned. [87]

The need for an effective program to limit the population growth rate was widely recognized in Indian administrative circles. It was recognized that unless India succeeded in reducing its "population explosion," whatever expanded resources the economy generated would go only toward meeting the additional consumption mandated by the growth in population. According to census figures, the population had grown from 359 million in 1951 to over 436 million in 1961 and was 548 million in 1971. The large increase was not altogether attributable to a high birthrate but was also the result of increased life expectancy and the corresponding decline in annual death toll. Whereas in 1951 annual life expectancy was a mere 32.5 years, by 1971 it had climbed to 53.2 years [88] as a result of better health and sanitation and more effective famine relief programs. The widespread epidemics and famines which had ravaged the countryside and taken millions of lives in the past had for the most

part been eliminated, and, in combination with the reduced infant mortality rate, the population grew at such a pace that the demographic pressures on economic development soon became overwhelming.

The program of family planning that had been followed by the Government until the Emergency was largely voluntary with certain incentives offered to encourage participation in the sterilization program. As late as April 5, 1974, Dr. Karan Singh, the Union Minister of Health and Family Planning, had declared during his inaugural address to the Central Family Planning Clinic:

> "While the fixing of targets is useful to guide the workers on the level of achievement, strategies have to be developed to see that the people themselves readily accept the program without any compulsion. Family planning must be a voluntary and people's program . . . Motivation, persuasion and creating health and family planning consciousness in the country is one side of our effort. The other side is the provision of services . . ." 89

The Emergency witnessed a drastic departure from the voluntary character of the family planning drive. As before, the objective remained the same -- for families to limit the number of children to three. The methods of bringing this about changed, however. The program of incentives to encourage voluntary sterilization was considered inadequate, and it was therefore supplanted by a new program of stringent disincentives that ultimately degenerated into naked coercion. In a note to Mrs. Gandhi dated October 10, 1975, Dr. Karan Singh discussed the need for a "crash program to intensify family planning," writing, "the problem is now so

serious there seems to be no alternative but to think in terms of introduction of some element of compulsion in the larger national interest." [90] Mrs. Gandhi too expanded on this theme, emphasizing the need for some degree of compulsion. In her address to the Joint Conference of Association of Physicians on January 22, 1976, she observed:

> "We must now act decisively and bring down the birth rate speedily ... We should not hesitate to take steps which might be described as drastic. Some personal rights have to be kept in abeyance, for the human rights of the nation, the right to live, the right to progress ..." 91

Within months of the declaration of the Emergency the voluntary character of the Government's family planning program had undergone a transformation. Harsh measures were enacted both by the center and the states achieving the stated goal of reducing, by 1984, the birth rate from 3.5 to 2.5 percent. [92] The program of incentives and disincentives was soon perverted into a macbre campaign that focused on compulsory sterilization. Incentives no longer rewarded just the person undergoing sterilization but the "motivator" as well. Rukhsana Sultana, a friend of Sanjay Gandhi who was active in the sterilization campaign in Delhi is reported to have earned Rupees 84,210 for "having motivated" 8407 people to undergo sterilization. [93]

The disincentives too were stringent by any standard. With unseeming haste, state after state passed their family planning packages. These varied considerably in the schemes of rewards and punishments they proposed, with no uniformity of approach in regard to the adopted population

control measures. Generally speaking, however, the disincentives referred to denials of certain privileges and concessions such as maternity leave, financial loans and advances, allotment of accomodation and land, free medical treatment, scholarships and educational allowance for children and similar perquisities which had through long useage come to be treated as part and parcel of the employment terms of a government servant. Among the various programs of family planning enacted by the States, that of Himachal Pradesh was characterized even by Mrs. Gandhi as rather harsh. The measures were spelt out in a letter from the Governor of the state to the President of India, dated November 2, 1976.

> "In addition to the package of incentives and disincentives, the State Government has decided to make family planning obligatory for all Government employees. A Government servant having two children of different sexes would be considered an "eligible person"... The State Government has also approved "The Himachal Pradesh Government Servants (Special Provisions relating to Family Planning) Rules" incorporating the incentives and disincentives announced by the Government in this regard. Under these rules an "eligible person" who fails to get himself or his spouse sterilized within three months from the commencement of these rules will be disqualified in respect of the following: (a) earning of annual increment or crossing efficiency bar; (b) confirmation and promotion; (c) medical reimbursement or treatment at Government hospitals; (d) allotment of Government accomodation. In case a person is already residing in a Government accomodation, he will be required to pay the market rent or six times the standard rent whichever is higher; (e) Government loans including . . advances and (f) maternity leave in the case of women employees. 94

Maharashtra enacted a Bill mandating sterilization after registration of the third child, with up to two years in prison for those who violated the law. [95] The Haryana measure advocated the dismissal of all "eligible" Government employees who did not get themselves sterilized within a stipulated time. [96] According to a report in the Sunday Telegraph (London), in U.P., each teacher was required to provide 12 candidates for sterilization every three months. Failure to do so resulted in the withholding of salary or even dismissal. [97] In Mathura 150 teachers were jailed for 20 days when they protested against the measure and in Alamgarh another 400 were suspended until they had met their quotas. [98]

The brutal implementation of the new and harsh strategy to curb population growth was most evident in the North. Further, it was only after Sanjay Gandhi, Mrs. Gandhi's younger son, made family planning a major plank of the platform of the Youth Congress, of which he was by then the undisputed leader, that the sterilization campaign acquired its frenzied character. By that time Sanjay was not only the acknowledged leader of the Youth Congress, but was also widely recognized as being second only to Mrs. Gandhi in the power and influence he wielded. So, when he pushed a four point Youth Congress program which included, besides family planning, the planting of trees, the eradication of illiteracy and the abolition of caste and dowry systems, the program was referred for speedy execution to all Congress-ruled states.

The passage below is representative of the sterilization target-mongering about that went on in various states as government officials in their eagerness to curry favor with Sanjay lost all moral perspective and developed an oppressive policy that terrorized millions of Indians. The passage from a directive dated September 30, 1976, addressed to district officers from the Joint Director for Family Planning of the State of Maharashtra read:

> "I wish to inform you that Shri Sanjay Gandhi is visiting Maharashtra State about October 28, 1976, and the Chief Minister desires that before the visit of Shri Sanjay Gandhi Maharashtra State must have completed 5 lakhs sterilizations. You will appreciate the seriousness with which the Chief Minister has issued instructions, and therefore, though the task is stupendous, we shall have to leave no stone unturned to achieve this objective." 99

The tactics of compulsion were widespread, especially in the North. The sterilization drive in two villages of Northern India has been described by an Indian journalist as "the most callous rape of rights and dignity experienced anywhere in the twenty months of the Emergency." 100 Not surprisingly, it was the weaker sections of the population -- the poor, the backward classes and the minorities that suffered the most from the arbitrariness and insensitivity of a Government that recognized no restraints on its authority. Unchecked power in the hands of petty officials who, with the assistance of the police, sought to reach the incredibly high sterilization targets established by State authorities resulted in hundreds of thousands of individuals being coerced into undergoing sterilization. There was no longer an avenue for redress of their grievances, no matter how grave.

Table II providing the Shah Commission Report's figures on sterilizations during the Emergency bespeaks of the grisly eagerness with which the campaign was executed. [101]

Among the other abuses of authority by the State against individuals that the Shah Commission investigated, one that evoked a large number of complaints was in connection with "the treatment meted out to public servants in so far as it related to their service conditions generally and with particular reference to their summary dismissal, compulsory/ premature retirements and supersessions." [102]

There was a departure from accepted norms and practices on two counts. First, during the Emergency, the Government made appointments to important offices of persons who had either been rejected as unfit by the Public Enterprises Selection Board, the body entrusted with selecting senior executives of public undertakings or whose selections did not conform to normal procedures. These officers as the Shah Commission concluded were selected only because they were perceived as willing instruments who would "further the interests of the center of power in gross violation of established administrative norms and practices."[103]

Secondly, both the center and the States dealt harshly with those bureaucrats who did not exhibit the degree of enthusiasm about the Emergency expected of them. To deal with them the various governments resorted to dismissals, forced retirements and supersession. There were 25,962 cases of premature or compulsory retirements made during the Emergency that were referred for review by the post Emergency Government.

TABLE II -- STERILIZATIONS: TARGETS & ACHIEVEMENTS

Name of State/UT	1975 - 76			1976 - 77		
	Target Set by Gov't of India	Target as Revised by State Gov't/UT Admin.	Achievements	Target Set by Gov't of India	Target as Revised by State Gov't/UT Admin.	Achievements
1	2	3	4	5	6	7
Andhra Pradesh	2,94,200	--	1,65,163	4,00,000	6,00,000	7,41,713
Assam	67,300	--	1,47,545	1,70,000	--	2,26,205
Bihar	2,02,500	--	1,65,531	3,00,000	6,00,000	6,80,000
Gujarat	1,82,400	--	1,53,000	2,00,000	3,78,240	3,17,000
Haryana	74,300	45,000*	57,942	52,000	2,00,000	2,22,000
Himachal Pradesh	18,600	--	16,830	31,500	1,00,000	1,00,740
Jammu & Kashmir	7,000	--	9,502	31,000	--	15,794
Karnataka	1,39,000	--	1,20,671	2,44,500	6,00,000	4,88,861**
Kerala	1,48,400	--	1,56,622	2,22,500	--	2,06,600
Madhya Pradesh	1,63,800	--	1,12,000	2,67,500	7,00,000	10,01,000
Maharashtra	3,18,300	5,68,000	6,11,000	5,62,000	12,00,000	8,33,000
Manipur	1,600	--	847	4,500	--	6,286
Meghalaya	1,500	--	2,100	3,500	--	7,513
Nagaland	--	--	--	--	1,000	355
Orissa	1,09,200	--	1,25,040	1,95,500	4,62,000	3,22,984
Punjab	43,100	--	53,083	46,500	2,50,000	1,39,905
Rajasthan	1,06,100	--	86,000	1,75,000	3,50,000	3,64,760
Sikkim	--	--	--	--	--	262
Tamil Nadu	2,11,300	--	2,70,691	5,00,000	6,00,000	5,69,756
Tripura	3,400	--	4,140	9,000	10,000	12,600
Uttar Pradesh	1,75,000	--	1,28,000	4,00,000	15,00,000	8,37,000
West Bengal	1,96,100	--	2,06,421	3,92,500	11,00,000	8,80,000
Andaman & Nicobar Islds.	200	--	242	500	1,300	1,376
Arunachal Pradesh	100	--	22	600	--	268
Chandigarh	1,300	--	1,163	2,000	--	2,590
Dadra&Nagar Haveli	350	--	241	600	630	695
Delhi	11,200	--	22,510	29,000	1,00,000	1,38,517
Goa, Daman&Diu	4,400	--	2,800	8,000	--	5,571
Lakshadweep	50	--	56	200	--	149
Mizoram	900	--	905	1,800	--	679
Pondicherry	3,400	--	4,688	5,300	7,300	8,030
TOTAL	24,85,000		26,24,755	42,55,500		81,32,209

* With Central Government's approval.
** Up to 28/2/77.

As of June 1, 1978, 16,538 had been taken up for review and of these 14,187 orders had been reversed and the affected officers reinstated, 1488 cases were still under consideration, leaving only 863 cases in which the reviewing authority found insufficient cause for the early retirement of the officers concerned. [104] Similarly, reviewing authorities reversed large numbers of dismissals and supersessions of civil servants that occurred during the Emergency, lending credence to complaints that there was political motivation behind such orders. [105]

Pressure was brought to bear even upon the judiciary. High Court judges who did not decide in favor of the Government in cases that came before them suddenly were transferred out of their regular jurisdictions, purportedly "in the interests of national integration." [106] Legally, of course, it was within the Government's power to effect the transfer of High Court Judges after consultation with the Chief Justice of India. However, in the past this power had seldom been exercised and then only with the consent or at the request of the judge being transferred. But in May 1976 a report announced the transfer of 16 judges with the comment that "this process will probably continue in appropriate installments at reasonable intervals."[107] Among those transferred were Justice J. M. Sheth who had ruled in favor of the Gujarati language Sarvodaya Journal Bhumiputra in its challenge of a precensorship order, Justice J. R. Vimadlal who had joined Justice P. S. Shah in declaring that "a detenu is not a convict and the power to detain is not a power to punish,"[107] and Justice Sesha Rangarajan, who had delivered a stinging rebuke to the

the Government in the case relating to the detention of the journalist Kuldip Nayar of the Indian Express. Of this, Raj Mohan Gandhi wrote in Himmat in June 1976, "A transfer can be a form of punishment". So it would seem to have been in many instances of transfers during the Emergency, and particularly so in the case of Justice Vimadlal who was transferred from Maharashtra to Andhra Pradesh even though he had only six months of active service remaining before retirement.

Justice J. L. Aggarwal, who, along with Justice Rangarajan, had heard the arguments in the Nayar case was reverted from Additional Judge of the Delhi High Court to the Junior status of a Sessions Judge despite recommendations from both the Chief Justice and the Law Minister that he be confirmed as a Justice of the High Court. [109]

As the transfers continued, it became obvious to the judges that "a finding against the Government was an invitation to transfer." [110] Only when Justice Sheth filed a petition challenging his transfer was there an end to this particular form of punishment of judges who did not see eye to eye with the Government. A full bench of the Gujarat High Court allowed Sheth's petition on grounds that there had been no meaningful consultation with the Chief Justice, as required by the Constitution, prior to the issuance of the transfer order and as such the order was invalid and therefore unenforceable. According to Kuldip Nayar the verdict in the Sheth transfer "stopped the transfer of 44 more judges." [111]

The Emergency and the Press

Of the many changes to the democratic system the Emergency wrought, none so dramatised, especially to the outside world, the collapse of Indian democracy as the virtual destruction of the freedom of the press in India. The free press was one of the first casualties of the new order. When emergency was declared a few minutes before midnight on June 25, 1975 it was accompanied by a disruption of electricity to Bahadur Shah Zafar Marg, the "Fleet Street" of Delhi, where most of the major newspapers had their offices and presses. [112] The following day, power supply to the other leading dailies located outside the already affected area was also discontinued and only after the censorship machinery had been set up was electricity restored to the Delhi dailies. [113]

Since a free press, which provides a forum for the expression of competing views, opinions, ideologies and philosophies is integral to a functioning democracy, and since the Indian Press, until the Emergency, was widely acknowledged to be one of the freest in the world, its reduction during the Emergency to mere propaganda outlets for the Government merits attention. No examination of the Emergency can be complete, in fact, without an analysis of the Indian press situation during this period. The assault on freedom of the press began early, continued with such zeal and was so effective in intimidating most sections of the press that L. K. Advani, the Minister of Information in the post-Emergency government, would later taunt the press saying, "when you were merely asked to bend, you chose to crawl." [114]

The right to freedom of the press is not specifically mentioned in the Indian Constitution as it is in the U.S. Bill of Rights. The Constitution refers only to the freedom of speech and expression of which the freedom of press was treated as an integral element. In the first two cases on freedom of speech and expression, decided in 1950, the Supreme Court had to deal with the freedom of circulation and censhorship of the press. In Romesh Thappar vs. State of Madras, the Court observed:

> There can be no doubt that freedom of speech and expression includes freedom of propagation of ideas and that freedom is secured by freedom of circulation. Liberty of circulation is as essential to that freedom as the liberty of publication. Indeed without circulation the publication would be of little value. 115

and in Brij Bhushan

> There can be little doubt about the imposition of censorship on a journal is a restriction on the liberty of the press which is an essential part of the right to freedom of speech and expression declared by Article 19 (1) (a). 116

These two cases decided together by the Court had challenged respectively the Madras Maintenance of Public Orders Act, 1949, and the East Punjab Public Safety Act, 1949. The Madras Act authorized the State Government to prohibit or regulate entry into or the circulation, sale or distribution of any document or class of documents "for the purpose of securing public safety or maintenance of public order." [117] The Punjab Public Safety Act authorized precensorship by the government" for the purpose of preventing or combating any activity prejudicial to public

safety or the maintenance of public order." [118] It is significant that the Court ruled the impugned orders unconstitutional on very narrow grounds. The Court merely held that preservation of public safety and order was not among the recognized restraints on the freedom of speech and expression, under the Constitution. The respondent's contention that restrictions in the interests of State security as authorized by Art. 19(2) was broad enough to cover all actions taken towards maintaining public order and safety was rejected by the Court.

The Court, though it declared freedom of press as an integral element of the freedom of speech and expression, was less concerned, it would seem, about the scope and effects of curbs on the press than about the constitutionality of the curbs imposed. The rulings thus merely served to encourage the Government to increase the number of restrictions on the freedom of speech and expression. The First Amendment Act provided three additional restraints; namely, friendly relations with foreign states, public order and incitement to an offence. Later, the 16th Amendment authorized the imposition of restraints in the interests of the sovereignty and integrity of India. In all, there were eight restrictions on the freedom of speech and expression, including freedom of the press. These related to (1) the sovereignty and integrity of India; (2) the security of the State; (3) friendly relations with foreign states; (4) public order; (5) decency or morality; (6) contempt of court; (7) defamation; and (8) incitement to an offence.

As her style of politics grew more autocratic, Mrs. Gandhi's attitude towards the press changed from one of cordiality to that of virtual hostility. [119] In keeping with her decreasing tolerance of all dissent she did not take kindly to the criticism of her that appeared with frequency in the nation's press even as the political and economic situation in the country deteriorated and public opinion began to turn against her; all such criticism was denounced as the voice of monopoly capital destroying the people's confidence. [120] When Emergency rule was established the Administration set about with ruthless efficiency to destroy the freedom that the Indian press had enjoyed in considerable measure since independence. In as much as freedom of the press is fundamental to a functioning democracy, the attempt during the Emergency to institutionalize an authoritarian system of government demanded the virtual destruction of a free press in the country. As V. K. Narasimhan, a leading editor has written "The Emergency could not have lasted for a single month in the form in which it was maintained ... if the press had been free." [121]

Censorship was imposed on the Indian press during the Emergency under Rule 48 of the Defence and Internal Security Rules which authorized the government to censor or precensor matters in respect of the defence of India, civil defence, public safety, maintenance of public order and efficient conduct of military operations. A statutory order under Rule 48 was issued listing the subjects that fell within the scope of precensorship. In practice, however, censorship was exercised through ever-expanding guidelines which issued forth from time to time from the office of the Chief Censor and it was used primarily to silence the opposition

and protect Mrs. Gandhi and her administration from public scrutiny and criticism.

The initial set of guidelines orally communicated to the press on June 26 included injunctions against the publication of rumors, the reproduction of "objectionable" matter already published in any Indian or foreign newspaper and the publication of anything likely to bring into hatred or contempt or excite disaffection toward the Government. [122] Everything not announced by the government, it seemed, would be treated as rumor and everything critical of the Government, as objectionable. The foreign news organizations were warned on June 28, by the new Information Minister Vidya Charan Shukla that they risked expulsion from India if they failed to submit their dispatches or broadcast scripts for censorship before sending them outside India. [123] The foreign correspondents were also informed that under certain circumstances, they would be held responsible for news about India that their organizations published or broadcast, even if the news did not originate with the correspondents themselves. [124] The penalty for noncompliance was expulsion.

Within a week of the Emergency declaration, the censorship apparatus was in place and fully functional. Censorship guidelines, as issued by the Chief Censor, frequently exceeded the scope of Rule 48 of the Defense and Internal Security of India Rules under which censorship had been imposed. Not only was there prohibition of items of news relating to defense, public safety, public order or military operations, but newspapers

and journals were barred from publishing any material which could be construed as even remotely critical of the Emergency. Even quotations from Gandhi, Tagore and Nehru, leaders of the Indian struggle for independence, were disallowed if their words could be interpreted in such a manner as to imply criticism of present conditions. [125] No blank spaces or columns were allowed since these would have indicated evidence of precensorship. Cushrow Irani, the managing director of The Statesman, and at the time, the Chairman of the news agency, The Press Trust of India, claimed on July 29 that several newspapers had been charged with failure to publish Mrs. Gandhi's photograph on their front pages frequently enough. [126] Under the regulation, the very publication of the censorship guidelines was itself a violation of censorship. In effect, censorship orders were "arbitrary in nature, capricious and were usually issued orally without any relation to the provisions of Rule 48. [127] A record of the censorship instructions maintained by the Duty Room of the Censor Department offer ample evidence that many of these instructions were issued with the sole objective of suppressing news critical or possibly critical of the Government. Following is a partial list of the representative illustrations provided by the Shah Commission on such censorship directives. [128]

"No story is to be cleared pertaining to Parliament business or Supreme Court appeal filed by Prime Minister. No reference to the case" (12th July, 1975).

"There has been a "bundh" in Ahmedabad, organized by the ruling party (Janta Front). If the agencies and the ocrrespondents' copies

say that the "bundh was a flop" it may be allowed, provided the description of the "bundh" does not go against Censor instructions."

"Any statement made by the Chief Minister, Gujarat, criticizing any action taken by the Centre should be spiked, but if his statement is innocuous it may be allowed. In case of any doubt, please ring up Additional Chief Censor, Shri U. C. Tiwari." (26th July, 1975).

"Please ensure that Allahabad High Court judgement today upholding MISA detenues' right to move High Court under Article 226 is not published in the State. Instruct your Censor in Allahabad to kill story" (30th October, 1975).

"KMLP (Gujarat) has been dissolved. There is likelihood of some members issuing statements withdrawing support to the Janta Front Government in Gujarat. Such statements should be allowed. Statements pledging support to the Janata Front Government by some of the members should be spiked" (Instruction CC) 11th February, 1975.

"All the statements made by the Janata Front Leaders alleging that Centre or Congress was out to topple their Ministry or that Janta Front would take to agitation, etc., should not be allowed. The statement of KMLP leaders dissolving their party, in support of the Janta Front are also not to be allowed. Anything which is unhelpful to the present plan of the Centre should be killed." (15th February, 1976).

Even the reporting of parliamentary and court proceedings was subjected to censorship during the Emergency. The first set of guidelines to cover these subjects was issued on July 13, in anticipation of the reopening

of the Supreme Court the following day after summer vacation, and the forthcoming parliamentary session slated to open on July 21. The guidelines for the reportings of proceedings in Parliament declared that statements made on behalf of the Government could be published either in full or in a condensed form provided the contents did not infringe censorship. Nothing else pertaining to the sessions could be published except the result of voting and the names and party affiliations of the members speaking for or against a subject. [129] Rules relating to the coverage of court proceedings were not quite as specific, though it appeared that the new guidelines could, as the London Times observed on July 14, "prevent the press from publishing the ruling of the Supreme Court if it gives an unfavorable judgement on Mrs. Gandhi's appeal."

On July 22, the day after the opening of the monsoon season of Parliament, supplementary guidelines were issued for coverage of parliamentary proceedings. These prevented publication of the movement of members within the House, e.g., ruling party members moving to opposition benches or vice versa, references to empty seats in the Opposition Benches, or the names of absent members. The guidelines also laid down that remarks from the Chair in either House should not be allowed as a part of the proceedings of the House. [130]

On January 4, 1976, even more stringent guidelines were issued in anticipation of the new session of Parliament due to commence shortly. These laid down that all news, reports and comments relating to parliamentary proceedings would henceforth be governed by Rule 48 of the Defence

and Internal Security of India Rules and hence all such news items would have to be cleared by the Censor Officer before their publication. [131] A Censor Room was even established in the Parliament for that purpose. Two further sets of guidelines were issued on January 14 and March 7, 1976; they further expanded the scope of censorship of parliamentary proceedings by laying down that nothing could be published which would in any manner impair the image of the Parliament as the voice of the people and as a sovereign body. [132] Naturally, the publication of reports relating to the parliamentary discussion of censorship was expressly forbidden. As the Information Minister expressed it, it was the Government's intention to see that "in future there will be no confrontation between the legally and democratically elected government and a section of the press." [133]

As the censorship regulations related to the foreign press in India, in the beginning, it too was subjected to the total censorship that was imposed on the domestic press. This was later modified to precensorship on certain subjects; those who did not comply were summarily expelled. [134] On July 21, the precensorship requirement was replaced by a set of "guidelines" the foreign correspondents were obligated to observe. "The purpose of censorship" the opening paragraph of the guidelines declared, "is to guide and advise the press to guard against publication of unauthorized, irresponsible or demoralizing news items, reports, conjectures or rumors." [135] It went on to list a host of restraints on publication of news about India which if followed would have, as A. M. Rosenthal,

managing editor of The New York Times put it, made "the remnant of coverage from India suspect by reducing it only to material issued by or approved by the Government." [136]

Although the new regulation abolished the requirement that foreign reporters submit their dispatches to the Censor's office prior to its filing, this did not signify, by any means, a major loosening of the curbs on the foreign press. It merely shifted the onus of responsibility onto the correspondent since under the regulations of July 21 they were required, on threat of expulsion, to sign a pledge that started with: "I undertake to comply with the Government of India's censorship guidelines for the press and instructions issued thereunder." [137] That the foreign press corps was reluctant to give such an undertaking soon became evident when on July 23, Mark Tulley, a BBC correspondent known for his sympathies for India, decided to leave the country voluntarily rather than submit to the draconian regulations, which made fair reporting on India difficult.

The guidelines were revised once again, and in place of the pledge that they would abide by the censorship regulations, foreign reporters were asked to sign a statement assuming full responsibility for their dispatches. [138] There was, of course, the tacit understanding that the dispatches would comply with all the regulations that had been issued previously and that violation would be met with expulsion. And, indeed, those who ignored the rules were either expelled or did not have their visas renewed; and, correspondents attached to newspapers considered unsympathetic by the Government were refused entry to the country. [139]

The Western press, especially the American, was so suspect in the Government eyes that when John Saar, a correspondent for the Washington Post, which had been without a representative since the early days of the Emergency when its resident correspondent was expelled, went to India he is reported to have gone there as a businessman, not as a journalist. [140] On his return he wrote a series of five articles for the Post which constituted some of the most in-depth reporting on the Emergency Government in India. [141] In September 1976 the censorship of the foreign press was officially withdrawn although the Government continued to discourage most Western journalists from covering India.

The assault on the domestic press was both more determined and more successful. The Government started with censorship, modified it to precensorship of specific subjects, and finally to self censorship for those who complied with the guidelines for reporting. If and when a newspaper or journal published what the Government viewed as violating the existing censorship regulations, it was required to submit to precensorship. According to the Ministry of Information and Broadcasting Report 1976/77, sixty newspapers were required, during the period when censorship had supposedly been relaxed to mere self censorship, to submit to precensorship on specific subjects, some even to total precensorship. Journalists, editors and publishers who did not embrace the Government line eagerly enough were subjected to a variety of pressures designed to coerce them into submitting to the censorship regulations. Reporters who did not

succumb were, more often than not, detained. According to the White Paper on the Misuse of the Mass Media, during the Emergency, 253 journalists were arrested and 110 detained under the MISA and 60 under the DIR. [142]

Of the national dailies, The Statesman, India's most prestigious newspaper, and The Indian Express, the largest newspaper chain with circulation of over one million, were the major victims of the policy of intimidation and harassment carried out by the authorities against independent minded publications. [143] Not only were these two English language papers subjected at different times to precensorship with all the delaying tactics that attended it, they were also subjected to a host of other punitive measures. In the case of the Indian Express, there definitely seems to have been what an observer has described as "a well orchestrated manoeuvre at the highest official levels to take over and eliminate the Indian Express group of newspapers." [144]

In pursuance of its objective of asserting control over these two newspapers, the Government sought to foist its own nominees as directors of boards. Although The Statesman succeeded in resisting the Government demands, by December 1975 six of the eleven directors of the Express board, including the Chairman, were Government appointees. Within months, at a time when publisher Goenka was down with a heart attack, the newly reconstituted board prevailed upon Goenka's son to terminate the services of S. Mulgaokar, the editor-in-chief. He was replaced by V. K. Narasimham, former editor of The Financial Express, also of the Express group of

papers. He, however, did not turn out to be the pliable instrument the authorities had hoped for and soon Goenka was being pressured to have Narasimhan replaced as well.

With The Statesman, the Government failed to get its way when it sought to intervene in the selection of an editor. In the early months of the Emergency, the contract of The Statesman's overall editor, N. J. Nanporia, expired and he was replaced. Mr. V. C. Shukla, the Information Minister objected to the new appointment on two accounts. One, that Nanporia was "being made to pay for the complete support to the Government since Emergency" and two, that the new appointee, S. Nihal Singh, the former resident editor in Delhi had not "behaved properly" and was therefore unacceptable. [145] Shukla demanded the reinstatement of Nanporia but was rebuffed by The Statesman's managing editor, Cushrow Irani, who, unlike the majority of publishing executives in India, did not accept without protest the destruction of press freedom during the Emergency.

For the independence they had displayed in the past and for their modest attempts now to retain some semblance of press dignity, publications like The Statesman and The Indian Express were continuously persecuted by the Government; some of the smaller publications were even forced to close down. [146] The Statesman was even threatened with confiscation of its printing press in Delhi for printing an issue of the journal Seminar which allegedly had contravened censorship requirements. The Government backed away only after the paper challenged the order in

court. The harassment of The Indian Express was worse. The power supply to its Delhi presses were shut off for almost four days for alleged non-payment of electricity bills and only after the Delhi High Court intervened in response to a writ petition filed by The Express was electricity restored. The Court again came to the rescue of the paper when the Delhi Municipal Corporation, by now completely under the domination of Sanjay Gandhi, seized and sealed The Express building in Delhi and attached the paper's central air conditioning plant and other equipment, supposedly to collect on taxes in arrears. This time, the Court issued a stay order since the arrears in question related to a case from five years ago which already was under a stay order pending final outcome of the case.

Both Irani and Goenka were also subjected to personal harassment as were a number of other "unfriendly" publishers, editors and journalists. At Irani's refusal to allow the Government to appoint its nominees to The Statesman's board, proceedings were started against him on a charge that went back to almost six years previously. He was charged with violating, in 1970, the provisions of the Companies Act by acquiring a publishing subsidiary without Government approval. Later, without explanation his passport was impounded, and for over a year, until the Emergency ended, he was prevented from travelling abroad. As for Goenka, he and his family were repeatedly threatened with MISA and other "grave consequences" if he did not relinquish all control of the paper willingly. [147]

Finally, the Government sought to cripple financially those newspapers which it considered unfriendly to the government cause. Various

tactics were used which included delays induced by the censor which cut into the papers' street sales, by reducing and even denying their lines of credit at nationalized banks and by withholding State sponsored advertising from them. [148] In particular, the advertising policy of the Government was transferred into a political instrument and was employed to reward and punish newspapers and periodicals, in a clear departure from established policy and practices. On the basis of their political affiliation, their support of the Government and their attitude toward political development, newspapers were categorized as "friendly," "neutral" or "hostile" with the allocation of advertising revenues of the Government clearly favoring the "friendly". [149] Thus, National Herald, a proCongress daily, founded by Jawaharlal Nehru, benefitted enormously under the new policy. Its managing director was Mohammed Younus, a close friend over the years of the Nehru family, who was designated during the Emergency as Special Envoy to the Prime Minister, and who was also a member of the inner council that Sanjay Gandhi presided over. With an A+ (positively friendly) rating it increased its share of Government advertising from its Delhi edition alone from Rupees 17,298 in 1974 to Rupees 132,917 in 1976, even though its circulation during the same period had declined slightly from 11,048 to 10,831. [150] Likewise, another national daily, Amrita Bazaar Patrika, also with an A+ rating received in 1976, Rupees 1,010,696 compared to Rupees 457,340 in 1974; it too had registered a decline in readership in that period. [151]

At the same time that "friendly" papers were being rewarded handsomely, a total of 89 other newspapers and periodicals were denied Government advertisements for varying lengths of time, [152] as punishment for the independence they exhibited, which the authorities construed as hostility to them. Even private corporations were directed by the Directorate of Advertising and Visual Publicity (DAVP) to align their policies with that of the Government's and not to release advertisement to those periodicals and newspapers that the DAVP had delisted. [153]

As for the advertisement support which the Congress Party received, figures compiled by the Shah Commission and reproduced in Table III lend credence to opposition charges of the politicization of the advertisement policy of the Government during the Emergency. [154]

The DAVP patronage of the Congress Party also extended to the purchase of advertisements in the Party souvenirs which totalled Rupees 80,325 in 1976, up from Rupees 3,868 in 1974, whereas the opposition parties in 1976 did not receive a single rupee's worth of advertising, though they had received Rupees 1,403 worth in 1974. [155]

The politicization of the news industry was at its blatant worst in the manner in which the Government media, especially the All India Radio (AIR) was employed to build up Sanjay Gandhi, Mrs. Gandhi's son, as a great national leader and to further the image of the Congress Party, the Government and the Prime Minister. According to the Shah Commission Report, between January 1976 and January 18, 1977, the AIR in Delhi alone carried 192 items on Sanjay in its main news bulletins. [156] Further,

TABLE III

ADVERTISEMENT SUPPORT TO PARTY PUBLICATIONS BY THE MINISTRY OF INFORMATION AND BROADCASTING

Name of Party	Name of Journal	Period	Circulation	Expenditures (Rupees)
Congress Party	Socialist India	1974-75	1,881	3,188
		1975-76	1,062	18,647
		1976-77	3,521	1,11,740
	Socialist Bharat	1974-75	--	--
		1975-76	3,660	14,918
		1976-77	2,902	1,05,236
	Sub Saath	1974-75	2,400	2,718
		1975-76	1,443	6,555
		1976-77	1,443	52,623
Community Party of India	New Age	1974-75	12,783	3,668
		1975-76	12,340	21,250
		1976-77	14,496	11,106
	Hayat	1974-75	1,866	736
		1975-76	1,883	3,366
		1976-77	1,883	2,879
Communist Party of India (Marxist)	Ganashakti	1974-75	12,891	17,957
		1975-76	12,891	11,442
		1976-77	Not used between 1-2-76 to 23-3-77	1,524
Bhartiya Jana Sangha	Mother Land	1974-75	14,335	13,728
		1975-76	Publication ceased	
		1976-77		
Praja Socialist Party	Janata	1974-75	1,477	450
		1975-76	1,587	98
		1976-77	Not used	--

AIR news reporting was so unfair to the opposition that in December 1976, AIR bulletins devoted only 34 lines to them and 2,207 lines to the Congress as against the 571 and 522 lines respectively in December 1974. [157]

Three major presidential ordinances were promulgated in December 1975 and later enacted by the Legislature into law with the sole objective of institutionalizing press control. First, the ten year old Press Council, an independent body of journalists and newspaper interests committed to promoting freedom of the press, was summarily abolished. It is widely believed that the dissolution of the council was effected in time to prevent it from rendering a verdict on a complaint before it. The complaint charged that B. George Verghese, a leading journalist was removed as editor of Hindustan Times by K. K. Birla, the owner of the paper, as a result of direct political pressure from above; the Press Council was expected to uphold the charge. [158]

The second measure withdrew the legal immunity of journalists covering parliamentary proceedings. At the same time, a large number of journalists whom the Government considered unsympathetic had their accreditation privileges, which enables them to cover the activities of the Government by attending major new conferences, legislation sessions, court hearings, etc., withdrawn. [159]

It was, however, the Prevention of Publication of Objectionable Material ordinance that spelt out in detail the grand design the Government had to destroy all vestiges of press freedom in India. It incorpora-

ted several coercive features and empowered the Government to mete out harsh penalties to authors, editors, publishers and even printers for publishing, circulating or distributing "objectionable material." Such material was so broadly defined as to include virtually anything the Government may disapprove of. "Words, signs or visible representations" likely to "bring into hatred or contempt or excite disaffection towards the Government," or which might "cause fear or alarm to the public . . . whereby any person may be induced to commit an offence against the State or against the public tranquillity" or be defamatory of the President, of India, the Vice President of India, the Prime Minister, the Speaker of the House of People or the Governor of a State were among material defined as "objectionable" under the new measure. [160]

Beyond the adoption of these stringent curbs on the press the Government took the additional step of dismantling the leading news agencies. The two major English news agencies, the United News of India and the Press Trust of India and the Hindi news agencies, Samachar Bharati and Hindustan Samachar were coerced by the Administration through threats and strategems to merge "voluntarily" and surrender their functions to a new body Samachar. Samachar remained both administratively and editorially fully under the control of the Government and it functioned primarily as a government conduit for propaganda in the manner in which the State controlled raido and television already did. With the creation of this body, the tradition of a free press ended in India, and thereafter the press too became the captive of the Government.

As the forgoing analysis of the actions of the Emergency suggests, this period witnessed a systematic perversion of the fundamental concepts of constitutionalism and led to the institutionalization of an authoritarian regime in place of the democratic system the nation had adopted at independence. The changes to the political and constitutional system made during this period are remarkable for their broad sweep, their disregard for constitutional constraints and above all for their total deviation from known democratic norms.

Without doubt, the Emergency violated basic democratic concepts. There was suspension of civil liberties, denial of the due process of justice and the revocation of the rules of law. All meaningful political opposition was disallowed, public dissent stifled and the freedom of the press destroyed. Permanent changes to the political order were enacted through constitutional amendments. These altered the distribution of power among the branches of government, reduced the scope of citizens' rights, curtailed judicial review, and gave parliament absolute authority to amend the Constitution. Free of judicial scrutiny of administrative actions, the Emergency period witnessed repression in many forms such as in the widespread abuse of preventive detention measures, in the sterilization program, and in the efforts to politicize the civil service. Furthermore, there was the emergence of extra constitutional authority that centered around Sanjay Gandhi. With no electoral or official position, he exercised immense power, second only to Mrs. Gandhi's, but with no accountability whatsoever.

In short, the Indian Emergency of 1975 was characterized not merely by the institution of a government with expanded powers to meet an extraordinary situation, but by the emergence of a government which usurped and exercised enormous powers to perpetuate itself in power.

NOTES - CHAPTER III

1. Deccan Chronicle, Special Supplement, 26 June 1975.

2. Ibid.

3. List in Ibid., 2 July 1975. For further details of the program see J.S. Bright, One Year of Emergency in India and The 20-Point Programme (New Delhi: Pankaj Publications, 1976) All India Congress Committee, Congress Marches Ahead 12 (December 1975 - May 1976) and V.B. Singh, Economics of the Twenty Point Programme, (New Delhi: Ministry of Information and Broadcasting 1976).

4. Times (London) 18 July 1975.

5. The drop in the inflationary rate was also due to the deflationary measures such as compulsory savings, tight credit and curbs on wage increases introduced prior to the Emergency. Even before the Emergency was two months old Mrs. Gandhi was announcing that prices were down by two percent as against the thirty percent increase the preceding year. Statesman, 15 August 1975.

6. Times (London), 18 July 1975.

7. The Court's reversal of the conviction, on November 7, 1975 was based not on the merits of the case as such but because of an amendment to the Election Laws which effectively voided her conviction and which was extended protection from judicial scrutiny by its inclusion in the IX Schedule.

8. Constitution of India. Amendment 42, cl. 55 (amended art. 368).

9. Quoted in Michael Henderson, Experiment With Untruth: India Under Emergency (Bombay: South Asia Books, 1977) p. 180.

10. Amendment 42, cl. 55 (amendment of article 368).

11. This followed an earlier abortive attempt to have the Supreme Court overturn the decision. On November 10, 1975 the full 13-member bench was convened at the Administration's request to review its 1973 decision which had held that Parliament's power to amend the Constitution was limited by the principle of the "basic structure." After two days the bench was dissolved without rendering an opinion.

12. AIR 1951, Mad. 120.

13. Kesavanda Bharati vs. Kerala, AIR 1973 sc 1461.

14. Amendment 42, cl 5 (insertion of new article 31D).

15. Ibid., subcl. 4.

16. cl. 6 (insertion of new article 32A).

17. Ibid.

18. cl. 38, subcl. 1(b). (substitution of new article for art. 226).

19. Ibid., subcl. 1(c).

20. cl. 25, subcl. 1 (insertion of new article 144A).

21. cl. 25, subcl. 2 (insertion of new article 144A); and cl. 42, cl. 4(a) (insertion of new article 228A).

22. cl. 46 Part 1, subcl. 1 and Part 2, cl. 2 (insertion of new Part XIVA).

23. Ibid., Part 1, subcl. 2(d) and Part 2, subcl. 3(d).

24. cl. 13, subcl. 1 (amendment of article 74). Interestingly, though the earlier provision did not rule out presidential discretion, a Supreme Court ruling in 1974 (Samsher Singh vs. State of Punjab AIR 1974 sc. 2192) had unaniously held that the President did not act on his own initiative or responsibility but only on the advice of the Council of Ministers, responsible to the Parliament.

25. cl. 57. (Amendment of Schedule VII).

26. Ibid., (amendment of Schedule VII - Union List, Entry 2; State List, Entry 3; and Concurrent List, Entry 2).

27. Ibid.

28. Ibid. (amendment of State List, Entries 11, 19, 20 and 29, and Concurrent List, Entry 17).

29. Ibid. (amendment of Concurrent List, Entry 20).

30. cl. 29. (amendment of article 170).

31. cl. 17, (amendment of article 83).

32. cl. 22, (amendment of article 118).

33. Constitution of India; art. 100, cl. 3 and 4.

34. Election Laws Amendment of 1975. (No. 40 of 1975) cl. 2.

35. Times of India, 7 August 1975.

36. Ibid. In respect of retroactive legislation, art. 20 of the Constitution of India lays down three conditions: (1) that an act, not criminal at the time of commission and before passage of such legislation shall not be made retroactively criminal; (2) that the legislation shall not aggravate a criminal act retroactively and thereby provide graver penalty than that which would have been imposed under law prevailing at the time of the act; and (3) that retroactively legislation shall not alter evidentiary rules so as to deprive the accused of legal safeguards available to him at the time the crime was committed. The Constitution does not bar the decriminalization of an act which under earlier law would have been a crime; in this sense the retroactive laws to benefit Mrs. Gandhi were technically valid.

37. Election Law Amendment, 1975, cl. 7.

38. Ibid., cl. 8. Details of the passage of the statute in Times of India, 7 August 1975.

39. Election Laws Amendment, cl. 8.

40. The Court did uphold the legality of the measures and was therefore obligated to overturn the Allahabad verdict.

41. Times of India, 7 August 1975.

42. Amendment 39, cl. 2 (Substitution of new art. 71).

43. Ibid., cl. 4 (Insertion of new art. 329A).

44. Statesman, 9 August 1975.

45. Ibid.

46. Ibid., 10 August 1975.

47. Ibid.

48. Constitution of India, article 361.

49. Amendment 38, cl. 8 (amended art. 360).

50. Times of India, 23 July 1975.

51. Ibid.

52. Amendment 38, cl. 5 (amendment of article 352).

53. Ibid., cl. 7 (amendment of article 359).

54. Maintenance of Internal Security (Amendment) Act, 1975 (no. 39 of 1975), cl. 6.

55. Ibid.

56. Ibid., cl. 4.

57. Ibid., cl. 5.

58. Ibid., cl. 7.

59. Ibid., cl. 5.

60. Ibid., cl. 6.

61. Maintenance of Internal Security (Amendment) Act, 1976 (No. 78 of 1976) cl. 3 and 4.

62. Ibid., cl. 4.

63. Ibid., cl. 4.

64. Maintenance of Internal Security (Second Amendment) Act, 1976 (No. 78 of 1976). Text in Times of India, 26 August 1976.

65. Shah Commission, 3:43.

66. The Shah Commission in its report refers to the Defence of India Rules (DIR) as the Defence and Internal Security of India Rules (DISIR) to denote the introduction of the internal security aspects into the Act. Text, Times of India, 1 August 1975.

67. The Conservation of Foreign Exchange and Prevention of Smuggling Activities (Amendment) Act, 1975 (No. 35 of 1975), cl. 3.

68. Ibid., cl. 2.

69. Ibid., cl. 4.

70. Bright, Emergency in India, pp. 42-43.

71. Amendment 39, cl. 5 (amendment of the Ninth Schedule).

72. Shah Commission, 3:237.

73. Statesman, 5 July 1975.

74. See Craig Baxter, The Jan Sangh: A Biography of an Indian Political Party. (Philadelphia: Univ. of Pennsylvania Press, 1969).

75. For an excellent study on the Indian political parties see Myron Weiner and Osgood Field, eds., Electoral Politics in the Indian States, Vol. 4. Party Systems and Cleavages. (Delhi: Manohar Book Service, 1975).

76. The movement meaning the "Path of Bliss" was founded in 1955 by P.R. Sircar, who at the time was an accountant with the Indian Railways.

77. The term derives from an abortive peasant uprising, in 1967 in the Naxalbari subdivision of Darjeeling district in W. Bengal. For an interesting account of the Naxalbari uprising and the formation of the CP (ML) see Marcus Franda, Radical Politics in West Bengal (Cambridge, Mass.: MIT Press 1971), Mohan Ram, Maoism in India (New Delhi: Vikas, 1971).

78. Statesman, 5 July 1975.

79. Ibid.

80. Shah Commission, 3:43.

81. Deccan Chronicle, Special Supplement, 26 June 1975.

82. Oriana Fallaci, "Mrs. Gandhi's Opposition: Morarji Desai," New Republic (August 2 and 9, 1975); p. 18.

83. Shah Commission, 3.

84 Letter to India Gandhi dated 6 November 1975.

85. Shah Commission, 3:43.

86. Ibid., 3:134.

87 W.H. Morris Jones, "The Indian Elections and their Aftermath," Asian Affairs (7 October 1977): p. 291.

88. India - Ministry of Information and Broadcasting, India: A Reference Annual, 1974 (Delhi: 1974); p. 5.

89. Cited by Shah Commission, 3:153.

90. Ibid.

91. Ibid., 3:154.

92. Ibid.

93. Hindustan Times, 1 July 1977.

94. Shah Commission, 3:159.

95. Washington Post, 8 November 1976.

96. Himmat, 4 February 1976.

97. Sunday Telegraph (London), 27 February 1976, cited by Michael Henderson, Experiments with Untruth, p. 70.

98. Ibid.

99. Shah Commission, 3:164.

100. Suman Dubey, "Pipli and Uttawar," Seminar 214 (June 1977); p. 23.

101. Shah Commission, 3:207.

102. Ibid., 3:101.

103. Ibid., 2:142.

104. Ibid., 3:35-6.

105. Ibid., 3:36-8.

106. The Hindu, 30 May 1976.

107. Ibid.

108. Nayar, Judgement; p. 96.

109. Ibid., pp. 150-1.

110. Statesman, 13 April, 1976.

111. Nayar, Judgement, p. 151.

112. Times (London), 29 June 1975.

113. Ibid.

114. Quoted in Cushrow Irani, Report to the General Assembly of the International Press Institute on the Indian Press Situation. (Oslo, June 6-8, 1977); p. 8.

115. AIR 1950 sc 124.

116. Brij Bhushan vs. State of Delhi, AIR 1950 sc 129.

117. sec. 9 (1-A) of the Act.

118. sec. 7(1-C) of the Act.

119. Mrs. Gandhi's attitude to the press is explained by her former Press Secretary, B.G. Verghese in Zareer Masani, Indira Gandhi: A Biography (New York: Thomas Y. Crowell, 1975); p. 258.

120. Kochanek, "Mrs. Gandhi's Pyramid," p. 114.

121. V.K. Narasimhan in Democracy Redeemed ,(New Delhi: S Chand, 1977); p. 25.

122. New York Times, 29 June 1975.

123. Ibid.

124. Ibid.

125. Henderson, Experiment with Untruth, p. 89.

126. Times (London), 30 July 1975.

127. Shah Commission, 1:36.

128. Ibid., Also see White Paper on Misuse of Mass Media during the Internal Emergency (New Delhi: Government of India, 1977) for a list of 161 censorship directives, appendix 13, pp.52-60.

129. Shah Commission, 1:35.

130. Ibid.

131. For a detailed account of the fate of the press during the Emergency see Soli Sorabjee, The Law of Press Censorship in India (Bombay: Tripathi, 1976).

132. Shah Commission, 1:35.

133. Washington Post, 9 November 1976.

134. Even before the Emergency was a month old, the Government expelled two American and two British correspondents. Lewis Simon of the Washington Post was the first to be expelled on June 30, followed by Loren Jenkins of Newsweek, Peter Hazlehurst of Times (London) and Peter Gill of the Daily Telegraph, who were all served with deportation orders on July 20.

135. New York Times, 22 July 1975. Partial text of the censorship guidelines published in Ibid. For complete text see White Paper on Misuse of Media, Appendix 12, pp. 46-51.

136. New York Times, 22 July 1975.

137. Ibid.

138. Times (London), 25 July 1975.

139. According to the Ministry of Information and Broadcasting Report 1976-77, seven were either expelled or not given visa extension, and nineteen were refused entry.

140. Henderson, Experiment with Untruth, p. 151.

141. The five articles appeared on consecutive days from November seventh through the eleventh and focussed on the issues of poverty, birth control, censorship, Sanjay's rise to power, and the opposition to the Emergency.

142. White Paper on Misuse of Media, p. 29.

143. For details of the persecution of the Press see Sorabjee, Law of Censorship; Henderson, Experiment with Untruth, pp. 79-108; D.R. Mankekar and Kamla Mankekar, Decline and Fall of Indira Gandhi (New Delhi: Vision Books, 1977); pp.72-122; Marcus Franda, Curbing the Indian Press (3 Parts) Part 1 "The Initial Censorship"; Part II "Beyond Censorship"; and Part III "Acquiesance and Defiance"; (Hanover, N.H.: American Universities Field Staff Reports, 1977); Shah Commission, 1:33-48; "India's Clampdown," Index on Censorship (London) 4 (Winter 1975): pp. 5-11; and White Paper on Misuse of Mass Media during the Internal Emergency (New Delhi).

144. Far Eastern Economic Review, 16 January 1976.

145. Quoted in Henderson, Experiment with Untruth, p. 96.

146. Among those publications which closed down were the political or party organs - Organizer and Motherland (Jan Sangh); Prajaniti and Everyman's (J.P.'s publications); Janata (Socialist); and March of India (edited by the BLD leader, Piloo Mody); and journals of opinion such as Seminar, Opinion and Mainstream (English) Sadhana (Marathi) and Bhumiputra (Gujerati).

147. In his letters to P.N. Dhar, Secretary to the Prime Minister, R.N. Goenka, the Indian Express owner has detailed several instances of harassment meted out to him by V.C. Shukla, the Minister of Information and Broadcasting. These range from vague threats of "grave consequences" if Goenka would not accede to the Minister's demands, to more pointed threats of detention of him, his son and daughter-in-law, under MISA should be refuse Shukla's proposals for restructuring the paper's management (letters dated July 20 and 26, 1976. Copies received). The stody of Goenka's harassment received wide international coverage - see Washington Post, 3 January 1976.

148. For lists of newspapers and periodicals denied government advertising see Appendices 18 and 19, White Paper on Misuse of Media, pp. 68-71. Another tactic, the requirement of heavy security deposits, subject to forfeiture in case of violation of guidelines was particularly harmful to the smaller publications. Both Himmat, edited by Mahatma Gandhi's grandson, Raj Mohan Gandhi and Opinion edited by Gorwala, successfully resisted the demands for deposits, though Gorwala was ultimately forced to close down because of other equally harsh pressures.

149. Shah Commission, 1:39.

150. Ibid., 1:141.

151. Ibid.

152. Ibid., 1:42.

153. Ibid., 1:41.

154. Ibid.

155. Ibid., 1:44.

156. Ibid. Expenses incurred for television coverage of Sanjay during the Emergency amounted to Rs. 8,33,055, according to Ibid. For details of television coverage of Sanjay see Appendix 22, White Paper on Misuse of Media, pp. 78-9.

157. Ibid.

158. Nayar, Judgement, p. 100.

159. Shah Commission, 1:43. Also White Paper on Misuse of Media, pp. 36-8

160. Text of PPOMA in Seminar, 199 (March 1977); pp. 15-21.

CONCLUSIONS

On January 18, 1977, Mrs. Gandhi announced that fresh elections to the Lok Sabha would be held in March. It seemed at the time that she would once again romp home to victory. After all, over the 19 months of the Emergency, the economic situation had improved, there was relative calm on the social and political fronts and most importantly, the Opposition appeared to have been effectively crippled, with most of its leaders still in detention. The victory which was expected would lend Mrs. Gandhi's authoritarian rule the legitimacy which, since the imposition of the Emergency, it had lost in the eyes of the world and among broad sections of the Indian populace as well.

Following the announcement, most of the political prisoners, including opposition leaders, were released from prison, censorship was withdrawn and other emergency measures were relaxed so as to permit political activity prior to the elections.

Once again, the non-communist opposition comprising the Bharatiya Lok Dal, the Jan Sangh, the Socialists and the Congress (O) came together to form a united front, the Janata Front, to contest the elections. [1] Opposition efforts received an added lift when Jagjivan Ram, a leading national figure in Mrs. Gandhi's cabinet, who had been at the center of Indian politics since independence, resigned his cabinet post and his Congress Party membership charging that the Party had ceased to be a democratic organization. [2] The Congress for Democracy (CFD) which he now formed joined forces with the Janata Front. J. P., the leader of the

preemergency united opposition, still eschewing party politics in principle, nonetheless gave the front its blessings and he too made common cause with it to bring about Mrs. Gandhi's defeat at the polls. The elections soon turned into a referendum on the Emergency. The Janata campaign slogan "democracy versus dictatorship" galvanized the public and all the pent up resentments against the emergency rule finally found its expression in the elections.

In the elections held on March 16, 1977 Mrs. Gandhi and her Congress Party, which had ruled India uninterruptedly since independence, suffered an astounding defeat. Mrs. Gandhi herself lost her seat to Raj Narain whom she had defeated in 1971 two to one and who had later brought the lawsuit which had resulted in her conviction. Many Congress leaders closely associated with the excesses of the Emergency period also lost, as did Sanjay, in his first venture into electoral politics. In all, the Congress managed to win only 153 seats compared to the 350 seats it had swept in the 1971 elections. [3] The Janata won 271 seats in the 542 seat parliament and also received the promise of support from Ram's Congress for Democracy and from other smaller parties. Without doubt, the election verdict was an incredible expression of public resentment against the arrogance that had characterized the exercise of power during the Emergency.

Within hours of the announcement on March 21 that Mrs. Gandhi had gone to personal defeat and the Congress was trailing badly, B. D. Jatti, the acting President of India, on Mrs. Gandhi's advice revoked the state of emergency declared on June 25, 1975.

The Emergency represented a crisis of values, institutions, and functions that underlay the Indian political system. During this period, Indian democracy which had gained its legitimacy through the representation of the interests of its politically articulate participants failed to meet their demands. What had been a reconciliatory political system was transformed under the Emergency into what David Apter has described as a mobilizing regime. His description of the two systems is germane to an understanding of this process which was described in detail in Chapter III.

> The role of government in a reconciliation system is not organization; rather, it works to reconcile diverse interest; it mediates, integrates, and above all, coordinates, rather than organizes and mobilizes... Local decision-making and local capital investment mean a great dependence of the development process on village and local committees... The integrational function of government may be inundated by a wave of internal conflicts between governmental bodies. In other words, the malfunctioning of the structures may eventually come to weaken the ability of the government to perform its functions, with the result that the system will begin to change into something else. 4

The system as it emerged violated known boundaries of political action and behavior by the rulers who no longer seemed answerable to those whom they claimed to represent. Among some of the intelligentsia there was a growing belief that not only did the crises that preceded it not warrant the imposition of emergency but that the powers under the Emergency had been expended primarily to accumulate yet further power. Even the much touted accomplishments of this period, they concluded, could have been achieved earlier through the exercise of strong and

effective, yet not oppressive leadership. Instead, in the name of political stability, economic progress and social justice, a new system had evolved which provided neither the channels for articulation of grievances nor the institutions and processes for their redress. And in March 1977, the Indian public when offered the opportunity to pass verdict on the Emergency, concluded that they had paid too high a price for whatever benefits it was that it had supposedly brought htem.

The salient fact that emerges from the forgoing chapters is that since 1971, when Mrs. Gandhi became the undisputed leader of the Congress Party, the Government and the nation, the Indian political system was transformed from a constitutional democracy to an authoritarian polity. The dimensions of this change can be comprehended best by comparing the political system which emerged during this period against that which preceded it.

Rajni Kothari's description in 1970 of his model of Indian politics offers an apt and accurate description of the Indian system before it underwent major changes in the Gandhi era. He viewed the Indian model as one of modernization of an ancient and plural society in the context of an open polity. It was, according to him

> a multisystemic model in which a hitherto fragmented and plural society (structures and values) is exposed to a new set of universal norms, confronted with a purposively adopted framework of institutions, directed to new purposes of nation unification and planned production, and finds its rewards in the distribution of divisible benefits on the one hand and the dispersal of political opportunities on the other. 5

India was a fragmented and plural society which espoused the liberal democratic values of the West and on achieving independence in 1947, adopted a framework of democratic institutions and processes to achieve the goals of economic modernization and national unification. As an egalitarian order committed to the ideal of a welfare state, it sought to distribute the benefits of the system equitably while at the same time, the open nature of its polity appeared to assure the dispersal of political opportunities.

Indian democracy as discussed in Chapter I was a fragile union between a traditional society and Western liberal ideology and institutions. The Constitution provided for a representative and responsible government, a guarantee of the individual's fundamental rights, albeit with limitations, and recognized the concepts of the rule of law and due process. At the same time, it also remained vulnerable to subversion of several of its democratic features because of the provisions relating to the restrictions on rights, to the declaration of emergency, and to the amendability of the Constitution.

The grant of rights was severely circumscribed in the interests of the security of the state, public purpose, public order, public morality and other grounds enumerated in Chapter I. Additionally, the civil liberties of the citizen were subject to suspension during times of Emergency. What constituted justifiable grounds for an emergency or how long such an emergency could last was left vague and ill defined. So long as an emergency lasted the Government functioned not as the limited

constitutional government that it was in normal times, but as an authoritarian government with expanded powers and with few recognizable constraints on the exercise of such powers. Furthermore, even in normal times it was possible through amending the Constitution to increase the Government's powers or reduce the citizen's rights. The procedures prescribed for amending the Constitution were simple and provided no protection at all against a tyrannical majority in parliament.

But for all its incipient weaknesses India was, until Mrs. Gandhi's time, a working democracy with periodic, free, and fair elections, a responsible government, an independent judiciary, a free press, and a commitment to the rule of law and the dignity of the individual.

Following the 1971 elections, which established unprecedented Congress Party dominance in the nation at large but even more so at the center and thereby provided Mrs. Gandhi with unfettered freedom of political action, the rules by which Indian politics until then had been played were revised. The purposively adopted framework of democratic institutions was modified. The federal and pluralistic system with its separation of powers and the system of checks and balances among the different branches of government became increasingly centralized and personalized. In the process, it ceased to be directed to the purposes of national unification and planned production which Dr. Kothari has alluded to.

Though Mrs. Gandhi herself was a national figure and in that sense a unifying symbol, the ideological polarization resulting from her populist demagoguery forced a split within the Congress Party ranks and

exacerbated political tensions in the country. The resulting demise of collective leadership within the party furthermore upset the delicate balance among competing interests represented within it and thereby increased political factionalism leading to disunity. As for planned production, there was no longer an agreement on fundamentals, and planning was therefore slipshod and inadequate. Without a sustained program to improve production to keep up with the rising expectations aroused by Mrs. Gandhi's radical rhetoric, actual production fell far short of promise and this in turn undermined the credibility of the Government. Few divisible benefits from the system flowed to the public or were enjoyed by them. With the economy in near shambles and general poverty on the increase, the most conspicuous beneficiaries of the existing order appeared to be the Congress ministers and leaders whose ostentatious lifestyles presented a vivid contrast to the poverty of the masses they presumably represented. Scandals and charges of corruption proliferated implicating State leaders and even central cabinet ministers of Mrs. Gandhi's choice. Meanwhile, her reluctance or inability to stem Congress corruption, combined with her son's role in the notorious Maruti car project, contributed to a public perception of her tacit approval of a political system whose benefits only the powerful and the privileged enjoyed.

At the same time, the dispersal of political opportunities, even within the Congress Party itself, turned restrictive. Increasingly, political patronage came to be based on the degree of support and loyalty

to the Prime Minister. This was a major departure from the practices of the past under which the strength of a nominee's popular support was the most important factor in the selection and elevation of political leadership. Under the changed rules, many actors who had dominated the political stage until then and many others who had expected to suddenly found themselves relegated to minor roles or even eliminated from the political scene altogether. The machinations of the leaders scorned together with the inexperience and, in many instances, the incompetence of the new leaders undermined the effectiveness of the Congress Party which for nearly a quarter of a century had provided stable leadership to the country.

The restructuring of the Congress Party leadership leading to the induction into it of new elites without established bases of political support and the accompanying collapse of consensus within it was, without doubt, a major determinant of the political unstability that culminated in the Emergency. At the same time, the interjection of ideological tensions into the Party which, hitherto, had remained singularly pragmatic heightened political polarization of both the leaders and the masses. This resulted in heightened political consciousness and increased expectations which the system could not fulfill and which then led to irresponsible behavior on the part of both the rulers and the ruled, far exceeding the limits of responsible political behavior indicated in a functioning democracy. Such behavior, in turn, resulted in increasing resort to repressive tactics and its legitimization as an instrument of admin-

istration. The inability of the Administration to satisfy legitimate demands of the various segments of society and the frequent employment of repressive measures to put down the agitational efforts to enforce these demands increased popular frustration which was exploited by powerful political groups both within the Congress and outside to mount an effective opposition to Mrs. Gandhi and her administration.

The threat of a unified opposition in place of the inchoate mass of parties and factions that had opposed the Congress until then emerged, as newly formed opposition coalitions won significant political victories in Bihar, Uttar Pradesh and elsewhere, but most importantly in the mid-term elections to the Gujerat assembly held on June 8, 1975. By the time the Opposition, more unified than at any other time in the past, announced its objective of forcing Mrs. Gandhi's resignation as Prime Minister in light of the Allahabad Court verdict setting aside her election to the Lok Sabha, Mrs. Gandhi had already lost much of the popular support that had swept her into power in 1971. It was the Opposition's hope that another powerful popular movement could be forged to sweep her out of power.

The declaration of the Emergency was Mrs. Gandhi's response to the Opposition's threat. Her actions while the Emergency lasted amounted to a subversion of the principle of constitutionalism and led to the institutionalization of a full-fledged authoritarianism. The Indian political system during that period ceased to be a democracy in all but name.

The ways in which emergency powers were employed in India to bring about radical alterations to the Constitution and to the political system

provided under it raises serious questions about the vulnerability of democratic institutions and processes to subversion in times of crisis. At issue here is not just the violation of any particular constitutional provision but the vitiation of a political order through ostensibly legal means. For, the point to be remembered is that the actions of the Emergency regime by and large conformed to constitutional requirements.

But regardless of whether they contravened constitutional provisions or not, the arrests and the silencing of political opposition, the suspension of civil liberties, the imposition of censorship and the attempts to abridge the jurisdiction of the courts and to modify the principle of rule of law all undermined the foundations on which Indian democracy had rested until then.

The danger of abuse of emergency powers in India is ever present because the constitutional provisions dealing with them are loose and without safeguards. This becomes especially clear when the Indian emergency provisions are compared against the criteria Clinton Rossiter sets out in Constitutional Dictatorship to govern the assumption of dictatorial powers by a democratic regime during times of emergency.

Rossiter's first criterion is that no such regime should be initiated unless it is indispensable to the preservation of the state and its constitutional order. [6] While there was in India the need for firm government action to restore law and order, the extreme step of imposing an emergency to accomplish this appears to have been unwarranted. Rossiter next suggests that the decision to institute a dictatorial regime should

not be left to those who will ultimately wield the crisis powers. [7] The Indian Constitution does grant the legislature the ultimate power of extending an emergency beyond two months while vesting the expanded powers mainly in the executive. However, in practice this is not much of a safeguard because the Prime Minister who advises the President on the need for a declaration of emergency and who in reality wields the emergency powers, is also the leader of the majority party in the legislature. In 1975, the Congress Party held over two-thirds majority in both the Lok Sabha and the Rajya Sabha.

To reduce the abuse of emergency Rossiter recommends that all readjustments in the organization of the government should be in keeping with constitutional requirements: that no institution be adopted, no right invaded, no procedure altered other than is absolutely necessary to overcome the particular crisis; and that the measures so adopted be not permanent in character or in effect. [8] With respect to the Indian Emergency, most of the actions of the Emergency government did conform to the technical requirements of the Constitution. There was no need to violate constitutional provisions for emergency rule because these provisions are so broad and loose. Since the constitution offers no protection against legislative tyranny, the institutionalization of authoritarian powers in India took a perfectly constitutional route. However, as seems abundantly clear from the facts set down in Chapter III, the changes made to the political system were fundamental, representing a revision or reversal of many democratic institutions and processes hitherto accepted.

The rule that the "dictatorship" during the Emergency should be carried on by persons representative of every part of the citizenry interested in the defense of the existing constitutional order [9] may appear on the surface to have been observed also in as much as the Parliament, which may be said to represent all sections of the citizenry, did ratify the Emergency and had voted on the measures enacted under it. In reality, the Emergency government was a highly personalized one that centered around Mrs. Gandhi, her son Sanjay, and their inner circle of advisers and confidants. The Cabinet and the Parliament were merely rubber stamp institutions which ratified the decisions of this small group and thereby lent it a spurious legitimacy. Additionally, in view of the arrests of opposition leaders and their absence from Parliament, the suspension of normal parliamentary procedures, and the air of intimidation and fear all around, even this seeming parliamentary participation in emergency rule would appear to be mostly democratic trappings.

Rossiter then states that ultimate responsibility should be maintained for all the actions taken under the emergency. [10] Not only is there no such provision in the Indian Constitution, but whatever slender protection there was against abuse of emergency was eliminated by removing all matters relating to an emergency from judicial review.

Rossiter insists that an emergency regime must be terminated as soon as the crisis that engendered it is over, that there should be specific provision for its termination and that the decision to terminate it should not be left to the crisis regime. [11] The Indian Constitution is remiss

on all these points. It provides no protection against the indefinite perpetuation of an emergency regime which enjoys a majority in Parliament.

Finally, Rossiter advises that the termination of the crisis should be followed by a return to the political and governmental conditions existing prior to the institution of the crisis regime. [12] In the Indian case, because of major amendments to the Constitution there can be no return to the preexisting conditions unless the Constitution can be amended again to nullify the Emergency alterations.

It is clear from the preceding comments that procedural safeguards are required to protect Indian democracy from powerhungry leaders who might seek to establish authoritarian rule through seemingly legal means. Since wanton violations of democratic rule occurred during the Emergency, there must be, first of all, a tightening of the constitutional provisions on emergency in accordance with the Rossiter strictures. In particular, radical changes to the political and constitutional order totally unrelated to the crisis should be specifically barred. For, it must not be forgotten that an emergency regime is, by definition, the creature of a basically democratic order established for the purpose of managing more efficiently a crisis that threatens the political system itself. It is designed to be a temporary state of affairs. Measures which seek to institutionalize it, being undemocratic in intent and effect, are therefore contrary to the concept of an emergency. A provision restricting the kind of changes that can be initiated or enacted during an emergency to those which have a direct bearing on the emergency will assist in

limiting the duration of emergencies, since governments wishing to take up other important legislative matters would be prevailed upon to declare an end to the existing state of emergency before taking up such other issues.

On the larger question of the institutionalization of authoritarian processes in normal times the only sure and certain protection against it is an altered approach to the Constitution itself. It has been the misfortune of Indian democracy that its leaders have tended to view the Constitution merely as an instrument. Because of this attitude, no air of sanctity or reverence attaches to the Constitution and its amendment is approached with no more deliberation than the passage of ordinary laws. Furthermore, one party dominance in Parliament combined with the procedural ease with which the Constitution can be amended has resulted in the erosion of democratic values, institutions and processes described earlier. With no grand democratic tradition to fall back on and no visionary leaders, political expedience has dictated the institutionalized decline of democracy. While a flexible approach is indeed required to deal with the host of political and constitutional problems bound to arise in a new nation, such an approach should not entail the compromise of the very basis of the political system which the Constitution was designed not only to reflect but to protect as well.

The Kesavanda Bharati verdict was correct in enunciating the principle that parliament may not alter the basic structure of the Constitution. Now it only remains for the Court to spell out authoritatively those areas which comprise the basic structure.

Parliamentary supremacy was not envisioned in the Indian Constitution at the time of its adoption, though over the years something akin to it has evolved. To some extent the courts are responsible for this development since early judicial rulings on the scope of Parliament's powers tended to uphold the exercise of powers by it far in excess of what is permissible under a system which does not recognize parliamentary supremacy. These rulings by justices educated and trained under the British constitutional system, which incidentally does acknowledge supremacy of the Parliament, served as precedents and influenced subsequent judicial rulings. The result has been that the Indian courts have not provided protection against the aggrandizement of power by the government. In the absence of a strong democratic tradition to act as a restraint against the abuse of power, the Indian Parliament, especially under Mrs. Gandhi's leadership, has used its powers to defeat the democratic underpinnings of its political system.

The first major step to reverse such a trend in the future would be for the courts to deny unequivocally the notion of parliamentary supremacy and to affirm the inviolability of democratic principles such as citizens' rights, rule of law and the due process of justice.

Even assuming a departure from the passivity that has characterized the judiciary for almost three decades, no substantive limits on parliamentary power can be effected, so long as the infamous IX schedule remains part of the Constitution. So long as patently unconstitutional measures can be enacted and protected from any judicial scrutiny of their

merits by harboring them in the Schedule, parliament cannot be expected to observe the constraints on law-making imposed under other provisions. A democratic constitution ought not to provide a safe harbor for unconstitutional laws which undermine democracy itself. If, as proponents claim, such a schedule is necessary to circumvent lengthy, cumbersome and expensive litigation likely to slow down the radical social and economic reforms needed to bring about social justice, then there should be a clear limitation on the subjects that belong in it. The Schedule was created to protect land and agrarian reforms that sought to correct the inequities of existing land relations in India. But, as it stands now, any governmental measure can be extended protection under it, provided the requisite Parliamentary majority supports its inclusion in the Schedule. Perhaps the original intent can be reaffirmed and the IX Schedule can be restricted to land reforms only.

Towards the latter days of the Emergency there was a widespread feeling that somehow the Constitution had failed to protect the ordinary citizen from an oppressive government. And indeed, the actions of Emergency government as documented in Chapter III lend credence to this belief. Under the Emergency, the Indian national was treated more as a subject than as the citizen the Constitution proclaimed him to be; and neither the courts nor the Constitution could do much to provide him the protection which he, as a citizen of a democracy deserved to have had. What is more, it can happen all over again, because in its present form and subjected to the body of judicial precedents relating to it, the

Indian Constitution remains virtually the same which enabled Mrs. Gandhi to usurp and exercise vast powers against the citizens.

In the long run, perhaps only a new constitution drawing upon the experiences and errors of the past can protect democracy in India. A constituent assembly, representative of all segments of Indian society, would have to be convened to undertake such a task. The assembly's task would be to evolve a constitutional document which not only enshrines lofty democratic ideals but provides adequate protection against their subversion. The new document could define the essential features of the Indian political system and deny the institutions of government the authority to change these. The details regarding the composition, the strength, the charter, etc., of the constituent assembly can be worked out by the parliament.

It is outside the scope of this study to detail the form the new Constitution should take. However, in light of the discussion of the Indian political system undertaken in the forgoing chapters a few suggestions are in order. First of all, the Constitution should embody and protect the republican, representative, constitutional and secular character of Indian democracy, the responsible and federal form of its government, the guarantee of certain fundamental rights of the citizens and the recognition of the supremacy of the constitution, the rule of law and the separation of power among the different branches of government.

Any new constitution must pay closer attention to those areas most vulnerable to abuse. The procedure for amendment of the constitution

should be made more rigid and certain areas specifically excluded from amendments. Not only should the basic character of the system be preserved but vital areas such as the citizens' fundamental rights, the freedom of the press and judicial review, which are fundamental to the notion of democracy, should be well protected. Such reasonable restrictions on fundamental rights as are necessary in the larger interests of society should be spelt out with the express stiulation that there would be no further abridgements of such rights. Ideally, the provision on preventive detention should be eliminated. However, in view of the pervasiveness of violence on the Indian political scene, it is unlikely that preventive detention would be excluded from the provision on individual liberty. What can be eliminated is the possible abuse by the government of its preventive detention powers. This can be achieved by providing for strict controls by the courts over its employment. Grounds for such detention, its duration, and the rights of the detainees should be spelt out and precluded from further revision. The government must be subjected to rigorous standards of proof to justify its use of preventive detention and there should be provision for the swift and impartial scrutiny and enforcement of the safeguards against the abuse of such detention. As a further measure to strengthen the citizen's right to liberty the Constitution should prohibit the suspension of the Writ of Habeas Corpus even during times of emergency.

As mentioned earlier in this chapter, the provisions dealing with the declaration and continuation of a state of emergency should be tightened. Accountability for government actions should be recognized both

during emergency and in normal times. Judicial review should be strengthened and the independence of the judiciary affirmed. All pretensions to parliamentary supremacy should be disallowed and the supremacy of the constitution asserted. If there is to be a provision such as the current IX Schedule its scope should be narrow. To preserve the federal character of the political system there should be a reapportionment of the powers and responsibilities between the center and the states which favors the states more than it does currently. Furthermore, the future transfer of powers from the states to the center should be made more difficult through more stringent requirements.

It is for constitutional scholars and the representatives of the people to design a new constitutional document which, at the same time, would be flexible enough to meet changing social, economic and political conditions and would also be able to remain true to constitutional democracy. At the present this is only a hope. The reality is a Constitution which still permits subversion of its democratic principles, political leaders with no concept of national interest who seem to be obsessed with their personal concerns and an electorate which in recent years has been disillusioned thoroughly by the bankruptcy of its leadership. Time alone will tell what kind of a future democracy has in India.

NOTES - CONCLUSIONS

1. Morarji Desai who led the united opposition to victory was released only hours before Mrs. Gandhi announced the election.

2. New York Times, 3 February 1977. Text of Ram's statement in Seminar 211 (March 1977) pp. 37-8.

3. For discussion of the 1977 elections see R.S. Arora "The Government and Opposition in India: A Study of Recent Election," Pacific Community (July 1977): pp. 660-76; Oliver Mendelsohn "The Collapse of the Indian National Congress," Pacific Affairs 51 (Spring 1978): pp. 41-66; Norman D. Palmer "The Two Elections: A Comparative Analysis," Asian Survey 17 (July 1977): pp. 648-66; and Myron Weiner "The 1977 Parliamentary Elections in India," Asian Survey 17 (July 1977): pp. 619-26.

4. David Apter, The Politics of Modernization (Chicago: University of Chicago Press, 1965) pp. 399-402 passim.

5. Rajni Kothari, Politics in India (Boston: Little Brown and Co., 1970) p. 14.

6. Clinton L. Rossiter, Constitutional Dictatorship: Crisis Government in the Modern Democracies (Princeton, N.J.: Princeton Univ. Press, 1948). p. 298.

7. Ibid., p. 299.

8. Ibid., p. 302.

9. Ibid., p. 304.

10. Ibid., p. 305.

11. Ibid., p. 300.

12. Ibid., p. 306.

POSTSCRIPT

After research on this project was completed in the autumn of 1979, another spectacular turn of events in Indian politics has restored Mrs. Gandhi to power as Prime Minister of India. In the midterm elections to the Lok Sabha in early January of this year, her Congress Party achieved a stunning victory, winning 351 seats in the 542-seat Assembly. The promise of legislative support from Congress' electoral ally, the Dravida Munnetra Kazhagam (DMK), which won another 16 seats, gives Mrs. Gandhi, once again, a more than two-thirds majority in Lok Sabha.

To achieve this modern day political miracle after her humiliating electoral reverse of 1977, Mrs. Gandhi needed strong allies; and as the Manchester Guardian Weekly pointed out on January 13, 1980, she had such allies in Morarji Desai, Charan Singh and Jagjivan Ram, "the gerontocracy atop the Janata wave" who through their petty politicking brought about the dissolution of the Lok Sabha and the call for new elections. Much had befallen the Janata coalition which in 1977 had made history by bringing about the defeat of Mrs. Gandhi and her party, thereby ending the Emergency. The unity of purpose that had swept it to power had, in the intervening months, disintegrated. The strength and momentum evident during the campaign and in the early post-Emergency days soon vanished as old rivalries and personal considerations once again rose to the fore. And, instead of working together to forge a lasting alliance to consolidate their fragile hold on power and to ensure stability in the country, the elements within the coalition fell to vicious political infighting. It culminated in the withdrawal of support of the Janata by Charan Singh's

Lok Dal party, which had 77 seats in Parliament. In the elections that ensued, both the Janata Party and the Lok Dal were humbled, winning only 32 and 41 seats respectively compared to the 203 and 77 seats they had controlled in the disolved House.

Without a coherent political philosophy and, therefore, without new initiatives or programs, the Janata, while it ruled, appeared utterly incapable of solving the perennial problems of unemployment, inflation, shortages of essential commodities, labor unrest and declining productivity. In contrast to this, the Emergency era must have appeared to many, in retrospect, as a period of political and economic calm, with students in school, labor under control, prices stable and shortages eliminated. That a state of Emergency ought not to have been necessary to accomplish economic improvement or maintain political calm was probably lost on the masses as Mrs. Gandhi hammered away at the contrast between the chaos that characterized Janata rule and the alleged law, order, and stability under her Emergency rule.

Mrs. Gandhi also appears to have benefitted enormously from the turn of events in neighboring Afghanistan. As the Soviet army poured into Kabul and the United States hastened to respond to the Soviet action with, among other measures, the offer of arms aid to Pakistan, the need for strong and unified leadership at the center must have become apparent to many Indians. The Janata crowd, as it had functioned in the months immediately preceding the call for elections, had been so ineffectual that the masses probably could not conceive of such a leadership standing

upto, let alone, prevailing over a rearmed and potentially threatening Pakistan.

As for the implications of the results of the 1977 and 1980 elections, viewed as a whole, these are most interesting. They represent an assertion of certain values and expectations by the voters. Both elections amounted to a repudiation of incumbent leadership, but for wholly different reasons. In the 1977 elections the electorate's verdict was that it could not tolerate the repression and assault on human dignity by the government during the Emergency. In the more recent elections the voting public's message to the Janata leadership was that it was not enough to go back to the status quo ante-Emergency of political and economic anarchy, but that it was the responsibility of the Government to provide political stability and economic performance. Political liberty was the issue in 1977 and political and economic order the concerns in 1980. Having punished Mrs. Gandhi in 1977 for her transgressions, the Indian public has now awarded her a second chance to offer strong leadership, to provide political stability, and to bring about economic progress, but not at the cost of human rights.

It is too early to say whether Mrs. Gandhi has understood these simple lessons of the preceding elections or whether she can live up to public expectations of her. There are many who forsee a recurrence of the authoritarianism which the Emergency represented. Some of her recent actions, such as the dissolution of state assemblies where her party was not in power, the recall of all unsold copies of the Shah Commission report,

and the harassment of certain judges presiding over Emergency-related cases and the reemergence of Sanjay as a power center do lend credence to this point of view. More ominous, however, is the fact that the Congress Party she now heads has been shorn of all leaders with independent bases of their own. The restructured leadership is totally beholden to her and to her son. There is no leavening factor within the party to influence her use of power. Others believe that having learnt her lesson that an all powerful center unencumbered by any opposition was not sufficient by itself to bring about rapid and acceptable resolution of political and economic problems, Mrs. Gandhi is unlikely to try that route again. For my part, I perceive democracy in India as imperative, not merely preferable. I strongly believe that the regional integrity of India can be preserved only through a system of decentralized democracy which encourages political participation at all levels of the diverse ethnic and regional groups of the highly plural Indian society. If Mrs. Gandhi is as committed to the survival of India as I believe her to be, she has no alternative but to follow the democratic path.

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