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WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal providededicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

PROCLAMATION OF NATIONAL EMERGENCY IN INDIA IN 1975

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Abstract

The origin of the National Emergency is often regarded as a dark phase in independent India's history. An emergency is a temporary situation declared within a state's borders during which certain fundamental liberties of its citizens are suspended. There were reports of frequent human rights violations and the press being censored to a repressive extent. Part III of the constitution enshrined fundamental rights. They are among the rights required for human survival in dignity. The emergency was in effect in India from June 25, 1975, to March 21, 1977; one of these dates was highly debated in academic and political circles. The 42nd Amendment Act enables the President to declare an emergency in any part of the country. We chose this topic as it has been one of the biggest issues in the history of Indian politics to date. Our research contains data of secondary sources that are already available. We'll also be reading some journals and some books to get a sense of the situation. This paper will deal with many facts and claims that oppose emergency and some defend but whatever happened at that time was a matter of concern. It must be taken in mind that it should not be repeated by any of the governments to withhold the constitutional and democratic freedom of India. This paper examines the causes which led to the proclamation of 1975 and checks its validity.

Keywords

Emergency, Fundamental Rights, Constitution, Amendment, Proclamation

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Introduction

Emergency has a different meaning under the Constitution than it does in dictionaries. In the constitution, the word "emergency" refers to an aberrant condition that necessitates prompt corrective action, as opposed to the dictionary definition of the word "emergency," which is a situation that poses an imminent risk. Governments have a duty to take all necessary precautions to protect their citizens in the event of any disaster. Being a democratic country, India grants the President the power to declare an emergency during serious crises. The President's delight stems from the reality that armed revolt, internal conflict, or other threats to India's security make it impossible to modify the situation in court, even if they are objectively true. The subjective satisfaction of the President is the knowledge that armed revolt, internal conflict, or other threats threaten India's security, and this fact cannot be overturned in a court of law, even if the President were acting in bad faith. A national emergency is a situation when there is a threat to the security of any country or any territory. Article 352 of the Indian Constitution states a proclamation of emergency. Under this article, a national emergency can be imposed in the whole of India or a part of its territory.

On this day (June 25), 47 years ago, former Prime Minister Indira Gandhi had imposed a nationwide state emergency which went down as one of the most notorious events in Indian history. ² It curtailed restrictions on civil liberties, press freedom and led to crackdowns against the Congress' political oppositions. The order for imposing the Emergency was issued by President Fakhruddin Ali under Article 352 of the Constitution.

Reasons given by the government for imposing emergency. They cited 'internal disturbances' as the reason for invoking the order which cancelled elections and gave the Prime Minister unprecedented powers. The Indira Gandhi government also reasoned that there were threats to national security which required such strict measures. At the time, a war with Pakistan had recently ended due to which the economy had suffered leading to protests and strikes. This, the government said that hurt the country to large extent. The Emergency ended on March 21, 1977, before which Indira Gandhi had called for fresh elections on January 18, 1977. She had also ordered the release of many opposition leaders from prison. Emergency was neither a parenthesis nor so much a turning point but a concentration of a style of rule that is very much alive today. Further investigation reveals

that these provisions also provide the administration a significant amount of discretionary power, despite the fact that they are meant to maintain India's security and preserve people's fundamental rights. The federal system becomes a unitary one when executive powers are used. In order to make sure that the ruling party and government use their power correctly, we continue to feel that the check and balance system, which was absent during the third national emergency in 1975, should be reintroduced. In times of emergency, our constitution permits the use of powers that may violate a person's fundamental rights.

Literature Review

1. DD Basu: Commentary on the Constitution of India (9th ed, Vol 14, Articles 311 (contd.)- 369, Lexis Nexis)

The document deals with Article 359 suspension of the enforcement of the rights conferred by Part III during emergencies in the constitution. It also talks about how the proclamation of national emergency suspends the fundamental rights of the citizens.

2. J K Soonavala: Supreme Court Criminal Digest, (1950-2015, 6e 2016; Lexis Nexis)

The document deals with the Fundamental Rights of the citizens and how it gets suspended because of the proclamation of National Emergency. It also deals with Article 359 the suspension of the right to move any Court brought about by the Presidential Order can last either for the whole period of proclamation or for any shorter period, if it is so specified in the order.

Research Problem

A National Emergency in India is a state of temporary situation declared within the territorial boundaries of a state during which the fundamental liberties of citizens are suspended. The emergency provisions are embodied in Part XVIII of the constitution, from article 352 to 360. The emergency results in suspension of fundamental rights protected by Article 19 - Article 358 stipulates the suspension of the six freedoms protected by this article, and nothing in this paragraph limits the state's ability to enact laws or remove the rights protected by Article 19. The importance of fundamental rights is diminished, and the democratic framework is also destroyed. 3 The existence of such specific law enacted during the period of emergency under Article 352 is not contemporaneous with the

provisions of the proclamation of emergency, and thus the proclamation of the given emergency is not revoked as soon as the law expires, and vice versa.

Research Questions

1. Whether the Proclamation of National Emergency in 1975 is violative of the fundamental rights of the citizen?
2. Was the Proclamation of National Emergency in 1975 requisite, reasoning “internal disturbances”?
3. Was the Proclamation of National Emergency in 1975, an antithesis to what National Emergency actually proclaims?

Hypothesis

The announcement of National Emergency on June 26, 1975 was an endeavour to decimate Indian democracy system. The ruling party at that time was Congress, which was well known for its corrupt practices. Due to the continuous strikes and protests, Indira Gandhi saw that her power could be in danger. Just to retain the power in her own hands, she drafted a letter to the President to issue the proclamation based on the information that there is an imminent danger to the security of India being threatened by internal disturbances.

Objectives

- To understand the nature of the Proclamation of National Emergency in 1975
- The study aims to examine the actual causes that led to the Proclamation of National Emergency in 1975
- The study aims to study the outcome after the Proclamation of National Emergency in 1975

Research Methodology

Design and Research method is the most important part of any Research Paper. In our work the single case study methodology is used. The research design has to matched with the empirical questions. We found the case study is appropriate methodology for our research. Whereas there are some criticisms about this methodology. Case study method is most suitable method to answer the descriptive questions as well as for testing the hypothesis. We followed the general organization of this project; we distinguish this research

methodology into two different designs. Forgive answer to the descriptive question, we will do in depth analysis of the emergency in the form of case study. A case became crucial if the facts of the case are central to the confirmation or disconfirmation of the theory. It should closely appropriate for and validate the forecast and attribute of this theory. For the answer of the second explicative question, we will also do an another in depth case study analysis. In this second part of the study treats the “autocracy” as independent variable and democratic deepening as dependent variable. Again, the emergency 1957 – 77 will be our case study. This time the case selection has been done according to the rule of selecting cases on the characteristics of the independent variable. In particular this case takes shape of “extreme case”, because it scores an extreme high value on the independent variable. This seems to be a useful strategy of case selection, if the explanatory ability of the study variable to be assessed. Where possible, We will use primary sources.

SCOPE OF THE STUDY

When we hear the “emergency”, we typically associate it with the feelings of anxiety, panic, and nervousness. The Emergency directly affected the lives of common people in many cases. We understand through this study how the political system can get unstable in India, the political power which are vested upon the elected representatives of the people is abused and wrongly used for selfish means. In present day, we see how the incident still traumatized the people and that India still goes through such instability in the political system.

The study brings insight on how the emergency powers diminished the importance of fundamental rights. The union gains absolute power, destroying the democratic framework.

This research would be beneficial to the future researcher because they can get some information that might be needed in their research and some of their questions may possibly be answered by this research.

Discussion

On June 12, 1975, the Allahabad High Court issued its decision in the Raj Narain case, and thus was the situation. In the elections of 1971, Raj Narain, a socialist politician from Uttar

Pradesh, ran against Indira Gandhi. He filed a lawsuit after she won, alleging fraud and the misuse of government resources. The High Court cleared her of voter fraud and electoral misconduct but found her guilty of utilising public resources for her campaign. Indira Gandhi was stripped of her parliamentary seat and prohibited from running in elections for six years after the election was ruled invalid. An uprising across the country was spearheaded by JP, S.N. Sinha, and Morarji Desai as a result of the acquittal on the most serious charges. The Supreme Court upheld the decision of the High Court. Despite losing her vote rights and MP privileges, Mrs. Gandhi was still able to serve as prime minister. JP started an agitation in response, urging government employees to defy the immoral and unethical government's directives. Indira Gandhi and her advisors petitioned President Fakhruddin Ali Ahmed to proclaim a state of emergency owing to "an urgent danger to the security of India being threatened by internal disturbances" in the face of widespread strikes and political opposition. And so, on June 25, 1975, just a few minutes past midnight, one of Indian history's most contentious chapters got underway. The political opposition was detained under the Preventive Detention Law as the first act following the declaration of the Emergency. Blank detention papers were given to District Magistrates and Collectors so they could hold thousands of political opposition leaders and supporters. Each detainee had only their name, father's name, and address filled out by hand. No reason for detention was ever given. After stating that the ordinary political workers were either members of prohibited organisations or threatened to topple the government, police stations were advised to file identical FIRs under the Defence of India Rules. Nine High Courts around the nation determined that the detention order was justiciable and that it may be revoked in the absence of the detention's justifications. The Supreme Court made a different choice. The whole news medium was subjected to pre-censorship.

Without first going via the censor, no word could be published in the newspaper.

Every major newspaper has a censorship officer on the premises. The government blocked out the entirety of the opposition's actions, and the media solely featured government propaganda. Each ground on which Mrs. Indira Gandhi's election had been rejected may now be statutorily overturned thanks to a retroactive amendment to both the Indian Constitution and the Representation of the People Act's provisions. During the ongoing emergency period, there was no free press, no credible opposition, and no independent court, and it was clear that democracy was eroding at the behest of the then-prime minister

Indira Gandhi. Media censorship was given primary emphasis during the emergency, and numerous newspapers and periodicals were outlawed at that time. All of India's major newspapers lost their electricity three hours after the decision to declare an emergency. Some of the major publications, including Indian Express and Times of India, spoke out against the restrictions and ran headlines and blank editorials opposing the emergency.

After the Bangladesh Liberation War, India's economy and social situation were at their worst, and the US also suspended all help to India, which caused widespread unrest and rising commodities prices. Employees were upset because the government had frozen their pay, and farmers were upset because the monsoon and the production of food grains had been delayed. In January 1974, Gujarati students protested food prices that were too high. Additionally, a number of political parties backed them, and Gujarat held elections in June 1975. The students' movement in Bihar received support from Jayprakash Narayan, and the effort reached a national audience. On June 25, 1975, Narayan addressed a sizable gathering at Ramlila Ground in Delhi and declared a Satyagraha for the registration of Indira Gandhi. The things that caused chaos during the Emergency era were that police detained innocent people without charging them or notifying their families, torture and abuse of political prisoners and detainees, use of public and private media institutions for propaganda, such as the national television network Doordarshan. Thousands of men were forced to have vasectomy procedures as part of the infamous family planning initiative. Sanjay Gandhi, Indira's son, was blamed for the abusive and coercive treatment of people, arbitrary demolition of slums and low-income housing in old Delhi's Turkman Gate and Jama Masjid areas. Political turmoil against the government led by Indira Gandhi peaked between 1973 and 1975. Many party leaders in congress wanted around this time a system with directly elected party executives that functions more like the presidential one. As soon as India declared a national emergency, all authority was given to the Union government. During that time, the government curtailed residents' fundamental rights. Without prior approval, the press was not permitted to print any articles. The Rashtriya Swayamsevak Sangh (RSS) and Jamiat-e-Islami were outlawed. Additionally, unofficial results for the elections for president, prime minister, and vice president were announced. Sanjay Gandhi took over the executive branch. In March 1977, the government made the decision to call for elections.

The first catalyst was Mrs. Gandhi's attempt to exert influence over the judiciary.

According to the Supreme Court's rulings in the Golaknath case (1967) and the Kesavananda Bharathi case (1973), Parliament could not modify the Constitution if those revisions had an impact on fundamental concerns like fundamental rights. Four of the thirteen judges who heard the latter case did not concur with the judgement. When the senior most dissenter, A.N. Ray, was appointed Chief Justice of India, there was outrage. In 1973, India was experiencing severe political unrest. The Nav Nirman movement in Gujarat has resulted in the dissolution of the state legislature and the imposition of President's rule. An alliance of opposition parties defeated the Congress during the June 1975 re- elections. Gandhian leader Jayaprakash Narayan (JP) supported a student uprising against the state administration in Bihar. His appeal for a "complete revolution" sparked a massive mobilisation in April 1974. A harsh crackdown on a unionised strike by railroad workers in May soured public opinion toward the administration. At the time, the government had largely abandoned all fundamental human rights, and democracy was in freefall. Due to actions taken by the government under the guise of "internal disturbance" and security, there was growing disdain for the government at this time. It was also regarded as the dark age of history that saw Congress fall far down the political ladder following Independence.

Conclusion

The Indian constitution was created and framed after extensive research, protracted studies, and detailed investigation. The most important emergency provision is that it is installed promptly and with great care. The provisions are still in existence, but they are a failure since they have gotten worse over time, becoming insufficient and giving the government more power. India can only be successful if it is united and offers safeguards against the abuse of emergency powers. It is simple to understand why the Indian constitution has provisions for emergencies. After wrangling with every procedural requirement, it is obvious why it was important to make those conditions first and foremost applicable to the Constitution. Although we conducted our analysis for the same reason, we did see that the regulations by themselves provide the Executive a lot of dramatic freedoms, even though the laws on national security and citizen welfare are taken into account in these areas. In fact, no real progress along the proclaimed lines was possible, for Mrs Gandhi and Congress failed to create any new agencies of social change or organs for popular mobilization. Reliance for the implementation of the developmental programmes was placed exclusively on the same old corrupt and inefficient bureaucracy

and manipulative and discredited politicians. So far as the common people were concerned, matters took a turn for the worse, for there were no avenues of protest or any other mechanism for the voicing and redressal of their grievances.

It largely affects the territorial framework of the country and makes it majoritarian, thereby attempting to defend the needs of the individual and the community. While acknowledging its necessity, we also concur that a check-and-balance system may be set up so that, unlike the emergency of 1975, the ruling party and the president cannot misuse power. We concur that human rights are essential to people's very existence in a democracy, despite the fact that their revocation has frequently been justified. Since the 44th Amendment to the Constitution stipulates that there are always methods to unfairly violate fundamental rights in emergencies, we have discovered in our study that this is true notwithstanding the protective provisions that were introduced during our examination. It will serve as the consolidated framework for confirming the unconstitutional use of discretionary powers available to the executive and legislative branches in accordance with emergency provisions, just as some other federal constitutions, like those of Canada and Australia, allow the courts to decide on the extent to which the centre can extend its authority.

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