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**NATIONAL EMERGENCY AS A THREAT TO DEMOCRACY: AN  
ANALYSIS**- Tanisha Khatri & Prashant Duhan<sup>1</sup>**ABSTRACT**

A national emergency is a state of emergency caused by a danger or threat to the country, either foreign or from a foreign country, usually proclaimed by the government's right to exist<sup>2</sup>. As per Article 352 of the Indian Constitution, when the security of India or any part of it is threatened by war or secession, the Eighteenth Article of the Constitution is referred to as the "Emergency Clause". In the event of a foreign or military attack, the president may declare a state of emergency. 44th Amendment of 1978, replaced the old meaning of "internal disturbance" with the word "armed rebellion". The declaration of a state of emergency due to "war" or "external aggression" is called "external emergency". On the other hand, when it was reported to the field of "armed rebellion" it was called "internal emergency". The interpretation of Article 352 states that the declaration of a state of emergency does not require the actual occurrence of foreign aggression or military aggression. An announcement can be made even if the manager believes that a danger exists.

The President may declare a state of emergency only upon the written request by Cabinet headed by the Prime Ministers. Both houses of parliament participate in decisions by voting. Under article 352, approval requires a majority vote in both houses of parliament; a two-thirds majority of those present must vote and the declaration of the state of emergency must be approved within one month from the date of its announcement<sup>3</sup>.

However, if the declaration of a state of emergency is made in the event of Parliament's dissolution or if it is dissolved within one month without its approval, the declaration shall be valid up to 30 days from the first meeting of the Board. It is also the innovation that the Rajya Sabha has given its approval. The state of emergency will last six months if approved by both house, and can be

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<sup>2</sup> Sharma, H.P., 1975. "National Emergency" in India. *Journal of Contemporary Asia*, 5(4), pp.462-470.

<sup>3</sup> Sanghadia, V., 2017. Justiciability of a Presidential Proclamation of Emergency under Article 352 (1) of the Constitution. *NALSAR Stud. L. Rev.*, 12, p.73.

extended indefinitely every six months with the approval of the government. Any resolution approving the declaration or extension of the state of emergency must be passed by a special majority in both houses of Congress. The declaration of state of emergency may be lifted by the President at any time with a subsequent declaration. These announcements do not require government approval. If the Lok Sabha decides by simple majority against its extension, the state of emergency should be lifted<sup>45</sup>.

### STATEMENT OF NATIONAL EMERGENCY

India has declared a state of national emergency three times since its independence; 1962, 1971 and 1975;

- On October 26<sup>th</sup> 1962, the first National Emergency Statement was issued, valid until January 10<sup>th</sup>, 1968, during the Sino-Indian War due to the Chinese offensive by the North-East Frontier Agency (NEFA). Emergency declared by Prime Minister, Pandit Jawaharlal Nehru on the grounds of Article 352 as external aggression. During the war, "India's security" was declared as "threatened by external aggression". The state of emergency resulted in the suspension of articles 21 and 22 of fundamental rights. Nearly 200 opposition leaders were arrested for violating the country's laws. The Tashkent Agreement was signed to normalize the situation between the two countries during the Sino-Indian War. The state of emergency was lifted in January 1968 due to ongoing domestic unrest<sup>67</sup>.
- The Second National Declaration was issued during the Indo-Pakistani War on 3<sup>rd</sup> December 1971, followed by the Third Declaration - "India's security" was declared as a "threat of external violence" and was repealed on 21<sup>st</sup> March 1977<sup>8</sup>. Dr. V.V. Giri, the President of India at the time, declared a state of emergency across the country. State of Emergency Declared for Security of Indian Parliament has - Maintenance of Internal Security Act (MISA), Coffee POSA Act, Government of India Protection Act passed. These three bills were designed to avoid incarceration. After the state of emergency, they abused power because our office had too much power and this happened: Arrests, death sentences, Encounter like 1<sup>st</sup> emergency between India

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<sup>4</sup>Singh, T. and Kulshrestha, M., 2022. The Legitimacy of Emergencies under Article 352 and Grounds for Proclamation in India. *Issue 5 Int'l JL Mgmt. & Human.*, 5, p.14.

<sup>5</sup>Mangla, P., 2022. Emergency Provisions in India. *Issue 5 Indian JL & Legal Rsch.*, 4, p.1.

<sup>6</sup>Epari, S., 2022. An Analysis of the National Emergency. *Issue 5 Indian JL & Legal Rsch.*, 4, p.1.

<sup>7</sup>Goel, A., 2021. Proclamation of Emergency. *Issue 5 Int'l JL Mgmt. & Human.*, 4, p.877.

<sup>8</sup>Kirty, N., 2021. National Emergency and The Global Pandemic. *Indian Journal of Law and Legal Research*, 2(1), pp.286-295.

and Pakistan the war was ended but emergency was not over. (There is an emergency between India and Pakistan, the war is over but the situation is not over yet). In 1974, the President said that under MISA, no one can exercise their fundamental rights in court. The 3rd emergency is declared before the 2nd emergency disappears<sup>9</sup>.

- While the second scenario based on external aggression is active. On the night of 25th June 1975, Indira Gandhi sent a petition to the President without the consent of the Executive Board. In general, the president should declare a state of emergency and seek help, aid and advice from the Cabinet. However, this time the state of emergency was declared only with the words of the prime minister. Fakhruddin Ali Ahmed shared the advice of Prime Minister Indira Gandhi. India declared a 21-month state of emergency as an "internal conflict" resulting from the conflict and affecting India's security, which was caused by controversial circumstances. These events stem from political conflicts. During the state of emergency, opposition leaders were arrested, elections were postponed, protests against the government were banned, and the media was censored. Certain laws were rephrased to suit the government. The constitutional rights were suspended, freedom of speech and expression and press were abolished. Indira Gandhi advocated drastic measures in the national interest on three points; first, she said, India's security and freedom, democracy is at risk because of the movement launched by Jayaprakash Narayan's. Second, it saw the need for rapid economic development and support for the lives of disadvantaged groups. Third, she warned against foreign interference that could weaken and undermine India. Finally, on March 23, 1977, this state of emergency was lifted. Thus, from June 26th, 1975 to March 1977, two declarations of state of emergency were in effect at the same time<sup>1011</sup>.

## EFFECTS AND CONSEQUENCES OF A NATIONAL EMERGENCY

The state of emergency declared under Article 352 of the Constitution of India suspends some fundamental rights and gives special powers to the executive, especially the President of India, to deal with situations that threaten certain national situations. While national emergency may be mandatory in definite occurrences, but they also have the ability to threaten India's freedom. We cannot ignore the fact that Indira Gandhi created a state of emergency in India that, threatens the

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<sup>9</sup>Kirty, N., 2021. National Emergency and The Global Pandemic. *Indian Journal of Law and Legal Research*, 2(1), pp.286-295.

<sup>10</sup>Pendakur, M., 1988. Mass media during the 1975 National Emergency in India. *Canadian Journal of Communication*, 13(6), pp.32-48.

<sup>11</sup>Jaffrelot, C. and Anil, P., 2021. *India's first dictatorship: the emergency, 1975-1977*. Oxford University Press.

future of Indian democracy like no other event. The worst decision Indira Gandhi's government made was to enforce the state of emergency<sup>12</sup>. Turning democracy into a dictatorship and depriving the citizens of all rights is the worst decision of the late prime minister. Arrest of the opposition ministers, fearing opposition for her actions, Indira Gandhi chose to lock up anyone who opposed her in the prison. Just months after declaring a state of emergency, President's rule was imposed on the two states ruled by the opposition party- Gujarat and Tamil Nadu - putting the entire country under the control of the central government<sup>13</sup>.

When the state of emergency was declared, the nature of Centre-State relations changed. The Centre has the authority to give executive directions to state governments on "any" matter. The President of India has the power to direct the states in the exercise of executive power. State governments are not abolished, but placed under the effective control of the federal government, which has the power to supervise the state governments, and state governments must obey orders (Article 353(A)). The Parliament has legislative power on all matters mentioned in the state list, and the president can make state decisions if the government is not in session. Laws enacted by the government will also lose their validity if they are found to be invalid after six months. Article 83(2) of the Indian constitution allows the Lok Sabha to be extended by one year at a time. However, this extension is only allowed up to maximum of 6 months after the lifting of the state of emergency<sup>14</sup>. According to the article 268 and article 279, the President, subject to the approval of the Legislative Council, may amend the law on the distribution of revenues between the Center and the State as soon as possible (Section 354). This adjustment will not go beyond the fiscal year in which the state of emergency was lifted. The president can limit the distribution of funds between the federal government and the states, and if there is an emergency, the federal government can use all available resources to combat costs. The duration of the Lok Sabha can be extended by one year at a time. However, this extension cannot exceed six months after the crisis has stopped<sup>15</sup>.

Likewise, during any state of emergency, Parliament can extend the normal tenure of the State Legislative Assembly by one year each time during a national emergency, but only for more than six months after the emergency has ended. During the state of emergency, the government has the

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<sup>12</sup> Park, R.L., 1975. Political crisis in India, 1975. *Asian Survey*, 15(11), pp.996-1013.

<sup>13</sup> Singh, P., 2022. Postcolonial Exceptions: Cultural Lives of the Indian National Emergency, 1975-1977 (Doctoral dissertation, The Ohio State University).

<sup>14</sup> Singh, I.B., 1980. The Indian mass media system: Before, during and after the national emergency. *Canadian Journal of Communication*, 7(2), pp.38-49.

<sup>15</sup> Dash, S.C., 1961. Emergency Provisions and Union-State Relations in India. *The Indian Journal of Political Science*, 22(1/2), pp.53-63.

power to arrest a person who is seen to pose a threat to the country<sup>16</sup>. For example, around 1,11,000 people were arrested and detained under the prevention detention laws between 1975 and 1977. While more powers and powers were given to the police and other security forces, large numbers of prisoners were tortured and died.

And mainly the biggest consequence of the crisis is often the suspension of many democratic rights. During this period, many harsh laws were passed that threatened democratic values. It unfortunately affects civil liberties. When the state of emergency is declared, all the fundamental rights enumerated in articles 36, 37, 38, 39, 40 and 42 of the Indian Constitution will be suspended, and as a result the, executive authorities may take any measures against these rights and can form laws accordingly. A state of emergency may be declared based on external threats or internal disturbances. Abuse of power lie in the internal disturbance. The term "internal disturbance" is not clearly defined and its ambiguity can lead to its abuse by the authorities.

Thus, a state of emergency can be declared even in times of peace to stop protests and other forms of opposition to the government. Similar to the reasons behind the emergency in 1975 was a verdict given by the, Allahabad High Court passed a decision canceling the election and banning Indira Gandhi's candidacy for the next 6 years. In other words, the government is using its power to crush the opposition by declaring a state of emergency. And they can take their own personal revenge by misusing emergency. And independent media is one of the country's four main pillars of democracy. But can extremely shrink independence of media and used for government propaganda, which can be ruinous for democracy. One thing that happened during the third emergency was that prominent singer Kishore Kumar was asked to sing for a party rally, which he promptly refused, and as result of that, his songs were prohibit from playing in the state or country. This clearly shows how the state misuses its power. And can make any law illegally for their own purpose and benefit<sup>1718</sup>.

#### o FUNDAMENTAL RIGHTS

The declaration of the state of emergency is a serious problem as it affects the structure of the Constitution and also affects the rights of the individual. Many important rights of Indian citizens

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<sup>16</sup>Dutt, V.P., 1976. The emergency in India: background and rationale. *Asian Survey*, 16(12), pp.1124-1138.

<sup>17</sup>Jha, H., 2023. India's Authoritarian Turn: Understanding the Emergency (1975–1977) and Its Afterlife. *Pacific Affairs*, 96(1), pp.119-133.

<sup>18</sup>Hazarika, V., 2020. RIGHTS OF THE PEOPLE AND NATIONAL EMERGENCY (1975-77): A CRITICAL ANALYSIS OF A DEBATABLE ERA OF INDIAN POLITICS. *International Journal of Management (IJM)*, 11(11).

will be suspended during the state of emergency. Fundamental rights are those rights which are necessary for the survival of human beings with dignity and these rights are given to every citizen of India and if there is violation of any of these rights a person can approach the court. These rights have helped people to live their life with full dignity. And six fundamental rights are there. The Right to Life and Personal Liberty cannot be suspended under the original Constitution. Articles 358 and 359 describe the impact of the state of emergency on the fundamental rights. When a state of emergency is declared according to Article 358, the important rights in Article 19 are automatically suspended. This may include: Right against exploitation, Freedom to practice any profession, occupation, trade, or business, Freedom to assemble peacefully, Freedom of equality before the law, Freedom of movement across Indian territory, Freedom to practice or propagate religion, Freedom of speech and expression. Article 19 is automatically reinstated after the expiry of the state of emergency. The 44th Amendment Act laid out that Article 19 can only be suspended when the National Emergency is laid on the grounds of war or external aggression and not in the case of armed rebellion. Under Article 359, the President is authorized to suspend, by order, the right to move any court for the enforcement of Fundamental Rights during a National Emergency. Thus, remedial measures are suspended and not the Fundamental Rights. The suspension of enforcement relates to only those Fundamental Rights that are specified in the Presidential Order. The suspension could be for the period during the operation of emergency or for a shorter period. The Order should be laid before each House of Parliament for approval. The 44th Amendment Act mandates that the President cannot suspend the right to move the court for the enforcement of Fundamental Rights guaranteed by Article 20 and 21<sup>1920</sup>.

During Emergency if Fundamental Rights are suspended then it can be worse for the general public of India or Country. If Right against exploitation be suspended it will be not good because if the people will not have right against exploitation a person with authority can exploit them, they can make them do anything they want and the public will be helpless because they can will not be able to approach the court for the exploitation. The person having higher authority can misuse his authority or power and can exploit the general public. And if Freedom of speech and expression be suspended it will be worse because general public cannot have right to express their views and

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<sup>19</sup> John, M.E., 2014. The Emergency in India: some reflections on the legibility of the political. *Inter-Asia Cultural Studies*, 15(4), pp.625-637.

<sup>20</sup> Balganes, S., 2000. Fundamental Rights during a Proclamation of Emergency: The Indian Experience. *Student Advoc.*, 12, p.24.

opinions at any issue through any medium, example: by words of mouth, by writing views, by printing, by making picture, by making film, movie etc<sup>2122</sup>.

#### o THREATS TO DEMOCRACY

Democracy is a form of government that based on the principles of equality, freedom, and the rule of law. It provides a platform for citizens to participate in decision-making processes and to guarantee their human rights and freedoms. However, democracies face the balancing act of ensuring public safety and protecting democratic values in the times of national crisis<sup>2324</sup>.

- **Suspension of Civil Liberties:** During national emergencies, the governments may suspend certain civil liberties and restrict freedoms such as freedom of speech, assembly, and private freedom. While these measures are often considered necessary for public safety, they can be easily abused. The governments will use emergency measures to quell protests, suppress opposition and curtail civil rights. The fundamental rights will become less important and the foundation of democracy will be destroyed<sup>25</sup>.
- **Concentration of Powers:** Situation in the country may lead to the concentration of power in several people or in a single authority. Emergency measures may grant expanded executive powers, cross checks and balances and lead to separation of powers. This sense of power undermines democratic principles and creates a fertile ground for authoritarian rule. The federal character of the constitution will be gone, and the union will gain absolute power.
- **No Responsibility:** Accountability procedures can be compromised in an emergency. During a national emergency, the normal functioning of independent institutions, such as the judiciary and the media may be interrupted or restricted. This can lead to a lack of accountability because the government will not be properly scrutinized, and the public will have limited access to the law or procedures for treatment. And weak accountability undermines democratic governance and undermines the public's trust in their institutions.
- **Potential for Compliance:** There is a risk of national emergencies can be invoked for political purposes rather than a genuine threats to the nation. The governments will use its emergency

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<sup>21</sup>Islam, M., 2020. Position of Fundamental Rights During Emergency in India. *International Journal of Management*, 11(9).

<sup>22</sup>Hoonka, A., 2022. Suspension of Fundamental Rights during Emergency. *Issue 3 Indian JL & Legal Rsch.*, 4, p.1.

<sup>23</sup>Gupta, A., 2021. AN ANALYSIS OF THE LAWS IN EMERGENCY SITUATION. *EMERGING ISSUES IN LAW, ECONOMIC AND BUSINESS*, p.55.

<sup>24</sup>Palmer, N.D., 1976. India in 1975: democracy in eclipse. *Asian Survey*, 16(2), pp.95-110.

<sup>25</sup>Varshney, A., 1998. Why democracy survives. *J. Democracy*, 9, p.36.

