Only two years later and people are already trying to hide the terrible truth about Mrs. Gandhi's "Emergency rule"

India's Second Freedom Struggle

Michael Henderson

During the Indian Emergency a cartoon appeared in a Sri Lanka newspaper that depicted two Gandhi-capped congressmen in conversation, one of them saying: "The thing I really miss is lecturing the Western nations on how to run a democracy." If there has been resistance in the past to Indian application, of course, its experience can certainly call illiterate villager of India refused to be seduced by Sorabjee, put it: "The skinny, ill-fed, semi-clothed, so-called institutions are so healthy as to be inviolable. At the apparent well-established democracy could have been study the subversion of a democracy.

Coupled with the jubilation, however, was the desire both within India and abroad to understand how such an apparently well-established democracy could have been so quickly dismantled with the seeming acquiescence of so many democrats. And with so many of the participants alive to tell the tale and so many of the facts still fresh in mind, history has provided few better chances to study the subversion of a democracy.

Although not all of India's lessons will have universal application, of course, its experience can certainly provide a beneficial jolt to those who think that their own institutions are so healthy as to be inviolable. At the height of the Emergency an Indian editor, Kuldip Mayar, told an English visitor that if he had been asked before June, 1975, about the chance of India becoming totalitarian, he would have said it was impossible. "Now I say 'It can happen anywhere.'"

In the two short years since the end of the Emergency, and by the determined effort of those with a vested interest in distorting facts, there has developed a blurring of the issues. Some are now claiming that democracy never existed in India anyway, while others write about "the anarchic drift which made the Emergency necessary and possible." Others see the whole development as a systemic crisis. Some maintain that with or without Mrs. Gandhi, India would have arrived at a state of emergency. There are still others who highlight the inadequacies of the present Janata government and equate them with the iniquities of the previous regime.

And there are even those who refuse to recognize that there were any iniquities at all and, like Mrs. Gandhi, prefer to speak of "a few minor irregularities."

To accept these distortions would be to invite a repeat performance whose end might not be so swift next time. An honest look now, painful as it may be to some, may spare far greater pain to more people later. This honesty is necessary no matter how badly the present government performs. It will be needed even more if Mrs. Gandhi were to return to power. It is not enough to regret the excesses while excusing the subversion of the constitution that made them possible. Nor is it enough to say, true as it is, that the scale of dictatorship never approached that of a Stalin or a Hitler.

Such an honest look precludes the claim that all was well in India before the Emergency. It does, however, mean facing the issue that Rajmohan Gandhi outlined in the Indian weekly, Himmat, on the eve of the elections in March, 1977: "It is not as if the election is a choice between Congress sinners and Janata saints. The writer hopes for a Janata victory and a Congress defeat not because one side is overwhelmingly filled with noble people and the other with an excess of ignoble men. He does so because in the last two years the Congress party crossed a line that should not be crossed....In a society where human values are cherished, a government does not, in the middle of the night, muzzle the press and imprison tens of thousands without reason, redress or trial. When a ruling party does that it crosses the limit, and forfeits the respect and support of large numbers....In such a situation impartiality cannot wear the

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garb of neutrality. Independent men have to throw their weight in opposition to the party that oversteps the boundary."

Honesty also precludes the claim that all has been well since the end of the Emergency. Expectations were high when Morarji Desai's government was formed, and they have not been fulfilled. Many people who supported it are disillusioned. It is important to keep in mind the problems of an administration hastily assembled and comprising many different political elements. It faced the need to give strong government to a people who had just dismissed a dictatorial one and it inherited many headaches that accompany the first flush of newfound freedom. It is fair to point out that with all its shortcomings in implementing its programs, the present government's commitment to law and democracy has been exemplary and its dealing with prices, for instance, a success story.

In the last two years India has attracted a number of conferences and seminars, on and off the record, that have been examining the Emergency. The proceedings and reports of the Shah Commission, which looked into the abuses of authority during the Emergency, have provided a detailed analysis of what really went on. India has become a laboratory, according to the International Herald Tribune, where lawyers, politicians, and editors try to devise ways of assuring that the Emergency dictatorship cannot return. "The dimensions of Mrs. Gandhi's late experiment in tyranny are still not sufficiently understood in the West," the paper wrote in August, 1978. "And they should be, for they indicate how fragile the protections of freedom may be in any country."

For those who have forgotten, and for those who never knew, it is useful to record just what the situation in Emergency India was like. At the start of 1977 twenty thousand people were still behind bars without trial; judges whose judgments were regarded as hostile to the government found themselves transferred across hundreds of miles to other states; any newspaper that dared oppose the regime was effectively censored; compulsory and far was widespread. How could this have happened without it. It is not suggested that these crimes were in every case the intention of the authorities. But the clear evidence of the Emergency is that the due process of law is removed, and the possibilities of judicial review no longer exists, then the door is opened for strong government to a people who had just dismissed a dictatorial one and it inherited many headaches that accompany the first flush of newfound freedom. It is fair to point out that with all its shortcomings in implementing its programs, the present government's commitment to law and democracy has been exemplary and its dealing with prices, for instance, a success story.

At about 11:30 on the evening of June 25, 1975, the president of India, at the instigation of the prime minister, Indira Gandhi, signed the declaration of Emergency. She had told him that this was necessitated by an "imminent danger" to India's security. In her broadcast to the nation the next day she said that the main reason for this action was that the opposition planned "to create anarchy and chaos, to overthrow the elected representatives of the people." She stated categorically: "I would like to assure you that the Emergency proclaimed will in no way affect the rights of law-abiding citizens."

The reality was otherwise. On June 12, 1975, Mrs. Gandhi had been found guilty in a court of law of corrupt electoral practices and her election as a member of parliament was set aside. Twelve days later the Supreme Court, some of whose members were on vacation, refused to set aside this conviction, although it did allow her to take her seat without speaking or voting. On the same day the combined opposition—the Janata Front—won an overwhelming victory in the Gujarat State elections. Instead of waiting for the full bench of the Supreme Court to hear her appeal, Mrs. Gandhi made a preemptive strike to protect her position by declaring Emergency.

Evidence presented to the Shah Commission makes clear the following points:

- The fortnightly reports of the state governments and chief secretaries indicated that the law and order situation was under complete control and that no significant deterioration in the days before the Emergency had been reported. The Intelligence Bureau had not submitted any report to the Home Ministry suggesting that the internal situation warranted an Emergency, and the Home Ministry had not expressed to the prime minister any anxiety about the internal situation.
- The home secretary of India, the director of the Intelligence Bureau, the minister of law and justice, the cabinet secretary and senior civil servants in the Home Ministry, cabinet secretariat, and the prime minister's secretariat first learned about the Emergency after it had been imposed.
- The need for such a declaration had not been discussed at any cabinet meeting prior to June 26.
- Orders for arrests, bypassing the usual channels, had been set in motion days before the Emergency.

There is not space enough to relate the sufferings that thousands of people underwent because of the Emergency. They include the knock at the door in the middle of the night and arbitrary arrest (nearly 200,000 people were detained during the period), the most heartrending stories of torture, the callous demolition of precious homes, and compulsory and indiscriminate sterilization (seven million males were sterilized in 1976). All this happened because of the Emergency and would not have happened without it. It is not suggested that these crimes were in every case the intention of the authorities. But the clear evidence of the Emergency is that once the due process of law is removed, and the possibility of judicial review no longer exists, then the door is open for strong government to a people who had just dismissed a dictatorial one and it inherited many headaches that accompany the first flush of newfound freedom. It is fair to point out that with all its shortcomings in implementing its programs, the present government's commitment to law and democracy has been exemplary and its dealing with prices, for instance, a success story.

The truth of the matter is that the Emergency was a giant step backward in the development of India's democratic institutions. It is important to keep in mind the clear evidence of a system that has been subverted. The timetable of the takeover went like this:

- **June 26, 1975** State of internal Emergency declared.
- **June 26** Central censorship order issued, imposing precensorship for the first time in free India.
- **June 27** Presidential Order suspending the
enforcement of fundamental rights of equality, life, and personal liberty.

June 29  Ordinance promulgated by president that reason for detention need no longer be given to a detainee.

August 1 Constitution (38th Amendment) Act passed whereby declaration of Emergency made final and conclusive and placed beyond judicial review.

August 10 Constitution (39th Amendment) Act passed whereby matters relating to election of prime minister are placed beyond review of courts.

October 17 Ordinance issued whereby grounds of detention need not be communicated to court, also enabling re-arrest of those whose detention orders had expired or were revoked.

January 8, 1976 Presidential Order issued suspending enforcement of basic human freedoms under Article 19 of the Constitution.

February 4 Life of Lok Sabha (Parliament) extended a year.


April 28 Right of habeas corpus suspended by a judgment of the Supreme Court.


November 5 Life of Lok Sabha extended a further year (until March 8, 1978).

January 2/ February, 1977 Constitution (42nd Amendment) Act came into force, curtailing powers of courts and containing a provision precluding the court from determining the validity of the Amendment.

January 18 Election called to give aura of legitimacy to Emergency measures.

March 21 Emergency revoked.

To many Indians the blackest day was the one on which the Supreme Court ruled (4 to 1) that under the Emergency legislation habeas corpus was suspended. Mr. Justice H.R. Khanna, who gave the dissenting judgment, was superseded when the next chief justice was appointed, though Khanna was due to fill the post. Former Attorney-General C.K. Daphtary said that this courageous action would "rank with the great dissents of the U.S. Supreme Court."

H ow could things reach such a point in a country with a strong democratic tradition? First of all, there was censorship from the start, a handicap even Germans did not face in the early days of Hitler. The very night the Emergency was declared, electric power was cut off from the Delhi papers to prevent them publishing the news. With a lack of information, particularly in a country as large as India, the people did not know what to do, what could be done, or, worst of all, what had been done. Romesh Thapar, a respected Indian intellectual, told a British parliamentarian, "For as K. Santhanam, one of the men who drafted India's original constitution, wrote during the Emergency, "There is not a single economic programme which cannot be implemented by the normal democratic process." Too many people also confuse what happened during the Emergency with what happened because of it. Take the example of prices. Prices went down during the Emergency. They also went up. So it would be as sensible and ridiculous to say they went down because of the Emergency as to say they went up because of it. Such a claim has as much meaning as saying, "Since the Emergency there have been floods," commented B.G. Verghese, a leading economic writer.

The truth is that because of a good monsoon and a good harvest, plus strong measures by the government a good nine months earlier, the index of wholesale prices had come down eighteen to twenty points before the Emergency was imposed. Only seven weeks after her declaration Mrs. Gandhi went on record as saying that inflation had been brought to zero because of measures she had taken the previous year.

No apologists for the Emergency have been able to point to any economic gains for the country that could not have happened without the Emergency. In fact, they have not been able to point to any economic gains at all. The supposed shortcut was in reality a costly detour. Not only was there mismanagement of the economy as a
result of unqualified but more amenable persons being appointed to run public sector institutions, but the effect of compulsory sterilization has been to discredit the whole family planning program—and that can only be described as an economic disaster.

Since the Emergency much thought has been given to the question of how democratic institutions can be made less vulnerable. As a result there have been a number of changes in the law. Laying them before the Indian Parliament, Law Minister Shanti Bhushan said that recent experience had shown that fundamental rights, including life and liberty, granted to citizens by the Constitution, could be taken away by a transient majority. “It is therefore necessary,” he said, “to provide adequate safeguards against the recurrence of such a contingency in the future and to ensure to the people themselves an effective voice in determining the form of government under which they are to live.” Among the changes is the provision that an emergency may now be declared only on the basis of a cabinet decision and on the written advice of the cabinet to the president. In June, 1975, a shocked cabinet was simply summoned the next morning and informed by Mrs. Gandhi of what she had done. Such a declaration must also be approved by resolutions of both Houses of Parliament within a month, instead of two months as before, and such resolutions have to be carried by a majority of the total membership of each House and not less than two-thirds of the majority of the members present and voting in each House instead of by a simple majority. In addition, this parliamentary endorsement is valid for only six months, at which time a fresh endorsement must be obtained. Further, the grounds for a declaration of emergency will henceforth be “armed rebellion”—no longer, “internal disturbance.”

The most significant change ensures that even during an emergency certain fundamental rights cannot be suspended by a presidential order. These are the rights to life and personal liberty, to protection against retroactive criminal laws, self-incrimination, and double jeopardy. As a result of this amendment no court can come to the conclusion the Supreme Court did in the habeas corpus case: that an order of detention, which can be demonstrated to be mala fide, cannot be challenged in a court of law during emergency. It is also laid down that in the case of any future emergency the right to report to the courts, for instance, and to the press. The need for an impartial and independent judiciary is obvious. By and large the high courts came out of the Emergency with flying colors. Judges and lawyers who would not be intimidated or bribed maintained, as long as it was legally possible, the rights of individuals and organizations. But such integrity cannot be legislated.

Another commission has, in addition, recommended statutory safeguards for civil servants to prevent action being taken against them simply for differing with their political leaders. During the Emergency, 25,962 public servants were compulsorily retired. Indeed, Mrs. Gandhi served some time in prison at the end of 1978 for breach of parliamentary privilege in a matter involving the harassment of four civil servants whose houses had been searched and raided and false cases instituted against them because, in the discharge of their duties, they were collecting information for the answer to a parliamentary question about her son’s Maruti business.

Mr. Justice Khanna, now chairman of India’s Law Commission, told a conference in Delhi last year that it would be a mistake to rely too much on laws or a constitution to protect freedom. “The ramparts of defense against tyranny,” he said, “are ultimately in the hearts of people.” The crucial importance of personal integrity is perhaps the biggest lesson of the Emergency. It applies to the courts, for instance, and to the press. The need for an impartial and independent judiciary is obvious. By and large the high courts came out of the Emergency with flying colors. Judges and lawyers who would not be intimidated or bribed maintained, as long as it was legally possible, the rights of individuals and organizations. But such integrity cannot be legislated.

The need for an independent and courageous press is equally evident. Here, unfortunately, there were too few publishers and journalists who were willing to act professionally. The ability of the government to withhold licenses, apportion advertising, and restrict newsprint supplies may in future be curtailed. Also the government monopoly of broadcasting may be changed. But the line separating those who did stand up and those who did not had little to do with existing laws and a great deal to do with character or the lack of it.

The same applies to the civil service. The Shah Commission stated categorically: “During the Emergency for many a public servant the dividing line between right and wrong, moral and immoral ceased to exist.” Its final report refers to officers who committed excesses at the behest of others and “could not display courage to face the truth then [and] have not the character to face the truth now and to own up to their past wrongs.” A senior Indian civil servant last year told a conference of civil servants, lawyers, and journalists that if a dozen of India’s top civil servants had gone to Mrs. Gandhi in June, 1975, “the country might have been spared the Emergency trauma.” Another seminar in Delhi that studied the aspects of misuse concluded: “What is important is not so much conclusions or solutions but a...”
willingness to examine again and again the pressures on democratic institutions in order to uphold them.” Or as Thomas Jefferson put it in only seven words: “Eternal vigilance is the price of liberty.”

If a repeat of the Emergency experience is to be avoided, it means examining two basic attitudes that existed in some quarters and may have allowed it to continue as long as it did—the attitude to democracy itself and the attitude to one’s fellow man. It is certainly true that there were too many Indians, particularly in the business community, who said to themselves, “This country could do with a bit of dictatorship.” But a little dictatorship is a contradiction in terms. They were pleased to have the trade union leaders locked up. And there were those abroad who had what Morarji Desai and Jayaprakash Narayan have characterized as an “arrogant attitude.” Basically that attitude is, “We have the maturity for democracy, but the poor people need a bit of stick.”

Then there is the question of what we believe about human community. During the Emergency an Indian businessman lunching one day with a foreign friend at the Oberoi Hotel in Delhi was praising the gains of the Emergency, as many liked to do, sometimes because they believed in them, as this man did, and sometimes out of self-protection. The friend interrupted him, saying, “Last time I was here I stayed with Hansraj Gupta [the mayor], now I can’t. He is in jail.” The businessman, who knew Hansraj personally, answered almost truculently: “Well, we have a saying, ‘When you grind the corn some insects get crushed.’” If his export business went well, he didn’t give a damn about other people’s human rights.

Permit me to add a personal note. Though these words are offered by a foreigner, they come from a love of India and a belief in the leadership it is destined to give to the world. During the Emergency I met or read of many of the bravest and finest men and women anywhere. Any nation would be proud of their example. Many of them believed, even when there was no light at the end of the tunnel, that the manner in which they conducted their struggle for freedom was as important as freedom itself. They are worthy heirs of Mahatma Gandhi.

We think of the Emergency as a time when institutions crumbled and men and women failed. But in any discussion of that period I think space should be reserved to honor those who were uncowed. They come from all castes, from different religions or none, from all ages, and from every part of India. It is noticeable how the former foreign minister, who, when asked by an English journalist at the height of the Emergency how he could best assist India, said, “Go on fighting. This is not just a battle for Indian freedom. It is a battle for world freedom.” Pride of place must go, of course, to Jayaprakash Narayan, who, inside prison or out, in constant pain and under regular dialysis, never flagged in his faith in the Indian people and in his efforts to inspire and unite the democratic forces. Only a few months before the restoration of democracy he was being characterized in a government documentary film as “India’s own Hitler.” Yet he was to this second Indian revolution what Mahatma Gandhi was to the first, fulfilling Nehru’s prophecy, “A time will come when we will play a very important part in shaping India’s destiny.”

Memorable judgments were handed down by high court judges like Mr. Justice V.D. Tulpapurkar. Challenging the government’s contention that a certain order was not passed with a view of stifling or choking an expression of views unpalatable to it, the Maharashtra judge declared: “Such a plea in face of the total ban imposed on any kind of public debate on the Emergency cannot obviously be accepted, for, in my view, no government which suppresses even peaceful and constructive criticism of the Emergency at a public debate, no government which preserves freedoms only for the cringing and the craven, and no government which permits its police chief to perpetrate on its citizens the humiliation and indignity of being required to obtain prior permission for their normal, innocent and innocuous activities can have any moral right to proclaim to the world that democracy is alive in the country.”

Memorable battles were fought by a few journalists who resisted the efforts of the censor and others. The editors of the Indian Express and the Statesman, S. Mulgaokar and Nihal Singh, have been recognized internationally by the Atlas World Press Review as “editors of the year.” The proprietors, shareholders, and staff of those two big papers share in that honor. But many small papers also did battle. The editor of a monthly newsletter, seventy-five-year-old A.D. Gorwala, wrote a moving last message to his subscribers when he was forced to close, little thinking that he would be able to open again within six months. He ended with the words: “For true lovers of the country and of freedom, the present is a tragic time, and the future likely to be even more saddening. In such periods it is important to realize that the seat of freedom in man is the mind. Preserve its integrity and all is not lost. The pressures upon a man may be enormous, yet if he sees clearly and judges accordingly, there is still room for hope. People accustomed to freedom sometimes ask despairingly, ‘This terrible time, when will it end?’ I do not know, but this is sure that if they and we lose courage, it may never. Whatever the duration, upon us all it is encumbent so to bear ourselves in it as if its end were certain, the dawn inevitable after this long stretched-out dark night. And so, farewell.”

There is not space to describe the courage that many showed in prison, often tortured or in solitary confinement. But my faith is that one day even those who find it hard to face up to the truth of what really happened will reserve for all such brave men and women the same place of honor they give to the heroes of India’s first freedom struggle for independence from Britain. This second freedom struggle, if we will but try to understand it, reveals as much about human nature and about the universal future of that democratic governance which we cannot guard too carefully.