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from Ancient Athens to the Present Day***

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Chapter 8

The Indian Emergency (1975-1977) in Historical Perspective

Sugata Bose and Ayesha Jalal

Democracy and authoritarianism have been historically bound in a complex, and sometimes, intimate relationship. The global emergence of quite a few democratically elected authoritarian leaders today has made explicit what had always been an underlying feature of the history of democratic practice. The authoritarian strain was perhaps more marked in countries aspiring for democracy by shedding an inheritance of colonial despotism.¹ India's experiment with democracy after winning independence from British rule offers a fascinating case study of the struggle to establish democratic norms amidst the lure of falling back on the structures of an authoritarian legacy.

Foundations and Frailties of India's Democracy

Constitutional reforms in British India during the early twentieth century in 1909, 1919 and 1935 had introduced elements of limited representative government while denying substantive democracy. These were measures to protect and perpetuate colonial rule under changed political circumstances of an intensifying nationalist challenge. The British had alternated between attempts at

¹ Ayesha Jalal, *Democracy and Authoritarianism in South Asia: A Comparative and Historical Perspective* (Cambridge: Cambridge University Press, 1995).

communalizing and provincializing Indian representative politics in order to keep power at the all-India center firmly in their own hands. Since 1909 separate electorates were introduced for religious minorities. The 1919 and 1935 legislations sought to direct Indian political attention towards local and provincial arenas. The Indian National Congress led by Mohandas Karamchand Gandhi from 1920 onwards orchestrated mass movements across the country to circumvent the constraints of the representative institutions with very restricted electorates set up by the British raj. Indians learned the value of democracy less from its example in the metropolis and more from the practice of authoritarianism in the colony. The rule of colonial difference had ensured that what was good for the metropolis was not considered good for the colony. "Democracy," as Subhas Chandra Bose put it in 1928, "is by no means a Western institution; it is a human institution." India, he believed, should become "an independent Federal Republic". He warned Indian nationalists not to become "a queer mixture of political democrats and social conservatives". He explained:

If we want to make India really great, we must build up a political democracy on the pedestal of a democratic society. Privileges based on birth, caste or creed should go, and equal opportunities should be thrown open to all irrespective of caste, creed or religion. The status of women should also be raised, and women should be trained to take larger and a more intelligent interest in public affairs.²

With independence on the horizon nearly two decades later, a Constituent Assembly was convened on December 9, 1946, to begin the task of laying the constitutional foundation of India's democracy.

On November 26, 1949, the Constituent Assembly adopted a set of principles enshrined in a lengthy written document that have guided India's political destiny for over seven decades. The Republic envisioned in the Constitution was formally inaugurated on January 26, 1950. Its most far-reaching provision was for a universal adult franchise in a country with a literacy rate hovering near 12%. India was to have a parliamentary democratic system with a directly elected House of the People (Lok Sabha) and a Council of States (Rajya Sabha) indirectly elected by state legislatures.

India was extremely fortunate that as stringent a critic of mainstream nationalism as the "depressed classes" leader Dr. B.R. Ambedkar placed his intellectual prowess at the service of the nation for five crucial years from

² Quoted in Sugata Bose, *His Majesty's Opponent: Subhas Chandra Bose and India's Struggle against Empire* (Cambridge, MA: The Belknap Press of Harvard University Press, 2011), 73.

December 9, 1946, to October 12, 1951, when he resigned as Law Minister from Jawaharlal Nehru's cabinet in protest against conservative opposition to the reformist Hindu Code Bill. As the minorities face the cold winds of exclusion from the powers that be in today's India, it is pertinent to recall what Ambedkar said on the question of minority protection while introducing the draft constitution on November 4, 1948. "To diehards who have developed a kind of fanaticism against minority protection," he declared, "I would like to say two things. One is that minorities are an explosive force which, if it erupts, can blow up the whole fabric of the State...The other is that the minorities in India have agreed to place their existence in the hands of the majority...They have loyally accepted the rule of the majority which is basically a communal majority and not a political majority. It is for the majority to realize its duty not to discriminate against minorities."³

In the same speech Ambedkar tried to respond to critics who asserted that there was "nothing new in the Draft Constitution, that about half of it has been copied from the Government of India Act of 1935 and that the rest of it has been borrowed from the Constitutions of other countries". Ambedkar explained that he had borrowed and not plagiarized. He was only sorry that the provisions taken from the Government of India Act, 1935, related mostly to the details of administration. He agreed that ideally administrative details should have no place in the Constitution but argued that it was necessary in the Indian situation. It was in this context that Ambedkar invoked the concept of constitutional morality described by Grote, the historian of Greece, as "a paramount reverence for the forms of the Constitution, enforcing obedience to authority acting under and within these forms yet combined with the habit of open speech, of actions subject only to definite legal control, and unrestrained censure of those very authorities as to all their public acts combined too with a perfect confidence in the bosom of every citizen amidst the bitterness of party contest that the forms of the Constitution will not be less sacred in the eyes of his opponents than in his own."

However, Grote had written of a situation where people were saturated with constitutional morality and could, therefore, take the risk of omitting details of the administration from the Constitution. In India of the late 1940s Ambedkar believed such a diffusion of Constitutional morality could not be presumed. "Constitutional morality," he contended, "is not a natural sentiment. It has to be cultivated. We must realize that our people have yet to learn it."⁴

Ambedkar followed up this contention with a debatable proposition: "Democracy in India is only a top-dressing on an Indian soil, which is essentially

³ *Constituent Assembly Debates*, Volume 7, November 4, 1948, 39.

⁴ *Ibid.*, 37-38.

undemocratic.”⁵ In today’s climate some would probably label him unpatriotic or anti-national for having said so. But a mature democracy ought to ponder over his remark and embrace the value of constitutional morality as respect for forms and processes that enable the negotiation, adjudication and resolution of differences by transcending what Grote described as “the bitterness of party contest”. In the course of the constituent assembly debates another eloquent member Zairul-Hasan Lari pointed out that constitutional morality was a value that not just citizens but also the government must learn.⁶ Just because the government has the power to act, it does not mean it should. The spirit underlying the constitution and not just the words must guide and restrain the government.

If Ambedkar had profound insights into freedom of conscience, minority protection and constitutional morality, he and the Constituent Assembly collectively fell short on the question of emergency provisions and federalism. The constitution was framed under the dark shadow of the dislocations wrought by partition. The loss and division of the Muslim-majority provinces reduced the voices that would have argued against an over-centralizing impulse. Ambedkar was originally elected to the Constituent Assembly from Bengal thanks to the magnanimity of Scheduled Caste leaders led by Jogendra Nath Mondal. The list of members who registered and presented their credentials on December 9, 1946, from Bengal had been a veritable roll of honor. It read as follows: BENGAL: 1. Mr. Sarat Chandra Bose, 2. Dr. B. R. Ambedkar, 3. Mr. Kiran Shankar Roy, 4 Mr. Frank Reginald Anthony, 5. Mr. Satya Ranjan Baksi, 6. Dr. Prafulla Chandra Ghosh. The list included twenty-five members from Bengal including the distinguished communist leader Somnath Lahiri.⁷ Once the partitioner’s axe fell on Bengal, the Jessore and Khulna constituency that Ambedkar represented through an indirect election was given away to the new constituent assembly of Pakistan. At that moment in July 1947 Ambedkar had to be hastily re-elected from Bombay province to a seat vacated by M.R. Jayakar.

Ambedkar candidly acknowledged that the Indian constitution, unlike the American one, was not cast in the pure federal mold. The constitution of India, he claimed, “can be both unitary as well as federal according to the requirements of time and circumstances. In normal times, it is framed to work as a federal system. But in times of war it is so designed as to make it work as though it was a unitary system.” “Once the President issues a Proclamation which he is authorized to do under the Provisions of Article 275,” he went on to say, “the whole scene can

⁵ *Ibid.*, 38.

⁶ *Constituent Assembly Debates*, Volume 7, November 8, 1948, 298.

⁷ *Constituent Assembly Debates*, Volume 1, December 9, 1946, 10

become transformed and the State becomes a unitary state.”⁸ We now know from what transpired between 1975 and 1977 how this lacuna in the form of emergency provisions can allow authoritarianism to get the better of both federalism and democracy. Even fundamental rights are not as inviolable in the Indian constitution as the bill of rights in the United States. “Though imbibing the principles of democratic Constitutions,” Asok Chanda wrote in his 1965 book *Federalism in India*, “the Indian Constitution is not altogether free from authoritarian trends which it inherited in accepting the basis of the 1935 Act.”⁹

Did no one in the Constituent Assembly foresee the dangers posed to federalism and democracy by the states of exception written into the Constitution? A few did. But their far-sighted amendments were typically voted down or “negatived”, to use the parliamentary jargon. Hari Vishnu Kamath, a close associate of Subhas Chandra Bose during the freedom struggle, rang the alarm bells during the debate on draft Article 275 on August 2, 1949:

I have ransacked most of the constitutions of democratic countries of the world – monarchic or republican – and I find no parallel to this Chapter on emergency provisions in any of the other constitutions of democratic countries in the world. The closest approximation, to my mind, is reached in the Weimar Constitution of the Third Reich which was destroyed by Hitler taking advantage of the very same provisions contained in that constitution. That Weimar Constitution of the Third Republic exists no longer and has been replaced by the Bonn Constitution. But those emergency provisions pale into insignificance when compared with the emergency provisions in this chapter of our Constitution.¹⁰

Ambedkar’s colleague, T.T. Krishnamachari, made light of “the constitutional dictatorship envisaged in Article 48 of the Weimar Constitution.” Kamath intervened once more to say to Krishnamachari that “the point I made out with

⁸ *Constituent Assembly Debates*, Volume 7, November 4, 1948:34-35.

⁹ Asok Chanda, *Federalism in India: A Study of Union State Relations* (London: George Allen and Unwin, 1965), 67. Until 1965 there was a lively intellectual tradition of critical scholarship on the Indian Constitution. The following year Granville Austin’s *The Indian Constitution: Cornerstone of a Nation* (Oxford: Clarendon Press, 1966) was published. Austin was a US State Department employee in the 1950s and 1960s. This foreigner’s praise of the liberal features of the Constitution was lapped up in Indian ruling circles. Austin made light of the objections raised in the Constituent Assembly to the inclusion of the emergency provisions, which were to be invoked within a decade of the publication of his book.

¹⁰ *Constituent Assembly Debates*, Volume 9, August 2, 1949, 105.

reference to article 48 of the Weimar Constitution is that Hitler used those very provisions to establish his dictatorship". Ambedkar reckoned "much time" had been taken up in the debate and "thought that no reply was necessary because Mr. T.T. Krishnamachari had replied to the points already". The President of the Constituent Assembly, Rajendra Prasad, terminated the debate with a show of some impatience. The Constituent Assembly passed the motion empowering the President to proclaim an Emergency if the security of India was threatened "whether by war or external aggression or internal disturbance" or if he was satisfied there was "imminent danger thereof".¹¹

The next day Kamath rose to the defense of federalism during the debate on draft Article 277-A that would let the Union Government intervene in the internal affairs of states in case of "internal disturbance". He brought an amendment to replace that phrase with "internal insurrection or chaos". The article proposed intervention by the President on receipt of a report from the state Governor "or otherwise". Kamath considered "otherwise" to be a "mischievous word". He refused to be party to such "a foul transaction, setting at naught the scheme of even the limited provincial autonomy which we have provided for in this Constitution, and I shall pray to God that he may grant sufficient wisdom to this House to see the folly, the stupidity, the criminal nature of this transaction".¹² Kamath received some support from K.T. Shah, Shibbun Lal Saxena, Hirday Nath Kunzru, Renuka Ray and Biswanath Das in taking a stand against the emergency provisions and over-centralizing tendencies. They were outvoted and Kamath's plea to lay "the foundation of a real democracy" sounded like a voice in the wilderness.¹³ "I do not altogether deny," Ambedkar conceded, "that there is a possibility of these articles being abused or employed for political purposes...the proper thing we ought to expect is that such articles will never be called into operation and that they would remain a dead letter."¹⁴ That was a pious hope waiting to be belied.

"The proceedings of this Constituent Assembly would have been very dull," Ambedkar said in his final speech in the Constituent Assembly, "if all members had yielded to the rule of party discipline. Party discipline, in all its rigidity, would have converted this Assembly into a gathering of 'yes' men. Fortunately, there were rebels." He went on to list by name Hari Vishnu

¹¹ Ibid. pp. 123, 125-127.

¹² *Constituent Assembly Debates*, Volume 9, August 3, 1949, 138, 140. K.T. Shah had already on November 15, 1948, brought an amendment to Article 1 of the Constitution for it to read: "India shall be a Secular, Federal, Socialist Union of States." It was negatived. *Constituent Assembly Debates*, Volume 7, November 15, 1948, 399-401.

¹³ *Constituent Assembly Debates*, Volume 9, August 3, 1949, 142.

¹⁴ *Constituent Assembly Debates*, Volume 9, August 4, 1949, 177.

Kamath, Dr. P. S. Deshmukh, R.K. Sidhva, Professor Shibban Lal Saksena, Pandit Thakur Das Bhargava, Professor K. T. Shah and Pandit Hirday Nath Kunzru. "That I was not prepared to accept their suggestions," Ambedkar generously stated, "does not diminish the value of their suggestions nor lessen the service they have rendered to the Assembly in enlivening its proceedings."¹⁵

Reduced to enlivening the proceedings rather than contributing to the substance of the final product, the rebels did not disguise their feelings of regret that their amendments were rejected. Rising to extend "limited and qualified support" to the motion moved by Ambedkar to pass the Constitution, Kamath suggested that "We, the people of India" had come to the end of a long journey which was, however, "the beginning of a longer, a more arduous and a more hazardous one". "True to the Indian genius," he noted, "our struggle, our awakening, began with a spiritual renaissance which was pioneered by Ramakrishna Paramahansa, Swami Vivekananda and Swami Dayananda. In the wake of those spiritual leaders came the political renaissance and the cultural renaissance of which the torchbearers, the leaders, the guides were Lokamanya Tilak, Aurobindo and Mahatma Gandhi and, last but not the least, Netaji Subhas Chandra Bose." He recalled the part played in the freedom struggle by Sheikh Abdullah in Kashmir and Khan Abdul Ghaffar Khan and his brother Dr. Khan Sahib in the North West Frontier Province. "That part of India is no longer with us," Kamath said, "but our hope and our faith is that whatever the differences between the part that has gone from us and the part that still remains to us, those differences will be removed, will be smoothed and our relations will become happier day by day, and Pakistan and India will live on the most cordial terms as years roll by." The Constitution that had been settled by the Assembly he described as "a centralized federation with a facade of parliamentary democracy". He and his friends Shibban Lal Saksena, P.S. Deshmukh, R.K. Sidhva, Mahavir Tyagi, Thakur Das Bhargava, Naziruddin Ahmad, K.T. Shah, Hirday Nath Kunzru and Brajeshwar Prasad had all tried "to make the Constitution conform to the Preamble" but "found that the horoscope of the Drafting Committee was strong".¹⁶

Between 1951 and 1971 India held five general elections to the Lok Sabha, the directly elected House of the People, based on universal adult franchise and supervised by a neutral Election Commission. Its credentials as a formal electoral

¹⁵ *Constituent Assembly Debates*, Volume 11, November 25, 1949, 974. For an analysis of the intellectual lineage of the dissenters, especially Hari Vishnu Kamath, see Aniket De, "A Rebel's Constitution: States of Exception and Anticolonial Alternatives in the Making of the Indian Republic" (forthcoming).

¹⁶ *Constituent Assembly Debates*, Volume 11, November 19, 1949, 689-692.

democracy was established beyond question. It had a vibrant and free print media even though radio and television (available only since the early 1970s) were under state control. The Indian National Congress was the dominant political party, which in partnership with the bureaucracy, sought to control the commanding heights of the political economy of development. A wide array of somewhat fragmented opposition parties failed to dislodge the Congress party in a first past the post parliamentary democratic system. The central government resorted to repression in Kashmir and India's north-east, especially Nagaland, in the 1950s. In 1959 a duly elected communist government in the state of Kerala was dismissed by the center. The war with China in 1962 occasioned an external emergency and the curtailment of fundamental rights.

Jawaharlal Nehru, India's first prime minister (1947-1964), had relied on provincial party bosses and dominant social groups to bring in the vote for the Congress party. The limitations of this oligarchical form of democracy were revealed in the 1967 elections in which the Congress party barely scraped through to power at the national level while losing to opposition parties in as many as eight states. This set the stage for further interventions by the center in the affairs of the states. Democratic political processes had empowered various subordinate social groups, which were now poised to break free of erstwhile patron-client linkages. Nehru's daughter, Indira Gandhi, rose to the challenge of widening and deepening the social bases of support of her party. She split the party in 1969, throwing out the organizational deadwood, and launched a left-leaning populist social and economic program encapsulated in the slogan "*Garibi Hatao*" ("Remove Poverty"). She nationalized fourteen private banks and abolished the privy purses of India's erstwhile princes. She called early general elections in March 1971, winning close to a two-thirds majority in Parliament with a significantly higher vote share than the undivided Congress party in 1967. Indira Gandhi's decisive leadership during the Bangladesh crisis of 1971 enhanced her prestige, leading the then opposition leader in Parliament, Atal Behari Vajpayee, to hail her as the goddess Durga-incarnate. The Congress party handily won a series of state elections in 1972, reversing the downward trajectory of 1967.¹⁷

The Breakdown of India's Democracy

And, yet, just three years later, democracy broke down in India giving way to a 19-month spell of overt rather than just covert authoritarianism. At the midnight hour of June 25-26, 1975, a pliant president invoked the constitutional

¹⁷ Sumantra Bose, *Transforming India: Challenges to the World's Largest Democracy* (Cambridge, MA: Harvard University Press, 2013), 22-31.

provision to declare a state of internal emergency at the instance of the prime minister. The cabinet, which had been kept in the dark, fell in line at dawn. Power had been shut off to the printing presses, so there were no newspapers that morning. A pre-dawn swoop had been conducted on opposition leaders, including the venerable Jaya Prakash Narayan. One of the many political opponents to be arrested was none other than Hari Vishnu Kamath, who had warned about danger posed by the emergency provisions in the Constituent Assembly decades ago. Altogether nearly 110,000 opposition political leaders and activists, independent editors and reporters, as well as dissenting students and youth were imprisoned during the Emergency. Fundamental rights, including the right to life and liberty enshrined in Article 21 of the Constitution, were suspended and courts could not entertain writs of habeas corpus. A series of constitutional amendments were bulldozed through Parliament further restricting, among other things, judicial review of executive decisions. The Supreme Court in a 4 to 1 decision with Justice H.R. Khanna dissenting upheld the government's position on the inadmissibility of habeas corpus petitions. The republic adorned itself with two additional adjectives – secular and socialist – in the preamble to the Constitution by means of the forty-second amendment.

In addition to the deployment of a constitutional provision allowing for a state of exception to the rule of law, an extra-constitutional center of power emerged around Sanjay Gandhi, the younger son of the prime minister. It was Sanjay Gandhi and the coterie around him who were behind what came to be called the “excesses” of the Emergency. These included coercive methods of population control, including drives toward compulsory sterilization in northern India, and forcible demolition of urban slums, notably in the Turkman gate area of Delhi. These assaults on the most vulnerable sections of society, including Dalits and Muslims, led “the wits to comment that having failed to get rid of poverty the Congress had taken to getting rid of the poor”.¹⁸

Resistance to the Emergency was fitful. The opposition and labor leader, George Fernandes, went underground and engaged in the polemics of defiance through his political pamphlets until he was tracked down in June 1976. The judiciary with the honorable exception of Justice Khanna caved to the executive's will, arguing that the constitutional provisions permitting the lawful suspension of rights limited their freedom of maneuver. Papers like the *Indian Express* and *The Statesman* stood up to the Emergency; courageous and principled journalists like Gourkishore Ghosh and Kuldip Nayyar went to jail. Yet there was something to the Jana Sangh leader L.K. Advani's complaint about the mainstream media: “They asked you to bend, and you crawled.” The Indira Gandhi regime deployed

¹⁸ Jalal, *Democracy and Authoritarianism*, 76.

Article 19 (2) of the Constitution citing “security of the state” and “promotion of disaffection” to effectively muzzle the media.

In January 1977 Indira Gandhi announced her decision to relax the Emergency (it was not repealed until two months later) and called for general elections in March. It is not entirely clear why she did so. The most plausible explanation is that she received intelligence inputs that she would win the elections. Macro-economic management by her government had been reasonably effective; inflation had been tamed. It is also possible that Nehru’s daughter was uncomfortable with the label of autocrat being attached to her even by erstwhile friends in foreign lands. A proven vote-getter and charismatic campaigner, she may have craved democratic legitimacy for her authoritarian leadership. As soon as opposition leaders were released from detention, they combined five different political entities to form the Janata (Peoples) party. In a sign of impending trouble, two key Congress leaders from Uttar Pradesh and Bihar – Hemvati Nandan Bahuguna and Jagjivan Ram – defected to form the Congress for Democracy and joined forces with the Janata Party. The people’s verdict was loud and clear. The Congress party suffered a humiliating rout in northern India with Indira Gandhi and Sanjay Gandhi losing their own seats in UP. The Congress party’s strong performance in the south suggests that people voted against the “excesses” of the Emergency rather than in defense of democracy in the abstract. Overall, the Janata party won a majority and formed the first non-Congress government at the center. The resort to overt authoritarianism had been emphatically repudiated by India’s electorate.

Causes of the Breakdown

Explanations for the breakdown in India’s democracy range from personal and proximate triggers to the structural and deep historical factors at work. At one end of the spectrum is the claim that Nehru’s “halting yet honest attempts to promote a democratic ethos” were “undone by his own daughter, and in decisive and dramatic ways”.¹⁹ At the other is the view that “Indira did not concoct the Emergency regime out of ether” and that “historical forces with roots in the past and implications for the future were at work in the extraordinary turn of events of 1975-77”.²⁰ In between, there is the view that acknowledges the Emergency represented a style of rule but neglects to delve into its roots in the Nehruvian

¹⁹ Ramachandra Guha, *India after Gandhi: The History of the World’s Largest Democracy* (New York: Harper Collins, 2007), 515.

²⁰ Gyan Prakash, *Emergency Chronicles: Indira Gandhi and Democracy’s Turning Point* (Delhi: Penguin, 2018), 38-39.

era.²¹ The contrast between Nehru and his daughter is surely overdrawn. The architect of India's parliamentary democracy equated communists and federalists with terrorists in the late 1940s, let the Gandhian Potti Sriramalu die of starvation in 1952 when he called for the linguistic re-organization of states, threw his friend Sheikh Abdullah into prison in 1953 compounding the Kashmir problem, turned a blind eye to human rights violations in Nagaland in 1956, and acquiesced in the dismissal of a duly elected state government of Kerala in 1959.²² It is clear that "events which have been explained mainly in terms of Indira Gandhi's flawed leadership qualities, and more specifically her personal paranoia, are more meaningfully analyzed in the context of the structural contradictions within the Indian state structure and economy".²³

Among the more proximate causes of the erosion of public support for Indira Gandhi's government between 1973 and 1975 was the first international oil shock that adversely affected India's balance of payments and fueled inflation. The difficult international economic environment hampered the democratically elected government's efforts to deliver on its socio-economic promises regarding poverty and unemployment. The electoral victories of 1971 and 1972 drawing on the mobilization of subordinate social groups, including Dalits and minorities, had not dented rural power structures at the regional level or the clout of trading classes in urban areas. In Gujarat and Bihar, for example, the opposition made the ostensibly undemocratic demand for the dissolution of duly elected state assemblies. But there were credible allegations of corruption against the Gujarat government and, after talks with the opposition leader Morarji Desai, Indira Gandhi yielded to the coercive demand for fresh elections. The role of university and college students in the anti-corruption movements of Gujarat and Bihar gave them a measure of moral legitimacy even before Jaya Prakash Narayan offered them his stamp of approval. Narayan was not averse to taking the help of the Hindu majoritarian Jana Sangh and the Rashtriya Swayamsevak Sangh in support of his movement for a "Total Revolution". In such a scenario Indira Gandhi needed to bolster the Congress party organization and delegate authority to capable regional leaders in her party. Instead, she dispensed with any semblance of inner-party democracy from 1973, fearing potential challengers within her own party as much as the opposition. Determined to make the center the fount of all political

²¹ Christophe Jaffrelot and Anil Pratinav, *India's First Dictatorship: The Emergency, 1975-77* (New York: Oxford University Press, 2021). See Aniket De's review in *Global Intellectual History*, ahead-of-print, <https://www.tandfonline.com/doi/full/10.1080/23801883.2021.1994742>

²² Sugata Bose, *The Nation as Mother and other visions of nationhood* (Delhi: Penguin Viking: 2017), 153-157.

²³ Jalal, *Democracy and Authoritarianism*, 75.

authority and socio-economic reforms, she buttressed an already over-centralized state and crafted a top-heavy party structure.

The personal and political became conjoined on June 12, 1975. That day the Allahabad High Court held Indira Gandhi guilty of electoral malpractice in 1971 on a technicality and barred her from being a Member of Parliament for six years. On the same day came news of the Congress party's defeat at the hands of an opposition alliance in the Gujarat state elections. On June 24, 1975, the Supreme Court conditionally stayed the Allahabad judgment, permitting Indira Gandhi to attend Parliament but not take part in any vote. A breakdown might have been averted if Indira Gandhi had stepped down as prime minister until she was fully cleared by the Supreme Court. She opted instead for the sovereign's right to declare an exception from the norm that had been left as a legacy from colonial times.

The breakdown of India's democracy in 1975 cannot be understood without reference to this state of exception and its inheritance at the moment of decolonization in 1947 and the constitution-making process between 1946 and 1950. Beginning with Regulation III of Bengal in 1818, the jurisprudence of emergency had a chequered history during colonial rule. John Stuart Mill in his tract on representative government had spelled out the nature of this exception: "a rude people, though in some degree alive to the benefit of civilized society, may be unable to practice the forbearances which it demands...in such a case, a civilized government, to be really advantageous to them, will require to be in a considerable degree despotic". Emergency powers were embedded in the rule of law propagated by the colonial state. They found pride of place in the Defence of India Act and the Defence of India rules in the first half of the twentieth century and provided the context, for example, not to mention an otiose justification, for the Amritsar massacre of April 13, 1919. A major study of colonialism and the rule of law concludes by emphasizing "the continuity between the ideas and practices of law and emergency of the colonial state and the nationalist state".²⁴

The Congress party leadership, notably Jawaharlal Nehru and Vallabhbhai Patel, had insisted on partition in order to inherit the unitary center of the British raj. The specter of partition violence was invoked to further bolster centralized state authority and entrench emergency powers in the Constitution. Partition had depleted the ranks of federalists in the Indian constituent assembly. Only a few ethical and eloquent voices arguing for greater democracy and federalism remained. Hari Vishnu Kamath had argued strenuously against the emergency

²⁴ Nasser Hussain, *The Jurisprudence of Emergency: Colonialism and the Rule of Law* (Ann Arbor: The University of Michigan Press, 2003), 119, 135-139.

provisions (draft article 275, later renumbered Article 352 and Article 359) during the Constituent Assembly debates in August 1949. His warning included a reference to Article 48 of the Weimar Constitution used cunningly to subvert democracy in Germany.²⁵ “Part XVIII of the Constitution conferring emergency powers upon the President,” Sarat Chandra Bose wrote in a critique in January 1950 in the *Indian Law Review*, “has a remarkable family-likeness to Section 42, 43 and 45 of the Government of India Act, 1935, the quintessence of which is re-incarnated in our Constitution with a minimum of verbal changes.” He described the emergency provisions as “time-bombs”. He further pointed out that Article 21 of the Constitution “does not secure due process of law; it secures procedural process only”.²⁶ This lacuna enabled the suspension of the fundamental right to life and liberty in 1975 and played a key role in the Supreme Court’s ruling on habeas corpus. The breakdown of India’s democracy had deep historical roots in colonial jurisprudence that formed the basis of the post-colonial republic. Either sheer lack of knowledge or deliberate obfuscation of this history has resulted in some shallow, uncritical, scholarship on the republic’s founding moment.

Aftermath

The Janata experiment in democracy lasted about as long as the Emergency. Before the Janata government collapsed under the weight of its own contradictions, some of the more egregious legal amendments of the Emergency era were reversed by the forty-third amendment of the Constitution. Most of the colonial inheritance of the states of exception remained on the statute books, including the law on sedition enshrined as Section 124A of the nineteenth-century Indian Penal Code. It is deployed today to brand as “anti-national” those expressing disaffection towards a government that has done incalculable harm to the very idea of India. In May 2022 the Supreme Court at long last began hearing challenges to this colonial era law.

As secularism and socialism lost legitimacy as justificatory ideologies of a centralized post-colonial state since the 1980s, an implicit and then explicit resort was made to Hindu religious majoritarianism to shore up central state authority against myriad regional and subaltern challenges. That trend reached its apogee in the victory of the Bharatiya Janata Party and the installation of Narendra Modi as prime minister in 2014 and his re-election in 2019. The relentless onslaught on democratic institutions, including the media and the judiciary, in recent years has

²⁵ *Constituent Assembly Debates*, Volume 9, August 2, 1949.

²⁶ Sarat Chandra Bose, *I Warned My Countrymen* (Calcutta: Netaji Research Bureau, 1968), 333-344.

led opposition leaders and political commentators to talk darkly about an undeclared emergency in today's India.²⁷ The dominance of a democratically elected authoritarian leader along with the organizational muscle provided by the Rashtriya Swayamsevak Sangh arguably poses a graver challenge to the world's largest democracy than the one that was overcome in 1977.

It is majoritarianism masquerading as democracy that undergirds the authoritarian turn in contemporary global politics. In that sense, Modi is not unique and is of a piece with Erdogan, Trump and Bolsonaro in the manipulation of religious or race-based majorities. He certainly precedes and rivals Trump in the use of the language of citizenship and illegal immigration to mask virulent anti-minority prejudice. During the election campaign in 2014 he proclaimed that on the day the results were to be announced he would drive all "illegal immigrants" across the border of Bangladesh. The citizenship crisis that erupted in December 2019 could be traced back to the tenor of the election campaign in 2014.

During Modi's first term there were concerns expressed about his regime's fomenting of "intolerance", a euphemism for a wave of unreason, injustice and inhumanity that swept across India. Students raising the cry for freedom were charged with sedition and assaulted by storm-troopers of the ruling party inside court premises. Scholars and writers faced systematic intimidation, and a few were killed. To disagree with the government was to be anti-national. So-called "intolerance" took the most grotesque form of lynching Muslims and Dalits suspected of eating beef or taking part in the beef trade. There were scores of such horrible incidents since 2014. In 2015 Muhammad Akhlaque, the father of an Indian Air Force officer, was killed by a mob not far from Delhi on the suspicion of storing beef in his refrigerator. It symbolized the death of "akhlaque" or the ethics of good governance in India. In most cases, it was the victims and not the perpetrators of these hate crimes who were subjected to the strong arm of the law. From the topmost echelons of the government there were the feeblest of disapprovals or disavowals of the taking of precious human life in the name of protecting the cow.²⁸

Speaking in the 16th Lok Sabha on August 9, 2017, Prime Minister Narendra Modi proclaimed that the five years from 2017 to 2022 would replicate the extraordinary journey of 1942 to 1947 from *sankalp* to *siddhi*, from resolution to

²⁷ Dexter Filkins, "Blood and Soil in Narendra Modi's India", *New Yorker*, December 9, 2019; "Modi Makes His Bigotry Even Clearer", *New York Times*, December 18, 2019; "India is at risk of sliding into a second Emergency", *Financial Times*, December 22, 2019.

²⁸ For Sugata Bose's speeches in the 16th Lok Sabha (2014-2019) against majoritarianism masquerading as democracy, see Bose, *The Nation as Mother*, 175-215.

realization. Outside Parliament, Modi had remarked that the next five years would be transformative because the holders of the top constitutional posts all subscribed to the same ideology. It was not difficult to infer that he had resolved to realize the ideological project of political *Hindutva* by building the edifice of a Hindu *rashtra*. Once he was re-elected Prime Minister for a second term in 2019, Modi and his home minister, Amit Shah, began spearheading the attempt to redefine the idea of India in the religious majoritarian mold by the time of the 75th anniversary of India's independence.

In July 2019 the government railroaded through Parliament an amendment to the Unlawful Activities Prevention Act that empowered the regime to proclaim an individual a terrorist and hold such a person in detention without trial for a period up to two years. This law bore a striking resemblance to the Rowlatt Act of a hundred years ago against which Gandhi had launched his first all-India *satyagraha* in 1919. The Mahatma had dubbed it a "lawless law" enacted by a "satanic government". The Modi regime's stance on preventive detention was a clear indication of its intent to behave more and more like its authoritarian colonial predecessor.

On August 5, 2019, the government extinguished the vestiges of democracy in Jammu and Kashmir. The autonomy for Jammu and Kashmir enshrined in Article 370 had been already whittled down by successive Congress regimes since 1954. A dead letter for decades, an audacious BJP government chose to give it an unceremonious burial. But it did much more. Through an accompanying legislation that downgraded and bifurcated the state to the status of two union territories, it heaped humiliation on a regional people and declared its determination to achieve integration through the force of arms. What followed was an indefinite and unprecedented communication lockdown hand in hand with a military clampdown on the Kashmir valley. A brazen and reckless assault on federalism and democracy, the government's move is certain to provoke further alienation instead of nurturing a sense of belonging to the Indian Union. A supine Supreme Court failed to entertain writs of habeas corpus filed on behalf of leaders and activists imprisoned without trial. Instead, a five-member bench including the chief justice Ranjan Gogoi delivered a verdict on the long-standing land dispute in Ayodhya, rewarding in their astonishing judgment the vandals who had torn down a historic mosque in 1992.

Emboldened by their seemingly unimpeded march towards establishing a Hindu majoritarian state, the government used its parliamentary majority to pass a Citizenship Amendment Act (CAA) in December 2019. Ostensibly designed to provide a fast-track to citizenship to non-Muslim immigrants from the Muslim-majority countries of Afghanistan, Bangladesh and Pakistan, this move introducing for the first time a religious test for citizenship struck a raw nerve and

provoked large-scale protests against the discriminatory law led by students and youth. The law came to be viewed in conjunction with repeated threats issued by the home minister, Amit Shah, to compile for the whole country a National Register of Citizens, which would form the basis for weeding out “illegal immigrants” and “infiltrators” described by him as “termites”. An exercise to draw up an NRC in the northeastern state of Assam had already left nearly two million excluded people facing the specter of statelessness and confinement in detention camps. A cynical move by the regime to target minorities came to be seen as a declaration of war on the undocumented poor. As the resistance against the CAA and NRC (and also the NPR, a National Population Register that would facilitate an exclusionary NRC) gathered momentum, a flustered government responded with police brutality, especially in BJP-ruled states such as Uttar Pradesh.

The de facto suspension of the fundamental rights to life and liberty, including habeas corpus, lends credence to the view that India faces an undeclared emergency. Protesters all across India, especially brave young men and women, recited the uplifting Preamble to the Constitution where “We, the People” grant to themselves liberty, equality, fraternity and justice. There is a need for idealistic youth to recognize the importance of resorting to both reason and emotion in upholding the spirit of the Constitution against the cunning use of certain constitutional provisions by a majoritarianism rampant to transform a democracy into a dictatorship and a federation into a unitary state.²⁹ India must brace for a prolonged *satyagraha* in defense of the values enshrined in the anti-colonial movement. A post-colonial constitution retaining the myriad states of exception of the colonial era does not afford sufficient protection against democratically elected authoritarian rulers. There will be no safe anchor until “We, the People” are able to decisively overturn the current parliamentary majority. It will then remain to be seen if the constitutional legacy of Parliament as a living organism can be deployed with wisdom to strengthen the features of federalism and democracy, and make fundamental rights and *habeas corpus* as inviolable as possible, so that India may be free from the scourge of majoritarian tyranny.

²⁹ This was the message for India’s protesting youth in Sugata Bose, “Assault on the Edifice”, *The Indian Express*, February 6, 2020.