



WCRP Report

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THE EROSION OF FUNDAMENTAL RIGHTS IN INDIA TODAY

Emery

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1. INTRODUCTION.

"A Government that has to rely on the Criminal Law Amendment Act and similar laws, that suppresses the press and literature, that bans hundreds of organizations, that keeps people in prisons without trial, and that does so many other things that are happening in India today, is a Government that has ceased to have even a shadow of a justification for its existence." --Jawaharlal Nehru, 1936.

India is slipping behind what can be called the Khadi (homespun) Curtain. The totalitarianism of India's Emergency is, so far, home-spun (khadi), full of holes, and not yet of bamboo or iron. Between the strands there is still some freedom, and between the lines of India's censored press one can still perceive much.

A few of the visitors' anticipations of a journey to India during the Emergency are given in Appendix A. My cautionary note on Western perspectives in judging India is given in Appendix B.

India is such a vast country -- a subcontinent -- and the Emergency has fractured communications in India so badly that very few persons can perceive the total parameters of the good and bad arising from the situation there today. Yet the knowledge of both complexity and inadequacy should surely not serve to inhibit efforts to find out what is happening in that vast and important land. These dangers are honestly recognized; the caveat is freely given. Indeed India is a big country and probably even Mrs. Gandhi herself does not know the full implications of what her Emergency has brought and wrought. Yet the total may begin to be perceived by those on the outside who are privy to some of the facts. This Memorandum makes no pretense of being exhaustive; on the other hand, it may contribute to a view of the greater whole.

Finally, should India be given the benefit of the doubt? Does India deserve that the observer suspend judgment on the present Emergency in view of her admittedly huge problems? India does merit sympathetic understanding from the world community, but it also merits honest appraisal. I hope this Memorandum reflects both sympathy and honesty.

In writing this Memorandum, I hope that I have not injured in any way WCRP(India) or other friends in India. They are in no way responsible for my observations or conclusions.

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It is a characterization of the Emergency in India today that such a statement must be made at all. Indeed, none of my friends will know of this Memorandum until they will have read it, although some of my judgments can hardly be a revelation to them.

Finally, I dedicate this Memorandum to Jayaprakash Narayan (J.P.), whom I have had the honor to know, and with whom I have occasionally worked, for a dozen or more years. To me the enormity of the tragedy of India today is symbolized by the treatment of this single individual. Since the death of Jawaharlal Nehru, J.P. has undeniably been the greatest person in India. May he yet summon the strength to lead his people from bondage.

--H.A.J.

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3. THE YEAR 1975 AND BEFORE.

"June 26, 1975, would join three other dates as landmarks in the nation's search for the good life for all her people."

So stated a large brochure to the American people published late in 1975 "for" the Embassy of India in Washington.(1)* But the first date was 15 August 1947 when India took her freedom after a long struggle from the British and partly as the result of World War II. Mohandas Gandhi, the "father" of India, was unhappy to see the subcontinent partitioned and engaged in huge communal (religious) massacres. He urged the Indian National Congress, founded in 1885, not to assume power, but by then decisions were largely in other hands, chiefly those of Jawaharlal Nehru who became the first Prime Minister. At independence Gandhi continued to attempt to lessen communal violence and was himself assassinated on 30 January 1948. (The Indian press still prints long stories containing new facts about the murder plot!)

Nehru for more than a decade and one-half presided over the new country, which adopted its Constitution on 26 November 1949. Nehru was also one of the architects and actors in the Asian African Conference at Bandung in 1955 and also in the first Conference of the Heads of Non-Aligned States in Belgrade in 1961. He also presided over India during its conflict with China in 1962. Upon Nehru's death in 1964, Lal Bahadur Shastri became Prime Minister, but his tenure was cut short by his death in 1966.
*For footnotes and bibliographical material, see Appendix F.

Mrs. Indira Gandhi became Prime Minister, appointed by the leaders of the Congress party on the assumption that Nehru's daughter was a symbol they could manipulate. Her party won a national election in 1967 and soon she became a leader in her own right. She presided over the split of the Congress into Congress (R--for Ruling) and Congress (O--for Organization), the latter containing most of the older leaders. Her Congress (R) party swept the "mid-term" polls in 1971 and then she immediately presided over another difficult period in the history of the subcontinent, with the massacres in East Pakistan. A wave of almost a million refugees came to India, and then followed the Indo-Pakistan War resulting in the creation of an independent Bangladesh.

While the year 1972 found India depleted by the war, optimism ran high and Mrs. Gandhi had the enviable opportunity to pilot her country to new heights of economic and social progress. Instead, stagnation and corruption set in on almost every level. For example, a huge railway strike occurred in May 1974. In this period J.P. Narayan emerged as the symbol of honesty and change, first in Bihar in 1974, but soon in the whole of India.

The year 1975 was for India, her people and her leaders, a crucial one:

January 3 - Railway Minister L. N. Mishra died after a bomb explosion.

March 2 - Minister of State for Housing Mohan Dharja was dropped from the cabinet, partly for urging a dialogue with J.P. Narayan.

March 6 - J.P. lead a march of 400,000 persons to Parliament in New Delhi demanding the eradication of corruption.

April 7 - Elder statesman Moraji Desai began an indefinite fast against certain political policies of Mrs. Gandhi's administration.

April 19 - India launched its first space satellite, amidst many self-congratulations.

May 26 - Sikkim, a quasi-independent tiny neighbor, became India's 22nd State.

June 12 - The High Court of Allahabad set aside the 1971 election of Mrs. Gandhi on a petition filed by her opponent, Raj Narain.

June 24 - The Supreme Court of India in Delhi ruled that Mrs. Gandhi's powers and privileges as Prime Minister would be unaffected during her appeal against the High Court verdict.

June 26 - A state of Emergency was proclaimed by President Ahmad of India (on recommendation of Mrs. Gandhi), with the immediate arrest of several opposition leaders -- including J.P. -- and press censorship imposed.

July 1 - Mrs. Gandhi announced a 20-point economic program.

July 4 - The Government banned several extremist organizations: Ananda Marga, RSS, Ja-maat-i-Islam, and some Naxalite groups.

July 23 - The Lok Sabha (lower house of Parliament) approved the proclamation of the Emergency and made it non-justiciable through a constitutional amendment.

August 9 - Parliament adopted a constitutional amendment (40th) giving the Prime Minister immunity from any criminal proceeding enjoyed by the President and Governors of States, and extending this immunity even after leaving office.

Oct. 24 - Bonded labor abolished through a presidential ordinance.

Nov. 3 - A presidential ordinance allowing the forfeiture of illegally acquired property of smugglers.

Nov. 7 - The Supreme Court unanimously upheld Mrs. Gandhi's election to the Lok Sabha.

Nov. 12 - J.P. released on parole -- after evidence became available that he was on the verge of death -- and on December 4th his detention was revoked (as he remained in a Bombay hospital).

Nov. 14 - A presidential ordinance amended MISA* further to authorize re-detention of a person earlier released.

Dec. 9 - A presidential ordinance made the defamation of the President, Prime Minister, or Vice-President a punishable offense.

Dec. 25 - Vinoba Bhave after one year's silence spoke to a vast crowd.

Dec. 28 - Seventy-fifth plenary session of the Indian National Congress adopted a resolution urging that the national elections (due no later than March 1976) to the Lok Sabha be postponed by one year, meaning that the Emergency would have to be extended at least six months.

*See mini-glossary in Appendix E for explanation of this and other abbreviations.

Thus ended an eventful year, with Parliament reconvening on 5 January 1976 for a 26-day session. The Congress (R) majority with the Communist Party of India (CPI) was expected to confirm the accumulation of presidential ordinances and to postpone the national elections.*

4. THE EMERGENCY DECREE.

"I trust it will be possible to lift the Emergency soon."

Mrs. Gandhi broadcasted these words to the nation on 27 June 1975. Two days earlier President Fakhruddin Ali Ahmed of India proclaimed the Emergency. Article 352 of the Indian Constitution provided for the proclamation of an Emergency as follows: "If the President is satisfied that a grave emergency exists whereby the security of India or of any part of the territory thereof is threatened, whether by war or external aggression or internal disturbance, he may, by proclamation, make a declaration to that effect." Such an Emergency would cease to be in operation at the expiration of two months unless approved by both houses of Parliament. An Emergency can be continued for six months at a time, but no more than for a total of three years.

Even before the present "internal" Emergency was declared in June 1975, another Emergency had been in effect since the Indo-Pakistan War of 1971. Many Opposition leaders beginning in 1972 had urged that this order be lifted, but the powers conferred on the Government were apparently such as to make them reluctant to give them up. For example, an estimated 6,000 persons, including many Naxalites, were imprisoned under MISA under cover of this earlier Emergency.

On 25 June 1975 the proclamation of the Emergency was as follows: "In exercise of the powers conferred by clause (1) of Article 352 of the Constitution, I, Fakhruddin Ali Ahmed, President of India, by this proclamation declare that a grave emergency exists whereby the security of India is threatened by internal disturbance."

Under the Indian form of government, this action of the President was recommended by the Prime Minister, Mrs. Gandhi. It is said that Mrs. Gandhi did not consult with her cabinet beforehand about declaring an Emergency and only summoned them at 6:30 a.m., hours after it had been promulgated. In a broadcast over All India Radio on 26 June, Mrs. Gandhi explained the situation: "The President has proclaimed Emergency. This is nothing to panic about. I am sure you are all conscious of the deep and widespread conspiracy which has been brewing ever since I began to introduce certain progressive measures of benefit to the common men and women of India. In the name of democracy it has been sought to negate the very functioning of democracy. Duly elected governments have not been allowed to function and in some cases force has been used to compel members to resign in order to dissolve lawfully elected Assemblies. Agitations have surcharged the atmosphere, leading to violent incidents. The whole country was shocked at the brutal murder of my Cabinet colleague, Shri L. N. Mishra. We also deeply deplore the dastardly attack on the Chief Justice of India."

Mrs. Gandhi further asserted: "Certain persons have gone to the length of inciting our Armed Forces to mutiny and our police to rebel. The fact that our defence forces and the police are disciplined and deeply patriotic, and, therefore, will not be taken in, does not mitigate the seriousness of the provocation. The forces of disintegration are in full play and communal passions are being aroused, threatening our unity."

Concluding the broadcast, Mrs. Gandhi said: "All manner of false allegations have been hurled at me. The Indian people have known me since my childhood. All my life has been in the service of our people. This is not a personal matter. It is not important whether I remain Prime Minister or not. However, the institution of the Prime Minister is important

*At this writing, 29 January, this action had not yet been taken.

and the deliberate political attempts to denigrate it is not in the interest of democracy or of the nation . . . I should like to assure you that the new Emergency proclamation will in no way affect the rights of law-abiding citizens . . ."

Both houses of Parliament met from 22 July to 7 August 1975 to consider and validate the Emergency. On 23 July the Lok Sabha approved the Emergency and, through a constitutional amendment, made the Courts powerless to rule on its constitutionality.

Mrs. Gandhi told The Saturday Review in August 1975 that she did not expect "that the present emergency situation will be unduly prolonged." She scoffed at those who "are saying that the measures we have been taking will never be revoked and that India can look forward to a totalitarian future." (2)

At the 75th plenary session of the Congress (R) in the final days of 1975, a resolution was adopted urging that the Government continue the Emergency (and also postpone elections for the Lok Sabha). The excuse given was that the Emergency should be continued until "there is the fullest assurance" that the dangers from the forces of destabilization, which led to its proclamation, "have been effectively contained."

The machinery for the extension of the Emergency would be another proclamation by the President -- at the behest of Mrs. Gandhi -- and its validation by the Parliament within two months from its extension. Certainly Mrs. Gandhi now has the votes in Parliament to confirm this action.

5. MRS. GANDHI AT COURT.

"Indira is India and India is Indira."

At the 1971 elections for the lower house of the Indian Parliament, the Lok Sabha, Mrs. Gandhi was re-elected from the Rai Bareilly constituency in Uttar Pradesh. She beat socialist Raj Narain by polling 183,309 votes to 71,499. However, Mr. Narain challenged her election in the Allahabad High Court. Several charges of corrupt election practices (under the 1951 Representation of the People Act) were brought against her. There were extensive, prolonged hearings, involving personal testimony by Mrs. Gandhi.

Justice J. L. Sinha ruled on 12 June 1975 that Mrs. Gandhi was guilty, under Section 123 (7), on two charges: 1-she used the services in the election campaign of Yashpal Kapoor, a government civil servant, while he was still in government service, and 2-she obtained the services of officers of the State Government for the construction of the rostrum and loud speakers on several occasions during her election campaign. Justice Sinha further prescribed penalties in the Act and ruled that Mrs. Gandhi should be barred from public office for six years. However, he ordered a stay of 20 days to the implementation of his decision, pending her appeal to the Supreme Court of India. The Justice also observed that she was an unreliable witness, having made contradictory oral statements to the Court.

The Opposition parties immediately demanded that Mrs. Gandhi resign. Groups outside her residence, on the other hand, chanted, "Indira is India and India is Indira." After several days, Mrs. Gandhi announced that she would remain in office while the conviction was being appealed. (She had advised Party colleagues to quit their positions when similar corrupt practice verdicts were made against them.) On 24 June, Justice V. P. Krishna Iyer -- "vacation judge" of the Supreme Court -- granted her a conditional stay of the order of the Allahabad Court instead of an absolute one, pending a decision of the full Court. In his judgment, Judge Iyer ruled that Mrs. Gandhi could not vote in the Lok Sabha or draw salary as a member.

Given this Court ruling, the Opposition increased their demands that she resign. This was climaxed by a huge rally in Delhi on 25 June, led by J.P. Also there were Opposition

strategy sessions to plan to bring her government down by a wide range of actions. Then on 26 June the Emergency was declared.

The subsequent Parliamentary and judicial action affecting her case can be summarized as follows:

1. The Parliament amended the Election Laws Act of 1951, to take effect retroactively. This changed the election laws so that Mrs. Gandhi could not be guilty for what she did in 1971. This had the effect of preventing the Supreme Court from confirming the verdict of the Allahabad Court.

2. The Parliament adopted the 39th amendment to the Constitution. This did at least three things: a-placed disputes over the election of the President, the Vice-President, the Prime Minister, and the Speaker of the Lok Sabha beyond the purview of the courts; b-rendered invalid all existing laws and court verdicts about the election of the Prime Minister or Speaker of the Lok Sabha, conferred absolute validity on such election, and directed the Supreme Court to dispose of current appeals and cross appeals with regard to such election in the light of the above; and 3-banned judicial scrutiny of the election laws and MISA.

3. The Parliament adopted the 40th amendment to the Constitution. This gave the President, Prime Minister, and State Governors immunity from criminal proceedings even after they laid down office and from civil proceedings during their term of office, in respect to acts done by them before and during their term of office.*

4. The full Supreme Court began considering Mrs. Gandhi's appeal in August. On 7 November the Supreme Court unanimously upheld Mrs. Gandhi's election and set aside the judgment of the Allahabad High Court. This action was ambiguously reported in the press to make it appear that the Court had overturned Mrs. Gandhi's conviction. The Supreme Court was asked to decide three issues: 1-the validity of the amendments to the Constitution which sought to exclude the election of the Prime Minister from the jurisdiction of the courts; 2-the validity of the amendments to the People's Representation Act, which made all the corrupt practices for which Mrs. Gandhi was accused retroactively innocent and demanding no penalties; and 3-the judgment of the Allahabad High Court. By a unanimous judgment, the Supreme Court upheld the first two issues and, under the circumstances, did not go into the merits of the third -- the judgment of the Allahabad High Court.

Technically all of the above Parliamentary actions appeared legal and constitutional.

6. THE 20-POINT PROGRAM.

"We are striving to take a country of 600 million people from one age to another not only to provide better physical and material life for them but also to insure full development of their personalities. This cannot happen without some curbs." --Mrs. Gandhi to Parliament, 8 Jan. 1976.

A substantial part of the Emergency, but not technically connected with it, is the 20-point New Program for Economic Progress. (This may have originally been a 21-point program, but "strict economy in Government expenditure" found in early versions was later dropped.) This Program was first enunciated by Mrs. Gandhi in a radio broadcast on 1 July 1975 -- less than a week after the proclamation of the Emergency.

Following are brief excerpts from this broadcast.

"I am going to speak to you today about some economic programs which the Government proposes to follow. Some of them are new. Others were set forth earlier but require to

*The Supreme Court nullified this amendment in November.

be pursued with greater vigor and determination. Please do not expect magic remedies and dramatic results. There is only one magic which can remove poverty, and that is hard work sustained by clear vision, iron will, and the strictest discipline . . .

"The first and foremost challenge is on the price front. In the last five days, the prices of many articles have shown a downward trend. This trend will have to be maintained. To this end, Government will take a series of steps to stimulate production, speed up procurement and streamline the distribution of essential commodities . . .

"Our outlook in regard to Foreign Exchange resources is reasonably satisfactory . . . State Governments have already been asked to advise dealers to display lists of prices and statements of stocks. Hoarders and those who violate the rules will be severely punished.

"This anti-inflation strategy has to be continued . . . Government departments and public enterprises have new orders to cut out inessential expenditure.

"The vast majority of our people live in the rural areas. We must implement ceiling laws and distribute surplus land among the landless with redoubled zeal. . .

"The program of providing housing sites in rural areas will be vastly expanded. Laws will be introduced to confer ownership rights on landless laborers who have been in occupation of house sites of their landlords over a certain period . . .

"The practice of bonded labor is barbarous and will be abolished . . .

"We propose to take action by stages to liquidate rural indebtedness . . .

"Agricultural labor is among the worst exploited sections of our society. A review of the existing legislation on minimum wages for agricultural labor will be undertaken and action will be initiated for suitable enhancement of minimum wages, wherever necessary.

"We must go all out to increase production. Water and power hold the key to higher agricultural and industrial output . . .

"The handloom industry is next only to agriculture in the number of people employed . . . In the mill sector, the controlled cloth scheme is being improved. . .

"Fortunes have been made out of urban land at the nation's expense . . . Legislation is being initiated to impose ceilings on the ownership and possession of vacant land, to acquire excess land, to restrict the plinth area of new dwelling units and to socialize urban and urbanized land.

"Tax evasion is a crime. A great deal of black money so evaded goes into luxury housing. . . We are thinking of summary trials.

"Our campaign against smugglers will be intensified . . .

"Licensing procedures have come in the way of new investment, causing delay. These will be simplified . . . Licenses are being misused . . . Penalties for breaking rules will include the confiscation of goods.

"Schemes for workers' participation in industries particularly at the shop floor level and production programs will be introduced.

"The movement of food grains, coal, steel and cement by railways has improved in the last few months. Constraints on the movement of foods by trucks will also be removed . . .

"People with fixed incomes have suffered severe hardships in the last few years. They need immediate relief. The minimum exemption limit for income tax will be raised from 6,000 rupees to 8,000 rupees.

"Students from poor families face special difficulties if they pursue higher studies away from their homes. To help them, essential commodities will be supplied at controlled prices to all hostels and approved lodging houses . . . As one of the measures to increase employment opportunities for educated young people, the Apprenticeship Act will be suitably amended.

" . . . What is most urgent is that collectively we should shake off any sense of helplessness. The worst feature of the crisis which was building over the last few months was that it spread cynicism and sapped national self-confidence. There is a chance now to regain the nation's spirit of adventure. Let us get on with the job."

For a synopsis of the Alternative Program, released at the 6 March 1975 rally at Delhi by J.P. and his followers, see Appendix D.

7. THE INITIAL POSITIVE EFFECTS.

Some of the initial effects of the Emergency, including the economic program, were admittedly positive. The Government early published a pamphlet suggesting that "Thirty days of Emergency have been 30 days of National Discipline." (3) Later the Government published a longer pamphlet entitled, "A Hundred New Gains." (4) This suggested that these early gains were "no flash in the pan," but "in the following weeks, the gains have not only been strengthened but are covering a much wider field."

It is not the purpose of this Memorandum to evaluate the gains of every part of the economic program. However, comments will be made on discipline, corruption, economic offenses, and inflation and prices.

A. DISCIPLINE.

"Punctuality Only for Railroads?"

So asked a bitter critic of the Emergency and of its chief by-product, discipline. In recent years indiscipline in India has been notorious, perhaps more so than in many other Asian States. Yet it has been easier to condemn the lack of discipline in general than to inventory its many specific parameters. One such inventory was made by critic M. R. Masani in 1969 when he described the lack of discipline as part of India's "national character." Masani's examples included "one of 20 of our railway passengers travelling without tickets . . . the shirking of work, laziness, and finally a lack of consideration for others -- unpunctuality, undependability in honoring one's various commitments." This critic, an Indian and not a Western practitioner of the Protestant work ethic, then concluded that these handicaps cannot be remedied by law, but are "very deep-rooted defects, and call for much deeper remedies." (5)

One remedy Mrs. Gandhi used has been the Emergency. The latter created, overnight, a fear -- that those who continued being undisciplined would somehow be penalized. The supreme penalty in an India of chronic unemployment is, of course, the loss of a job. Thus civil servants of all kinds suddenly came to work on time. They appeared to do an honest day's work. Students at all levels came to school with a new sense of dedication. A new atmosphere of discipline undeniably descended upon India.

This phenomenon was not the result of a national consensus and was not the result of a people determined to change its ways because of inspiration from its leaders. The discipline arose largely from fear. Indeed, already there are reports that this discipline may be

waning. Certainly in these circumstances it will only continue if the people see that their fears are legitimate and that those who do not practice discipline will reap a commensurate penalty. The latter need not be the result of any new laws, but the enforcement of old ones, chiefly by-passing existing labor regulations so that the undisciplined may in fact be fired or retired prematurely.

If there are few new laws, there is much new propaganda which Mrs. Gandhi and her government use to attempt to charge the people with discipline. A resolution adopted by the 75th plenary session of the Indian National Congress late in 1975 saluted "the people" for "responding magnificently to the new era of discipline." On the other hand, it observed that India passed through "its darkest hours when . . . indiscipline plagued the land." President Ahmed told the opening of Parliament in January 1976: "We can face our problems successfully if we are disciplined and united and we do not allow our energies to be frittered away." A "dent" can be made in poverty "only through sustained hard work and discipline in all walks of life." Thus the nation "should remain vigilant and disciplined." Even Vinoba Bhave, the erstwhile (Mohandas) Gandhian, gave comfort to Mrs. Gandhi when on 6 July 1975 in the midst of a self-imposed year of silence he described -- in writing -- the Emergency as "Anushasan Parve" -- an era of discipline.

Buses and signboards often carry slogans about discipline. These carry the ubiquitous initials, "davp," for the Directorate of Advertising and Visual Publicity. They remind at least millions of urban Indians daily that "Discipline Makes a Nation Great," "The Need of the Hour is Discipline," "Punctuality only for Railroads -- No, also for you," "Work More, Talk Less," and "There is no substitute for hard work."

Some Indians believe that there has been a striking change for the better since 26 June 1975 in the heightening of the discipline of their fellow Indians. Some regret the motivation. They only fear that the people will soon slip back into their old ways.

B. CORRUPTION.

"Now corruption is more expensive."

Corruption most often deals with citizens or businesses paying for favors or services to individuals on various levels of government or the ruling party. Corruption is not limited to any one country or social system or period in world history. Yet one wonders if today there may be more temptations for widespread corruption in poorer societies. This may be because there is in such countries more unlimited demand for goods (and also for jobs) and limited supply. Thus those who receive the limited goods or jobs can insure doing so through bribery. Also the lack of social security in many developing countries may explain not only bribery but also the dowry system.

There have been widespread evidences of corruption in independent India, especially in recent years. One object of the Emergency was to diminish if not end these practices.

Corruption has been a way of life in India, almost a custom. At all levels it is practiced. J.P. several years ago asserted: "The galloping political corruption is affecting and degrading, because of the predominant position politics occupies in an undeveloped society, the entire gamut of national life: business, whether it is private or public; administration; the professions; education; even customs, manners, and personal relations." (6) Attempts to lessen corruption have so far not appreciably succeeded. What results has the Emergency so far produced?

Mrs. Gandhi says that corruption is decreasing. There is little evidence so far available. Some persons have undeniably been arrested for corruption. Many people -- both on the giving and receiving ends -- are more wary. The leaders of the ruling Congress Party, including some of the top governmental officials, do not have a reputation of

incorruptibility. Pay-offs to build and operate the meetings of the 75th plenary sessions of the Congress at the end of 1975 at Chandigarh were alleged. Further, the finances of the Prime Minister's son, Sanjay, have been widely questioned, especially his building the corporation manufacturing the Maruti automobile.

C. ECONOMIC OFFENSES.

"The modern God of India is corruption and the people must try to recognize it in whatever avatar it manifests itself." --J.P. Narayan.(7)

One of the specific attempts to lessen corruption is to end smuggling, foreign exchange violations, and tax evasion. The Emergency provided a climate, together with existing and new laws, to curb these and other economic offenses.

Through the enforcement of anti-smuggling laws, and the enactment of new ones, there is a feeling that the bringing of goods into or out of India without duty or authorization has been indeed reduced since the Emergency was declared. The dimensions of these reductions are hard to ascertain. Orders have been issued to detain 1,700 smugglers. Valuable goods have been confiscated by the Government.

Immediately after the Emergency began, there were tax raids in various parts of India. Later the Government introduced the Voluntary Disclosure Scheme (VDS) which offered an opportunity for tax evaders to declare their hidden wealth and bring it into the mainstream of economic activity. They were given the deadline of 31 December 1975 and offered no penalties or imprisonment. By year-end over 13.13 billion rupees of black money had been declared, which provided 2.5 billion in taxes, with 400 million going to investment in Government securities. Upon the Taxation Law Amendment Act entering into force, the Courts have the discretion of awarding monetary punishment as an alternative to imprisonment.

D. INFLATION AND PRICES.(8)

"The socio-economic reality in the village, on close examination, is ugly and distressing in the extreme. My first reaction on coming face to face with reality was to realize how remote and unreal were the brave pronouncements of Delhi or Patna from the actuality at the ground level! High sounding words, grandiose plans, reforms galore. But somehow they all, or most of them, manage to remain suspended somewhere up in mid-air . . . What meets the eye is utter poverty, misery, inequality, exploitation, backwardness, stagnation, frustration, and loss of hope."
--J.P. Narayan.(9)

One visible trend in India today, which may or may not be the direct result of the Emergency, is that high inflation has been curbed and that prices are lessening.

Inflation was 25 per cent in 1973-74 and 17 per cent in 1974-75. For some foods it was 200 per cent in four years! Inflation peaked in the third quarter of 1974 -- months before the Emergency was declared. Yet inflation is continuing to slow down, with prices decreasing two per cent between the second and third quarter of 1975. The causes for this downward trend may be multiple: the lessening of purchases with "black" money, the severe limitation of hoarding, the lessening of smuggling, and perhaps a worldwide reduction in inflation.

The prices of some commodities and manufactured goods have also decreased, but there is not yet a pattern. The 1975 bumper crop has lowered the price of rice and wheat and this has had the effect of lowering some other prices. More co-op shops have opened to act as a check to private enterprise.

The lessening of inflation and of prices generally, and other factors, have resulted in somewhat of a business recession. This has varied with various industries. For example, for the first time in some years a customer does not have to wait for three or four years to purchase a new automobile. There has been a recent glut in steel and fertilizer.

Prospects for the growth in the gross national product of India appear brighter than in a number of years, perhaps reaching six per cent in 1976. In the decade of the 1950's the growth was 3.8 per cent and in the 1960's it was 3.7 per cent. In 1972-73, the growth in GNP was minus .9 per cent! In 1973-74, it was 3.1 per cent; and in 1974-75, two per cent. Yet from this figure one must subtract a two per cent population growth each year.

An interesting economic insight is given by an Indian citizen how a professor of engineering in the U.S. Prof. Kumar Mehta after a visit to India in the summer of 1975 wrote: "Only about 15 per cent of the people in India are affected in any significant manner by the national emergency. Only the rich, the middle class, and the industrial employees, which make up the top 15 per cent, enjoy some economic prosperity. The benefits from the state of Emergency, namely, that inflation is controlled -- crime is down -- strikes are banned -- discipline in factories and offices is improved -- the trains run on time -- all these touch primarily the lives of upper classes . . . For the bottom 85 per cent, or the overwhelming majority of the Indian people, nothing has really changed by the proclamation of Emergency." (10)

8. THE NEGATIVE EFFECTS.

India is fast going down the slippery slope of totalitarianism. From the latter there is no easy return for any country. This slippage is perceived perhaps more readily outside India than even by many Indian intellectuals on the inside. Yet the signs of descent to totalitarianism are unmistakably present. India is quickly slipping behind the Khadi curtain. Yet it is important to affirm that, today, India while slipping has not yet reached the stage of a full-fledged "police" or "fascist" state.

A. THE LEGAL EROSION.

"A Government that has to rely on the Criminal Law Amendment Act and similar laws, that suppresses the press and literature, that bans hundreds of organizations, that keeps people in prisons without trial, and that does so many other things that are happening in India today, is a Government that has ceased to have even a shadow of of a justification for its existence." --Jawaharlal Nehru, 1936.

While India was a democratic State before 26 June 1975, there were several laws of the central (federal) government which were hardly democratic. They included:

1. Defense of India Act(DIA). This legislation has at least the relative advantage of requiring that individuals formally be brought into court and be charged.

2. Maintenance of Internal Security Act(MISA). This legislation gave the authorities wide powers to detain individuals.

After the declaration of the Emergency, the following further erosion of democracy in India was made:

1. The President on 27 June issued an order suspending for the duration of the Emergency the right of any person (including a non-citizen) to petition any court for the enforcement of the fundamental rights conferred under Articles 14, 21, and 22 of the Constitution -- and all proceedings pending in any court for the enforcement of these rights.

2. The President on 29 June promulgated an ordinance amending MISA, so that no grounds need be given for detention of a person under this Act. MISA originally provided

that the grounds of detention should be supplied to the detainee within a few days after detention. Thus all the authorities must do is make a declaration that the detention of the designated individual is necessary for dealing with the Emergency and give a copy of this declaration to the detainee.

3. The Central Government, on 4 July, in four separate orders banned 26 organizations and parties. Their offices were sealed, documents and property seized, and a large number of their leaders and members arrested.

4. The Central Government, on 15 July, issued an ordinance whereby no person, including a non-citizen, detained under MISA could claim a right to personal liberty by virtue of natural or common law.

5. The 38th amendment to the Constitution was adopted, denying legal redress against misuse by the State of its emergency powers by placing the proclamation of the Emergency outside the jurisdiction of the courts.

6. MISA was further amended to prohibit the release of detainees on bail.

7. MISA on 17 October was amended again to forbid disclosure of the grounds of detention or material or information on which such grounds are framed. This was the government's answer to the court which demanded it to disclose to the judiciary the grounds of detention of individuals under MISA.

8. The Lok Sabha on 22 January 1976 confirmed the earlier Presidential decrees amending MISA. By a vote of 181 to 27, the Lower House tightened MISA so that the Government could rearrest persons whose detention orders have expired (after one year's detention) or have been revoked. In addition the Government can detain political prisoners without having to disclose reasons to anyone, including the Judiciary.

B. POLITICAL PRISONERS.

"Nor do I want to be known as a government leader who lacked the will to act decisively when the legacy of Mahatma Gandhi or Jawaharlal Nehru was blocked or threatened." -- Mrs. Indira Gandhi, The Saturday Review.

A great number of persons were imprisoned from the first hours of the Emergency on June 25-26 under the 1971 Maintenance of Internal Security Act (MISA). Those detained included Members of Parliament and state legislators, other leaders of Opposition political parties, students, etc. No warrants were needed for their arrest and no reasons for their detention had to be given. Some have been detained for six months or more without trial. Some have been placed in solitary confinement, although preventive detention is not legally considered to be punishment for a crime. Some have been tortured -- as in prisons in many parts of the world. Torture has been widely reported in the Tihar jail in Delhi and in Bihar, West Bengal, Uttar Pradesh, and Haryana. Such instances of torture are being documented and sent to international human rights organizations.

No reliable or official estimate of the total number of prisoners has been available. The total would include economic -- smugglers, etc. -- as well as political prisoners. Estimates range from 30,000 to 200,000 individuals detained for political offenses since 25-26 July 1975. Some prisoners have been released, but others are being imprisoned, almost daily. Certainly at least 50,000 political prisoners are today detained.

A number of political leaders were jailed, including at least 30 Members of Parliament. Veterans were Ashoka Mehta, Moraji Desai, and J. P. Narayan. As of the date of writing, only the latter has been freed, initially because of ill-health.

C. PRESS CENSORSHIP.

"Quoting Gandhi on censorship is forbidden."

So one government censor told the editor of one continuing publication in India today. There is pervasive censorship of the Indian press and of journalists writing for the foreign press (and radio and TV). On the second day of the Emergency, Mrs. Gandhi in a broadcast to the nation justified the press censorship: "You know that I have always believed in freedom of the press, and I still do, but like all freedoms it has to be exercised with responsibility and restraint. In situations of internal disturbance, whether language or communal riots, grave mischief has been done by irresponsible writing. We had to prevent such a situation. For some time, several newspapers have deliberately distorted news and made malicious and provocative comments. The purpose of censorship is to restore a climate of trust."(11)

On the night that the Emergency was declared, electric power was cut from the presses of many newspapers. When publication was resumed, government censors were installed in the offices of some newspapers. When the influential Statesman did not publish a sufficient number of photographs of Mrs. Gandhi on its front page, the editor was ordered to submit entire page proofs to the censors for prior approval.(12) Now a stage has been reached whereby through "guidelines" editors and foreign correspondents "know" what they can and cannot print.

These guidelines prohibit publication without censorship of action (including arrests) under MISA, action taken against anybody for infringing the censorship order, or censorship itself. Also nothing should be written that causes disaffection or demoralization, incites violence or disobedience, or denigrates the office of the Prime Minister. Legislative proceedings and "politically sensitive" judicial proceedings are censored. Certain items cannot be published; in the past they included the cancellation of Prince Charles' trip to India and President Ford's comments on the Emergency. Some of the guidelines are issued orally and confirmatory orders in writing never reach the newspaper offices. In addition to these guidelines, there are other pressure tactics. Some presses are locked up, journalists are dismissed or arrested, and monetary fines are assessed. The government demands a deposit of 1,000 rupees as security against the publication of prejudiced material.

Thus the once-vigorous and free press of India has been severely muzzled. Mr. B.G. Verghese, editor of The Hindustan Times, was finally dismissed after many months of litigation -- starting before the Emergency (12A)-- and Express editor Kuldeep Nayar was summarily detained but released by the court.(13) Those editors remaining tend to be cautious. No direct criticisms of governmental policies are reflected in editorials (leaders) or even news stories. (Occasionally editorials appear about human rights and other problems occurring in other countries, but the lesson for India is plain to readers if not the censors. For instance, an editorial on "a case for clemency" of political prisoners in Indonesia had obvious application to India as much as to Indonesia.) (14) Even speeches of Opposition Members of Parliament, made on the floor of Parliament, are usually not printed in the press. Also The Financial Express was asked not to publish again the well-known prayer-poem of Tagore, with the line, "a land where the mind is without fear."

In this process of censorship, some weeklies have been closed, such as Everyman's Weekly, published by the J. P. movement, and the Jan Sangh Motherland. Others have voluntarily given up, such as the humorous Shankar's Weekly and Freedom First. The latter resumed publication in January 1976 after the editor, veteran critic and journalist, M. R. Masani, received a judgment from the Bombay High Court that the censors did not even act within their own guidelines in banning certain articles before publication. Masani at first contemplated publishing the newsletter in July 1975 with certain blank columns and the word, "censored," placed in the space, but he decided to suspend publication and appeal to the Court when the controlled press reported that the government considered such action by

publications to be offensive. (15) The new Minister of Information, V. C. Shulka, frankly stated about running blank columns: "It is a form of protest; it implies you are not accepting the Government rules." Other publications which still appear and carry political comment include Opinion from Bombay, Guardian from Bangalore, and Bhoomiputta from Gujarat.

Foreign correspondents have also been asked to submit to censorship. Foreign dispatches were at first censored, but beginning in July they were exempt from precensorship, although correspondents were still expected to censor their own dispatches according to the Government guidelines. Those exceeding the guidelines were punished by the periodic severance of communication lines, including telephones. Several correspondents were expelled, including the Associated Press, Lewis Simon of The Washington Post, The Los Angeles Times, Loren Jenkins of Newsweek, Peter Hazelhurst of The Times (London), Peter Gill of The Daily Telegraph, and Mark Tully of BBC. Foreign magazines (e.g., Time and Far Eastern Economic Review) are not circulated if they contain articles critical of the Emergency. Book publishing has also felt the long hand of the censor, with books published before June 1975 critical of the Gandhi government confiscated or withdrawn. Perceptive commentary on domestic Indian affairs is no longer in the publishing pipeline. However, some books published before the Emergency praising J.P. are freely available in bookstores or, with persistence on the part of the purchaser, can be obtained from under the bookseller's counter.

On 8 December 1975 the government promulgated three new press ordinances. The first safeguards against "publications which are likely to excite disaffection against the constitutionally established government." This included anything defamatory written about the President, the Prime Minister, and other key officials. Disobedience of the order can lead to forfeiture of the publication, closure of the printing press, and imprisonment for a term up to one year, or a fine of 1,000 rupees, or both. The second ordinance was to repeal the Parliamentary Proceedings Act of 1956 (introduced into the Parliament then by Mrs. Gandhi's late husband, Feroze). This repealed immunity conferred on the press. The third ordinance called for dissolution of the Press Council on 1 January 1976. This group had been established to evolve a code of conduct for the press.

Mrs. Gandhi in a candid moment told some journalism students on 23 December: "There are different ways of handling them (newspapers); we have done it crudely because we did not have any experience in this line."

Let Jawaharlal Nehru say the last word: "The freedom of the press is not just a slogan from the larger point of view but it is an essential attribute of the democratic process. I have no doubt that even if the Government dislikes the liberties taken by the press and considers them dangerous, it is wrong to interfere with the freedom of the press. By imposing restriction, you do not change anything; you merely suppress the public manifestation of certain things, thereby causing the idea and thought underlying them to spread further. Therefore, I would rather have a completely free press with all the dangers involved in the wrong use of that freedom than a suppressed or regulated press."

D. ASSEMBLY, FEAR, AND HARASSMENT.

"Don't quote me, for God's sake."

For several decades India has been one of the freest democracies in the world. All ideologies, all political currents, were freely aired by word or speech. Today a miasma of fear is spreading. Few citizens have firm evidence that their telephones are tapped or that their mail is scrutinized. Few are detained for overheard political remarks. Yet the climate of fear persists. Indians feel that their freedoms are being restricted. There is just enough evidence that their fears are not paranoia: "Don't quote me, for God's sake."

Friends urge the visitor to adjourn any political talk at a restaurant until "after we leave." One professor observed that the "tearoom at college is dead."

Another category of fear is that of reprisals. Many do not know when someone might try to "repay an old score" by reporting an irregularity.

Freedom of assembly is severely curtailed. In theory no more than five persons may assemble. This has prevented the holding of political rallies -- and any other meetings the Government may fear.

Another type of harassment is the determination to remove squatters. This problem has been a chronic one in many Indian cities, some having remained since Partition (in 1947). Using the Emergency, authorities have driven squatters out of shacks, often in the center of the city, and made them go to new land given them on the far outskirts. This is a desirable goal, but the evictions have been made often too quickly and before sufficient employment and transportation problems could be solved.

E. PARLIAMENT AND THE ELECTIONS.

"The Parliamentary institution and the Constitution itself are sought to be reduced to a mockery . . . Where this process of strangulation of Parliamentary democracy and disregard for the objectives of the Constitution lead this country nobody knows." --Prof. Sher Singh, M.P., 18 July 1975.

The Emergency affected Parliament in several ways. A number of Members, perhaps as many as 30, were placed under detention and could not attend meetings of the Parliament. These even included some members of Congress(R), such as Raj Dhan and Chandra Sekhar. Seven M.P.'s including Prof. Sher Singh and Krishna Kant were suspended from the Congress(R) for anti-party activities.

For a parliament in a democracy to function well, the feed-back of public opinion, especially during its sessions, is essential. However, speeches by members of the Opposition, even on the floor, were not reported in the press or very severely censored. Thus the public was not apprised of the full debate prior to parliamentary votes, or after.

There were also charges of intimidation of Members of Parliament by the presence of hundreds of security personnel surrounding the Parliament grounds, and even inside. Further, it is said that the Presiding Officers, while having the power to suspend rules of business, never do so without consulting one or more committees. This they did not do when they suspended the Question Hour during the 1975 monsoon session.

Given the conditions of the Emergency, the Opposition at times deliberately absented themselves from Parliament and boycotted it during debates. As a result, some acts of Parliament, including amendments to the Constitution, were made in record time. George Fernandes, Chairman of the Socialist Party of India, made this comment from the underground: "Never in history has an amendment to the Constitution of a country been 'constitutionally,' and through a parliamentary body, adopted in such unholy haste. This was possible because: the vocal Opposition in Parliament has been silenced; the Presiding Officers were prepared to do her (Mrs. Gandhi's) bidding; the State Assemblies were willing creatures to her will; and, the President (of India), because he is beholden to her, put his signature at her nod. A well-orchestrated military exercise, yes. But certainly not a functioning Parliamentary Democracy."(16)

F. THE LOK SABHA ELECTIONS.

"Elections are becoming so costly that they can be fought only with black money." --Dr. Karan Singh, Minister of State, 1973.

The present Parliament of India expires on 19 March 1976. There were early allegations that, once Mrs. Gandhi called the Emergency, she would find excuses for extending it and

also the life of the Lower House, the Lok Sabha. (The Upper House or the Council of States is not elected directly by the people.)

At the 75th plenary of the Congress late in 1975, a resolution was adopted to extend the life of the Lok Sabha and thus the Emergency. According to Article 83 of the Constitution, the term of the Lok Sabha "may, while a Proclamation of Emergency is in operation be extended by Parliament by law for a period not exceeding one year at a time and not extending in any case beyond a period of six months after the proclamation has ceased to operate."

If the current session of the Lok Sabha does extend its own life,* the question can be raised as to why Mrs. Gandhi and her Government do not want early elections. She told Parliament on 8 January: "If we held the elections now, we would win. But that is not the point. The point is whether we have greater unity or whether we let loose forces of disruption so that the whole fabric falls apart." There are those observers who feel that Congress(R) might not win, that the Indian voters are very sophisticated, and that Mrs. Gandhi has made many enemies. Indeed, the lowering of the price of grain does not mean the rise of her strength at the polls, since some farmers feel adversely the decline in these prices.

G. TRADE UNIONS.

Trade unionism is not common in a country primarily of villages and of farmers. Yet in the cities and among government workers, unions have arisen, some strong. And some of the previous so-called indiscipline in India has allegedly been due to union members.

Since the labor unions have tended to be related to political parties, the Indian National Trade Union Congress affiliated with the Congress(R) and the All-India Trade Union Congress of the CPI have been less affected by the Emergency than those whose leaders have been detained for political purposes: the Socialist Hind Mazdoor Sabha and the Marxist Centre for Indian Trade Unions. The All India Railwaymen's Federation was told to remove from office its President, George Fernandes, who was also chairman of the Socialist Party. (He is now underground.)

Certain ordinances and other orders have been passed since the Emergency which curtail the rights of labor. Strikes were banned in such essential fields as civil service, railways, power, and water supply. Some wages have been reduced, some working hours raised, some holidays and other leaves curtailed. Profit-sharing bonuses have been slashed. Many wage negotiations have been banned.

Some members and leaders of trade unions have not easily complied with these restrictions. Protests have been suppressed and, in some cases, police have fired upon workers, with some killed. Hundreds of workers have been detained without trial.

The All-India Trade Union Congress, affiliated with the CPI, called a one-day strike early in January 1976 in protest of anti-labor legislation. They protested the ordinance cancelling the annual Diwali bonus of workers, which Mrs. Gandhi said would only add to inflation. A number of workers were arrested during this protest in several parts of India, but reportedly most were soon released.

The Lok Sabha on 22 January debated a law that would cut by one-half the annual mandatory bonus of one month's pay in 1976 and would eliminate it entirely in 1977 in companies

*At this writing, there has been no decisive action of Parliament on this issue. Despite the resolution of the Congress, Mrs. Gandhi could decide at the last moment not to postpone the March elections and instead have a quick poll. If she did this without lifting the Emergency, or without giving proper time for those political leaders in detention to be free and to organize, she would also be under heavy criticism.

that make no profit. When this bill was introduced, the Opposition walked out briefly, joined for the first time by the CPI.

H. XENOPHOBIA.

"External forces are promoting discord and instability in this region."

So stated a resolution of the 75th plenary of the Indian National Conference in December 1975. It added that "it would be premature to conclude that the dangers of internal and external subversion have been fully surmounted."

Certainly the external threat to India was one rationale for the Emergency. Mrs. Gandhi has made good use of this "threat" ever since. However, President Ahmed in his address (written by the Gandhi regime) to the opening session of the Parliament on 5 January 1976 did not once mention this danger.

The history of independent India has included occasional external threats, some resulting in war with Pakistan and China. These countries are India's neighbors with continuing problems which could become military again at any time. Given the premium on intelligence institutions existing in the modern world, both countries probably have their agents inside India, and vice versa.

Yet additional foreign threats to India have frequently been mentioned. With India having, at the moment, a close political relationship with the Soviet Union, the latter is not what Mrs. Gandhi has in mind in discussing foreign interference. Also the U.K. is not again meddling in any substantial way in what was once its subcontinent. The only "imperial" influence remaining is that of the U.S.A. The latter has been a favorite, if intermittent, whipping boy of Indian leaders (if not the Indian people) since independence. Recent revelations of CIA activity by Congressional hearings in Washington make more plausible the allegations of Indian communists and others that the CIA is responsible for almost every incident in every State in India.

Given slight encouragement from the top, the xenophobic instincts of the Indian people (as of most peoples) are being given free reign. Thus Indians read into every shift of the government of their neighbors the machination of foreign powers to injure India. Perhaps some political changes have been helped by such causes and agents. Yet others have more indigenous origins. Yet President Ahmed in his speech to the opening of Parliament in January 1976 talked of the anti-India forces which brought down in August the Mujibur Rahman regime in Bangladesh.

9. THE OPPOSITION, ACTIVE AND POTENTIAL.

The Opposition to the Emergency and to Mrs. Gandhi's ruling Congress Party is active, but greatly fragmented since 26 June. The Opposition includes several layers: J.P., the Opposition parties and the informal resistance, and the Sarvodaya movement. What could be classed as potential opposition are the Judiciary and "outsiders." Each of these dimensions will be discussed below.

A. JAYAPRAKASH NARAYAN.

"I have never had any doubt about the ability or integrity of Jayaprakash Narayan whom I value as a friend; and I am sure a time will come when he will play a very important part in shaping India's destiny." --Jawaharlal Nehru.

After spending 20 years with the Sarvodaya movement, especially with Bhoodan (land-distribution), Jayaprakash Narayan (J.P.) became more involved in other issues after the

end of the Bangladesh War in 1972. Students in his native Bihar asked J.P. to lead a non-party movement against corruption and soon the focus of India was on him. By 1974-75 his work extended beyond Bihar to all of India.

When Mrs. Gandhi was convicted of election irregularities J.P. led the movement in June 1975 against her. Sitting on a chair at the rostrum on 25 June, J.P. was the main speaker at an Opposition rally in New Delhi calling for the Prime Minister's resignation. Within a few hours after the rally closed, the Emergency was declared. J.P. was one of the first leaders to be arrested, at 2:30 a.m.

Taken to a Delhi prison, J.P. was soon transferred to a prison hospital in Chandigarh because of ill-health. Only members of his immediate family were allowed to see him. J.P.'s health degenerated badly, presumably from neglect, and suddenly he was released on parole on 12 November for reasons of health. He was removed to a hospital in Delhi where he saw a few associates and made a statement to the press. In the latter he called the Emergency "ridiculous." He asked that all political prisoners be freed, that press censorship be ended, and that the parliamentary elections be held on schedule -- in March 1976. J.P. then was taken to Bombay. There his health failed further and his kidneys had to be placed on a machine (dialysis). In the meantime his parole ran out and he was unconditionally freed.

On 24 December 1975, J.P. was released from the hospital and moved into his brother's apartment in Bombay. He must, however, return to the hospital three times a week and may have to use the kidney machine for the rest of his life. His health is broken and it now appears that J.P. can give only episodic leadership to the Opposition.

In sickness, as in prison or good health, J.P. appears to Mrs. Gandhi as the chief threat to her regime. Much of its propaganda since 26 June has been devoted to destroying J.P.'s reputation.

Four strong criticisms have been leveled at J.P., the third and fourth especially by Mrs. Gandhi and her Party.

1. It is said that J.P. does not believe in parliamentary democracy for India and has advocated "total revolution." J.P. told a youth conference in June 1974: "My interest is not in the capture of power but in the control of power by the people . . . I wish to give the people's movement a revolutionary direction so that the people can develop their own power and become the guardians of democracy." (17)

2. It is said that J.P. presided over an unsavory coalition of Opposition parties and this was not at all within his Gandhian tradition of refusing to use bad means for good ends. J.P.'s strategy was to develop a movement combining both Opposition parties and students and other non-party people. He once said: "The students and non-party people must come forward and the political parties might form a part of it. . . (the people) might set up their own candidates and not accept any party candidate . . ." (18)

3. It is also said that J.P. tried to use undemocratic means to remove democratically-elected representatives both in the States and in Parliament. Mrs. Gandhi told The Saturday Review that "the state of Emergency was proclaimed . . . when duly elected legislators are called upon to resign . . . and Parliament will not be allowed to function." J.P. defended his actions by claiming that in all democracies there is the right of recall, and that is all he was advocating, with his followers always using non-violent means.

4. It is also said that J.P. called on members of the police and military to disobey orders of the Government. In proclaiming the Emergency, Mrs. Gandhi said that "certain persons have gone to the length of inciting our Armed Forces to mutiny and our people to rebel." An Embassy of India booklet charged that "in 1975, Narayan was inciting open violation of the government's laws. He urged police and the armed forces to refuse to

execute their duties." J.P. indeed did call for the disobedience of illegal orders. At the public rally on 25 June J.P. said: "If any Government or party leader intends to use the army as a means to further their own power interests, it is the clear duty of the army not to be so used." Police and military manuals in India specify what orders they may obey and which to refuse to carry out. J.P. warned them against crimes against the people, crimes -- such as the shooting of students -- the police had repeatedly carried out in the recent past.

The charge against J.P. of his inciting the army and police is an old one, and in April 1975 he made this statement in Everyman's Weekly: "If the rulers do venture to use the army to suppress a peaceful revolution, then the army should not allow itself to be so used. On such occasions the leaders of the revolution may call upon the army to come over to their side, but I have always made it clear that the present was certainly not such an occasion. I have also decried sometimes the use of armed personnel to deal with civil disturbances for which the civil armed forces, like the armed police and the paramilitary forces, should be enough . . . The police commit excesses, no doubt under orders of superior officers . . . I consider it my duty to explain to the police that while I was not asking them to rebel and that they must do their duty, they must not obey orders that are illegal or go against their conscience . . . I categorically deny that I have ever asked the armed or the police forces to join the movement or to rebel." (19)

B. THE OPPOSITION PARTIES AND OTHER RESISTANCE.

Immediately after 26 June 1975, the Opposition seemed to diminish in strength, partly because of the arrest of thousands of its leaders, and partly because of the resultant demoralization from the Emergency and all it implied.

By June 1975, the political Opposition to Mrs. Gandhi consisted of a wide range of the political parties, except for the Communist Party of India (CPI). Thus the principal parties which informally or formally were working in Opposition consisted of the Congress (O), the Socialist Party, the Communist Party (Marxist), the Jan Sangh, and Bharatiya Lok Del. In addition, by mid-1975 before the Emergency, there were obvious political strains within Mrs. Gandhi's Congress (R) Party. Some urged that she begin negotiations with J.P., at least entering a dialogue. Some prominent Ministers were dismissed; notably Mohan Dhar and Prof. Sher Singh. After Mrs. Gandhi's conviction by the Allahabad High Court, reportedly more than a hundred M.P.'s urged her resignation, if only temporarily.

Immediately after the Emergency, most leaders of the Opposition parties were jailed. The list includes such well-known persons as Moraji Desai, 79-year-old leader of Congress (L); K. Adyani, President, Jan Sangh; Rai Narain, the Socialist Party leader who brought the suit against Mrs. Gandhi; Charan Singh, chairman of the conservative coalition called the Indian People's Party; Piloo Modi of the Swatantra Party; Ashoke Mehta, socialist and former Minister for Planning; Jyoti Basu of the Communist Party (Marxist); and Samar Guha of the Socialist Party. A few political leaders went underground, including Socialist Party chairman, George Fernandes. Some members of Congress (R) were detained.

It took some months for the Opposition to revive itself, in its several parts if not yet as a whole. In two states, Tamil Nadu (Madras) and Gujarat, state governments more sympathetic to the Opposition were in control. Chief Minister of Tamil Nadu, Mr. M. Karunanidhi of the Dravida Munnetra Kazhagam (DMK) party, asked members at a huge rally in Madras on 6 July solemnly to affirm that "we would not hesitate in any manner to safeguard India's democracy." In Gujarat the Janata Morcha (People's Front) won the elections in June and Chief Minister Babubhai Patel told a rally on 26 July: "We will never use MISA in political offenses." In both states authorities tended not to hear political requests from the Union Government more often than they overtly flaunted such orders. They tried to prevent provoking any situation which would provide a pretext for the Union Government to topple their ministry. Thus if political leaders were arrested, they were often quickly freed. Also censorship was much less severe.

Also soon after the Emergency was declared, most identifiable members of certain "ultramilitant" groups were detained and declared illegal. The list contains 27 groups, including the Anand Marga (a militant Hindu group with chapters of young people throughout the world), several splinter pro-Maoist Communist groups, Rashtriya Swayam Sevak Sangh (or RSS, an extreme Hindu group), Jamet-e-Islam-e-Hind (an extreme Muslim group), and the Mizo National Front.

Some non-party Sarvodaya workers were imprisoned, including J.P. Also imprisoned was Radhakrishna, secretary of the Gandhi Peace Foundation and an editor of Everyman's Weekly and People's Action. It took some weeks for the non-violent forces to regroup, which was slowly done under the leadership of Lok Sangharsh Samithi (Peoples Struggle Committee). Satyagrahis wore black ribbons across their chests and some flew black flags over their houses. Non-violent demonstrations slowly increased. A few examples are cited below:

Sept. 24-26, Delhi. Jawaharlal Nehru University was closed by a strike sparked by the Administration's refusing admission of some students on political grounds.

Oct. 2, Delhi. After traditional Gandhi birthday celebrations at Rajghat, attended by Mrs. Gandhi, a small group of Gandhians (including 87-year-old J. B. Kripalani, Sushila Nayyar, and two of Gandhi's grandsons) held a protest meeting. Police called such a public meeting unlawful and made arrests.

Oct. 2, Delhi. Disturbances by prisoners occurred in Tihar Prison.

Nov. 14, Delhi. In a mass satyagraha on Nehru's birthday, many were arrested, including J. B. Kripalani. Demonstrations took place in many other cities.

Nov. 17 and 20, Madras. Seven and five persons respectively were arrested. Two were detained for writing slogans on walls. Some spectators who tried to pick up leaflets thrown by the arrested persons were also taken into custody, as thousands gathered to witness the event. More than 1,000 persons were arrested in the entire state in a one-week period.

Nov. 21, Bangalore. More than 1,200 persons were arrested in Karnataka State on the first day of the nationwide Satyagraha. Thousands of onlookers expressed their sympathy and support by shouting slogans.

Nov. 21, Ahmadabad. Two hundred volunteers were arrested in different parts of Gujarat. In all 18 districts satyagraha took place either in front of All-India Radio headquarters or the office of the press censor.

Nov. 21, New Delhi. Thirty-seven volunteers offered satyagraha in the famous Chandni Chok as thousands thronged to witness the scene. Nine offered satyagraha in front of the Jawaharlal Nehru Samadhi.

Nov. 24 - As Mrs. Gandhi started to address a national conference of primary school teachers in New Delhi, a man arose and started to shout anti-government slogans. As security police arrested him, more persons in the crowd started to chant similar slogans. All the protesters were taken away and put under arrest.

Nov. Cannanore. Torture of satyagrahis by armed police created a sensation, since instead of arresting the volunteers, the police assaulted them with lathis, with the public taking the injured to the hospital.

Leaders of the principal Opposition parties met in Ahmadabad early in 1976 to continue a united effort. This Janata Front is informally composed of representatives from the Socialist Party, the Congress Party (O), the Communist Party (Marxist), Jan Sangh, and Bharatiya Lok Del. They agreed to work together and keep in touch with J.P. Later, during the session of the Lok Sabha in January, Members of Parliament of the Janata Front decided

to sit together and try to develop a common strategy.

There is obviously less coordination of the Opposition than, from the outside, appears possible. There appears to be no coordination of information or publications. Many small newsletters have, however, sprung up, more in Hindi than in English. However, no comprehensive means of communication has yet emerged equal to those in the much more oppressive Soviet Union (e.g., Chronicle of Current Events) or even in the Philippines (e.g., Report of the Association of Major Religious Superiors in the Philippines), although both have recently had difficulties.

C. THE SARVODAYA MOVEMENT AND VINOBA BHAVE.

"A State Saint?"

Acharya Vinoba Bhave has been considered by some to be "the spiritual successor" to Mohandas Gandhi. Beginning in 1951, he led the land-gift or Bhoodan movement. Beginning in 1952, J.P. Narayan withdrew from party politics and devoted his efforts to help Vinoba Bhave in this program as a loyal co-worker. However, in the 1970's, as J.P. became increasingly political, Vinoba became increasingly critical of J.P.

Bhave was quoted in the press in June 1974 as commenting about a situation involving J.P.: "Whatever is happening in Patna, I leave to God for his verdict." J.P. observed in reply, "When Vinobaji is passing the responsibility to God in a matter of such a patently criminal and dastardly act (the police fired into a procession led by J.P.), I wish he had left to God other matters too connected with the movement . . ."

A meeting of the influential body of Gandhian workers, Sarva Seva Sangh, met in July 1974 at one of Gandhi's former ashrams in Wardha to iron out these growing differences between Vinoba and J.P. At one point the President of the Sangh resigned and the 24-member Working Committee stood dissolved. Of the 18 persons present, 13 supported the resolution urging the sarvodayis -- the Gandhian constructive workers -- to support J.P.'s movement. Five close associates of Bhave objected. In the end Bhave himself resolved the crisis by agreeing that the Sarvodaya movement could allow its workers to join J.P.'s movement.

By the end of 1974 this continuing controversy heightened when J.P. showed increasing interest in the electoral process. The Sarva Seva Sangh met again in March 1975. Because of sharp differences given the requirement of unanimous agreement within the organization, it was agreed that the Sangh would remain in a state of suspension until Bhave broke his one-year vow of silence on 25 December 1975. This meant that Sarvodaya workers could do what they pleased. Most sided with and worked for J.P.'s growing organization. Indeed, many were arrested, or courted arrest, after the Emergency was declared.

The movement gathered at the end of 1975 at Wardha to be present when Bhave broke his silence. There was great publicity when Bhave spoke, but he said nothing significant. It appeared that the organization, through the Emergency, had broken apart rather than healed. Bhave planned in mid-January to convene a conference of senior intellectuals from throughout India to discuss the Emergency. (19A)

During his year of silence, Bhave gave much aid and comfort to Mrs. Gandhi. His slogan for discipline was widely used by the government. Mrs. Gandhi paid him a visit as recently as September 1975. In some eyes Bhave's reputation descended to that of an "Indian Billy Graham." The 81-year-old Bhave was called "a Government Baba" or a "State Saint" or a Saçari Baba (a common saint).

D. THE JUDICIARY.

"If freedom from arbitrary or illegal arrests and prevention of exploitation of it for personal ends has to be made possible, it can be only by

resort to the judicial power in order to keep administrative discretion in this respect 'structured, confined, and checked.'" --Delhi High Court in the judgment on the Kuldeep Nayyar case, 1975.

An independent judiciary is one cornerstone of democracy in India. To date the judiciary has remained independent and several courts have ruled against the Government.

The handling by several levels by the judiciary of the case against Mrs. Gandhi has been fair.

The handling by the Delhi High Court of the habeas corpus case brought by Mr. Kuldeep Nayyar has been exemplary. A well-known journalist, he was arrested in the early morning hours of 24 July 1975. A detention order, passed by the additional District Magistrate of New Delhi, asserted that the detaining authority was satisfied that, with a view to preventing Nayyar from acting in a manner prejudicial to the maintenance of public order, it was necessary to detain him. No grounds or reasons whatsoever were disclosed for the detention. Nayyar filed a writ petition in the Delhi High Court on 5 August 1975. The hearing began on 1 September and on the 12 September the Counsel for the Government indicated that Nayyar had been released and the order of detention was revoked and thus there was no necessity for the Court to pronounce judgment in the matter. Yet to the credit and independence of the Court, it did not accede to the request of the Government and, in view of the importance of the issues involved, it proceeded to deliver a judgment. The latter contained important opinions for the future of fundamental rights in India. Justice Sesha Rangarajan on 15 September in part declared: "There has been no suspension of the writ of Habeas Corpus (Article 226) in India . . . These orders of detention . . . are not outside the pale of review under Article 226 of the Constitution . . . The rule of law will not permit arbitrary executive action." (20)

If the judiciary is fair, the environment of the judiciary raises questions of fairness. The proceedings of the courts are censored before appearing in the press. This is a violation of democratic freedoms. Also it appears that some of the decisions of the courts are not being quickly implemented. When the Delhi High Court ruled that the detention of Moraji Desai was preventive and not punitive and that no impositions could be made on his detention, even a month after the court order he could not receive visitors liberally or receive mail in an unrestricted volume.

E. "OUTSIDERS."

"When no one was in jail, on whose side were they?"

So observed Mrs. Gandhi late in December 1975 when she criticized outsiders, including the foreign press, for shedding "crocodile tears" over the loss of democracy and press freedom in India.

Several categories of "outsiders" have reacted to the Emergency. These persons consist of both non-Indians and Indians, the latter both citizens of India living abroad and those who have taken citizenship in another country. The non-Indians who have shown concern include 1-the friends of Indian freedom (those still alive, especially in England and the U.S. who were active on the outside in the 1930's and 1940's); 2-those who have been privileged to live in India for short or longer periods since independence, such as retired diplomats, students, scholars, business agents, and representatives of inter-governmental or governmental aid programs (including the U.S. Peace Corps).

One of the facts of a shrinking world is how quickly many of these outsiders were "reached" by organs and individuals of the Indian Government. Within weeks subtle pressures were put on many of the above persons at least to suspend their judgment and "give Mrs. Gandhi the benefit of the doubt." Also many persons with professional, academic, and business

ties with India tended to weigh the vocational consequences of publicly criticizing the Gandhi regime. Some have decided to remain silent.

One of the first outside organizations to commend and support Mrs. Gandhi was the World Peace Council. A Reuters dispatch from Helsinki asserted: "Ramesh Chandra, Indian secretary-general of the Moscow-backed World Peace Council, Thursday described Premier Indira Gandhi's mass arrests of opposition politicians as an effort to combat a foreign plot to overthrow the Indian Government. He named the U.S. Central Intelligence Agency (CIA) and multinational corporations as backers of the moves to unseat Gandhi. Chandra, head of the Helsinki-based organization, was speaking at a press conference following his return from a visit to India." (21)

One of the first outside coalitions to oppose the Emergency was the Free JP Campaign in the United Kingdom. Chaired by the Hon. Philip Noel-Baker, formerly a cabinet minister in the U.K. Government who dealt with the freedom of India, the Campaign inserted a large advertisement signed by several hundred prominent persons in The Times (London) on 15 August 1975 with the caption: "Today is India's Independence Day: Don't Let the Light go out on Indian Democracy. Free J.P." The Campaign publishes an emergency Indian news digest, called Swaraj. Its address is 12 Watermead Lane, Carshalton, Surrey, England.

In the U.S. the Friends of India inserted a similar advertisement in The New York Times also on 15 August 1975. Also on that date a group of 80 Indians gathered at the home of the Indian Ambassador to the U.S. in Washington, participating in a March for Freedom, wearing black armbands and with mouths gagged. Friends of India soon became Indians for Democracy, composed of persons of Indian ancestry. It publishes the fortnightly newsletter, Indian Opinion. Its address is 600 River Street, Hoboken, N.J., 07030.

A number of outside individuals, some well-known personalities and known to Mrs. Gandhi, have sent private communications to her. One of the very few religious leaders, anywhere in the world, to protest the Emergency was Dr. Philip A. Potter, General Secretary of the World Council of Churches. In October he sent a letter to Mrs. Gandhi calling the situation "a very serious abridgement of human rights" and noted that nation-building requires "freedom to disseminate information, exchange of ideas, and expression of opinions including dissenting views." (22) Another personal protest came from Horace Alexander, a British Quaker and one of the few Western co-workers of Gandhi still alive.

The roles of outsiders may be increasing now that the Emergency appears to be continuing. Yet the ability of outsiders to affect changes within India must constantly be evaluated. Some feel that, despite Mrs. Gandhi's cavalier dismissal of Western or outside criticism, she is especially sensitive to such opinion. One evidence is how often she has agreed to explain her case in special interviews with Western media (e.g., The Saturday Review). Another evidence is the lavish materials published especially for the West to defend the Emergency (e.g., India June XXVI, published "for" the Embassy of India in Washington).

A feeling persists that the role of outsiders can be marginal at best. The principal efforts to end the Emergency must come from within India. However, outsiders can continue at least 1-to record events within India which, partly because of censorship, may not easily reach the world community, 2-to publicize violations of human rights and, if possible, ask international organizations and U.N. agencies to consider any emerging pattern of gross violations as they do with such problems worldwide, 3-to keep corresponding with India's leaders and citizens, and 4-to enhance the morale of the leaders of the Opposition.

10. SUMMARY AND CONCLUSIONS.

1. India continues to face major obstacles in providing even minimum living standards and economic and social justice to her 600 million inhabitants.

2. The Emergency has only postponed real progress toward the economic and social

well-being of most of her people. The programs of both the ruling Congress(R) Party and the Opposition involve only 10-15 percent of the people of India. Still this is a larger total -- 60-90 million people -- than the population of most medium-sized States in the world today.

3. The "positive" aspects of the Emergency -- some discipline, some economic growth -- are so far superficial.

4. The negative aspects -- an increasing erosion of fundamental rights -- are disastrous for the people of India and their future, and for the subcontinent.

5. The organized Opposition to Mrs. Gandhi and her Congress(R) Party (and Communist Party of India in coalition) appears to be demoralized, except in the states of Tamil Nadu and Gujarat, but non-violent protests are growing.

6. The immediate future of India cannot easily be predicted.

a. The Emergency may continue and elections to the Lok Sabha will be postponed.

b. The erosion of fundamental rights could also continue: a further lessening of legal rights, a further imprisonment of political leaders, further press censorship, further fear and harassment, and further restrictions on trade unions and public assembly.

c. Despite the tradition of non-violence, India is a very violent society and India could experience chaos.

d. An eventual military dictatorship cannot be completely excluded.

7. There are several long-term by-products of the Emergency favoring democracy.

a. Many Indians appreciate democracy today more than when they had it. The Emergency may, in the end, enhance democracy in India.

b. The defects of the democratic process in India's first quarter-century are, in retrospect, more obvious, even though proposals for reform are still hazy. Democracy is not a luxury for India, but the Whitehall-cum-Washington democratic institutions may well be modified to deal with Indian conditions and experiences.

8. A first step to reverse the present unfortunate trend would be promptly to lift the Emergency.

9. A second step would be to hold early elections for the Lok Sabha.

10. A real revolution is needed in India in order to give economic and social justice to 90 per cent or more of her people. It is hard to know what combination of existing political groups is prepared to work for this goal.

11. India faces continuing problems with her neighbors on the subcontinent, not only Pakistan, but also Bangladesh and China.

12. The role of the U.S., the U.S.S.R., and China can continue to be helpful or hurtful to India's progress. If India is non-aligned toward all three powers, she might attain the greatest security, within the context of being an active member of the U.N. A semi-permanent membership of India on the Security Council would be helpful to her self-image, although today her "peaceful" atomic program and her space program are welcomed by the Indian public.

13. The prognosis for India cannot be entirely negative. No nation which has given the world so much religion and culture through the centuries and which has produced in one century Tagore, Gandhi, Nehru, and J.P. Narayan can be submerged for long.

14. The role of the genuine "friends" of India -- non-Indians and Indian nationals and former nationals living outside -- can be marginal at most in affecting political changes within India. Perhaps the principal role of outsiders is to maintain links with friends in India and to try to keep the morale of India's Opposition high.

11. APPENDIX.

A. VISITING INDIA DURING THE EMERGENCY.

In anticipating a visit to India since the Emergency was declared in June 1975, the traveller wonders initially the degree of totalitarianism -- or "efficiency" -- he will encounter. Indeed, the visitor who may have publicly criticized some aspects of the Emergency may wonder if he or she will be admitted to India, let alone welcomed, whether or not possessing a valid visa.

For those nationals of countries who are not required to obtain visas in advance (if they have not previously visited India within six months), admittance seems no different or more difficult than before. If there is now an extended list of unwelcome visitors, it was not evident. In any case, I was routinely and quickly admitted as a tourist, receiving a visa at the airport.

However, the first impression of India -- at the Bombay airport -- hardly reflected any new Emergency or discipline. The wait for baggage seemed endless. Everybody was supervising, but only two men were handling the luggage of three jumbo jets!

Throughout our two-week stay in India -- December/January 1975-76 -- the evidences of the Emergency seemed superficial to the tourist. There were signs on the buses and elsewhere about discipline and hard work. But such propaganda was mild compared to many more traditionally-regimented societies. The 20-point economic program of Mrs. Gandhi was occasionally posted, with her picture, in store windows. (Yet during 14 days in India, I was unable to procure a copy of this much-quoted document!) The chief evidence of the Emergency was the undeniable fear exhibited by most Indians in discussing anything remotely political. Even close friends would ask not to be quoted. Also the Indian newspapers, once lively, have lost all editorial bite. One still buys several morning papers for a little breadth of news, but they are increasingly identical, except to those specialists who can perceive the most minute political nuances. The political shelves of bookstores in Delhi and Bombay appeared less interesting, although some older volumes containing criticisms of Mrs. Gandhi are produced and sold to the insistent customer. Finally, because of the Emergency, some of one's close friends may have "disappeared," or known to be in detention, or are now out on parole.

Except for these characteristics, India today does not seem to be a totalitarian state -- to the brief visitor. One is not followed. One does not feel his baggage is being examined during an absence from the hotel. One does not feel the telephone is tapped. Yet after being in India a few days, one does begin to wonder if one should not be more careful and act on the principle of expecting some surveillance rather than ignoring its possibility. Having said all this, India -- to the brief visitor in January 1976 -- does not yet seem to be a totalitarian state.

B. A NOTE ON WESTERN PERSPECTIVES.

Can a Westerner judge India today? Can a Westerner judge the Emergency in India today? Indians have no reluctance to judge the West, and especially the U.S.A. But can and should

Western and especially American observers return the compliments -- or the insults?

It is, of course, relatively easy to judge India by Western standards of efficiency, productivity -- and democracy. Yet how can one compare the institutions of a democracy barely a quarter of a century old to those of one now celebrating the completion of its second century?

Yet to decry imprisonment without a warrant, is this only a Western legal judgment? Is torture not to be criticized by a Westerner because it is also practiced in the West? Are Westerners to confine any catalogue of violations of human rights to those in their own lands? If Westerners are to criticize press censorship in Chile, cannot they do so in India?

It is, admittedly, more difficult to comment on the problems of honesty and morality in a society one does not know intimately through membership or longtime residence. The U.S.A. is rife with corruption and bribery as even its current governmental investigations freely attest. But is petty or even grand corruption endemic to a society and culture such as India? And is it presumptuous or even gratuitous for a Westerner to point out continuing corruption in India? Is this a moral, almost a spiritual, problem which has little to do with any particular government in power at any particular time in India?

After raising these questions, one must still give answers, however tentative. Ours is a shrinking, small world and what is done -- rightly or wrongly -- in Washington almost immediately affects Moscow, Peking, or New Delhi. Likewise, what is done, or not done, in the Indian Lok Sabha quickly affects decisions in the U.S. Senate. In these circumstances, and admitting gross cultural differences, a Westerner would be negligent if, after being privy to what is happening in India today, he or she would remain silent just out of respect for these differences. To comment or even to judge is not to practice "cultural imperialism." Indeed, to remain silent is to practice cultural irresponsibility which is a disservice both to the history and the future of India and its people.

C. FUNDAMENTAL RIGHTS IN THE INDIAN CONSTITUTION.

"Our first law should be to have our fundamental rights guaranteed in a manner which will not permit their withdrawal under any circumstances."
--Motilal Nehru (Mrs. Gandhi's grandfather.)

As early as 1918, the Indian National Congress demanded a Declaration of Rights for India. In 1927 the Congress, meeting at Madras, asked its Working Committee to draft a freedom constitution, based on a Declaration of Rights. The Committee was headed by Motilal Nehru -- father of Jawaharlal -- and prepared a draft, including 19 fundamental rights. In 1931 the Congress meeting at Karachi made a declaration securing for every citizen specific guarantees of fundamental rights. The insistent demands during this colonial period for fundamental rights being enshrined in the constitution of an independent India were due to several factors: 1-the lack of civil liberties under British rule, 2-the discriminatory treatment of untouchables and women, 3-the communal tensions (among religious groups), and 4-the exploitation of the poor, especially farmers.

The Constituent Assembly, after the transfer of power, set up a Constitution Drafting Committee, chaired by Dr. B. R. Ambedkar, a noted lawyer and untouchable. The Constitution they devised tended to follow the U.S. rather than the British legal model.

The Preamble of the Constitution, as approved by the Constituent Assembly in 1949, asserts important rights: "We, the people of India, having solemnly resolved to constitute India into a sovereign democratic republic and to secure to all its citizens: Justice, social, economic and political; Liberty of thought, expression, belief, faith and worship; Equality of status and of opportunity; And to promote among them all Fraternity assuring the dignity of the individual and of the unity of the Nation; In our Constituent Assembly 26 November 1949 hereby adopt, enact, and give to ourselves this Constitution."

Part III of the Constitution is devoted to Fundamental Rights. Among the pertinent articles are 13(2) and 19(1). The former asserts that "the State shall not make any law which takes away or abridges the rights conferred by this Part and any law made in contravention of this clause shall, to the extent of the contravention, be void." Section 19(1) asserts that "all citizens shall have the right (a) to freedom of speech and expression; (b) to assemble peacefully and without arms; (c) to form associations or unions . . .". Also Part IV contains "Directive Principles of State Policy," with Article 38 and others dealing with political and social justice.

These Fundamental Rights in the Indian Constitution are not, however, unambiguous. The original Constitution in Part III contained certain exceptions, including preventive detention (Article 22). These were further amplified in the very first Amendment (of more than 40 to date) of 1951 which asserts in part 12(2) that nothing in clause (1)(a) shall "prevent the State from making any law in so far as such law imposes reasonable restrictions on the exercise of rights" based on "the security of the State, friendly relations with foreign states, public order, decency or morality, or in relation to contempt of court, defamation, or incitement to an offense." This clause was further broadened by the 16th amendment to include the interests of "the sovereignty and integrity of India."

The possibility of amending the Constitution in order to whittle away the Fundamental Rights (and other changes) has always been feared. Rajendra Prasad, later the First President of India, prophetically declared: "I do not know what kind of people will there be in the future Parliament of India. In the heat of extremism or at the altar of some radical ideology they may like to do away with the provisions which we have made in the articles of the Constitution." Mr. J. B. Kripalani in commenting also on the Constitution said that "it was therefore felt necessary to keep the fundamental rights of the citizen outside the possible interference of average men and women who may act under intoxication of power, whether in the legislature or the government."

Already these fundamental rights have been seriously atrophied by amendment. The latter process requires only a two-thirds vote by both houses of Parliament and no referendum (on these parts) by the state legislatures (or directly by the people). In 1967 the Supreme Court ruled that Parliament could not "abridge or take away the fundamental rights guaranteed by the Constitution." But Parliament in 1971 adopted the 24th amendment to Article 13 which gives it* fundamental rights still further, including one which asserts that even the Preamble can be amended by the usual process. However, the landmark case of Kesavanand v. Kerala in 1973 raises some hope against the Parliament completely eroding the fundamental rights in the Constitution. Each of the 13 judges wrote a separate verdict, amounting to 1,500 pages in all, and actually upheld the 29th amendment to the Constitution on land reform which was challenged as unconstitutional. However, the essence of the judgment was parliamentary action could not be immune from judicial scrutiny, especially regarding fundamental rights.(22)

Mrs. Gandhi in addressing the 21st Commonwealth Parliamentary Conference at New Delhi in October 1975 said that democracy is a "generic term" and "forms of democracy vary in each country, in the light of its own history and national character, its size, the diversity or homogeneity of its population, the state of its economic development, and other such conditioning factors." She further quoted her father as saying that "it may be that the Constitution this House may frame may not satisfy that free India." He added that "this House cannot bind down the next generation, or the people who will duly succeed us in this task." She was preparing the Indian people for possible major constitutional changes. Yet the Bar Council of India as recently as 27 December warned publicly against any "drastic changes" in the Constitution without a national debate. Among the many proposals being circulated is one to create a Superior Council of the Judiciary. This would supercede the authority of the Supreme Court.

*power to amend even the fundamental rights. Further Court cases have possibly restricted these

D. THE ALTERNATIVE PROGRAM.

Several hundred thousand Indians marched to the Parliament at Delhi on 6 March 1975 to present their program. Below are excerpts (which should be compared to Mrs. Gandhi's subsequent 20-point program in section 6 above):

"We, the people of India, have gathered here to express solidarity with the struggle of the Bihar people which has come to symbolize the people's aspirations all over the country. When basic principles of public life and good government are allowed to be trampled, it is the people's duty to protest. We march to serve democracy.

"We pledge ourselves to a total revolution in society which will create a new order of social and economic equality, genuine democracy, and the moral values within the Gandhian framework. In order to advance towards the achievement of these cherished objectives, we focus attention on the following urgent demands:

"The Legislative Assembly of Bihar has forfeited the confidence of the people of the State . . . In Gujarat, the State Government was overthrown and the Assembly dissolved nearly a year ago in the wake of a people's movement. But free elections are not yet to be ordered . . .

"The Socio-economic Rights of the People.

"The Government's ruinous policies have led to economic stagnation on the one hand and increasing poverty, soaring prices, and growing unemployment on the other. Non-availability of essential commodities has become a permanent feature of the lives of the weaker sections. Nearly 60 per cent of the population lives in conditions of semi-starvation and their number is increasing at an alarming rate. Social inequalities are increasing.

"The vital social and economic rights of the people have to be secured urgently and the following steps must be taken for the purpose:

"1. Provision of the basic necessities of life should be ensured to the weaker sections particularly the poorest 60 per cent of the population at prices within their reach.

"2. Prices of essential goods should be related to costs and there should be a reasonable balance between agricultural and industrial prices. Prices should be stabilized and price rises must not exceed the rate of increase in the national income.

"3. Need-based minimum wages and incomes should be guaranteed to all.

"4. Economic inequalities should be minimized so as to bring them within reasonable limits such as 1:10.

"5. Effective land reforms ensuring equitable redistribution of land, securing of tenure based on the principle of land to the tiller, ownership of homestead land to the landless and assurance of fair wage to agricultural labor, a substantial part of which should be paid in kind.

"6. Assurance of full employment. Development of agriculture and of the rural economy through the application of an appropriate technology should be given the highest priority for this purpose. Programs of industrialization should similarly be based on techniques and schemes involving massive mobilization of manpower.

"7. Creation of regime of national austerity with the government to set the tone in this regard. This would involve a ban on import of luxury items and their manufacture at home.

"Democratic Rights and Civil Liberties.

"In violation of the spirit of the Constitution, the Government continues to maintain a state of National Emergency. The rule of law has been systematically replaced by the use of the Maintenance of Internal Security Act(MISA), Defense of India Rules(DIR), and governance by ordinance. Democratic rights are being denied to large sections: legitimate and peaceful struggles by the people are suppressed by use of Central and State police. In order to restore, defend, and expand the content of democracy, we demand:

"1. Immediate withdrawal of the emergency as well as MISA, DIR, and other laws which militate against civil liberties;

"2. Granting full political and trade union rights to the teaching and non-teaching staff of schools, colleges, and universities;

"3. Granting of full political and trade union rights to workers and employees in the commercial and industrial establishments of the public sector.

"Free and Fair Elections.

"It is essential that Parliament and Assemblies be made more responsive to popular aspirations. Elections must not be allowed to be influenced by use of official machinery, money power, and recourse to force . . .

"Decentralization of Political Power.

"Education Reforms.

"Eradication of Political Corruption.

"Corruption is eating into the vitals of our political life. It is disrupting development, undermining the administration and making a mockery of all laws and regulations. It is eroding people's faith and exhausting their proverbial patience.

"In order that public life is cleansed of this cancerous malady, we demand:

"1. Appointment of high-powered judicial tribunals with powers to inquire into allegations against persons in high positions, including the Prime Minister and Chief Ministers. In cases where charges of corruption are substantiated, prosecution of the persons concerned should be obligatory. In all cases reports of inquiries should be published.

"2. Implementation . . .

"3. A law should be framed requiring all holders of public office to declare their assets immediately on assumption of office and periodically thereafter."

E. A MINI-GLOSSARY.

Black money - Undisclosed earnings.

Congress(O) - The Congress party not in power.

Congress(R) - The ruling Congress party, in effect headed by Mrs. Gandhi.

DIR - Defense of India Rules.

J.P. - Jayaprakash Narayan, the leader of the opposition to Mrs. Gandhi.

Lok Sabha - The House of the People of the Parliament; the lower house.

MISA - Maintenance of Internal Security Act.

Naxalites - Violent Maoists active in Eastern India in the early 1970's.

Rajya Sabha - The Council of States of the Parliament; the upper house.

Saravodaya - Gandhian constructive workers.

Satyagraha - Non-violent direct action.

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