

# Provision of Emergency and Violation of Human Right

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## Abstract

Act-352 to 360 deals with the emergency Part-XVIII provisions in the India's Constitution. These emergency powers would be used in times of critical situations like Art.352 (emergency on account of war, external aggression or internal armed rebellion) this type of emergency declared in case of war and external aggression, Art.356, under this article, emergency declared in a particular state due to the failure of Constitutional machinery in the state and Art. 360 declared the financial emergency resulting from a threat to the financial stability or credit of India. H.V. Kamath warned the framers of the constitution that they should learn a lesson from the constitution of wiemer republic (Germany) which had emergency provisions. It was by misusing the emergency provisions that Hitler was successful in destroying the wiemer. Constitution and in establishing a dictatorship. An emergency under article 352 was proclaimed for the first time on 26 Oct. 1962 due to the Chinese Aggression against India and emergency was in operation when the 1965 war with Pakistan took place. This emergency was withdrawn in 1968.

It was imposed again on 3<sup>rd</sup> Dec, 1971 with the outbreak of war with Pakistan and this proclamation continued till March 1977. On 26<sup>th</sup> June, 1975, the President proclaimed an emergency under article 352, because of a threat to the security posed by internal disturbances. This proclamation was withdrawn on 22d March, 1977. This period was considered as the black period of Indian constitution. The emergency was declared by Prime Minister Indira Gandhi on grounds of Internal Disturbances.

Emergency declared in 1975-77 with a view of retain her power, position and serve her political interests as she was accused of corruption charges after the Allahabad High Court found her guilty of corrupt electoral practices in the 1971 elections and based her from contesting elections for the next six years. Under article 356, Union Government has thoroughly misused the powers given to the President that is the reason why the Rajamannar Committee appointed by the Tamil Nadu government on Centre-State relations in 1970, and the West Bengal government memorandum on Centre-State relations in 1977 have recommended the deletion of Article 356.

**Keywords:** Emergency, Judiciary, Human Rights, Censorship, President Rule, President, Internal Disturbances, Bureaucracy, Extra-Judicial killings, Encounter, Violation.

## Introduction

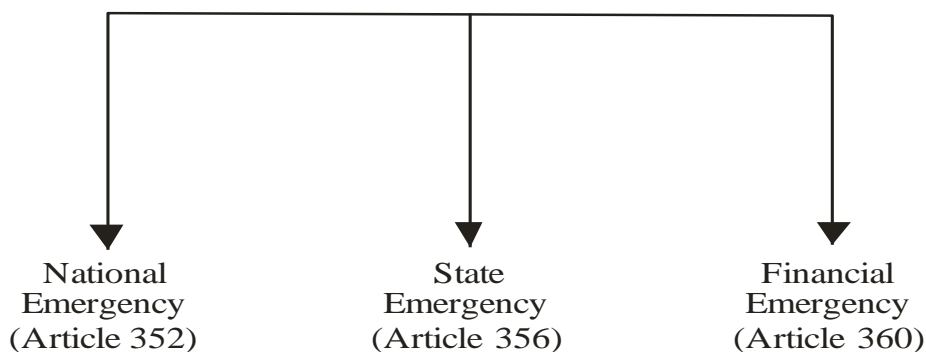
Act-352 to 360 deals with the emergency Part-XVIII provisions in the India's Constitution. These emergency powers would be used in times of critical situations like Art.352 (emergency on account of war, external aggression or internal armed rebellion) this type of emergency declared in case of war and external aggression, Art.356, under this article, emergency declared in a particular state due to the failure of Constitutional machinery in the state and Art. 360 declared the financial emergency resulting from a threat to the financial stability or credit of India.

1. Part XVIII of the constitution of India contains provisions for meeting three types of possible emergencies. It gives to the president of India some special powers for dealing with emergencies.

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### Three Types of Emergencies (Part-XVIII)



H.V. Kamath warned the framers of the constitution that they should learn a lesson from the constitution of weimer republic (Germany) which had emergency provisions. It was by misusing the emergency provisions that Hitler was successful in destroying the wiemer.Constitution and in establishing a dictatorship.

Three types of emergencies and their effects is explained as following:

#### Aim of study

To Analyse the violation of Human Rights with special reference to violation of Human Rights in the Emergency period of 1975-77 .

#### National Emergency (Article 352)

Article 352 deals with an emergency arising out of war, external aggression or internal armed rebellion. President can proclaim an emergency if he is satisfied that the security of India or any of its part has been violated or threatened by a war, external aggression or internal armed rebellion.

#### Article 352 (i) States

"If the President is satisfied with a grave emergency exists where by the security of India or of any part of the territory there of, is threatened whether by war or external aggression or internal armed rebellion, he may, by proclamation, make a declaration to that effect. The term armed rebellion, was incorporated by the 44<sup>th</sup> Amendment Act and it replaced original term "Internal disturbances". Such a proclamation of emergency can be made not only when a actual violation of security of India has taken place but also when the President is satisfied and there is an imminent danger to the security of the country.

#### Approval of the Emergency Proclamation

The proclamation of emergency (under Art. 352) has to be placed for approval before each House of Parliament within 30 days of the date of issue. Each House has to approve it by a majority of not less than two-thirds of members present and voting. In case this proclamation fails to get the approval of the parliament. It ceases to operate after 30 days.

#### Tenure of the Emergency Proclamation

Once issued and duly approved by both the House of the Parliament an emergency proclamation can remain in force for six months. However, through subsequent approvals after every six months, the proclamation can remain operative for any length of time.

#### Provisions for the Revocation of Emergency by the Parliament

After the passing of the 44<sup>th</sup> Amendment ten per cent of the members of the Lok Sabha can initiate action for the termination of an emergency proclamation. For this purpose these members have to give a written notice to the President, in case the Lok Sabha is not in session or to the speaker if it is in session but adjourned for requisitioning the meeting of the Lok Sabha or the withdrawal of the proclamation. Such as requisitioned meeting of the Lok Sabha has to be held within fourteen days of the issue of the notice by the members in case the Lok Sabha passes the resolution for terminating proclamation by a simple majority of member present and voting, the proclamation cease to operate.

#### Effect of an Emergency

##### Proclamation under Article 352

1. The union Parliament gets the power to legislate over the subjects of state list also. Such laws continue to operate during the period of emergency and expire six months after the end of emergency.
2. The union government gets the right to direct the exercise of the executive powers by the state government.
3. The President can effect a change in the distribution of finances between the union and the states.
4. The state can restrict the fundamental freedoms granted to the citizens by Article 19 of the constitution.
5. With the exception of the rights conferred by Articles 20 and 21, the President can suspend the fundamental rights of the citizen.

##### Operation of Article 352

An emergency under article 352 was proclaimed for the first time on 26 Oct. 1962 due to the Chinese Aggression against India and emergency was in operation when the 1965 war with Pakistan took place. This emergency was withdrawn in 1968.

It was imposed again on 3<sup>rd</sup> Dec, 1971 with the outbreak of war with Pakistan and this proclamation continued till March 1977. On 26<sup>th</sup> June, 1975, the President proclaimed an emergency under article 352, because of a threat to the security posed by internal disturbances. This proclamation was withdrawn on 22d March, 1977. Since 1977, the provision of art. 352 have not been used.

**Constitutional Emergency (Article 356)**

Article 356 of the constitution gives to the President the power to declare an emergency in a state for dealing with the failure of the constitutional machinery in the state. This article provides that if the President, either on the basis of the report of the governor of the state is satisfied that the government of the state is not being carried in accordance with the provisions of the constitution.

**Approval of the Constitutional Proclamation**

A proclamation of emergency made under Article 356 has to be laid before each House of the Parliament within two months. The proclamation becomes inoperative in case it fails to get the approval of the Parliament (both Houses individually). But if the proclamation is issued at a time when the Lok Sabha stands dissolved or its dissolution takes place within two months, the proclamations is to be placed before the Rajya Sabha for its approval. It continues only if the Rajya Sabha approves it. However, even after its approval by Rajya Sabha, it has to be placed before the new Lok Sabha as soon as it meets, but not later than 30 days after its first meeting. The Proclamation ceases to operate if the new Lok Sabha disapproves it or fails to approve it within 30 days.

**During of the Constitutional Emergency in a State**

Once approved by the Parliament, the Proclamation made under Art. 356, remains valid for six months, but it can be extended, with Parliamentary approval, for a period of six more months.

Such an emergency can continue, with the Parliament's approval, beyond one year (i) if during this period, a national emergency proclamation under Art 252 is issued, and (ii) if the Election Commission certifies that its continuance is necessary on account of difficulties in holding elections to the State Legislative Assembly. Such an emergency in a state can be maintained for a maximum of three years. However, there can be exceptions (as in the cases of Punjab 1980-92 and J&K 1990-96). For extending an emergency by beyond a period of three years, the Parliament has to make an enabling amendment in the Constitution.

**Effects of the Proclamation of Constitutional Emergency (Under Act 356)**

The proclamation of Emergency under Art. 356 in a state has the following effects

1. The President can assume all or any of the functions of the State Government and all or any of the powers vested in or exercisable by the Governor or any other authority of the State. However, the President cannot assume any of the powers vested in the State Legislature and the High Court of the State.
2. The President can authorise the Union Parliament to exercise the powers of the State Legislature. The laws made by the Parliament continue to operate even after the end of the emergency proclamation, unless altered or repealed or amended by a competent legislature or other authority.
3. The Union Parliament can delegate to the President the power of making laws for the State.

It can authorise him to delegate these powers to any other authority subject to such conditions as he may deem fit.

4. The State Legislature can either be dissolved or kept in suspended animation.
5. In case the State budget has to be passed the Union Parliament gets the power to pass it.
6. The President gets the power to authorise expenditure from the Consolidated Fund of the State.
7. The President can take any step that he may deem essential for giving effect to the objectives of the proclamation.

**Operation of Article 356**

Provision of Article 356 have been used nearly 95 times in the past. It was in 1951 itself that this Article was operationalised in respect of Punjab. Thereafter, it has been used quite regularly in 1977, it was used, simultaneously, in respect of nine States, U.P., M.P., Haryana, Punjab, H.P., Rajasthan, W.B., Bihar and Orissa. In February 1980 the act was repeated in respect of 9 States – U.P., Bihar, Rajasthan, M.P., Punjab, Gujrat, Orissa, Maharashtra and Tamil Nadu. Many states like Punjab and Kerala have been under repeated spells of President's Rule. In 1988, it was used in Nagaland. Some recent examples of the imposition of the President's rule are U.P., Tamil Nadu and Kerala; Punjab remained under the President's Rule for more than a decade from 1980 to 91.

**Financial Emergency under Article 360**

Under Article 360, President can proclaim a financial emergency in India if he satisfied that a situation has arisen where by the financial stability or credit or any part of the territory three of stands threatened Article 360 have not been operationlised so far.

**Emergency Provision (Article 352-360): A Great Threat to Fundamental Rights**

Fundamental Rights mentioned in Part-III of the Indian Constitution (Art. 12-35). The rights which the constitution guarantees to the citizen of India are called fundamental because they are basic to the development of human personality. Fundamental Rights can be classified into six categories:

1. Right to Equality (Article 14-18)
2. Right to Freedom (Article 19-22)
3. Right against Exploitation (Article 23-24)
4. Right to Freedom of Religion (Article 25-28)
5. Cultural and Educational Rights (Article 29-30)
6. Right to Constitutional Remedies (Article 32)

**Effects of Emergency on Fundamental Rights Suspension of Provisions of Article 19 (Article 358)**

When the national emergency is in operation, Fundamental Rights guaranteed by Article 19 are automatically suspended. These restrictions imposed either by a law passed by parliament or by executive action. It is important to note that the Fundamental Rights guaranteed by Article 19 can be suspended only if there is an Emergency on account of war and external aggression, (not armed rebellion or internal disturbance). However, the 59<sup>th</sup> Constitutional Amendment Act 1988, has provided

that in the case of Punjab or a part thereof, if Emergency is declared on account of "armed rebellion or internal disturbance" even then the Fundamental Rights guaranteed by Article 19 can be suspended, but this Amendment would be valid for a period of two years from commencement of the 59<sup>th</sup> Constitution Amendment Act 1988. 63<sup>rd</sup> Constitutional Amendment Act 1989 has repealed this Constitutional Amendment.

#### **Suspension of the Enforcement of the Rights Conferred by Part-III**

During Emergency the right of the people to move the courts through various writs, for the implementation of such of the Fundamental Rights conferred by Part III (except Articles 20 and 21) as mentioned in the Presidential order and all proceedings pending in any court for the period during which the Proclamation is in force or for such shorter period as may be specified in the order, can be suspended by the President by issuing an order.

When the President has issued an order suspending the rights conferred by Part-III (except Articles 20 and 21), the State would have the power to make any law or to take any executive action in violation of the rights mentioned in the Presidential order, but any law so made shall to the extent of incompetency, cease to have effect as soon as the order aforesaid, ceases to operate except as respects things done or omitted to be done, before the law so ceases to have effect.

#### **Extension of the term of Lok Sabha and Legislative Assemblies**

During emergency, under article 83, the tenure of Lok Sabha and under art. 172, the tenure of the Legislative assemblies extended by a law passed by parliament for a period not exceeding one year.

#### **Extension of President's Rule**

When there is no emergency in the country the Presidents Rule under article 356 can be extended for a period of one year and this extension has to be a six monthly basis by a resolution passed by each house of the parliament separately.

#### **Misuse of Emergency Powers**

Though the safeguards of emergency control mechanism provided in the Indian Constitution seem fairly effective, yet in practice they have failed.

1. Emergency declared on account of external aggression under art. 352 of the Constitution was continued for years together without any justification whatsoever after the hostilities had ceased. For example, Emergency declared on October 26, 1962 on account of Chinese aggression was continued till January 1, 1968, and the Emergency which was declared on account of Pakistan aggression on December 3, 1971, was withdrawn only on March 21, 1977 after defeat of the Congress Party in the elections.
2. Internal Emergency was declared on June 25, 1975 for which according to Justice J.C. Shah, there was no justification, and still it was approved by both Houses of Parliament.

3. Emergency Powers under Article 356 dealing with the failure of the Constitutional machinery in the States were also misused by :
  1. Dismissing the State Ministries as was done by Hindenburg in Germany, when they had a majority in the Assembly.
  2. Preventing non-Congress party or a combination thereof to form the government when it/they happened to be the largest in the Assembly.
  3. Denying the non-Congress parties a chance to form the Ministry when the government of the Congress party or a coalition in which Congress party happened to be a dominant partner, resigned from the office in anticipation of defeat on the floor of the House.
  4. Depriving the non-Congress parties of an opportunity to form an alternative Ministry after the defeat of the Congress Government on the floor of the House.
  5. Imposing the President's Rule after forcing the Congress Chief Minister having majority in the Assembly to resign, for resolving intra-party conflicts.
  6. Suspending and dissolving the Assemblies keeping in view the interests of the ruling party at the Centre.
  7. Imposing President's Rule too frequently on untenable grounds.
  8. Continuing the President's Rule without suspending or dissolving the Assembly.
  9. Emergency control procedures were violated by

Not placing the proclamations on the Table of Parliament which is a violation of mandatory provision of the Constitution, and

Re-issuing the Proclamations on their expiry after two months in order to by-pass the provision of parliamentary approval.

Since the Union Government has thoroughly misused the powers given to the President under Article 356 that is the reason why the Rajamannar Committee appointed by the Tamil Nadu government on Centre-State relations in 1970, and the West Bengal government memorandum on Centre-State relations in 1977 have recommended the deletion of Article 356.

#### **Emergency of 1975-77 in India A Black Period for India's Constitution and Human Rights**

Indian emergency of 1975-77, is the most traumatising phase in the history of Indian politics. Indian emergency of 1975-77 had not only suspended the fundamental rights but also paralysed the independent judiciary. Suppression of judges, arrests and detentions of political leaders, student union leaders, eminent personalities, some government officials and in the absence of trials shocked the entire nation. The emergency was declared by Prime Minister Indira Gandhi on grounds of Internal Disturbances.

Emergency declared in 1975-77 with a view of retain her power, position and serve her political interests as she was accused of corruption charges after the Allahabad High Court found her guilty of corrupt electoral practices in the 1971 elections and

based her from contesting elections for the next six years.

She failed to follow the proper procedure to declare the emergency in India. She formed an authoritarian regime and enhanced the executive power.

At that time, people would not be free to raise voice against state decisions, executive acquired absolute power and legislature and judiciary remained to serve as mere rubber stamps. Janta Party government organized by Jay Parkash Narayan, to protest against the imposition of emergency..

The implementation of Dictator laws like maintenance of internal security Act (MISA) and Defence of India Rules (DIR) clearly shows that no individual protesting against it.

The imposition of family planning programs and birth control methods like sterilisation of both men and women had witnessed the invasion of government power into the personal lives of common people to control sexuality.

The censorship of press by the Congress government effectively, restricts the press from publishing any objectionable comments against government actions.

As a result, every newspaper avoided publishing any controversial issue against the government policies.

After emergency, Congress government passed anti-terror laws such as TADA (Terrorist and Disruptive Activities) Prevention Act , prevention of terrorist activities act (POTA), Armed Forces special power act (AFSPA) employed in the north east states and Jammu and Kashmir. Although TADA ad POTA laws repealed some year back but AFSPA still in operation.

### **Emergency of 1975-77 in India: Black Period for India's Constitution and Human Rights Allahabad High Court Judgment**

Justice Sinha of Allahabad High Court gave a judgement on an election petition by Raj Narain, Convicting Mrs. Gandhi for having indulged in corrupt campaign practices and declaring her elections invalid. The conviction also meant that she could not seek election to parliament or hold office for six years.

Mrs. Gandhi refused to resign and appealed to the Supreme Court. While the Supreme Court would hear her appeal on 14<sup>th</sup> July, Justice V.R. Krishan Iyer, the vacation judge of the Supreme Court, created further confusion when he decided on 24<sup>th</sup> June, that Mrs. Gandhi could stay in office and speak in parliament but could not vote in it.

Janta party and other opposition parties demanded resignation of Mrs. Indra Gandhi but on 26 June, 1975 she declared internal emergency in the country.

Mrs. Gandhi proclaimed internal emergency under article 352 of the constitution on 26 June, 1975. As a result of this proclamation, federal provisions of the constitution and fundamental rights and civil liberties suspended. The government imposed strict censorship of press and hundreds of main leaders of the opposition were arrested under the maintenance of internal security Act (MISA) and among those

arrested were Jaya Parkash Narayan, Morarji Desai, Atal Behari Vajpayee, etc. More than 100,000 were arrested during a period of 19 months.<sup>192</sup>

### **Atrocities and Acts Committed During the Emergency Period (1975-77)**

During the emergency, fundamental rights of the citizens suspended and there was a forceful exclusion of people from private properties, searching of houses without warrants, killing people with suspicion without any trial and there was censorship of press.

### **Acts Prevalent During Emergency Misa (Maintenance of Internal Security Act – 1971-77)**

Indian parliament passed a controversial law MISA on 2 July, 1971. The act allowed the Indian law enforcement agencies to search and detain individuals and seizure their property without any warrant. The act was amended several times and it was used for arresting, torturing and in some case forcibly sterilizing people.

According to reports presented by Amnesty International, 1, 40,000 people were arrested without trial during the 21 month long emergency.

### **COFEPOSA (Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974)**

COFEPOSA was formulated and passed in order to prevent smuggling and black marketing in the foreign exchange in December 13, 1974, before the emergency was announced.

### **AFSPA (Armed Forces Special Powers Act, 1958)**

The Act was passed by the Parliament of India on 11 September 1958, which still persists. The law has six sections that grant special powers to the Indian Armed Forces in "disturbed areas" or the areas in which there is political turmoil or unrest of any kind. The Act has received severe criticism from various sections of the society as well as political leaders, for its violation of basic human rights that includes killing and seizure and search of private property without any warrant.

Some of the other controversial acts that later got criticized on the grounds of violating the civil freedoms and fails to safeguard basic human rights for serving the government giving it excessive powers for fighting internal and cross-border terrorism and political violence, are as follows :

1. National Security Act (1980)
2. Terrorism and Disruptive Activities (Prevention) Act (TADA, 1985-1995)
3. Prevention of Terrorism Act (POTA, 2002)

Indian government enacted various laws to curb terrorism but is used effectively by state agents to abuse human rights.

These laws include the MISA (Maintenance of Internal Security Act, MISA), Terrorist and Disruptive Activities Prevention Act (TADA), Prevention of Terrorism Act (POTA), the Disturbed Areas Act (DAA) and the armed forces special power Act (AFSPA).

These laws have helped extra-judicial killings of persons in custody, disappearances, torture and rape by police and security forces creating an

atmosphere in which human rights violations took place.

#### **Mass Sterilization Campaign**

In 1976, Media was under Massive threat and used to propagate forced sterilization and it was initiated by Sanjay Gandhi under this programme, Indian men to undergo sterilization in order to limit the population in the country and certain cases showed that sterilization was done forcefully. Such steps of Congress Government considered as intervention in the personal life of citizens.

#### **Censorship of Press/Media**

During the emergency, Press and Media was censored and many newspapers and magazines were banned. Within three hours from taking the decision to impose emergency in India, electricity supplies to all the major newspapers were cut. Indian Express and Times of India showed resentment against the censorship and carried blank editorials and headlines with bold letters criticizing the emergency.

The Indian Express, Delhi edition, 28 June, 1975 reproduced Rabindernath Tagore's poem.

"Where the mind is without fear and the head is held high."

Newspaper and Media worked and published matters under the strict observance of government.

#### **Custodial Killings and Extra-Judicial Killings**

The emergency period witnessed massive fake encounter killing of Naxalites or suspected Naxalites in Andhra Pradesh under the then Chief Minister Jagam Vengal Rao. This prompted Jayaprakash Narayan, who formed the People's Union of Civil liberties at the end of the emergency, to institute the Justice, V.M. Tarkunde Commission to probe the veracity of such 'encounter killings'. The Tarkunde Commission Report of 1978 shocked the nation by unambiguously terming all such encounter killings as "nothing but cold blooded murders".

Despite this, the three decades of the post-emergency period witnessed encounter killings entering new heights, fresh areas and taking heavy tolls – in Punjab in the name of fighting Khalistanists, in Jammu and Kashmir in the name of fighting Pak terrorists, in Gujrat in the name of fighting Islamic terrorism, and even in the name of antiooods operations in cities like Chennai and Mumbai. Terming the extra-judicial killings resulting from 'fake encounters' as 'extremely grave', the NHRC report for 2002-03 said that the Commission was informed of 83 instances of police encounters by the authorities of various States, 41 of which in Uttar Pradesh, 10 in Maharashtra and 7 in Andhra Pradesh.

#### **Emergency in India (1975-77): Limits the Power of Judiciary**

In July, 1975 to the detriment of the citizens liberties. In November 1976, an effort was made to change the basic civil Libertarian structure of the constitution through its 42<sup>nd</sup> amendment. Putting an end to the Judicial review of Constitutional amendment, because it was said that the judiciary was obstructing pro-poor social-economic measures such as land reform legislation in the name of defending fundamental rights, it was laid down that

there was no limitation whatever on the power of parliament to amend constitution.

#### **Towards the Ending of Emergency**

Emergency came to an end on 23<sup>rd</sup> March, 1977 after a long period and Delay in lifting emergency generated a sense of fear of authoritarian rule among the general masses and 42<sup>nd</sup> amendment to the constitution passed in 1976 considered as an effort to Subvert democracy by changing the basic structure of constitution as a result emergency began to lose legitimacy.

Incentives and persuasion were increasingly replaced by compulsion and coercion for sterilization considered as excess intervention into the personal affairs of individuals and such policies welcomed huge criticism.

The bureaucracy and the police got increased power and it was unchecked by criticism and exposure from the press, Courts, MLA's and MP's and popular movements and there was lots of misuse of authority by police and lack of accountability increased extra-judicial killings and fake encounters. Due to the censorship of Press, people knew that what appeared in the press or on the radio was heavily censored, they no longer trusted them. Fresh elections held on 16 March, in a free and fair atmosphere. General masses showed their strength and Congress defeated in these elections.

#### **Conclusion**

Indian emergency of 1975-77, is the most traumatizing phase in the history of Indian politics. Indian emergency of 1975-77 had not only suspended the fundamental rights but also paralyzed the independent judiciary. Suppression of judges, arrests and detentions of political leaders, student union leaders, eminent personalities, some government officials and in the absence of trials shocked the entire nation.

At that time, people would not be free to raise voice against state decisions, executive acquired absolute power and legislature and judiciary remained to serve as mere rubber stamps.

The imposition of family planning programs and birth control methods like sterilization of both men and women had witnessed the invasion of government power into the personal lives of common people to control sexuality.

The censorship of press by the Congress government effectively, restricts the press from publishing any objectionable comments against government actions.

As a result, every newspaper avoided publishing any controversial issue against the government policies.

The bureaucracy and the police got increased power and it was unchecked by criticism and exposure from the press, Courts, MLA's and MP's and popular movements and there was lots of misuse of authority by police and lack of accountability increased extra-judicial killings and fake encounters. Due to the censorship of Press, people knew that what appeared in the press or on the radio was heavily censored, they no longer

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