

Book Review: India's Undeclared Emergency : Constitutionalism and Politics of Resistance by Aravind Narrain.

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Narrain, A. (2021) India's Undeclared Emergency: Constitutionalism and the Politics of Resistance. Westland Publications Private Limited, India. pp 340, ISBN: 9789395073042, Price: Rs 799

Abstract: In "India's Undeclared Emergency: Constitutionalism and Politics of Resistance," Aravind Narrain critically compares the National Emergency of 1975 with the Modi regime since 2014, suggesting an unofficial 'undeclared emergency.' The book scrutinizes autocratic excesses during the Emergency, focusing on preventive detention and the misuse of the MISA Act. Drawing parallels, Narrain explores the Modi era, highlighting vulnerabilities for religious minorities and challenges to freedom of speech. Narrain notes a lack of contemporary awareness, describing it as an 'undeclared emergency' by the PUCL. The author further compares the populist Modi regime with the Emergency, emphasizing its strong Hindutva base and campaigns marked by open hatred. The rise of mob lynching is linked to divisive narratives, portraying communities as self-propelled agents of aggression. In the concluding chapter, Narrain addresses resistance strategies against an authoritarian state. Despite some limitations, the book serves as a valuable resource for social science and law students, offering a detailed view of Indian politics, constitutional challenges, and the intricacies of democracy.

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Aravind Narrain's 'India's Undeclared Emergency: Constitutionalism and Politics of Resistance' brings forth a scathing comparison between two different eras in post independent India – the period of National Emergency in 1975 and the Modi regime since 2014. Prime Minister Indira Gandhi had implemented the National Emergency in 1975 in an attempt to stabilize the nation, although critics are of the opinion that it was a way for Mrs. Gandhi to silence all opposition that were riling up against her. The Emergency lasted for around 2 years, and it was a period characterized by autocratic excesses, making it the darkest years in the post-independent India. Citizens were deprived of their fundamental rights, censorship was imposed on the press and all opposition were imprisoned. The system of preventive detention prevailed during these two years. Although a National Emergency was never again implemented in India till date, Aravind Narrain in his book describes the current decade as a period of 'undeclared Emergency'. His clever choice of words brings to attention the fact that India may unofficially be under Emergency.

Narrain in Undeclared Emergency presents the readers with an in-depth scrutiny of the nature of the National Emergency – a planned out systematic attack on the rule of law that shook the core of the world's largest democracy. It was a blatant subversion of the Indian Constitution and Narrain states how a similar trend has been followed in Indian even before the current regime came to power. Narrain brings to light the fact that unlike the Congress government of 1975, the Modi government draws on popular support and this raises the chances of this populist government transforming into a totalitarian government in the future.

The first chapter of the book is titled 'Authoritarian Rule: The Emergency (1975-77)'. As understandable from the chapter title, this chapter entails an in-depth discussion on the arbitrary excesses of the government during the National Emergency. Narrain puts emphasis on preventive detention and the use of the MISA Act of 1971. Passed during the Indo-Pak war of 1971, pre-trial detentions were allowed under MISA. These detentions were based on the 'satisfaction' of the federal or state administration. It allowed a person to be placed under arrest if the State determined that doing so would stop them from acting in a detrimental manner against the State. The Shah Commission had argued that abuse was built into the structure of MISA. The whole of opposition was against MISA, with Mr. Vajpayee stating that the act would be used not against foreign spies but against domestic violence. Furthermore, during the Emergency period,

amendments were made in the MISA which further broke down the safeguards available to individuals detained under this law.

Free from judicial overview, the Indira Gandhi government had free reign to abuse authority and misuse powers. This shows us how crucial it is to maintain a clear separation of powers at all cost, and what the scenario would be if the executive turned all supreme. A democracy cannot exist without dissent – it is the right of the people to disagree and dissent and voice their opinions. MISA was used by the government to target members of opposition political parties, members of banned organizations and anti-social elements and economic offenders. The Shah Commission states that of the 35000 detained under MISA, 13000 were connected with political parties. Student activists were also targets of MISA.

The other noteworthy excesses of this period include the press censorship, forceful family planning and arbitrary demolition of slums. The freedom of news media was curtailed – no newspaper could print anything without prior permission from the government. To control rapid population growth, the government implemented forceful family planning, which is absolutely unimaginable in a democratic nation. The atrocities at Turkman Gate in Delhi where Muslims resisting demolitions and sterilizations were shot down is just one example of the excesses during the Emergency. In regards to demolition for the sake of beautification, the absence of public pushback during the Emergency unlike the previous phase gave a free hand to the government to take advantage of the fear generated by the Emergency. Narrain ends the chapter with a positive note, he keeps alive our hopes by stating that even in the face of absolute dictatorship, the fires of protest would keep burning, as evident from the series of resistance portrayed by students, opposition political leaders and activists.

Chapter 2 titled 'Roots of Emergency: Preventive Detention' dives deep into the roots and origins of preventive detention. The tools of suppression used by the current regime is quite similar to those used during the National Emergency. Like Indira Gandhi, the current regime too relies on the measure of preventive detention to deal with dissent, as authorized by Article 22 of the chapter on Fundamental Rights in the Indian Constitution. Article 22 states "protection against arrest and detention in certain cases". It begins by setting out the rights of the accused person under 22 (1) and (2). While the first clause provides the arrested person the right to be informed of the grounds to arrest and the rights to consult and be defended by a legal practitioner, the second

clause ensures that the arrested person is produced before a magistrate within 24-hours of arrest. However, under 22(3)(b), both these above rights will not apply to an arrested person who has been detained under a law allowing preventive detention. Therefore, the important protections provided by the first two clauses are essentially nullified. Narrain further discusses the landmark *A.K. Gopalan vs. the State of Madras* case which affirmed the rights-protecting nature of the Constitution by examining preventive detention provisions. However, Narrain states that four of the six judges on this case upheld the constitutionality of the Preventive Detention Act as a whole.

In chapter 3 titled 'The Modi Era: The Undeclared Emergency', quoting the renowned historian Ramachandra Guha, Narrain states that post-Emergency India transformed into a 50-50 democracy. India was now once again a functional democracy – smooth and periodic elections, smooth transfer of power, not being a Hindu nation despite being a Hindu majority nation, availability of freedom of speech and expression, free media, and an independent judiciary. However, on the other side, religious minorities like Muslims were more vulnerable than ever, rise in corruption, criminalization of politics and imperfect protection of freedom of speech and expression became more visible. Narrain points out post-2014 India, where we see governmental suppression of dissent using repressive laws, in a similar manner like during the Emergency. The silence of the judiciary and the media in such situations make it a more alarming scenario than the Emergency era.

During the Emergency, people were aware of their rights being violated as they were openly living in a dictatorial state as a result of the Emergency. However, such an awareness is lacking today as on a superficial level, we are living in a democratic nation. In a democratic setting, the prevailing perception leads to an assumption of complete entitlement to rights and liberties. This brings forth complacency that prevents proactive civic engagement. It comes from a lack of awareness regarding encroachment upon these said rights, thereby making the populace apathetic and inert. Individuals turn passive and hesitate from asserting for their rights. Narrain states his surprise by referring to the observations of the People's Union for Civil Liberties (PUCL). The PUCL, born during the era of Emergency, described the current period as 'undeclared Emergency', stating that the rights of citizens are being snatched away under the disguise of patriotism and nationalism. In this chapter, Narrain mentions the UAPA (Unlawful Activities Prevention Act) and compares it with the MISA. Today, the

UAPA acts as a de facto preventive detention law as most of those charged under it are mostly not released on bail. In 2019, the Act was modified, enabling the ruling government to designate individuals as terrorist on a whim, including student activists. There is also a mention of the NIA as an agent of the State.

In chapter 4 titled 'Slouching Towards a Totalitarian Future', Narrain compares between the Emergency period and the contemporary era. While the current regime had a popular base, the former did not. People were neither interested in the twenty point programme or the family planning agenda. Unlike in Fascist Germany, there were no paramilitary squads, no mass mobilization around nationalism. However, the current regime enjoys a strong populist backing on the basis of its Hindutva inclinations. The most visible campaigns of this regime – cow-slaughter laws, anti-conversion laws, anti-love jihad laws and building of Ram temple – are all rooted in Hindutva ideology. The regime's popularity often depends on the language of open hatred towards the 'others'.

The language of open hatred towards the 'others' may have become a core reason behind the rise of mob lynching in India. Narrain provides a shocking data stating that 90% of religious crimes since 2009 have occurred after the current regime came to power post-2014. This chapter makes us understand that the government is transparent regarding the communities it represents, which becomes evident in its occasional propagation of divisive narratives. It seems like over time, the government no longer needs to play an active role in fostering discord. Communities, motivated by prevailing divisive narratives, become self-propelled agents of aggression.

Narrain begins chapter 5 titled 'What is to be done?' by asking some a pressing question – "How does one confront an authoritarian State that openly uses repressive laws to shut down dissent?" In this context, Narrain refers to Ernst Fraenkel's notion of the Dual States – prerogative and normative states. He states that although the prerogative state has taken over the normative one in India too, the elements of the normative state could be forged back to form the basis of resistance. He states eight measures to be adopted by the civil society, opposition parties and human rights activists in order to prevent the nation from rolling down into a state of totalitarianism.

The book is a well-researched one, and Narrain's legal acumen plays a significant role in critiquing recent issues, especially some of the laws that have been misused by the State in recent times. Relying on the ideas of scholars such as Hannah Arendt, Juan

Linz and Ernst Fraenkel, Narraïn states how India maybe inching closer to the realities of its dark days Emergency period. The book provides an excellent analysis of the unconstitutionality of State actions. The book, however, has multiple flaws too. For instance, although Narraïn excellently elaborates on the violation of fundamental rights and the rampant excesses of the Emergency, he fails either to realize or to mention that most of the laws that are being misused today had their origins during the era of the Congress. One such laws is the UAPA which came into force in 1967. Narraïn also engages into discussions diving into the crucial nature of the ideas of secularism and constitutionalism but does so only from a philosophical point of view and fails to take into consideration the deeply ingrained religious beliefs of the people in a nation like India. In conclusion, the book is an excellent read for students of social science and law as it brings to our attention a detailed in-depth view of Indian politics, Constitutional laws and challenges faced by a democracy.