THE EMERGENCY AND CONSTITUTIONAL CHANGE IN INDIA

by

SARBJIT SINGH JOHAL

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Department of Political Science

The University of British Columbia
2075 Wesbrook Place
Vancouver, Canada
V6T 1W5

Date 5th July 1977
ABSTRACT

This study is concerned with the effect of India's state of emergency 1975-77, on the operation of the Indian Constitution. Although the state of emergency of June 26, 1975 was invoked under Article 352 of the Constitution, it represented an important break in India's constitutional and political development since 1947. Prior to 1975, India was referred to both at home and abroad as the "world's largest democracy." Her political and constitutional stability were often contrasted with other Asian and African countries where constitutional governments collapsed.

During the state of emergency the government of Prime Minister Indira Gandhi proposed and passed certain amendments to the Indian Constitution. The purpose of this thesis is to examine the reasons for this constitutional revision and the nature of the amendments. The constitutional and political implications of the amendments are analyzed for political parties, government-opposition relations, executive, legislative and judicial powers, individual rights, economic and social reform and federalism. A detailed account is given of the constitutional revision debate within the Congress Party and between the government and opposition parties. In particular, the recommendations of the Swaran Singh Committee are analyzed.

In examining the viability of constitutional government in India, it is hypothesized that the Indian Constitution, as adopted on January 26, 1950, contained contradictions between its liberal democratic provisions and its emergency powers. These broad emergency powers proved
antithetical to constitutional government. It is further hypothesized that the maintenance of constitutional government requires a consensus between the government and the opposition parties as to the rules of the constitutional and political system. In developing these hypotheses Kothari's model of one-party dominance and the Marxist model of class conflict are utilized. Finally, the hypotheses of the paper and the two models are reexamined in the light of the emergency period and of the constitutional and political changes that occurred under it.
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CHAPTER I

INTRODUCTION
On June 26, 1975 the President of India, acting on the advice of Prime Minister Indira Gandhi, declared India's first state of national emergency for reasons of internal instability. Opposition leaders were arrested, press censorship imposed, certain extreme left and right wing organizations banned and civil liberties curtailed. At the time of its imposition, the question arose of whether the emergency rule was a temporary suspension of the constitution or the beginning of permanent authoritarian rule.

From June 1975 to the lifting of the emergency after the March 1977 general election, it appeared that the period of constitutional government between 1950 and 1975 had been only an interlude in India's long history of absolute forms of government, and that India was joining the list of African and Asian countries which had succumbed to dictatorship. Thus, in any analysis of the emergency period, 1975-77, it is necessary to compare and contrast it with the period 1950-75 to see whether the declaration of emergency was an aberration or the culmination of economic, social and political trends since independence.

In the years following India's independence in August 1947, many observers and social scientists drew attention to India's political stability. Such stability was all the more marked because the circumstances in which India gained independence seemed to make the future survival of India as a nation problematic. These circumstances included: communal strife between Hindus, Sikhs and Moslems; refugee problems; dislocations caused by the division of the administrative and military
structures of the former British Empire; the urgent need to develop a new political framework integrating the various states and regions of India; and, finally, economic and social underdevelopment.

Yet a decade after independence India had succeeded in formulating and adopting a working Constitution in which, for example, individual rights were guaranteed and the judiciary independent. The principle of civilian rule became an established feature of the Indian political system. Moreover, the princely states were integrated into the republic, most of the states were reorganized along linguistic lines, two general elections were held, and the Indian government had initiated economic planning and had set goals for social development. India came to be referred to as the 'world's largest democracy' and as a significant example for the rest of Asia and Africa where numerous governments were being replaced by military dictatorships or one-party regimes.

This is not to suggest, however, that India's constitutional and political development in the period 1947-75 took place against a background of economic, social and political stability. Internally, India faced language riots in the 1950s and 1960s over states reorganization; communal rioting and unrest in each of the decades; sporadic riots and demonstrations in urban areas; attacks on 'Harijans' and other caste conflicts; secessionist movements in Nagaland, Mizoram and Madras (now Tamil Nadu); and agrarian unrest in the late 1960s as shown by the Naxalite movement. Political instability was particularly marked in several states after the 1967 general election when several state governments fell after defections of M.L.A.s. These
manifestations of the various conflicts in Indian society had to be met by the central government with the imposition of President's Rule in several states and by the use of emergency regulations such as the Defense of India Rules, the Preventive Detention Act of 1950 and its successor the Maintenance of Internal Security Act (M.I.S.A.) of 1971. The central government expanded and utilized central police and special paramilitary forces such as the Central Reserve Police and the Border Security Force. A large number of police firings resulted in several deaths and woundings each year.¹

Given this catalogue of instability, one may well be justified in asking whether India's stability between 1947 and 1975 was more apparent than real. Nevertheless, there are a number of reasons for arguing that the political system was stable. In the first place, economic and social conflicts did not always reach the political plane. Many of these were spasmodic manifestations of urban and rural anomie. India's federal system also tended to isolate economic, social and political conflicts from state to state.² Secondly, at the central level the Indian National Congress served continuously as the majority party from 1947 to 1969 and again from 1971 to 1975. The Congress Party's base of support covered most sections of Indian society and a wide section of the ideological spectrum.

Where Congress governments were faced with economic, social and political conflict they met these threats by the outright use of coercion, as mentioned above, or by the mediation of these conflicts and the blunting of cleavages and antagonisms. As a result, the provisions
of the Constitution operated uninterruptedly from 1950 to 1975 even though the Constitution remained remote and unintelligible to the majority of the Indian population.

However, following the Congress split of 1969 and the 1971 general election the consensus characterizing India's political system, particularly in government-opposition relations, broke down. Of the factors that have contributed to this breakdown and to the subsequent declaration of the state of emergency one can mention the economic crisis, centralization of power of Mrs. Gandhi in the Congress Party and government and the role of extraparliamentary agitations which raised demands for constitutional, political, economic and social reform.

The declaration of the state of emergency in June 1975 has had important and far-reaching consequences for the operation of the Indian political and constitutional system. Following the declaration of emergency, the government of Prime Minister Indira Gandhi felt it necessary to propose certain changes to the Indian Constitution. These proposals were formally approved by the Lok Sabha (India's lower house of Parliament) on November 2, 1976 as the forty-second constitutional amendment.

The purpose of this study is to examine the process of constitutional change under the emergency and the constitutional revision debate within the ruling Congress Party and between Congress and the Opposition parties. In particular, the following questions will be looked at: What were the provisions of the constitutional amendments? Why were the constitutional amendments proposed and passed? Were they
designed to legitimize the Congress Party's emergency rule? Or were they, as the government claimed, designed to make the Constitution a more perfect instrument for economic and social progress? And, finally, what were the consequences of these constitutional changes for India's constitutional and political system?

In the course of this study the following hypotheses about the fragility of constitutional government in India will be examined:

(a) The Constitution had insufficient safeguards against the development of authoritarian rule. It contained contradictions between its liberal democratic provisions and the provisions relating to the Directive Principles of State Policy and the emergency powers of the state. The broad emergency powers of the Constitution enabled Mrs. Gandhi to impose authoritarian rule without overthrowing the existing Constitution.

(b) The legitimacy of constitutional government in India depends on the acceptance of the rules of the constitutional and political system by the government and the opposition parties. Where such consensus is eroded constitutional government breaks down.

The following chapter discusses these preliminary assertions by examining the nature of constitutional government, the emergency provisions of the Constitution and the initial consensus during the period of the Constituent Assembly, 1947-50. Chapter III examines two models which may be of use in understanding the relationship between constitutional arrangements and the political system. The aim in using these models is to obtain an insight into the legitimacy of constitution and into the conditions which favour constitutional
government. The ability of these models to predict the emergency period is also assessed. Chapter IV looks at the reasons for the breakdown of consensus and the declaration of the state of emergency. Chapter V describes and analyzes the constitutional revision during the emergency period. In the concluding chapter of this thesis, the hypotheses of the introductory chapter are discussed in the light of the descriptive and analytical chapters on the Indian Constitution, the emergency and constitutional revision.
CHAPTER II

THE INDIAN CONSTITUTION, 1950–1975
In the literature on constitutions there is widespread agreement that one of the most important characteristics of constitutions is the emphasis they place on limited government. According to one authority, constitutions are "those collections of solemn declarations, ideological commitments, and codified as well as uncodified rules that identify the sources, goals, uses, and restraints on official power and are labeled by political authorities as national constitutions."  

A problem arises, however, when one looks at those constitutions which do not restrain governmental power even though they may contain provisions which are intended to do so. In these cases, political scientists have preferred to label them 'nominal' as opposed to 'real' constitutions. The test of a constitution and constitutional government, therefore, is the extent to which governmental power is limited in practice. 'Constitutional government' implies that the arbitrary use of power by the government is checked and that individual rights such as freedom of speech, expression, assembly, and religion are guaranteed and adhered to. Also legitimate procedures are established under which both the government and the opposition may operate in the political system without the recourse to force and other non-constitutional methods. Thus there are provisions for the orderly succession of power-holders through competitive democratic elections based on universal adult suffrage.

Having defined constitutions and constitutional government, it is now possible to examine the nature of constitutional government in India. In the introductory chapter it was suggested that the Indian
Constitution, as adopted on January 26, 1950, contained several incompatible provisions. The provisions of the Constitution guaranteeing individual rights of freedom of speech, the right of equality and the right to property conflicted with the Directive Principles of State Policy of Part IV of the Constitution and the emergency provisions of Part XVIII.

It was further hypothesized that the legitimacy of constitutional government is directly related to the consensus between the government and the opposition parties. A discussion of these hypotheses requires a preliminary examination of the objectives of the Indian Constituent Assembly, 1947-50 and the initial consensus of the Framers. This examination of the Constituent Assembly is particularly relevant since it was claimed by certain members of the Congress Party during the emergency that the Assembly was unrepresentative of Indian society; and it was proposed that a new assembly should be called. Moreover, Mrs. Gandhi argued that the measures of the emergency did not represent a departure from the constitutional government established by the Framers of the Indian Constitution. In examining these claims the representativeness of the Constituent Assembly will be examined. This will then be followed by a discussion of the intentions of the Framers.

The Indian Constituent Assembly, 1947-50

The manner in which the Constituent Assembly was elected continues to be a matter of controversy. On the one hand it has been seen as unrepresentative of Indian society, while on the other hand it has been seen as broadly representative of Indian society. It is clear that
these counter-claims have important implications for the legitimacy of the Constituent Assembly. According to Bettelheim:

The Assembly consisted of 292 elected members and 93 representatives of the Princely States. The elected members were sent to the Constituent Assembly by members of the Provincial Legislative Assemblies, who were themselves elected by the votes of about 20 per cent of the adult population, a quarter of whose members were not even elected but claimed their seats by feudal right.

While it is true that the Constituent Assembly was indirectly elected by a minority of the adult population, it could also be argued that the Assembly was, nevertheless, broadly representative of Indian society. Granville Austin, for example, in his study of the Indian Constitution, refers to the Constituent Assembly as a 'microcosm' of India. He attributes the representativeness of the Assembly to the special role played by the Congress Party which was ideologically diverse, and which had a broad base of support throughout all sections of India society. Moreover, the Congress followed the deliberate policy of ensuring the election of minority groups to the Assembly as well as non-Congress members.

There are a number of other arguments which support Austin's assertion. In the first place, the figures used by Bettelheim for the proportion of the adult population voting for the provincial legislative assemblies are average figures. In some provinces the proportion of the adult population that voted was more than twenty-four per cent. Secondly, although the Princely States were given ninety-three seats in
the Constituent Assembly by the terms of the Cabinet Mission Plan, the method of selecting these representatives was left to consultation between the Constituent Assembly and the Princely States. Not all of the representatives of the Princely States claimed their seats by "feudal right"; some were elected and even included members of the Congress Party. Moreover, it is important to note that the princely state of Hyderabad did not participate at all in the proceedings of the Constituent Assembly. With sixteen seats allocated to them, Hyderabad's representatives would have constituted the largest single bloc of princely state members.

Finally, with partition and the exit of the majority of Muslim League members from the Constituent Assembly, the Congress-dominated Assembly was more rather than less representative of Indian society. The social composition of Constituent Assembly members is only one indication of the representativeness of the Assembly. It is also necessary to examine the representation of interests in the Constituent Assembly. Although the Assembly was dominated by the Congress Party and by certain individuals such as Nehru, Sardar Patel and Maulana Azad, it was prepared to accommodate the wishes of minority groups. Special provisions were included in the Constitution relating to the official languages of the Indian Union and the rights of minorities such as the scheduled castes and tribes. Thus the constitutional and political arrangements adopted by the Assembly reflected the balance between these different groups.

In addition to the representativeness of the Constituent
Assembly, the intentions of the Framers have also acquired added significance with the declaration of the state of emergency on June 26, 1975. Critics of Prime Minister Indira Gandhi charged that she had worked outside the spirit of the Constitution, while Mrs. Gandhi, in turn, claimed that there had been no deviation from the intentions of the Framers.

It is necessary, therefore, to examine what the intentions of the Framers were. It must be added that it is not possible in this study to examine the intention of the Framers for each article of the Constitution. Controversy in the Constituent Assembly, for example, was particularly marked over the issues of language, secularism and the protection of minorities; and these issues have remained controversial since 1950. But of more importance here are those issues that have been thrown into relief by the declaration of the state of emergency in 1975. These include the question of what form the institutional structures of the Indian political system should take. Should there be, for instance, a parliamentary, federal system or a decentralized system? Also of importance are the question of individual rights and social objectives contained in the section of Fundamental Rights and the Directive Principles of State Policy, and the question of the emergency provisions of the Indian Constitution.

The Constituent Assembly's proceedings were marked by a large measure of agreement on fundamental questions; and there are many reasons for this basic consensus. The Constituent Assembly can be seen, first of all, as a culmination of debate over constitutional provisions
rather than as a starting point. Even before the Assembly met, the Congress Party had adopted guidelines for a future constitutional order in the form of, for example, the Nehru Report of 1928 and the Karachi Resolution on Fundamental Rights and Economic and Social Change of 1931. The political attitudes of assembly members had been shaped by the common experience of colonialism and the nationalist movement. While they were influenced by British parliamentary democracy and the 1935 Constitution of India, the Framers were determined to prevent the arbitrary government which was a feature of the colonial period. Thus there was also agreement that a new constitution should safeguard individual rights.

The majority of the Constituent Assembly's members believed that the aims of limiting governmental power, guaranteeing individual rights, and securing economic and social progress for the community could best be achieved through a parliamentary system of government based largely upon the model of Westminster but incorporating a federal system to cope with India's diversity.

It is clear, however, that these aims of guaranteeing individual rights and securing economic and social progress conflicted with each other. The provisions of the Constitution relating to the Fundamental Rights and the Directive Principles of State Policy have been sources of controversy since the adoption of the Constitution in 1950. The debates have largely centered around the following questions: Are the Fundamental Rights of the Constitution absolute? Are they therefore unamendable by Parliament? Do the Directive Principles of State Policy take precedence over the Fundamental Rights in cases where they clash?
The evidence from the debates of the Constituent Assembly shows that the Fundamental Rights were not to be absolute or unamendable. Provisos were attached to particular rights such as the right of free speech where these rights conflicted with law or morality.\(^8\)

Congress governments since 1950 have taken the position that the fundamental rights of the Constitution are not transcendent and that the right to property and compensation must at times be secondary to economic and social reform. They have also argued that the Directive Principles of State Policy, even though they are non-justiciable, should in certain cases, such as land reform and the redistribution of wealth, take precedence over the Fundamental Rights. In their policies of land reform the central and state governments faced the problem of the amount of compensation to be paid to owners of property. This was a particular problem when the governments moved to abolish intermediaries (zamindars), between the state and cultivators of land. The government thus passed a series of constitutional amendments which gave it the authority to decide the amount of compensation to be paid to owners of property.\(^9\) Land reform laws could not be challenged on the grounds that they were inconsistent with the right to property under Article 31 of the Constitution. Such laws outside the scope of judicial review were placed in the Ninth Schedule of the Constitution.

The problem of whether the Fundamental Rights were to be absolute arose not only in the discussion of individual rights and economic and social reform but also in the Constituent Assembly's debates about the possible conflict between individual rights and the emergency powers of the state. Here the question was the important one of the limits of
constitutional government in times of emergency. This problem is raised by Wheare in his discussion of the future of constitutional government:

Perhaps the most difficult problem that confronts constitutional government in modern times is how to defend itself successfully against its enemies and still survive. Are there cases where a government is morally entitled in order to save the Constitution, to break a part of it, in order to enforce what is good in the constitution to neglect what is bad?\textsuperscript{10}

The problem of the limits of constitutional government can best be examined by looking at the emergency provisions of the Indian Constitution and the intentions of the Framers when they drafted these provisions. Such provisions are included in Part XVIII of the Constitution which states that:

A Proclamation of Emergency declaring that the security of India or of any part of the territory thereof is threatened by war or by external aggression or by internal disturbance may be made before the actual occurrence of war or of any such aggression or disturbance if the President is satisfied that there is imminent danger thereof.\textsuperscript{11}

Once a state of emergency is declared, Parliament obtains greater powers including the authority to pass laws on the legislative subjects of the State List of the Constitution. Part XVIII of the Constitution thus provides for the suspension of the federal system. The articles on the Fundamental Rights may also be suspended including the citizen's rights to constitutional remedies.\textsuperscript{12}

In addition to the declaration of a state of emergency, the President may impose 'President's Rule' in a particular state by issuing
a proclamation suspending the normal constitutional arrangements in the state and assuming the functions of the state's executive. Moreover, Part XVIII of the Constitution gives the President the authority to issue a proclamation of 'financial emergency' in a situation threatening to the financial stability of the Indian Union.

It is important to bear in mind the economic, social and political context in which these emergency provisions of the Constitution were framed. In particular, the problems of conflict with the new state of Pakistan, communal bloodshed in the Punjab and Bengal, the integration of the princely states, the threat of insurgency in Telengana and Nagaland, famine and administrative dislocation all occupied the members of the Constituent Assembly. The Framers, therefore, in writing the emergency provisions of the Constitution were not faced with an abstract possibility of crisis but a very real danger. Accordingly, they took steps to reserve to the state wide-ranging emergency powers to deal with external conflict and internal disturbance.

There were, however, safeguards included in the Constitution to limit these emergency powers. A declaration of emergency under Article 352, for instance, had to be approved by both houses of Parliament within two months of its declaration. Similarly, a declaration of 'President's Rule' in a state would expire at the end of six months unless it was renewed, and it could not be renewed for more than three years.
The hypothesis of this thesis is that these safeguards were inadequate in limiting the use of the emergency powers of the Constitution. The Framers assumed that a state of emergency would be declared only if there was a clear-cut threat to the stability of the Indian Union. They did not envisage the emergency powers being used by a Prime Minister in order to remain in power. Furthermore, once an emergency is declared and approved, it can be continued indefinitely by the Prime Minister regardless of whether or not the original reasons for the declaration of emergency remain. The Framers also did not envisage the emergency powers being used by the government to permanently alter the Constitution. Part XVIII of the Constitution contained opportunities therefore, for the negation of constitutional government.

In summary, the proceedings of the Constituent Assembly were marked by a large measure of consensus as to the federal and parliamentary institutional framework of the Indian Republic, the guaranteeing of individual rights and the statement of the economic, social and political objectives to be followed by future governments. Agreement was also reached on the need for extraordinary provisions to be used in times of emergency arising out of external aggression or internal disturbance. It was suggested that this consensus was partly due to the fact that the Congress Party had already hammered out part of its proposals for the Constitution during the independence movement. Also the Congress-dominated Constituent Assembly was prepared to accommodate the wishes of minority groups.
Nevertheless, the Constitution as adopted on January 26, 1950 contained authoritarian as well as liberal democratic features. It limited individual rights such as freedom of speech, the right to property and the right to constitutional remedies. With reference to the earlier hypothesis that the Constitution contained insufficient safeguards against the development of authoritarian rule, it has been shown that the emergency provisions were broad and antithetical to limited government. The problem of how to ensure that a state of emergency remained only temporary was left unresolved by the Framers.
CHAPTER III
KOTHARI'S MODEL OF ONE-PARTY DOMINANCE AND THE
MARXIST MODEL OF CLASS CONFLICT
The preceding chapter examined the consensus of the Constituent Assembly and the limits to individual rights and constitutional government contained in the Indian Constitution. This examination must be supplemented by an analysis of the social and political realities which give effect to the formal provisions of the Constitution or change them. In other words, a discussion is required of the social and political conditions favouring constitutional government in India.

The following chapter relates India's legal and constitutional arrangements to their political contexts by examining Kothari's model of one-party dominance and the Marxist model. In particular, this examination has two main aims: first, to inquire as to how effective these models are in their description and analysis of India's political and constitutional system between 1947 and 1975; and, secondly, to discover whether these models may help us to understand the crisis culminating in the declaration of the state of emergency in June 1975.

In using these models, however, it is important to note the limitations of models. Models necessarily involve the simplification and abstraction of the social system and can therefore be criticized for failing to include other important characteristics of the social and political systems. But by abstraction and analogy they enable us to delineate the relevant characteristics of a social and political system in order to explain its operation. The problem, then, is in how far these models accurately correspond to the social and political reality they seek to explain.

The relative stability of the Indian constitutional and political
system received its theoretical articulation in the early 1960s by a number of social theorists who sought to explain it with reference to the important role of the Indian National Congress. Of these the most important were Rajni Kothari and W.H. Morris-Jones. Kothari's consensual model of one-party dominance received the most academic attention but it is important to note that his model was not exclusively concerned with an examination of India's party system. Rather, Kothari was concerned with explaining why certain institutional arrangements have developed in India and why particular economic, social and political strategies have been followed by the Indian elite.

Kothari argued that the elite's identification of the problems of Indian economic, social, and political development has led them to follow particular strategies out of which has arisen a distinctive Indian model of development. At independence the challenge facing the political elite consisted of politically integrating India and also carrying out formidable tasks of economic and social development. These tasks, however, could only be carried out by means of a political framework creating consensus.

First, given its great diversity and polycentric character and its very young age as a unified polity, the framework of integration can be provided only through a democratic order. (In India democracy is not merely a matter of preference and value; it is also a necessity.) Second, however, the ability of the democratic order to provide an integrative framework to a highly segmented society depends on a structure of reconciliation and mobilization of energy for it at various levels that is provided by an all-encompassing party of consensus—covering all regions and sections of society.
Above all, Kothari's aim is to achieve comprehensiveness in describing and analyzing Indian social reality and to visualize the different parts of that reality as a connected whole, as a "basic system". It is worthwhile, then, to examine the nature of this "basic system" and to see whether it is an accurate description and analysis of aspects of India's economic, social and political system from 1947 to 1975.

In Kothari's model the competitive one-party dominance system consists of a 'party of consensus' and various 'parties of pressure'. The central position in this model is clearly occupied by the Indian National Congress. Kothari first of all notes the origins of the Congress Party and then describes how it has been able to transform its "historical legitimacy", derived from its role in the independence movement, to a "legitimacy in the present". It was able to achieve this "legitimacy in the present" through its mass base and support covering all regions and segments of the population; through its flexible ideological positions; through continuous governmental control at the centre and in the majority of the states, and through its ability to secure consensus within Congress itself and between Congress and non-Congress parties. Kothari also stresses the importance of the leadership of the Congress, particularly of Nehru and other "tall men", and the growth of a number of institutions and conventions responsible for blunting conflict, factionalism and the sources of cleavage in the country as a whole.

In Kothari's model advances are made in the description and
analysis of the relationship between the dominant party and the parties of pressure and in the effect of governmental power on the structuring and survival of parties. Kothari's model is partly a response to traditional typologies of party systems based on the experience of western political parties. The pluralistic model which attributes the maintenance of democracy to the existence of an effective two-party competitive system is obviously inadequate in explaining the workings of the Indian political system. Indian democracy functioned between 1947 and 1975 with one party having a virtual monopoly of power at the centre and in most of the states. Kothari's model accounts for the maintenance of democracy by looking at the peculiar nature of the systemic relationship between the party of consensus and the parties of pressure. He argues that this interaction between the parties has maintained the open democratic system.

In his analysis of this interaction, Kothari introduces the important concept of a 'margin of pressure' between the Congress and non-Congress parties. This margin of pressure has a crucial function in maintaining the responsiveness of the Congress Party.

Inside the margin are various factions within the party of consensus. Outside the margin are several opposition groups and parties, dissident groups and important individuals. These groups outside the margin do not constitute alternatives to the ruling party. Their role is to constantly pressurize, criticize, censure and influence it by influencing opinion and interests inside the margin and, above all, exert a latent threat that if the ruling group strays away too far from the balance of effective public opinion, and if the factional system within it is not mobilized
to restore the balance, it will be displaced from power by the opposition groups.\footnote{5}

In summary, this exposition of Kothari's model of one-party dominance has outlined the approach that he uses in order to explain comprehensively the operation of India's economic, social and political systems in the post-independence period. In the course of his analysis he has placed special emphasis on the role of elites, the Congress Party and parties of pressure in securing consensus and maintaining the legitimacy of the constitutional and political system.

In the Marxist model, however, the relative stability of India's constitutional and political system is explained with reference to the correlation of class forces in India. The outcome of the struggles between the various classes of Indian society determines the institutional forms of the constitutional and political system. The question arises of whether such a method can be used to explain aspects of India's economic, social and political systems between 1947 and 1975 and the legal and political transformations that have taken place during the same period. In particular what insights can be obtained by relating Indian legal and political changes to the underlying economic structure of society with its struggle between classes?

It would be useful, first of all, to examine how the Marxist approach has been applied to Indian society. These analyses are typified by the writings of Marxists such as Kathleen Gough, Hari P. Sharma, Meghnad Desai, and Charles Bettelheim as well as the analyses
made of the Indian situation by the Indian communist parties themselves.

Marxist analyses differ widely in their descriptions of Indian society, in their characterization of class formation and class struggle and hence in the conclusions that they reach. These differences, furthermore, reflect the varying ideological positions taken by the Indian communist parties and by other Marxist and neo-Marxist analyses, but they do share fundamental points of agreement. They all, for instance, take Marx's theoretical assertion of the relationship between economic structure and social consciousness as the starting point of their method.

In placing the struggle for independence in its historical perspective, most Marxists argue that the independence movement constituted a 'bourgeois-democratic revolution'. It was, they believe, essentially a struggle between, on the one hand, the Indian bourgeoisie and, on the other, British colonialism and its local allies, the feudal Indian princes. In this struggle, the political expression of the Indian bourgeoisie, the Indian National Congress, succeeded in forming a broad-based movement of different classes opposed to colonialism. Despite the popular basis of the movement, however, political control remained in the hands of the bourgeoisie. The Constituent Assembly, charged with the drafting of a new constitution, was unrepresentative of Indian society as a whole and was elected indirectly by provincial legislative assemblies. The provincial legislative assemblies were themselves dominated by urban and rural landowning interests.

Thus for Marxists the political institutions created by the victorious bourgeoisie during the period of the Constituent Assembly,
1947-50, were bourgeois institutions—a bourgeois republic with a federal system and parliamentary democracy based on universal adult suffrage, free elections and the guaranteed rights of individuals. Thus according to Marxists, the institutional forms of the state reflected the interests of the dominant class at independence.

Although they agree on the historical importance of the Indian bourgeoisie, Marxists differ in their analyses of the relationship between this class and the other classes of Indian society. The problem centers on the question of how far the Indian Republic can be termed a 'capitalist state' when the majority of the population is not engaged in capitalist activity but feudal or semi-feudal agriculture? Marxists point out, however, that although the capitalist mode of production has existed side by side with feudal or semi-feudal modes of production, only one, the capitalist mode, has been dominant in India since independence. And it has been this dominant mode of production which has been responsible for altering economic and social relations in the countryside. Moreover, the constitution includes in Part XX, financial, property, contract and suit relations that are characteristic of a capitalist framework.

After independence Congress governments undertook programmes of land reform which had the effect of abolishing the 'zamindari' system, simplifying land tenure relations and encouraging capitalism in agriculture. At the same time there developed a class of large landowners and rich peasants who engaged in capitalist farming and who consolidated their economic and hence social and political power in the rural areas.
The Marxist economist Meghnad Desai writes that "the Indian economy is by no means fully capitalist. Nearly 75 per cent of the population is engaged in agriculture, which remains predominantly pre-capitalist in character, stamped by feudal and customary relations. However, capitalist relations of exchange and exploitation have now achieved a significant penetration of the rural sector, especially in the more advanced regions."9

This strengthening of capitalist relations in India is similar to the historical process noted by Marx in France when the bourgeoisie, from the time of the French Revolution of 1789 onwards, attacked feudalism and transformed property relations. In The Civil War in France, he described the historical mission of the bourgeoisie and its state in overturning feudalism.

The centralised state power, with its ubiquitous organs of standing army, police, bureaucracy, clergy, and judicature—organs wrought after the plan of a systematic and hierarchic division of labour—originates from the days of absolute monarchy, serving middle-class society as a mighty weapon in its struggle against feudalism. Still, its development remained clogged by all manner of medieval rubbish, seignorial rights, local privileges, municipal and guild monopolies and provincial constitutions. The gigantic broom of the French Revolution of the eighteenth century swept away all these relics of bygone times, thus clearing simultaneously the social soil of its last hindrances to the superstructure of the modern state edifice raised under the First Empire...10

Post-independence India, of course, differs in important respects from eighteenth and nineteenth century France. This is true not only for their different economic, social and political structures but also in the nature of the bourgeois revolutions in the two epochs. Whereas
Marx refers to the French Revolution as a "gigantic broom" in clearing away feudalism, the Indian "bourgeois revolution" can hardly be seen as a "gigantic broom." Indeed, some Marxists such as Desai attribute the weakness of capitalist development in India since independence and the post-1971 economic and political crisis to the constraints placed upon the capitalist mode of production by the resilient feudal or semi-feudal sectors of the economy. The capitalist sector has been unable to raise sufficient internal economic surpluses for growth because of its inability to transform entirely the rural sector. Despite the progress made, there is as yet no national market and capitalist development has been uneven regionally. Hence the rate of growth remains low; leading some Marxists to describe what they see as the contradictions of slow capitalist development.  

In the Marxist analysis, the political stability of post-independence India has been a function of class relations. The relative stability of India has reflected the consolidation of the alliance between the big and middle bourgeoisie, petty bourgeoisie, big landowners and rich peasants during the 1950s and 1960s. With this consolidation there has been a concomitant growth in the power of the Indian state—the armed forces, paramilitary forces, police, intelligence services, bureaucracy and judiciary—which has directly affected the capacity of subordinate classes to challenge the power of the ruling classes. The consolidation of the power of the ruling classes reflected, as a corollary, the weakness of the main threats to the ruling classes—namely, the working class and the peasantry. To this weakness
of the proletariat and the peasantry must be added the fragmentation of their political and social organizations. Sectarian fragmentation has often been marked as shown, for example, by the split of the Indian Communist Party in the early 1960s into three different, often hostile, parties.

A comparison of the Marxist approach and that of Kothari's shows that they differ significantly in their accounts of the reasons for the stability and legitimacy of India's constitutional and political system since 1950. In the Marxist model of class conflict and Kothari's model of one-party dominance we have two different treatments of stability and conflict. The Marxist model tends to stress class struggle and contradictions while Kothari's model tends to stress stability, continuity and harmony. Kothari's model is concerned with 'incremental revolution' in which the constitutional and political system assimilates the forces of change in Indian society. This picture differs from that of the Marxist model which is concerned with wholesale and violent revolutionary processes.

Kothari's stress on continuity and stability reflects to a large degree the functionalist method that he uses. But functionalist theory can be criticized for its assumption that 'equilibrium' is the normal state of society and for its assumption that elements of a social order tend automatically to maintain the 'system.' The normal state of the Indian social and political system, however, probably lies between the two extremes of stability and conflict.

Kothari's model, for example, may be more applicable to the period
of one-party dominance between 1950 and 1967 than to the period after 1967. Before 1967 the legitimacy of the constitutional and political system was maintained by the mechanisms of consensus. As a result of the operation of the 'margin of pressure', the government remained responsive to the views of the opposition parties. The influence of opposition parties such as the Praja Socialists was thus greater than their small size in the Lok Sabha. Class divisions in India during this period were conditioned by other social cleavages such as caste, ethnic, religious, linguistic and regional divisions which counteracted the class solidarity of the Indian working class and the peasantry. Furthermore, the Communist Party of India's decision in 1951 to forego violent class struggle in favour of the parliamentary path had the effect of constraining a revolutionary challenge to India's constitutional and political system. In any case, the Indian working class was still embryonic, forming a small proportion of the total population of India.

The Marxist model, however, may be more applicable to the period after 1967 when the Congress Party's dominance was reduced at the center and in the states. Class conflict became more salient particularly in the countryside where the 'Green Revolution' of the 1960s had increased disparities of income and wealth. In the Congress Party, Mrs. Gandhi increasingly stressed economic and social performance rather than consensus. In her struggle with the 'Syndicate', who controlled the organizational wing of the Congress, Mrs. Gandhi stressed the redistribution of wealth and income, the nationalization of banks, the
abolition of privy purses and other attacks on 'vested interests.'

The question arises of what other perspectives does the Marxist model offer in the study of constitutional government in India. In the previous chapter, the discussion of the limitation of individual rights focussed mainly on how the Constitution contained authoritarian features. A class analysis may be of use in explaining why these broad emergency powers were included in the Constitution.

In the Marxist analysis, the independence movement did not constitute a social revolution but only the replacement of one ruling class by another. The new ruling class thus borrowed from the British the same repressive constitutional provisions and statutes. The Defense of India Rules, for example, were copied almost verbatim from the Defense of India Act and Rules of 1915 and 1939. In the Marxist analysis, the individual rights contained in the Fundamental Rights of the Constitution such as the freedom of speech, expression, religion and right to property were not absolute. They were to be maintained only as long as there was no challenge to India's ruling classes from subordinate classes. But as soon as this class rule was threatened, the bourgeoisie would drop the liberal democratic façade and show the authoritarian face of the state.  

The Marxist model may also be of use in explaining the constitutional changes that have taken place since the adoption of the Constitution in 1950. Since the adoption of the Constitution it has been amended forty-two times. It could be argued that such a large number of amendments for twenty-seven years demonstrates that the original
document was too rigid, or alternatively, that the amending process has been overused by successive governments who have treated the Constitution too lightly. A legalistic analysis of the defects of the Constitution, however, only gives a partial explanation of why forty-two amendments have been passed in such a short time.

An analysis is required of who benefits and loses from these constitutional amendments. The Marxist model, for example, assumes that the Indian Constitution reflected the political interests and ambitions of the Indian bourgeoisie and that the Constitution articulated and legitimized those objectives and policies that the Indian bourgeoisie was determined to pursue in the future. However, the bourgeoisie's policies of land and industrial reform were threatened in the 1950s and 1960s by a series of litigations and judicial interpretations which benefited individual landowners and industrialists rather than the interests of the whole of the bourgeoisie and landowners. Thus the government's policies of land reform have required the limitation of the individual's right to property in the interests of strengthening capitalist relations in the countryside and entrenching the capitalist mode of production.

In contrast, in Kothari's model of one-party dominance, the government's policies of social and economic reform are not a mere reflection of the class structure of society. Rather, there is a reciprocal relationship between economic and legal and political structures. For example, universal adult suffrage and the imperatives of obtaining electoral support have determined government policies of distribution.
of wealth and income and the abolition of poverty. Kothari writes that:

...in the case of India we see that it will not do to look at political institutions as some kind of superstructure that presides over more basic relationships in society and economy, or to look at elites as simple recipients of inputs from society to which they respond in the form of various governmental outputs. Instead the whole process starts here through the establishment of a constitutional and political superstructure which then, through the actions of elites, penetrates into society at various levels and by stages, leads to responses from below in the form of new coalitional structures. Elites and institutional forms can be seen here as creative actors in the process of integration and diversification, initiators of a far-reaching change in all spheres of life, and catalysts and mobilizers of a new vitality at various levels.14

Finally, an examination is required of the treatment of legitimacy and consensus in the two models. On this question, Marxists have argued that the consensus produced by the Indian National Congress supports the status quo.15 Kothari, on the other hand, argues that consensus does not support the status quo but instead that a certain measure of consensus has been necessary for the Congress Party in order to carry out its programs of economic, social and political development. Consensus, in other words is a prerequisite for social change. In his article "The 'Congress System' Revisited", Kothari writes:

But the Congress system is far more than a mere juxtaposition of parties and factions along the measurables of votes and seats. It is, basically, a system of evolving, maintaining and reviewing a framework of consensus in an enormously differentiated society. This is a dynamic process, involving continuous response to changing conditions (it is a serious mistake to confuse consensus with status quo) and, through such response, evolving a wider framework of shared goals and values.16
Despite their disagreements on the function of consensus and legitimacy, Marxists and Kothari agree that both consensus and legitimacy are not assured—that they are problematic. One of the strengths of Kothari's model of one-party dominance is that it attempts to relate the 'operative framework' of the electoral and party system to the frameworks of consensus and legitimacy. These three frameworks are both dependent on and independent of each other. Thus the legitimacy of the political system is not entirely dependent on the electoral victories of the dominant party. Legitimacy also depends "on a variety of exogenous factors--economic and demographic shifts, changes in relationships between social classes, wars and natural disasters, changes taking place in the world at large and their impact on the staying capacity of a regime and psychological attitudes towards it". However, Kothari does not give a detailed account of how each of the three frameworks influences the other. The 'exogenous factors' which he mentions influence not only the framework of legitimacy but also the framework of consensus and in particular the relations between the government and the opposition parties. Nevertheless, Kothari's division of the 'Congress System' into the three dimensions of operative mechanisms, consensus and legitimacy provides us with an important analytical framework with which to examine the breakdown of constitutional government in India. The interrelationship of these three dimensions will be examined in greater detail in the following chapter. The influence of 'exogenous factors' on consensus and the legitimacy of the Indian Constitution will also be examined.
The above discussion of the Marxist model and that of Kothari's has pointed out some of the strengths and weaknesses of each in accounting for the legitimacy of India's constitutional and political system in the period between 1947 and 1975. The test of a model, however, also lies in its ability to predict changes in a political system, and it is now necessary to consider in what ways the above models are relevant to an understanding of the political crisis of 1975.

Several Marxists have been perspicacious in predicting a crisis in the Indian political system as a result of their analysis of underlying economic and social trends. The Marxist Desai, for example, writing in 1973 argued that:

With her own internal rivals destroyed and India's external foe decisively humbled, Indira Gandhi appeared to have established an impregnable position for herself. In any moderately stable social system a string of such brilliant successes would suffice to consolidate the political order for many years to come. In the case of India such a prospect does not seem likely. The diplomatic, military and electoral triumphs of 1971-72 certainly reflected a temporary strengthening of Indian capitalism's economic position. But...the long term prospects for Indian capitalism remain bleak, and the very forces which helped to give Indira Gandhi room for manoeuvre in this period will confront her Government with grave problems at a later date."

Of course, it could be argued that the prediction of instability is to be expected from the method of Marxists since they hold that class struggle and revolution are inevitable. Their ideological preoccupations lead them to expect, and hope for, crises in the social and political systems. But Marxists have been predicting a crisis in the
Indian political system from at least the middle of the 1960s; they have to explain why that crisis occurred in 1975 and why it took the form that it did.

It now remains for us to consider the utility of Kothari's model in predicting the crisis of 1975. Although the post-1971 'Congress System' differed from the period of one-party dominance between 1950 and 1967 in regard to opposition and factionalism within the Congress, the relationship between the government and parties of pressure and center-state relations, Kothari restated the validity of his model of the 'Congress System' as late as December 1974. Before the emergency he did point to the perceptible decline in the legitimacy of the constitutional and political system, tracing this decline to certain trends in India's society and politics—notably, excessive centralization in the levels of government, the absence of a real popular base for the Indian political parties, corruption and failures of performance. Kothari, however, concluded that the Congress Party and Mrs. Gandhi were likely to consolidate their position but did not make clear how this consolidation would take place.¹⁹

In summary, Kothari's model of the 'Congress System' and the Marxist model of class conflict differ significantly in their explanations of the relative stability of India's constitutional and political system between 1947 and 1975. Kothari's model emphasizes the stability and consensus produced by the Congress Party and his model is concerned with 'incremental revolution.' In the Marxist model, however, class struggle is emphasized and India's relative constitutional and political
stability is explained by the dominance of the Indian bourgeoisie and rich landowners and by the weakness of revolutionary challenges to this dominance. With regard to the hypothesis that the Constitution contained insufficient safeguards against the development of authoritarian rule, an analysis of class interests provides one explanation of why broad emergency powers antithetical to constitutional government were included in the Constitution. A class analysis also provides an explanation of why constitutional amendments limiting the Fundamental Rights were passed by Congress Governments.
CHAPTER IV

THE EMERGENCY, 1975
The preceding examination of the Marxist model and Kothari's model of one-party dominance has offered several theoretical perspectives from which to analyze the breakdown of constitutional government in India. In analyzing the period leading up to the declaration of the state of emergency in June 1975, the following questions are particularly relevant: How did the operative framework of the electoral and party systems affect the legitimacy of the constitutional and political system after 1971? What was the nature of the consensus between the Congress Party and the parties of pressure and how did the 'margin of pressure' operate? What was the influence of exogenous factors, such as economic trends mentioned by Kothari, on the legitimacy of the constitutional and political system? Was there a revolutionary challenge to the bourgeois constitutional and political system or was there merely a struggle within the ruling class? Finally, to what extent did Mrs. Gandhi's populist strategy contribute to the economic and political crisis?

The following analysis of the breakdown of constitutional government begins with an examination of the effect of economic trends and Mrs. Gandhi's populist strategy on the frameworks of consensus and legitimacy. This will then be followed by a detailed examination of government-opposition relations in the period 1971-75.

Despite the Congress (R)'s large electoral majorities in the general election of March 1971 and the state assembly elections of February 1972, the government of Prime Minister Indira Gandhi found it difficult to fulfill its promises of economic and social reform.
Abolishing poverty was, in practice, more difficult than formulating slogans of 'garibi hatao' (abolish poverty) and other populist measures during election campaigns. In implementing its policies, the new government faced both economic and political impediments.

As regards the economic impediments, the government's programs were threatened in the years following the landslide victories of 1971-72 by successive droughts, poor harvests, and the consequent inflation which was also fuelled by worldwide inflation. The government itself admitted on July 30, 1975 that the second half of 1974 had seen the sharpest rate of increase of prices in India since 1945.¹ After good harvests in 1970-71, agricultural production declined sharply in the period 1972-75 while industrial production showed uneven growth. Power shortages, supply bottlenecks of raw materials, and unsatisfactory growth of agriculture all led to a slowing down of the rate of growth of industrial production and the rate of investment proves inadequate for sustained growth.² Per capita income in 1972-75 showed no significant increase and the effect of these economic trends was a general decline in the living standards of the mass of the Indian population.

In its annual report for 1974-75, published in April 1975, the Planning Commission admitted that the draft Fifth Five-Year Plan was unworkable. The Commission attributed the "substantial increases in non-development expenditure" and the "significant escalation in the cost of development programmes and expenditures" to the sharp increases in domestic prices and the cost of imported raw materials and fuel such
as oil. However, there were those who laid the blame for the failure of planning at the door of the government and, in particular, the Planning Commission itself. Dr. B.S. Minhas, who resigned from the body in 1975, charged that the Planning Commission was partly to blame for the deteriorating economic situation because of its unrealistic planning assumptions and methods. The Commission, for example, used inaccurate foreign aid and trade statistics and under-estimated the prices of crucial imports. Furthermore, the Commission over-estimated the level of domestic savings. As a result of these optimistic calculations, the draft Five-Year Plan bore little relation to economic reality.

Worsening economic conditions were not the only reason for the government's failure of performance after March 1971. Part of the blame lies with the government's initial delay in the period between the general elections of 1971 and the state assembly elections of 1972. David H. Bayley points out that the government lost much time in implementing its programs.

One of the great curiosities of Indian politics in 1971 was how little Mrs. Gandhi chose to do with her dramatic March victory. New programs of economic development were not announced; the 1971-72 budget was a copy of the previous year's; and cabinet changes were minor. The vast parliamentary majority has been mobilized on only three measures. These are constitutional amendments, and they are neither ideologically radical nor do they place new demands on the country.

The conflict between India and Pakistan over Bangladesh may have diverted the government's attention from economic and social
reform but of more importance in the failure of performance after 1971 were the continuing political constraints on the policies of the government. These constraints had not been removed by the "Indira Wave" of 1971-72 although the elections had certainly widened the parameters within which the government could act. At the state and local level, control of Congress Party units was in the hands of a coalition of urban and rural economic and political elites, particularly rich and middle peasants. Mrs. Gandhi's programs for the redistribution of wealth of income were therefore prevented by the nature of the Congress Party's social base. As Susanne Rudolph pointed out, "Indian states, like American, lie closer than their central governments to the organized interests, which are usually the more prosperous. State governments are apt to be less responsive to the less organized underprivileged sectors than a federal government, freer from the need for local support and from local constraints and able to appeal to national constituencies of the underprivileged."6

By the beginning of 1973 it was clear that the euphoric days of the Congress (R)'s election victories and the defeat of Pakistan had been replaced by a period of economic crisis and disillusionment with the government. The years 1973 and 1974 saw an erosion of the consensus in India politics between the government and opposition parties that had been characterized in Kothari's model of one-party dominance. Each side accused the other of undemocratic and unconstitutional actions and questioned each other's faith in democratic principles. This breakdown of the consensus was accelerated in 1975 to such an extent that both the
government and the opposition parties claimed that the other intended to impose a dictatorship on India. To see why there was this breakdown of consensus, it is necessary to examine government-opposition relations between 1972 and 1975 and to show how these relations affected the frameworks of consensus and legitimacy described by Kothari. Of particular importance in this examination is the operation of the 'margin of pressure' and the impact of the JP movement.

The Breakdown of Consensus

The breakdown of consensus can be directly traced to the 1971 general election and the 1972 state assembly elections. While the elections increased the majorities of Congress (R), they also drastically reduced the strength of opposition parties. Parties such as Congress (O), Swatantra and the Jana Sangh which had enjoyed considerable influence before 1971 now found their strengths diminished at the center and in the states. Moreover, the methods used by Mrs. Gandhi and the Congress (R) to reduce the opposition parties support before and after the 1971-72 elections contributed to the opposition parties alienation from 'Congress system'. As a response to Mrs. Gandhi's populism and to corruption in the electoral system, the non-communist opposition parties came to rely increasingly on extra-parliamentary methods.7

In Gujarat in January 1974 student discontent over increased hostel and food charges led to student demonstrations and rioting that ultimately resulted in the downfall of the Congress (R) Ministry, the imposition of President's Rule and the dissolution of the State Assembly.
The disturbances in Gujarat originated from the limited sectional demands of students but rapidly developed into an expression of urban middle class discontent among Gujaratis who protested against high food prices, shortages and government inaction and corruption.

The year 1974 also saw the reemergence of Jayaprakash Narayan, the veteran 'sarvodaya' leader from Bihar. Narayan, or 'JP' as he was popularly called, had in 1973 called for electoral and educational reform. In this campaign for social, economic and political regeneration he appealed to the youth of India to play a pivotal role. Specifically, he made overtures to students in his home state of Bihar. In the country as a whole, many Indians believed that he was the only person of sufficient stature and integrity to lead a nationwide campaign against corruption.

After the Gujarat disturbances had subsided in March 1974, opposition to Congress developed in JP's home state of Bihar. Again the issues were corruption and the failings of the government in the economic sphere. Similarly, the action committee formed by JP in Bihar had as one of its demands the dissolution of the state assembly and the replacement of the Chief Minister, Abdul Ghafoor. In its decision not to dissolve the assembly and call new elections, the central government took the position that the assembly had been democratically elected in 1972 and should therefore be allowed to run its normal course. The combined non-communist opposition parties, however, argued that the Congress (R) government of Bihar had lost touch with the people and should thus seek a new mandate. Besides this, the JP movement also
declared as one of its aims the establishment of the right of recall of the representatives of the people. This was an important constitutional issue that was to be frequently raised by the non-communist opposition parties in the period leading up to the emergency. It figured prominently, for example, in the 'Charter of Demands' submitted by the non-communist opposition parties after the mass rally in New Delhi on March 6, 1975. For the Government these demands and the methods used by the opposition parties only served to undermine the democratic process.

A consistent demand of the opposition parties throughout 1972-75 was that the state of emergency declared by the President in December 1971 should be lifted and that the Maintenance of Internal Security Act of 1971 should be either abolished or modified in its application. For the opposition parties, the emergency and MISA stood as a 'sword of Damocles' over their activities. As long as both the emergency and the MISA remained, they believed that the government had an unfair advantage in that it could potentially restrict their activities. Nor were the opposition parties in Parliament impressed by the government's arguments for continuing the emergency. The opposition parties argued that the external threat invoked as a reason for the emergency and its continuance had lessened since the war with Pakistan.

These demands for the termination of the emergency received added impetus following developments in India's neighbour Bangladesh in 1974-75. Sheikh Mujib Rahman, the Prime Minister of Bangladesh, had on December 28, 1974 issued a proclamation of emergency which suspended
the fundamental rights of the Constitution. On January 25, 1975 the Constitution itself was amended in such a way that the parliamentary form of government was replaced by a presidential one-party system in which civil liberties were curtailed.

In New Delhi on January 27, 1975 a conference of Narayan and other leaders of the opposition parties decided that the Bihar-type movement for the reassertion of democratic rights should be intensified to prevent a similar authoritarian regime being established in India. These opposition apprehensions were intensified by certain statements made by the Chief Minister of Bihar, Abdul Ghafoor, on one of his visits to New Delhi. Ghafoor threatened on January 29, 1975 to take drastic action against Jayaprakash Narayan should he restart his agitation on his return to the state of Bihar. These threats angered the opposition parties and it was rumored that Mrs. Gandhi herself had given approval to Ghafoor's warnings. Madhu Limaye of the Socialist Party asked: "Do these statements [of Ghafoor] presage further massive attacks on democratic rights? It is being said that the Prime Minister's advisers are engaged in a secret exercise the purpose of which is ultimately to clamp down a Bangladesh-type authoritarian regime in this country. Such an attempt will, naturally, be preceded by large-scale arrests of Opposition and trade union leaders and above all, of Mr. Narayan."  

The opposition parties, therefore, demanded the revocation of the state of emergency of December 1971 and the repeal or modification of the Maintenance of Internal Security Act. Developments in Bangladesh
and veiled warnings from the Congress (R) leadership only stiffened their resolve to press for an end to the emergency regulations.

It is not surprising, then, that the opposition parties, including the CPM, reacted strongly when the government attempted on May 7, 1975 to introduce an amendment to MISA in the Lok Sabha. The amendment would have permitted detention under the Act for a period of up to two years in places designated as 'disturbed areas' and without appeal to advisory boards. Because of the strong reaction from the opposition benches the Home Minister, Brahmananda Reddy, announced later that the bill would be withdrawn but he did make it clear that a similar proposal would be introduced in the future. This bill, if passed, would have been a setback to the Opposition's campaign for the relaxation of the emergency since it gave more discretionary powers to the government. It is interesting to note that the opposition parties, excluding the CPI, at this time were planning more Bihar-type movements; the amendment to MISA would have threatened these plans.

There was, however, one area in which a government-opposition consensus seemed likely to be achieved and that was the issue of electoral reform. At Bhubaneshwar, Orissa, on March 31, 1975, Narayan held out the offer of an all-party conference to be held in New Delhi to discuss electoral reform and invited Mrs. Gandhi and other leaders of the Congress Party. The idea of a dialogue between the government and the opposition on this issue was accepted by the Prime Minister and a series of meetings were held in New Delhi in April and May. Among the Opposition's proposals for a change in the electoral system were: the lowering
of the voting age and the qualifying age for candidates; the right to recall; changes in the size of the Electoral Commission and the method of appointing its members; changes in the laws regarding election expenditures and use of the mass media; and changes in the methods of counting at polling stations.\textsuperscript{13}

The Government agreed to make certain changes in the electoral system but these were only minor reforms that did not involve any changes in statutes but could be secured through executive orders. Despite these minor changes, the series of all-party meetings on electoral reform broke up without any significant changes to the electoral system. Both sides accused each other of obstruction in the talks and the government, in particular, was charged with being vague in its proposals.

In the period leading up to the declaration of the state of emergency in June 1975, the government and the opposition parties in Parliament took different positions. The opposition argued that its activities, far from weakening the democratic system, in fact strengthened it by posing the key issues of reform and by articulating popular discontent. They argued that there was nothing undemocratic about raising such basic issues. Otherwise, without serious checks on the actions of an increasingly authoritarian government, democratic rights and freedoms would be eroded. They felt that it was wrong of the government to expect that it could operate without any scrutiny of its actions. Furthermore, they argued that the Prime Minister could not justifiably claim that the opposition was hindering the social and
economic programs of the government since she already had had nine years of office in which to implement these programs.\textsuperscript{14}

The government, however, argued that the activities of the Opposition in Parliament and the state legislatures and the JP movement undermined the legitimacy of democratically-elected governments. This charge particularly applied to the JP movement's demand for the dissolution of the Bihar state assembly. The government's case was that the opposition, having been defeated convincingly at the polls in 1971 and 1972, was resorting to undemocratic practices as a result of their frustration. As regards the JP movement, the government questioned its mass base. Not only was that base limited but the Opposition was also duping its supporters and Narayan had allowed his movement to be infiltrated by 'anti-democratic elements'. Congress Party leaders such as Jagjivan Ram also poured scorn on JP's idea of 'party-less democracy' which they saw as being impractical and antithetical to parliamentary democracy.\textsuperscript{15}

The government also took note of certain vague appeals made from time to time by Narayan towards the army and the police. These unconstitutional appeals and the assassination of the Union Minister for Railways, L.N. Mishra, and the attempted assassination of Chief Justice Ray seemed to indicate a serious breakdown in law and order. In response to this the government saw itself as the guardian of public law and order. In particular, Indira Gandhi saw herself in Gaullesque terms as the only person capable of saving the Republic from chaos.

It is clear in this examination of government-opposition relations between 1971 and 1975 that the operation of the 'margin of
pressure' differed significantly from the periods 1950-67 and 1967-71. In contrast to the periods 1950-67 and 1967-71, the parties of pressure (except the C.P.I.) were not successful in maintaining the responsiveness of the dominant party. Some of the reasons for this have already been noted—namely, the decline in the strength and efficacy of the non-communist opposition parties and their alienation from the 'Congress System'; the centralization of power by Mrs. Gandhi and her emphasis on performance rather than consensus; and changes in government-opposition norms of behaviour in which there was a greater resort to law and order methods by the government and extra-parliamentary methods by the non-communist Opposition. The Opposition parties' criticisms of the dominant party can to a certain extent be explained as rhetoric and the normal tendency of opposition parties to take adversary positions against the government. However, after 1971, there was less tolerance by the government and opposition parties of each other's viewpoint. The criticisms took on a more high-pitched character as shown, for example, by each side accusing the other of unconstitutional actions.

Illustrative of the changes in the 'Congress System' are the relations between the government and the JP movement. Besides being a threat to the popularity of the Congress Party in the country as a whole, the JP movement was also, specifically, a threat to Mrs. Gandhi's position in the Congress Party, and her alliance with the C.P.I. Mrs. Gandhi was well aware of the fact that a certain number of Congress Party members were receptive to JP's movement and opposed to the
Congress' alliance with the Communist Party of India. On March 2, 1975, the Prime Minister dismissed the State Minister for Works and Housing, Mohan Dharia, after he had publicly urged her to open a dialogue with Narayan.

Narayan responded to the dismissal of Dharia by issuing a statement on March 4, 1975 in which he urged the top leadership of the Congress Party to replace Mrs. Gandhi. The reaction of members of the Congress Party to this plea was to accuse Narayan and other members of the Opposition of meddling in the internal affairs of the Congress Party. On March 5, 1975 an emergency meeting of the executive of the Congress Parliamentary Party unanimously approved a resolution which deplored "the attempt of anti-democratic forces to disrupt the party" and which reiterated its faith in the leadership of Mrs. Gandhi. A similar resolution attacking the actions of Narayan was passed by the C.P.I.

Mrs. Gandhi's dismissal of Dharia and her rejection of a dialogue with Narayan and Narayan's appeals to the Congress Party leadership to remove Mrs. Gandhi all demonstrate that the government and opposition parties had deviated from the norms of the Congress 'System'; consensus and tolerance had been replaced by inflexible positions between government and opposition parties.

A Marxist analysis of the breakdown of consensus shows that there was a contradiction between Mrs. Gandhi's populist policies and the base of support for the Congress Party. Mrs. Gandhi's programs for economic and social reform could not be implemented because the Congress Party at the state and local level remained under the control of urban and rural
landowning interests. The gap between Mrs. Gandhi's promises and performance increased resulting in the erosion of the legitimacy of the political system. This failure of performance and the economic crisis, the corruption in the electoral system and the alienation of the 'parties of pressure' from the 'Congress System' all led to a reduction in the legitimacy of India's constitutional and political system.

Immediate Causes of the Emergency

Having examined the breakdown of consensus and erosion of the legitimacy of the constitutional and political system, it is necessary now to consider why the emergency was declared in June 1975. In the introductory chapter, it was hypothesized that the maintenance of constitutional government in India depends on the acceptance of the existing constitutional and political framework by both the government and the opposition parties. What then were the specific circumstances which led the government to temporarily suspend this common framework? In other words, why did the government feel that the unlimited powers of a state of emergency were required?

In analyzing the reasons for the state of emergency several key questions arise: What part did the Allahabad High Court decision and the Gujarat election results play in the decision of June 26, 1975? To what extent was Mrs. Gandhi's decision to declare a state of emergency motivated by purely personal considerations of staying in power? What was the nature of the threat to constitutional government from the opposition? What was the role of the Congress Party leadership,
the President, the bureaucracy, the army and the police? Could the emergency have been averted?

From pressing its demands for economic, social and political reform, the opposition's focus of attack changed to that of removing Indira Gandhi. The opposition parties appeared to have achieved this objective when two events of importance affecting the personal position of the Prime Minister occurred in June 1975.

At 10:00 a.m. on June 12, 1975, Justice Jag Mohan Lal Sinha of the Allahabad High Court announced that Mrs. Gandhi had been found guilty on two counts of electoral violations in her election to the Lok Sabha in 1971. Mrs. Gandhi was now barred from holding elective office for six years and was to vacate her seat in the Lok Sabha within six months. However, she was also given a "stay order" delaying the execution of Justice Sinha's sentence for twenty days, allowing her time to appeal the judgement in the Supreme Court of India.

On the following day, Mrs. Gandhi received a further setback when the results of the Gujarat State elections held on June 8-11 were announced. The Congress Party was decisively beaten by a coalition of opposition parties, the Janata Front, which won eighty-seven seats and formed a ministry headed by Babubhai Patel. The Congress Party's strength in the 182-member assembly fell from 140 seats at dissolution in 1974 to seventy-five seats. The election results were a personal defeat for Mrs. Gandhi since she had staked her prestige on the results and had campaigned extensively in the state making numerous speeches and helicopter tours in all nineteen districts of the state. Moreover,
during the election campaign she had stressed the argument that the Congress Party was the only party capable of giving stability and unity to India.

In his analysis of the impact of the Gujarat election, Kothari argues that the Congress Party misinterpreted the election results.

The Congress itself did not fare badly, getting 44 per cent of the vote which had been the normal strength of the Congress all along. This happened in spite of the fact that the anti-Congress movement had originally started in Gujarat and the stock of local Congressmen was very low. To no small extent this was due to the Prime Minister's own massive campaign on behalf of the Congress and the fact that the poor, the tribal and other underprivileged strata of the people were still with the Congress. And Gujarat was by no means representative of the country and there was more than a fair chance that the Congress would once again emerge triumphant in the national election which was barely eight months ahead.18

While it is certainly true that the Congress received forty-four per cent of the popular vote, a figure higher than that of the Janata Front, the fact remains that the winning of elections depends on the number of seats won rather than the proportion of the popular vote. The Congress Party could have taken comfort in the fact that its share of the popular vote remained approximately the same, but it could not have been satisfied with the fact that it had lost sixty-five seats and was now a minority party. Moreover, the Congress (R) lost ground in the crucial urban areas of the state such as Rajkot, Surat, Baroda and Ahmedabad where the Janata Front obtained a higher proportion of the total vote. Clearly, urban discontent with the Congress (R) had not lessened since 1974.
For the Congress Party, the election results before Gujarat had been mixed and they indicated that the 'Indira Wave' of 1971-72 had declined. For instance, in the February 1974 state assembly elections in Uttar Pradesh the Congress Party had managed to retain control of the State government but with a majority of only two seats. And the U.P. election was regarded as the most corrupt in post-independence history. In January 1975, Congress (R) suffered a shock defeat in the Lok Sabha constituency of Jabalpur, one of its strongholds in the state of Madhya Pradesh. The effect of this victory of an independent supported by the opposition parties was to quash any thought in the Congress leadership of an early general election.

Thus the timing of the Gujarat election results is significant, especially since they came one day after the Allahabad High Court decision. The twin events had a cumulative impact on the position of Mrs. Gandhi and the Congress Party. It is, of course, a matter of speculation whether there would have been an emergency declaration had the timing of these two events been different. Perhaps Mrs. Gandhi could have dealt with each crisis separately. What is certain, though, is that the effect of Allahabad and Gujarat was twofold: First, it gave the opposition parties an unparalleled opportunity to attack the Prime Minister and the Congress Party. The non-communist opposition perceived that the prestige of the Prime Minister had suffered an irreversible setback. Secondly, the events of June placed the Congress Party in a period of uncertainty. This uncertainty was not ended when the 'vacation judge' of the Supreme Court, Justice V.R. Krishna Iyer,
on June 24, 1975, turned down Mrs. Gandhi's request for a "complete and absolute stay of justice." Justice Iyer did, however, grant a conditional staying order which enabled Mrs. Gandhi to continue as Prime Minister but not to take part in parliamentary proceedings, vote or draw her pay as a member of the Lok Sabha.19

After the Allahabad High Court decision and the Gujarat election results, the non-communist opposition was unanimous in the view that Mrs. Gandhi should resign. Justice Sinha's judgement was hailed as a great act showing the independence of the judiciary. The opposition argued that the Prime Minister could not justifiably remain in office after being convicted on electoral offences no matter how minor those offences were. Remaining in office would only weaken her credibility and weaken the authority of the office of Prime Minister. Accordingly, the opposition parties called for the establishment of a new government and began a nation-wide campaign for her resignation.

On the other hand, supporters of the Prime Minister stressed the fact that the electoral convictions were minor and that other charges of electoral offences had been thrown out by Justice Sinha. The opposition was accused of having double standards in that they accepted the decisions of the courts only when they suited their political interests. They were also accused of exploiting the ruling against Mrs. Gandhi in order to create discontent in the country. Moreover, Mrs. Gandhi's supporters argued that she was not legally obliged to resign since she had been given a conditional staying order; the question of Mrs. Gandhi's resignation would only arise once the Supreme Court had made its
judgement on the matter of her appeal. Whatever the legal arguments, it soon became apparent that the question of the continuance of the Prime Minister in office was a political issue.

The non-communist opposition parties believed that Mrs. Gandhi could not recover from these setbacks, but in this they miscalculated. She retained widespread support in her own party. Her dominance of the party and the fact that most Congressmen and Chief Ministers owed their positions to her meant that there was no likely successor to the Prime Minister if she resigned. President Ahmed was careful to take a non-committal position in the whole matter of her resignation; and Mrs. Gandhi retained the support of the army, the police, the intelligence services and the upper echelons of the state and central bureaucracies.

In line with their decision to begin a nationwide campaign for the resignation of Indira Gandhi, the opposition parties held a massive rally in New Delhi on the afternoon of June 25, 1975. Leading the rally, Jayaprakash Narayan called for a nation-wide civil disobedience struggle and once again appealed to the army and the police not to obey illegal orders.

Government servants should not obey any unjust orders; the military's responsibility is to protect Indian democracy; their duty is to protect the Constitution...the police are trained to act in a blind way; they should also think - the police, don't they have self-respect, are they just there for the sake of bread?

Narayan had made similar appeals before and they had been duly recorded by the police and intelligence services. However, his appeal on June 25 took on an added significance because it was made on the
eve of a nationwide civil disobedience campaign and it furnished Mrs. Gandhi with a further reason for imposing a state of national emergency.

The decision to declare a state of national emergency was reached by Mrs. Gandhi on the evening of the same day. The Union cabinet met at six o'clock the next morning to approve the emergency which was then proclaimed by the President of India at 7:00 a.m. on Thursday June 26, 1975. The Central Reserve Police had already arrested a number of opposition leaders and Congressmen including Jayaprakash Narayan, Morarji Desai, Raj Narain, Piloo Mody, A.B. Vajpayee, Chandra Sekhar and Ram Dhas under the Maintenance of Internal Security Act of 1971. Strict press censorship was immediately imposed and most morning newspapers in New Delhi did not appear because of 'electrical failures'. Three days after the imposition of the emergency a Presidential order was promulgated which limited the rights of individuals, groups and foreigners to defend their rights and freedoms in the courts.

These initial measures of the emergency were followed on July 1 by the announcement of the Prime Minister of a 'Twenty-Point Programme' of economic and social reforms, and on July 4, by the banning of twenty-six organizations including the Rashtriya Swayamsevak Sangh (R.S.S.), Anand Marg and a number of Naxalite groups under the Defence of India Rules. These were soon followed by other measures which enlarged the scope of executive power and curtailed civil liberties on an ascending line of authoritarianism. First, the government suspended the rules of procedure of the Lok Sabha so that question hour was discontinued and only government motions were allowed. Secondly, on July 23, 1975 the Lok Sabha passed a resolution approving the declaration
of the state of emergency by a vote of 336 to 59. The resolution thus fulfilled the requirements of the Constitution in which Parliament has to approve a state of emergency within two months of its proclamation.

With certain opposition members and Congressmen either in jail or boycotting the session of Parliament, the government had the necessary majority to rush through a series of constitutional amendments through the Lok Sabha. On July 23, 1975 the Lok Sabha approved by a 342 to 1 vote the thirty-ninth constitutional amendment which barred law courts from hearing petitions challenging either the proclamation of an emergency or the rules imposed under it. The amendment also gave the President the right to proclaim any number of emergencies simultaneously. On August 7, 1975 Parliament approved the fortieth constitutional amendment; the courts could not consider cases concerning the election of the Prime Minister, the President, Vice-President and speaker of the Lok Sabha. It also excluded thirty-eight central and state laws from judicial review including M.I.S.A. and the Election Laws (Amendment) Act of 1975.

Mrs. Gandhi's position was also strengthened by the decision of the Supreme Court on November 7. This reversed her conviction on two electoral offences and the Allahabad High Court's ruling barring her from elective office for six years. The decision of the Supreme Court was not, however, an unqualified success for Mrs. Gandhi. In a five to three vote, the Supreme Court also nullified part of the fortieth constitutional amendment which placed the election of the Prime Minister outside the scope of judicial review. Thus in the post-June 26 period...
the courts remained an important brake on the activities of the executive.

In analyzing executive-judicial relations in this period, a definite pattern emerges. There were, first of all, a number of court decisions which invalidated parts of the constitutional amendments or which led to the release of certain political prisoners such as the journalist Kuldip Nayar. After taking stock of these decisions, the government responded by passing constitutional amendments, amendments to statutes or executive orders which overturned the courts' decisions. Thus the initiative always remained with the executive. In short, the result of these executive-judicial interactions was an increase in the power of the executive and a progressive diminution of the power of the courts.

Finally, one of the most important actions of the government in the emergency period was the suspension on January 26, 1976 of seven important rights guaranteed by Article 19 of the Constitution—namely, the rights to freedom of speech and expression, to assemble peaceably without arms, to form associations or unions, to move freely throughout the territory of India, to reside or settle in any part of the territory of India, to acquire, hold and dispose of property, and to practice any profession or to carry on any occupation, trade or business. Once again, the Presidential order suspending these rights included a provision barring appeals to the Courts to enforce Article 19.

The Significance and Constitutionality of the Emergency

It now remains to consider the significance of the declaration
of the state of emergency and subsequent government measures for the operation of India's constitutional and political systems. Several questions arise: Was the emergency consistent with constitutional government? Were the emergency measures an overreaction on the part of the government--an attempt, as it was said, to crack a nut with a sledgehammer? In what sense was the declaration of the state of emergency constitutionally and politically unprecedented? And, finally, how do the Marxist model of class conflict and Kothari's model of one-party dominance explain the suspension of constitutional government?

The June 26 proclamation raised important questions regarding the legality of Mrs. Gandhi's actions. It could be argued that the Prime Minister did not exceed the bounds of her legal and constitutional authority since the emergency measures were based on a large number of constitutional provisions such as Article 352 and on legal statutes such as the Maintenance of Internal Security Act of 1971 and the Defence of India Rules. These constitutional and statutory provisions give the executive broad powers in times of crisis. In his evaluation of the political crisis of 1975, Richard L. Park argues that "Indira Gandhi could not have embarked on the course of action she has taken since June 26 had she not held legitimate majorities in Parliament and in 19 of the 22 states. The moves she has fostered appear to be legal; but it is questionable that they have been constitutional. The difference between what is "legal" and what is "constitutional" can be a matter of opinion, but in the end the difference is what the Supreme Court says it is. This is a most frustrating fact that concerns members of
the existing Government, and serious scholars of the subject as well."

One of the problems of making this distinction between the 'legality' and the 'constitutionality' of the emergency is that it ignores the fact that the emergency provisions of the Constitution were, by their very nature, designed to suspend the normal workings of the Constitution. A more suitable distinction, therefore, would be between the 'spirit' of the Constitution and the 'letter' of its provisions.

In arguing that democracy was still functioning in India after June 26, 1975, the government pointed out the following: that Parliament was still meeting amidst a multi-party system; that the Prime Minister and the Cabinet continued to be answerable to Parliament; that the legislatures of the States were still in session; and that opposition governments were in power in Goa, Gujarat and Tamil Nadu.

These assertions, however, do not take into account the constitutional amendments that were passed after June 1975 or the fact that President's Rule was subsequently imposed on Gujarat and Tamil Nadu.

In Chapter II it was argued that 'constitutional government' implies that the arbitrary use of power by the government is checked, that individual rights are maintained and that there are provisions for the succession of power-holders through competitive, democratic elections. Using this definition of 'constitutional government' as a standard, it is clear that democracy did not function in India during the emergency. Where Mrs. Gandhi had gone against the 'spirit' of the Constitution was in arresting important opposition leaders and certain members of her own party, in imposing press censorship, postponing national elections and
reducing the power of the courts.

Arguments over the emergency also center on the appropriateness of Mrs. Gandhi's measures and whether they were an overreaction to events. The government had a large majority in Parliament, control of the majority of state governments, and it was also armed with the declaration of emergency of December 1971 and with the Maintenance of Internal Security Act of 1971 and the Defence of India Rules. Could the government, therefore, have dealt with the crisis without the extreme measure of an emergency applied to the whole of India? The argument of Mrs. Gandhi and her supporters was that these resources at the disposal of the government were inadequate to deal with a real threat to India's political stability. Tougher measures designed to demonstrate the government's determination to deal with this threat were needed in order to save Indian democracy from collapse. The government's ban of twenty-six extreme left and right wing organizations such as the R.S.S., Anand Marg and Naxalites was also an attempt to strengthen Indian democracy by consolidating the moderate center of Indian politics.

It is necessary to consider in what ways the measures of the emergency were unprecedented. States of national emergency has been declared before in October 1962 and December 1971 but these had been designed to deal with an external threat and had been limited in their application. For instance, during the first emergency in the Sino-Indian border war, arrests had largely been confined to pro-Peking communists. And since independence the Preventive Detention Act and its successor M.I.S.A. had been used mainly against 'anti-social
elements' such as 'goondas' (urban toughs), dacoits, smugglers and speculators.

The state of emergency of June 26, 1975, however, was the first emergency to be declared for reasons of internal rather than external crisis. The emergency was also unique in that it was accompanied by the imposition of extensive press censorship and by the simultaneous arrest of opposition leaders from parties such as the Jana Sangh, the Samyutka Socialist Party, the C.P.M. and the Congress Party itself. Unprecedented also was the first large-scale arrest of members of the Lok Sabha.

Finally, how useful are the Marxist model of class conflict and Kothari's model of one-party dominance in explaining the suspension of constitutional government in India? In the previous chapters it was hypothesized that the Constitution contained authoritarian as well as liberal-democratic features. A class analysis offered one explanation of why the broad emergency powers were included in the Constitution. Class interest also offered an explanation of the conditions favouring constitutional government. In the Marxist analysis the individual rights of the Constitution were conditional on the absence of a revolutionary challenge to the social and political power of the dominant classes of India.

The analyses of the breakdown of consensus and of the immediate causes of the emergency, however, have shown that the emergency was not the outcome of a revolutionary challenge to the Indian constitutional and political system. The instability in Gujarat, for example, was
caused by a middle class revolt against Congress governments at the state level and at the center. The organized working class played only a marginal role in these disturbances. Rather, the instability prior to the emergency was caused by conflict between bourgeois parties such as the Congress (R), Congress (O), Jana Sangh and Swantantra. In this conflict between the bourgeois parties, the Indian communist parties took different sides; the C.P.I. allied itself with the ruling Congress Party while the C.P.M. sided with the opposition parties.

Yet a class analysis may explain the ease with which the emergency was imposed and in particular the loyalty of the police, army, bureaucracy and paramilitary forces to Mrs. Gandhi. In the Marxist analysis, these instruments of state power are controlled by the ruling classes; their function is to maintain the dominance of the ruling classes. However, after the declaration of the state of emergency in June 1975, the judiciary was one exception to the Marxist analysis. It was still wedded to liberal democratic principles, and served as a brake on the actions of the executive.

It could thus be argued that the emergency was not the crisis of India's dominant classes but rather of one section of the ruling class. It could also be argued that the emergency was, above all, the crisis of one person—Indira Gandhi. One of the strengths of Kothari's model of one-party dominance is the importance it gives to the role of India's political leaders in securing consensus in the political system. For example, in his model of the 'Congress System' Kothari stressed the importance of leaders such as Nehru and other 'tall men' in blunting
conflict and cleavages in India.

The foregoing analysis of the period leading up to the declaration of the state of emergency has shown that Mrs. Gandhi came to place more emphasis on economic and social performance, even at the expense of consensus. In her populist strategy Mrs. Gandhi attacked the 'vested interests' of Indian society and she saw herself as the champion of the disadvantaged sections of society. And as the opposition parties resorted to extra-parliamentary agitations she saw herself as the guardian of law and order.

However, Mrs. Gandhi's personality and attitudes towards democracy and opposition give only a partial explanation of the suspension of constitutional government in 1975. Attention must also be focussed on Kothari's frameworks of operative mechanisms, consensus and legitimacy and in particular the operation of the 'margin of pressure.' Although the operation of the 'margin of pressure' contributed to the openness of the political system before 1969, the 'margin of pressure' did not operate after this period. Before 1969 there was at least some agreement between the party of consensus and the parties of pressure as to the rules of the constitutional and political system. But after the Congress split and the 1971-72 elections the parties of pressure were reduced in importance and alienated from the 'Congress System.' The opposition parties demanded the reform of the electoral system, the right of recall of representatives and the lifting of the state of emergency declared in December 1971. They believed that the existing constitutional and political framework unduly favoured the ruling
Congress Party. In the terminology of functionalism, opposition had become dysfunctional to the constitutional and political system.

This examination of the period leading up to the declaration of the state of emergency has shown that the maintenance of constitutional government requires consensus between the government and the opposition parties. It has also shown that a modification is required to the Marxist model since revolutionary challenges to class dominance do not account for the suspension of constitutional government. The maintenance of constitutional government also requires agreement within the dominant classes as to the constitutional and political framework.

Following the declaration of the state of emergency, the government made it clear that it would not allow a return to some of the features of the pre-June 1975 political system, particularly in the extra-constitutional methods adopted by the non-communist and CPM opposition parties. The following chapter examines how the government intended to prevent a recurrence of the political instability leading up to the emergency.
CHAPTER V

THE REVISION OF THE CONSTITUTION
Soon after the declaration of the state of national emergency in June 1975, India's constitutional and political system was placed in an unprecedented state of flux. The way in which the Emergency was imposed raised questions of whether India would continue to remain a parliamentary democracy and whether the old norms of Indian politics would ever return. Some western observers argued that a dictatorship had been imposed on India and that this civilian dictatorship would sooner or later be replaced by a military one. Mrs. Gandhi herself made it clear that she intended to use the state of emergency as an opportunity to reassess India's constitutional and political institutions; and as part of this fresh start a revision of the constitution would be necessary. She justified constitutional revision on the grounds that it was long overdue and needed to secure the social economic and political transformation of India. In particular, she argued that constitutional revision would remove obstacles to the government's economic and social programs, primarily, the rulings of the courts on property rights and the activities of 'vested interests'.

It could be argued that constitutional revision was not necessary and that the obstacles to the government represented by the judiciary and the 'vested interests' were non-issues by 1975. Rather, these 'obstacles' continued to be of use to Mrs. Gandhi as whipping boys in her populist strategy. Since 1971, Parliament had passed a series of constitutional amendments in response to the Supreme Court's conservative rulings on land reform and property rights, the nationalization of banks and the abolition of privy purses. On August 11, 1971, for example, the
Lok Sahba approved the 24th amendment to the Constitution in response to the Supreme Court's 1967 ruling in the case of 'Golaknath v Punjab'. Articles 13 and 368 of the Constitution were amended, thus reaffirming Parliament's authority to amend any part of the Constitution including the section on Fundamental Rights. Also the 29th amendment of June 9, 1972 and the 34th amendment of August 26, 1974 added to the list of central and state laws outside the scope of judicial review. Furthermore, on April 24, 1973, the Supreme Court in the case of 'Kesavananda v Kerala' overturned its earlier ruling in the 'Golaknath' case. The court ruled that Parliament did have the constitutional authority to amend the Fundamental Rights.

Why, then, was further constitutional revision necessary after June 1975? In the first place, it is important to note that the 'Kesavananda' decision did not settle the controversy over Parliament's authority to amend the Constitution. While the Supreme Court did state that Parliament could alter the Fundamental Rights, it also added that Parliament could not alter the 'basic structure' or 'framework' of the Constitution. The Court, however, did not make clear what it meant by the 'basic structure' or 'framework' of the Constitution. Thus by the middle of 1975, the constitutional issue of Parliament's authority to revise the Constitution remained unresolved.

There were also other outstanding constitutional and political problems. These included: the powers of the President; high court rulings on central laws and the use of high court writs; land reform and the issue of 'benami transfers', in which some landowners
registered their holdings with relatives and friends in order to evade land ceiling laws; the problem of judicial intervention in civil service matters such as employment and conditions of service; controversy over whether the Directive Principles of State Policy took precedence over the Fundamental Rights of the Constitution; and the problem of reforming the legal system in order to make it more efficient and more accessible to the majority of the population.

However, the most important reason for constitutional revision was Mrs. Gandhi's aim of consolidating her personal power as shown by the earlier fortieth amendment which barred the courts from considering the election of the Prime Minister.

The following section traces the government's proposals for constitutional reform from June 1975 to the passing of the 42nd Constitutional (Amendment) Act in November 2, 1976. It is largely a chronological account of the genesis of the 42nd amendment and it will consider why specific proposals were put forward, modified or withdrawn.

On August 16, 1975, in an interview with the editor-in-chief of the Bombay newsmagazine 'Blitz', Mrs. Gandhi made known some of her guidelines for constitutional revision. Replying to the question of what changes were being contemplated by the governments. Mrs. Gandhi said:

I am not thinking in terms of a Constituent Assembly or a new Constitution. A second look does not mean an alternative constitution. Neither the spirit of our Constitution nor its essential characteristics can change. We cannot but be a democracy, a secular democracy and a democracy striving steadily to enlarge
its socialist content. The importance of representative institutions or the place of Parliament cannot change either. Nor can there be any fundamental departure in the scheme of Centre-State relations which our founding fathers devised to serve the needs of a country of our vast diversity. But we can and should have a look at the provisions and procedures we have to give effect to the adopted objectives of the Constitution. Many of these procedures and provisions have in effect worked against the Constitution and given enormous scope for small obstructive groups to create trouble and engineer crisis. I want lawyers, political scientists, leaders of the intellectual world, earnestly to study the problems that have come up and give us suggestions.

In the Congress Party, the debate about constitutional revision had already begun by the time Mrs. Gandhi gave this interview to 'Blitz'. A set of wide-ranging proposals entitled "A Fresh Look at our Constitution" was being circulated among the Congress Party leadership. In order to illustrate its proposals, the draft referred to sections of the constitutions of other countries such as the United States, France, Italy, Greece, Belgium, Guatemala, Japan and Argentina. Among the suggestions of this draft was a proposal to replace the Indian parliamentary system by a presidential system of government. The President of India would be the Chief Executive but would have broader powers than his counterpart in the United States. The Council of Ministers would be accountable to the President who would also be elected directly for a term of six years.

Another proposal of this draft was the establishment of a 'Superior Council of Judiciary' which would replace the Supreme Court as the sole authority to interpret the laws and Constitution of the Indian Republic. The Council would be chaired by the President and be comprised of two
Vice-Chairmen consisting of the Chief Justice of India and the Minister for Law and Justice, two justices from the Supreme Court and two chief judges from the state high courts, four persons elected by Parliament and four persons nominated by the President. The Council would also review the conduct of all judges and hear cases of complaints against them. It is clear that this proposal would have ended the independence of the judiciary and would have given the executive the power to rule on the constitutionality of its own legislation and amendments to the Constitution. Thus, by limiting judicial review, the proposal would have been antithetical to constitutional government.

Several of these proposals, particularly those advocating a presidential system and the Superior Council, met with criticism within the Congress Party and from the C.P.I. and were quietly dropped. The proposals of the draft relating to changes in the wording of the preamble of the Constitution and extending the term of the Lok Sabha from five to six years were, however, incorporated in later constitutional proposals.

At the Congress Party's 75th annual conference at Chandigarh in December 1975—the first since the declaration of emergency in June—a political resolution was adopted on December 31, 1975 calling for the postponement of elections to the Lok Sabha and for a thorough revision of the Indian Constitution. In line with this political resolution, the Congress President, D.K. Borooah, on February 26, 1976, appointed a committee to suggest amendments to the Constitution. The party committee was to be headed by Sardar Swaran Singh, 69, a veteran Union
Minister and the Minister of Defence until he was dropped from the Cabinet on November 30, 1975.

The committee's preliminary report on proposed constitutional changes was approved in principle by the Congress Working Committee on April 26. The report reaffirmed that the parliamentary system of government was the one best suited to Indian conditions and it made the following recommendations: (1) no amendment to the Constitution should be called in question in any court; (2) the constitutional validity of any legislation should be decided by a bench consisting of at least seven Supreme Court judges, and any decision to declare the law invalid should require the support of at least two-thirds of the bench; (3) the high courts should exercise their power to issue writs only to enforce fundamental rights; (4) the courts should have no jurisdiction over civil service matters, which should be decided by administrative tribunals; (5) appeals from labour and industrial courts should be transferred from the high courts to an all-Indian labour appellate tribunal; (6) no writ jurisdiction should lie in relation to matters concerning the revenue, land reforms, procurement and distribution of foodgrains, or elections; (7) all questions of the disqualification of members of Parliament or of the state legislatures should be settled by a body consisting of three members chosen from the Lok Sabha and three nominated by the President; (8) agriculture and education, which were state subjects, should be placed on the Concurrent List of subjects on which both Parliament and the state legislatures might legislate; and (9) the Union government should have the power to deploy police (or
other similar forces under its own superintendence or control) in any state or territory of the Union.  

These recommendations were to be discussed at a meeting of the All-India Congress Committee (A.I.C.C.) in New Delhi on May 28-29, 1976. A week before the scheduled meeting of the A.I.C.C., the Swaran Singh Committee released a modified draft of its preliminary report of April 12. This included two new proposals. The Committee proposed that India should be declared a "sovereign, democratic, secular, socialist republic" in the preamble instead of only a "sovereign, democratic republic" in order to reaffirm the commitment of the government to the objectives of secularism and socialism. The words "and integrity" would also be added to the preamble after the word "unity". The other recommendation of the Swaran Singh Committee was that the President should be able to restrict a declaration of emergency to only a part of the country.

The Swaran Singh Committee's recommendations were amended by the A.I.C.C. session of May 28-29, 1976 and were then unanimously endorsed. An amendment moved by Dr. Karan Singh, the Union Minister of Health and Family Planning, proposed that the Constitution should also include certain fundamental duties and obligations of citizens as a balance to their rights. The amendment in the form of an addition to the official resolution said:

The A.I.C.C. suggests that the committee appointed by the Congress President to suggest amendments to the Constitution of India should also formulate proposals for inclusion in the Constitution of certain fundamental duties and obligations which every citizen owes to the nation, inter alia, to function in such a manner as to sustain and strengthen the integrity and unity of the nation;
to act in accordance with the Constitution and the laws of the land; to maintain discipline in every sphere; to honestly perform all public duties and to safeguard public property.\textsuperscript{10}

The A.I.C.C. session also modified the proposals of the Swaran Singh Committee relating to changes in the Union, State and Concurrent Lists of the Constitution. Although education was to be included in the Concurrent List, it was decided at the session that agriculture would remain a state subject. Several chief ministers at the A.I.C.C. session had voiced their objections to including agriculture as a concurrent subject.

Finally, the A.I.C.C. session decided that the Swaran Singh Committee would continue to operate after May 1976 and it would consider other proposals for constitutional revision. It would continue to consult with various individuals and associations such as the central party leadership, Pradesh Congress Committee Presidents, Chief Ministers, lawyers, judges, bar associations and other members of the intelligentsia. There would be a nation-wide debate on constitutional revision in New Delhi, the state capitals, and other large cities and towns of the nation.

More coverage was given in government announcements and in the press to the constitutional debate within the top leadership of the Congress Party than to the debate among the lower ranks of the Congress, in the rural areas and among the opposition parties. The evidence does suggest that the non-communist opposition parties and the C.P.M. did not participate in the government-initiated debate on constitutional revision.\textsuperscript{11} Instead they held their own forums for discussing the
constitutional changes. One such forum sponsored by the opposition parties was the 'National Committee for Review of the Constitution'. A two-day seminar organized by the Committee was held in New Delhi and attended by opposition leaders such as A.K. Gopalan, (C.P.M.), E.M.S. Namboodiripad (C.P.M.), P. Ramamurthy (C.P.M.), Asoka Mehta (Congress-O), Shanti Bhushan (Congress-O), Era Sezhiyan (D.M.K.) and Chowdhury Charan Singh (B.L.D.).

The opposition parties were critical of the proposed constitutional amendments and of the political conditions under which they were being discussed. They argued that the proposed changes had been put forward by a committee of the ruling Congress Party and that the ruling party had no mandate to pass the amendments since the Lok Sabha's term had been extended by decree in March 1976. The opposition parties proposed either fresh elections to the Lok Sabha or a referendum in order to test the approval for the constitutional changes by the electorate. The government's reply to these demands was that a referendum was neither needed nor feasible considering the large number of constitutional measures that would have to be approved by such a procedure. The government also pointed out that constitutional reform had been part of the manifesto of the Congress (R) in the general election and, in any case, it had the necessary majority in Parliament to pass the amendments.

There were also demands for the formation of a new constituent assembly from the opposition parties and from within the Congress (R) itself. Mrs. Gandhi often referred to the Constituent Assembly of 1947-50 in the course of the debates on constitutional revision, saying
that the assembly had been indirectly elected by a minority of the Indian population. This did not mean that she was thinking of calling a new constituent assembly. Rather, the intention was to point out the contrasts between an indirectly-elected Constituent Assembly and a democratically-elected Lok Sabha and so demonstrate Parliament's right to revise the constitution. Certainly, Mrs. Gandhi could have called a constituent assembly to draft a new constitution. A new constitution would probably have been more intelligible than the previous Constitution with its large numbers of statutes placed in the Ninth Schedule and with its forty-one amendments. But this would have involved political costs as well as benefits for Mrs. Gandhi. It is doubtful whether Mrs. Gandhi seriously considered a new Constitution merely for the sake of constitutional neatness. A new Constitution would have generated more opposition from the non-communist opposition parties and the C.P.M. than an omnibus amendment to the existing Constitution. Finally, it is important to note that the Congress Party in making the constitutional revisions assumed that it would continue in power.

On September 1, 1976, the government's series of constitutional proposals were formally introduced in the Lok Sabha. A draft of the 59-clause bill had already been circulating in Parliament and had met intense criticism from the opposition. The government announced that the bill would be considered in detail by the Lok Sabha in a special session in October. This ten-day session began on October 25, 1976 and each of the fifty-nine clauses was discussed on October 30 and November 1, 1976. The 44th amendment bill was approved by the Lok
Sahba on November 2, 1976 by a vote of 366 to 4. Since other constitutional amendment bills were on Parliament's agenda, the 44th Constitution (Amendment) Bill was then renumbered the 42nd Constitution (Amendment) Act.

The Constitutional and Political Implications of the 42nd Amendment

It is necessary now to examine the provisions of the 59-clause constitutional amendment and to analyze its constitutional and political implications. Since the Act is on 'omnibus' amendment, only changes in major constitutional provisions relating to the following areas will be examined: political parties and government-opposition relations; executive, legislative and judicial powers; individual rights; economic and social reform; and federalism.

The first part of the Indian Constitution that was amended by the 42nd amendment was the preamble. India was now officially designated as "a sovereign socialist secular democratic republic". At first glance, it would appear that the insertion of 'secular' and 'socialist' in the preamble was merely a question of semantics. The change, however, was intended by the government to reaffirm the principles of 'secularism' and 'socialism' as part of the 'basic structure' of the Constitution.

The changes in the preamble also had implications for India's political parties. In June 1976, a foreign correspondent posed the question of whether the proposed changes in the preamble would oblige all political parties to pledge adherence to the principles of secularism and socialism. Under Articles 75, 99 and the Third Schedule of the Constitution, any person who seeks election to the Indian Parliament and
the state legislatures must take an oath of allegiance to the Constitution. Thus the changes in the preamble could have made the constitutional position of non-socialist parties such as the Bharatiya Lok Dal and the Jana Sangh untenable. However, rather than using the changes in the preamble as a justification for banning non-socialist and communal parties, the Congress Party intended to demonstrate its own commitment to the principles of secularism and socialism.

Of greater significance for the opposition parties, however, was that clause of the 42nd amendment which gave the government the power to ban "anti-national activities and associations". "Anti-national activities" were defined as 'activities intended to bring about the cession or secession of part of the territory of India, to threaten or disrupt the sovereignty and integrity of India, the security of the state or the unity of the nation; to overthrow the Government by force; to create internal disturbance or disruption of public services, or to threaten or disrupt harmony between different religions, racial, language or regional groups, or castes or communities'. Thus the clause could have been applied by the government to parties or organizations advocating the secession of a particular region, state or territory of India. Apart from a secessionist movement, the "anti-national" clause was intended to prevent a recurrence of the breakdown of law and order in the period before the declaration of emergency in June 1975. Unconstitutional appeals to the police, army and the bureaucracy would also have been dealt with under the clause. The passing of this measure was an indication that the government would deal firmly with civil
disobedience such as fasts and 'hartals' (general strikes).

The 42nd amendment altered the powers of the executive, the legislature and the judiciary in several important ways. The amendment cleared up one of the "grey areas" of the Constitution—namely, the powers of the President. The Framers of the Constitution did not include a provision obliging the President to follow the advice of the Prime Minister and the Council of Ministers. Relations between the President and the Prime Minister and Council of Ministers were to be left to constitutional practice. Since 1950, Presidents have generally followed the convention of acting on the advice of the Prime Minister. Mrs. Gandhi was, however, faced with the possibility in 1969 of the election of a presidential candidate, Sanjiva Reddy, who made known his intention not to follow this convention once elected. Under the 42nd amendment the President's obligation to follow the advice of the Prime Minister and Council of Ministers was now made explicit. A tacit convention was transformed into a written provision and in this respect the 42nd amendment did not alter constitutional practice.

The amendment did enlarge the formal powers of the President. He could settle disputes arising out of the election of members of Parliament and of the state legislatures; he could declare a state of national emergency in a particular state or territory of India; and he could revise the provisions of the Constitution on his own authority where these were felt to be necessary. Since the President was obliged to act on the advice of the Prime Minister and the Council of Ministers, this enlargement of power was in fact an expansion of the powers of the Prime Minister.
As regards the powers of Parliament, the 42nd amendment reasserted Parliament's authority to amend the Constitution. Clause 55 declared that "for the removal of doubts, it is hereby declared that there shall be no limitation whatever on the constituent power of Parliament to amend, by way of addition, variation or repeal the provisions of this Constitution under Article 368." Amendments made by Parliament to the Constitution were also placed outside the scope of judicial review. Clauses 21 and 22 of the 42nd amendment modified the articles of the Constitution relating to the quorum for meetings of Parliament and the state legislatures, and the powers and privileges of the members and committees of Parliament. The 42nd amendment also changed the duration of the terms of the Lok Sabha and the state legislatures from five to six years.

Besides limiting judicial review of amendments to the Constitution, the 42nd amendment further limited the powers of the judiciary in that central laws could now only be declared invalid by the Supreme Court instead of by both the Supreme and High Courts. Clause 25 stated that a two-thirds majority verdict of a minimum of seven judges of the Supreme Court was required for validating and interpreting central and state laws.

In order to prevent a recurrence of judicial obstacles to the government's economic and social programs, the 42nd amendment also made it clear that the Directive Principles of State Policy were to take precedence over the Fundamental Rights of the Constitution. The amendment was thus intended to resolve the argument about the precedence of
the Directive Principles over the Fundamental Rights; an argument that
has been a key issue since the Constitution was adopted on January 26,
1950. It is important to note that there was one exception to this.
Under the 42nd amendment no law could be made giving effect to the
Directive Principles of Part IV of the Constitution if it conflicted
with the special safeguards or rights conferred on minorities such as
the scheduled castes, tribes or other backward classes under the
Fundamental Rights Section of Part III. These special provisions, there­
fore, were to be the only entrenched portion of the Fundamental Rights.

The 42nd amendment added several new articles to the Directive
Principles of State Policy. Article 39(a) required the state to secure
that the operation of the legal system promoted justice on the basis of
equal opportunity and it obliged the state to provide free legal aid.
Article 43(a) sought to secure the participation of workers in the
management of industrial organizations. The 42nd amendment followed
the recommendations of the A.I.C.C. session of May 1976 by including a
section on the fundamental duties of citizens. This section of the
Constitution was intended to balance the Fundamental Rights and was in
accordance with Mrs. Gandhi's belief that democracy entails obligations
as well as rights.

The 42nd amendment also froze until the year 2001 the allocation
of seats in the Lok Sabha to the states, the total number of seats in
the state assemblies, and the number of Lok Sabha and state assembly
seats reserved for the scheduled castes and tribes. This clause was
intended to further the government's family planning program.
Districts and states that were successful in their family planning programs would, therefore, not be penalized by having their representation in the state assemblies and the Lok Sabha reduced.

The government's major justification for the revision of the Constitution was that it would facilitate economic and social reform by removing judicial obstacles to such reform and also by strengthening the stability of the political system on which social and economic progress are dependent. However, constitutional revision would not by itself usher in a period of economic and social progress. This would depend on political, economic and social as well as constitutional factors. Much would depend, for example, on the performance of the central and state governments and the bureaucracy and on economic factors such as the rate of growth of industrial and agricultural production and the distribution of wealth and income.

The 42nd amendment modified the distribution of legislative powers between the center and the states by transferring certain matters such as education and the administration of justice from the State List to the Concurrent List. The amendment strengthened the powers of the Center, particularly in the powers relating to "anti-national activities", the regionalization of states of emergency and the deployment of central police and special forces by the center within a particular state. On the latter, the amendment gave the Center the authority to use central police and special forces without prior consultation with the state government; once deployed, these forces were to remain under the control of the Center. Moreover, the amendment extended from six
months to one year the period in which President's rule would remain in force after being approved by Parliament.

But the 42nd amendment made no radical changes in the federal structure of the Indian political system. The Supreme Court's authority to declare central and state laws invalid was not ended and thus its function as an arbiter in the federal system remained. Furthermore, the dropping of the proposal for adding agriculture in the Concurrent List at the A.I.C.C. session of May 1976 illustrated the continuing importance of the states in India's federal system.

In summary, the 42nd Constitution (Amendment) Act, approved by the Lok Sabha on November 2, 1976, made important changes in the Constitution regarding the powers of the President, the Prime Minister and the Council of Ministers. It reasserted Parliament's authority to amend the Constitution as it sees fit and further restricted the powers of the judiciary. Changes were made in the preamble, the Fundamental Rights and the Directive Principles of State Policy, and a section was inserted on Fundamental Duties. The addition of the latter and new provisions regarding "anti-national activities", the regionalization of emergencies and the use of police and other special forces by the Center all increased the powers of the executive.

In increasing the powers of the executive by constitutional amendment, Prime Minister Indira Gandhi hoped to achieve several objectives. First, she sought to safeguard her own personal position as Prime Minister. The 42nd amendment increased the powers of the office of Prime Minister by removing institutional restraints from the President and the
courts. Secondly, she sought to make the state of emergency permanent by widening the already large emergency powers of the state, by strengthening the powers of the Center vis-à-vis the states, and by limiting the Fundamental Rights of the Constitution. Thirdly, Mrs. Gandhi attempted to establish new norms of opposition activity through the "anti-national activities" clause of the 42nd amendment. The aim was to strengthen the position of the Congress Party and to prevent a recurrence of the political instability that led to the state of emergency in June 1975. The 42nd amendment thus provided the basis for a "disciplined democracy" in India. Finally, Mrs. Gandhi sought to legitimize the emergency. The government argued that constitutional revision would promote social justice by removing obstacles to the government's economic and social programs.

Speaking in the Lok Sabha on the Amendment Bill, Mrs. Gandhi argued that "a Constitution has a bigger test than a judicial scrutiny. And that is the scrutiny of history and its capacity to meet the challenges of historical forces. There is something bigger than all of us and that is the nation and its future. That is the importance of this Bill." It was in order to find out the verdict of the Indian people, at least, that Mrs. Gandhi called the March election in 1977. The concluding chapter examines the impact of the March 1977 election and assesses Mrs. Gandhi's emergency rule and the constitutional amendments passed under it.
CHAPTER VI

Conclusion
With the victory of the Janata Party and the Congress for Democracy (C.F.D.) in the March 1977 general election, thirty years of Congress dominance have come to an end. During the election campaign the Janata and C.F.D. coalition pledged themselves to dismantle the authoritarian system under the emergency, while the Congress Party made support for the emergency and the constitutional amendments a key part of its own manifesto. The March 1977 election results thus constitute a decisive judgment of the Indian electorate against Mrs. Gandhi's emergency rule and the constitutional amendments passed under it.

It remains now to conclude with an assessment of the emergency and with a general discussion of the continuities and changes in the constitutional and political system in the periods 1950-75 and 1975-77. Finally, the validity of Kothari's model of one-party dominance and the Marxist model will be re-examined in the light of the emergency and its ending in March 1977.

During the emergency the government argued that the new amendments to the Constitution did not change the "basic structure" of that document. Rather, the amendments reaffirmed the validity of this "basic structure". The Prime Minister argued that the revision of the Constitution was more of a 'renovation' than a 'rebuilding' and that constitutions are not meant to be rigid and sacrosanct but need to be continually reassessed in the light of changing economic, social and political circumstances.¹

The government's claim that constitutional revision did not alter the "basic structure" of the Constitution was somewhat dubious. The
reaffirmation of the principle of secularism and Parliament's authority to amend the Constitution, the safeguarding of minority rights and the President's obligation to follow the advice of the Council of Ministers, certainly represented no radical break in constitutional and political practice. But the centralization of the political system, the curtailment of individual rights and the reduction in the powers of the judiciary did constitute important departures from the "basic structure" of the Constitution between 1950 and 1975.

As shown in Chapter IV, Mrs. Gandhi followed the 'letter' of the Constitution but not its 'spirit'. Constitutional government in the sense of limited government did not operate during the period of emergency because normal constitutional provisions were temporarily suspended and the government obtained wider powers. However, Mrs. Gandhi used the emergency as an opportunity to permanently enlarge the powers of the executive. The 42nd amendment, for instance, added to the already large emergency powers at the disposal of the government such as the Maintenance of Internal Security Act, the Defense of India Rules and President's Rule. It would, therefore, have been possible for the government to lift the state of emergency yet retain large emergency powers. It is not surprising then that the non-communist opposition and the C.P.M. saw the 42nd Amendment as a codification of the measures of the emergency.

This is not to suggest that the power of the Indian government became unlimited during the emergency. A distinction must be drawn between constitutional and non-constitutional restraints on the government. Even though the emergency measures and amendments to the
Constitution removed certain formal restraints on the powers of the government, other important economic, social and political restraints remained. Among these were the restraints on the central government exercised by the states which continued to have important political resources vis-à-vis New Delhi. Limitations on executive power also arose from the inadequacy of material and skilled human resources at the disposal of the government and the bureaucracy, as shown for example, by the failure of the government's family planning program.

Finally, what are the implications of the emergency period for Kothari's model of one-party dominance and the Marxist model? In the theoretical discussion of the model of one-party dominance it was seen that Kothari was concerned with explaining why certain political institutional arrangements have developed in India and why particular economic, social and political strategies have been pursued by the Indian elite. He argued that a distinctive Indian model of development had arisen which contrasted sharply with the model of development followed by, for example, the People's Republic of China. And Kothari pointed out the unique characteristics of the Indian model.

The point about Indian development which gives it the character of an unprecedented undertaking is that while economic and social change is in important respects planned and directed from above, it is nonetheless carried on within the framework of an open and undirected polity. This means that manipulation of change in the image of a few dominant ideas gets conditioned by an accelerated pace of political competition, a changing structure of power and influence, and a widening base of political consultation and persuasion.
The emergency and the revision of the Constitution denoted a major change from an open competitive polity to a guided system in which the government had wider powers and stressed duties and discipline. But as late as December 1974 Kothari restated the validity of his model of the 'Congress System'. Before the emergency he did point to a perceptible decline in the legitimacy of the constitutional and political system and traced this decline to certain trends in Indian society and politics— notably, excessive centralization in the levels of government, the absence of a real popular base for the Indian political parties, corruption and failures of performance. Kothari, however, concluded that the Congress Party and Mrs. Gandhi were likely to consolidate their position but did not make it clear how this consolidation would take place.

The victory of the Janata Party and the Congress for Democracy poses the question of whether there will be a new dominant party, a two-party system, or a fragmented multi-party system. Will there now be a 'Janata System'—a 'Congress System' without the Congress? Certain features of the political system under Congress dominance are likely to remain. Given India's size and diversity and the federal system, the ruling party or coalition will have to continue to aggregate interests. And it is important to note that the Janata Party is a coalition of different ideological components ranging from conservatives to socialists. It is therefore similar to the ideological amorphousness of the Congress Party. The emphasis on performance will also remain and there is no doubt that the viability of India's constitutional order will depend
to a great extent on the economic, social and political performance of the government.

The legitimacy of the constitutional and political order will also depend on the frameworks of consensus and the operative mechanisms of the political system described by Kothari. The significance of the March 1977 general election is that the electoral system (one of the operative mechanisms) has re-integrated the former non-communist and C.P.M. opposition parties into the constitutional and political system. But the March election results will not ensure the legitimacy of India's constitutional and political system. The analysis of the effect of the 1971 general election and the 1972 state assembly elections has demonstrated this. Although Mrs. Gandhi and the Congress Party obtained large electoral majorities in 1971-72, corrupt electoral practices also served to reduce the legitimacy of the political system. Electoral reform, particularly the financing of elections became a key demand of the non-communist opposition parties and the C.P.M. after 1971-72.

An analysis of government-opposition relations between 1971 and 1975 has proved the hypothesis of Chapter I that the legitimacy of constitutional government is dependent on the acceptance of the rules of the constitutional and political system by the government and opposition parties.

The study of government-opposition relations in the period between 1971 and the declaration of the state of emergency also showed that the 'margin of pressure' did not operate to maintain the openness of the political system. It remains to be seen whether the post-emergency
period will be accompanied by the development of a new 'margin of pressure' between the Janata Party, the C.F.D. and the opposition parties. It depends, first of all, on whether the Congress (R), now out of power, loses its strength and becomes a 'party of pressure'. Secondly, much depends on the factional alignments within the dominant coalition and their relationship to the opposition parties, and on whether the Janata Party is prepared to seek consensus with the opposition parties.

Kothari's model of one-party dominance and the Marxist model share the common assumption that constitutional and political institutions are historically necessary for their time. But in the Marxist model legal and political institutions are logically necessary given the particular economic structure of society and the prevailing class relationships. In the Marxist model the real struggle is not between institutions such as the executive, legislature and the judiciary but between classes; institutions are transformed or abolished as they suit the economic and social interests of the dominant classes. The emergency, in this analysis, arose from the crisis facing India's ruling classes and the facade of liberal constitutional democracy was quickly dropped.

In the theoretical discussion of the Marxist model some of the problems of applying this class analysis to the period 1947-75 were mentioned. The study of the period between the 1971 general elections and the state of emergency of June 1975 also showed the inadequacies of class and economic determinist explorations. Not only are there difficulties of identifying the ruling class, but also the breakdown of
consensus involved bourgeois parties such as the Congress (R) and the opposition B.L.D., Jana Sangh and Congress (O). It is also difficult to speak of the emergency as the outcome of a pure class struggle because of the reformist position of the C.P.I. and its support for the Congress (R) and also because of the socialist and populist rhetoric of the Congress Party.

But the Marxist analysis of dictatorship does not rely on the existence of an open class struggle. Dictatorships are seen to arise when 'bourgeois' institutions are threatened but revolutionary movements weak. But is the emergency a prelude to revolutionary change? The March 1977 general election seems to have given a new lease of life to India's 'bourgeois democracy'. A revolutionary movement guided by a revolutionary party which will establish its own alternative constitutional and political institutions is, however, absent in India today. It is likely to remain so as long as the C.P.I. and the C.P.M. continue their reformist policies.

Although it is still too early to assess the effect of the victory of the Janata Party and the C.F.D. on India's constitutional and political system, certain trends are clear. The new government has made known its intention to dismantle the authoritarian system of Mrs. Gandhi's emergency rule. It has been seen that the Congress Party in passing the constitutional amendments since June 1975 assumed that it would remain in power indefinitely. Ironically, with the shift in fortunes, it is now the Congress Party which is in a disadvantaged position under the revised constitution. The new government of Prime Minister Desai,
however, has announced that civil liberties and the independence of the judiciary will be restored. In Chapter I it was hypothesized that the Constitution had insufficient safeguards against the development of authoritarian rule. It remains to be seen whether the Janata and C.F.D. will reduce the emergency powers of the executive—particularly the emergency provisions of the Constitution and statutes such as M.I.S.A. and the Defence of India Rules—which enabled Mrs. Gandhi to impose her authoritarian rule in the first place.

The repeal of statutes such as the Maintenance of Internal Security Act and the Defense of India Rules is likely to be more straightforward for the Janata government than the repeal of the 39th, 40th, 41st and 42nd constitutional amendments. Repeal of these amendments will require a majority of two-thirds of Lok Sabha and Rajya Sabha members present and voting and ratification by a majority of the state legislatures. In order to re-amend the Constitution, the Janata government has, at the time of writing, announced the dissolution of nine state assemblies controlled by the Congress Party. The outcome of these elections and the ability of the Janata government to secure the necessary majorities in Parliament will, therefore, determine the success of the new government in abolishing these amendments to the Constitution.

The emergency thus appears to have been an aberration in India's constitutional and political system since independence. But Mrs. Gandhi has left important precedents especially the arrest of opposition leaders, press censorship and the precedents of constitutional revision under emergency rule. An examination of India's future constitutional
and political development may therefore answer the question of whether the emergency was in fact an aberration or whether it was the precursor of further periods of authoritarian rule in India.
FOOTNOTES
FOOTNOTES

CHAPTER I


CHAPTER II


5 Ibid., p. 10, n. 38.

6 Ibid., p. 5, n. 19.


8 Austin, The Indian Constitution, pp. 68-69.

9 1st Amendment (1951); 4th Amendment (1955); and 17th Amendment (1964).


11 Article 352 (3). References to the Constitution are to India, Ministry of Law and Justice, The Constitution of India as Modified up to the 15th of May, 1972 (New Delhi: Ministry of Information and Broadcasting, 1972).
CHAPTER III


3 Ibid., p. 1036.

4 Ibid., p. 1036.


8 Articles 264-300.


17 Ibid., p. 1051.


CHAPTER IV


3 *The Statesman* (Delhi), April 24, 1975.


6 Ibid., p. 961.


8 Ibid., pp. 320-1.


10 For example, on April 7, 1975 Morarji Desai began a fast to the death unless two of his conditions were met by Mrs. Gandhi—that fresh elections be held immediately in Gujarat and that the national emergency declared in December 1971 should be lifted. *The Statesman* (Delhi) April 8, 1975.


12 *Times of India* (New Delhi), April 1, 1975.
CHAPTER V

See, for example, Claire Sterling's article, "Ruler of 600 Million, and Alone," The New York Times Magazine, August 10, 1975; and Neville Maxwell, "Woman on a White Horse: India 1975," Round Table No. 260. (October 1975): 357-368.
2 Gandhi, Democracy and Discipline, pp. 63-64.

3 Ibid., pp. 103-4.


5 Ibid., p. 2.


7 Other members of the Committee were: A.R. Antulay, Congress General Secretary; Siddhartha Shankar Ray, Chief Minister of West Bengal; H.R. Gokhale, Union Law Minister; Rajni Patel, President of the Bombay Pradesh Congress Committee; V.A. Seyed Mohammed, Minister of State for Law; V.N. Gadgil, Minister of State for Defense Production; and the M.P.s C.M. Stephen, V.P. Sathe, D.C. Goswami, Krishna Mani, B.N. Bannerji, and D.P. Singh. Times of India (Bombay), May 23, 1976.

8 Keesing's Contemporary Archives (London), April 1976, p. 27783.

9 Times of India (Bombay), May 23, 1976.


11 For example, the Law Minister, H.R. Gokhale, on introducing the 44th Constitution (Amendment) Bill in the Lok Sabha in October 1976, criticized the opposition parties for failing to participate in the forums for debating constitutional revision. Gokhale also said that the Swaran Singh Committee had received four thousand memoranda and had interviewed a large number of people before finalizing its report in May 1976. "Parliament Approves Constitution Amendments", Indian and Foreign Review, Vol. 14, No. 3, (15 November 1976), pp. 5-6.

12 Times of India (Bombay) October 17, 1976.

13 Times of India (Bombay) October 10, 1976.

14 Ibid.


18 Article 74 (1) states only that "There shall be a Council of Ministers with the Prime Minister at the head to aid and advise the President in the exercise of his functions".


CHAPTER VI


2Kothari, Politics in India, pp. 8-9.


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