

EMERGENCY IN INDIAN CONSTITUTION (1990). By Nakade, Shiv Raj B. COSMO Publications, New Delhi. Pp. vi+296. Price Rs. 250.

EMERGENCY POWERS vested in the President of India are one of the most important salient features of the Constitution of India. Before their incorporation in the final constitutional document, there was a prolonged debate in the Constituent Assembly in which many members very vehemently and forcefully opposed the incorporation of emergency provisions in the proposed new Constitution. Their apprehension being that these could be misused by the executive to the disadvantage of common citizens and were basically not in keeping with proposed federal structure going to be introduced shortly in India. Though ultimately the Assembly decided to vest the President with emergency powers, yet not without reservations by many of its prominent members.<sup>1</sup> Experience has shown that the critics were not wrong and their apprehensions, not without foundations.

The volume is an indepth study of emergency provisions of Indian Constitution. It analyses the deliberations of the framers of the Constitution and highlights emergency constitutional provisions of some other countries. In the very first chapter, the author has tried to discuss concept, origin and development of emergency which he opines is creature of necessity, of unforeseen situations and is as old as the concept of authority.<sup>2</sup> It implies an element of intensity, variety and perception. He feels that advent of modern welfare state has not dispensed with the concept of emergency rather it has expanded and has been accepted as a necessity because of new emergency international order and sophisticated weaponry.<sup>3</sup>

In the next chapter, Nakade has tried to focus the attention of the readers to the view point of some of the prominent members of the Constituent Assembly who were critical of over-centralisation and conferment of overriding powers on the central executive. In his view, the framers of Indian Constitution incorporated emergency provisions in the Constitution as a matter of necessity but keeping in view their drastic nature they also tried to provide some safeguards as well.<sup>4</sup>

The focus of third chapter is "Effect of National Emergency on Centre-State Relations". Here he feels that in all federations centralising tendencies have been noticed during the periods of national crises. During emergencies federal governments come very near to unitary governments and delegation of powers to the Centre becomes unavoidable, but even then he feels that no other federal state has given so extensive powers to its national government

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1. VIII CAD at 196; IX CAD at 105, 107, 112, & 114.

2. Nakade, Shivraj B., *Emergency in Indian Constitution* (1990) at 4-5.

3. *Id.* at 24.

4. *Id.* at 84.

as India.<sup>5</sup> According to the author, in India the courts have adopted legalistic approach and have been giving liberal interpretation to emergency laws and thus allowed the governments to exercise extraordinary powers in dealing with ordinary matters.<sup>6</sup> He also feels that it appears that during the periods of emergency the courts came under the grip of general atmosphere of stress and strain which prevailed throughout the country.<sup>7</sup> While discussing the effects of national emergency on fundamental rights, he appears to be somewhat satisfied when he says that the 1978 change has put a check on colourable emergency legislation and executive action.<sup>8</sup>

National and internal emergencies, Fundamental Rights and Judiciary are the themes of chapters 5 and 6 of the volume. In chapter 5, *Makhan Singh*<sup>9</sup>, *Mohan Chowdhury*,<sup>10</sup> *Sadhu Singh*<sup>11</sup>, *Prabhakar*,<sup>12</sup> *Ananda Nambiar*,<sup>13</sup> and several other cases including *Lakhan Pal*,<sup>14</sup> *Bennet Coleman & Co.*<sup>15</sup> have been discussed both analytically and at some length. He has come to the conclusion that the Supreme Court in India, as apex courts in other countries, has been as concerned with the national interest in the security of state as the national interest in the safeguarding of the Fundamental Rights. The court in its judgments in several cases has tried to protect individuals from arbitrary and malafide exercise of power and also from the power having no nexus with the objective of emergency legislation.<sup>16</sup>

In chapter 6, the author has discussed *Habeas Corpus*<sup>17</sup> and *Bhanudas*<sup>18</sup> cases. His considered view here is that even the balance between the needs of emergency and protection of individual liberty struck on its external emergency rulings was upset by the Supreme Court in its internal emergency decisions. It appears to him that the apex court fell a victim, may be involuntarily, to the perpetrators of uncalled for emergency of mid-seventies.<sup>19</sup>

In the last but one chapter of the volume, which is devoted to "Judicial Review and National Emergency", Nakade has said that in India by now it is clear that the President invested with emergency powers under Article 352 is the final judge about the declaration and continuance of state of

5. *Id.* at 99.

6. *Id.* at 100.

7. *Ibid.*

8. *Id.* at 118.

9. *Makhan Singh v. State of Punjab* A.I.R. 1964 S.C. 381.

10. *Mohan Chowdhury v. Chief Commissioner* A.I.R. 1964 S.C. 173.

11. *Sadhu Singh v. Delhi Administration* A.I.R. 1966 S.C. 91.

12. *State of Maharashtra v. Prabhakar Pandurang Sanzgiri* A.I.R. 1966 S.C. 424.

13. *K. Anandanambiar v. Chief Secretary* A.I.R. 1966 S.C. 957.

14. *P.L. Lakhan Pal v. Union of India* A.I.R. 1967 S.C. 1507.

15. *Bennett Coleman and Co. Ltd. v. Union of India*, A.I.R. 1973 S.C. 106.

16. *Supra* note 2 at 162.

17. *Additional District Magistrate v. Shiva Kanta Shukla* A.I.R. 1976 S.C. 1207.

18. *Union of India v. Bhanudas* A.I.R. 1977 S.C. 1207.

19. *Supra* note 2 at 190.

emergency and the court has limited power of judicial review only when malafide is established. He has also pointed out that the *Minerva Mills* decision shows that the application of limited judicial review is almost an impossibility. The court in India has also held that for all practical purposes, emergency belongs to para political and not judicial sector.<sup>20</sup>

In the last and concluding chapter, the author has summarised some points discussed in the earlier chapters and also reacted to some of the already made suggestions about emergency provisions of the Constitution. Deletion of Article 352 does not appeal to him in the context of Indian history, conditions and requirements.<sup>21</sup> He also does not agree with the suggestion that proclamation of emergency should be made in consultation with and not on the aid and advice of Council of Ministers, as it will not work in our parliamentary system and is likely to cause many contradictions in the working of the Constitution.<sup>22</sup> In his view, deletion of Articles 358 and 359 is fraught with dangers and may create more problems in an emergency than solve them.<sup>23</sup> His own suggestion is that a loophole in Article 352 can be plugged by repealing the explanation given thereunder.<sup>24</sup> This Article may be so amended as to provide for judicial review of the proclamation and continuance of emergency either *suo motu* or on an application made by a citizens' body or by an individual citizen. The power may be confined to Supreme Court alone to avoid multiplicity.<sup>25</sup> His other suggestion is that Article 358 may be deleted so as to stop automatic suspension of freedoms under Article 19.<sup>26</sup> He is in favour of modification of Article 359 in certain respects.<sup>27</sup>

A complex topic has been dealt with in a simple, untaxing and easily understandable language. Court cases cited in the volume have been clearly and analytically discussed and provide requisite in-depth for understanding the issues involved. A good bibliography at the end of the book has increased its value. The suggestions made by the author in the concluding chapter deserve serious consideration because the past experience about the use of emergency powers is not happy with the masses. The book provides good reading. It would have been better if it had been moderately priced.

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20. *Id.* at 217.

21. *Id.* at 235.

22. *Id.* at 237.

23. *Id.* at 240.

24. *Id.* at 246.

25. *Id.* at 248.

26. *Id.* at 250.

27. *Ibid.*

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