



**THE
SHAH COMMISSION
REPORT**

**Circumstances Leading to
Declaration of Emergency**

Handwritten notes in Devanagari script, including the word "सिद्ध" (Siddha) and other illegible characters.

The Government of India have already accepted the findings, observations and recommendations made by the Shah Commission of Inquiry in their two Interim Reports. This was announced in the Lok Sabha on May 15, 1978 by the Prime Minister, Shri Morarji Desai. The two reports relate to excesses committed during the Emergency.

The Chapter on 'General Observations' of the Shah Commission's Interim Report No. 2 was reproduced as a pamphlet. In view of the continuing public interest in the subject, Chapter 5 of the first Interim Report dealing with the circumstances leading to the declaration of the Emergency is given in the following pages.

Circumstances Leading to Declaration of Emergency

In the Elections held to the Lok Sabha in 1971 from the Rai Bareilly Constituency Smt. Indira Gandhi was declared elected, defeating Shri Raj Narain and others who had contested the election. Shri Raj Narain then filed a petition in the High Court of Allahabad challenging the election of Smt. Indira Nehru Gandhi on a number of grounds, *inter alia*, alleging misconduct against her. The High Court of Allahabad pronounced its judgment on June 12, 1975. Shri J. M. L. Sinha of Allahabad High Court ordered :

"In view of my findings. this petition is allowed and the election of Smt. Indira Nehru Gandhi respondent No. 1 to the Lok Sabha is declared void."

The Court further ruled that :

"The respondent No. 1, accordingly, stands disqualified for a period of six years from the date of this order, as provided in section 8A of the Representation of the People Act."

The Court further directed :

"The operation of the said order is accordingly stayed for a period of twenty days. On the expiry of the said period of 20 days or as soon as an appeal is filed in the Supreme Court, whichever takes place earlier, this order shall cease to carry effect."

Following the judgment of the Allahabad High Court setting aside the election of Smt. Indira Gandhi there was a spurt of political activity in Delhi in particular and in the rest of India in general.

Apparently, an effort was made by the followers of Smt. Indira Gandhi to create an atmosphere that she should, notwithstanding that she was unseated and disqualified to stand for election, continue to remain and function as Prime Minister of India regardless of the High Court verdict. With that object in view, a number of demonstrations, rallies and meetings were arranged by her supporters in Delhi and elsewhere.

The post-judgment scene in Delhi and some of the adjoining States was spoken to by a number of witnesses. Shri Bhawani Mal, the then Inspector General of Police, Delhi, stated that there was no denying the fact that there had been a spurt of activity in the wake of the announcement of Shri Justice Sinha's verdict. Several demonstrations, rallies and public meetings were organised between June, 12 and 25. Most of these were in favour of the former Prime Minister, while a few were directed against her, and all this generated tension but no untoward incident occurred during that period.

Misuse of Public Utility Services

Shri Krishan Chand, the then Lt. Governor, Delhi, stated that soon after the pronouncement of Allahabad High Court judgment, he was called to the Prime Minister's House, but he sent Shri Navin Chawla, his Secretary, to proceed to the Prime Minister's House. He stated that he learnt from Shri Navin Chawla that in order to cope up with the law and order situation that might develop from the threatened opposition rallies, it was decided to organise rallies in support of the Prime Minister; and for this purpose people had to be collected from various places. Shri Krishan Chand also stated that he was told that public utility services would also be mobilised for the purpose. These services included New Delhi Municipal Committee, Delhi Transport Corporation and Delhi Electric Supply Undertaking. He further stated that rallies and bringing of people to the House of the Prime Minister continued after the 12th of June in order to show support to the Prime Minister.

The records of Delhi Transport Corporation show that 1761 DTC buses were requisitioned by the All India Congress

Committee or the Delhi Pradesh Congress Committee for organising the rallies in support of Smt. Indira Gandhi between June 12, 1975 and June 25, 1975. Shri J. R. Anand, who was working as a Traffic Manager in Delhi Transport Corporation (DTC), stated that buses were mostly booked on his own orders as the Traffic Manager and that he did it in pursuance of the decision taken by the Chairman of the DTC, who was also the Lt. Governor. The instructions were given in a meeting held at Raj Nivas that full cooperation should be given by the DTC by arranging buses to carry people who were taking part in rallies to be organised to express solidarity to the then Prime Minister. Shri J. R. Anand has stated that according to the DTC Rules for special hire by a private party, an application in prescribed proforma accompanied by advance payment is required; but this formality was not observed in the case of the bookings made by the AICC. The buses were booked on the basis of telephonic instructions received from Shri Navin Chawla, the then Secretary to the Lt. Governor. In the cases of major bookings, the details regarding the number of buses and the parties and places to which they would report, were given by Shri Navin Chawla. In small bookings, Shri J. R. Anand stated that Shri Navin Chawla told him to get in touch with certain Congress leaders for details. Shri Anand further stated that in the case of heavy number of buses booked on June 12 and 20, the buses had to be withdrawn from the scheduled operations, thus affecting the normal services; that the number of buses booked during the period June 12 to 25, 1975, on special hire, was much above the normal booking allowed for private parties, which is five buses per depot; that the total number of buses which could be booked was 95 a day which was far exceeded in the cases of the buses booked by the AICC and the individual Congress leaders. This adversely affected the normal operations of the DTC and caused much inconvenience to the public. Shri J. R. Anand has also stated that an amount of Rs. 4 lakhs on account of special hire charges of the buses is still outstanding against the AICC and DPCC for over two years.

On June 13, 1975 the entire fleet of 983 buses plying on the Delhi routes was taken off the road and the buses were diverted to converge on the Prime Minister's House, No. 1,

Safdarjung Road to register their support in favour of Smt. Indira Gandhi. Residents of Haryana, Punjab, Rajasthan and Uttar Pradesh, which are the States adjacent to Delhi, were sent in vehicles commandeered by the State authorities for the purpose. A large majority of those vehicles did not observe the Route Permits Rules required under the Motor Vehicles Act; and in many cases Government vehicles were used for which no payment was made.

The records of the DTC clearly support the evidence of the witnesses that Government employees were pressed into service for organising these rallies. A number of buses deputed in connection with these rallies were required to report to the Government servants including some senior officers. The statement of Shri Jaswant Singh, Depot Manager, DTC, gave the names/designations of such officials, numbers of buses which were deputed to report to them and the relevant dates, which are given below :—

Name of the Officer and designation	Date of report	No. of buses reported
S.H.O. Police Station, Faridabad	12-6-75	26
Smt. Meenaxi Dutta, SDM	-do-	2
S.P. New Delhi, Parliament Street Police Station, Shri K. D. Nayar	-do-	2
	16-6-75	2
	26-6-75	4
S.H.O. Police Station, Gurgaon	12-6-75	99
S.H.O. Police Station, Rai	12-6-75	95
Shri Bakshish Singh Gill, Dy. S. P. Enforcement	-do-	16
Director of Transport	-do-	34
Shri B. L. Anand, S.D.M.	-do-	1
Shri Sareen, Sadar Bazar Police Station	-do-	1
Shri Sareen, Dy. Director, Delhi Admn., Delhi	17-6-75	2
Shri Hayalan, PA to Chief Secretary, U.P.	19-6-75	60
PA to Chief Minister, Bihar	20-6-75	40

Rallies were held at New Delhi to register support for Smt. Indira Gandhi to continue in office as Prime Minister notwithstanding the order of the Allahabad High Court. Government organisations like Delhi Transport Corporation, New Delhi Municipal Committee and Delhi Electric Supply Undertaking participated in these rallies. Shri K. D. Nayar, the then Superintendent of Police, New Delhi, has stated that he used to visit and supervise law and order arrangements in the vicinity of the Prime Minister's House. According to him the participants in these rallies carried the banners indicating their organisations and the Unions to which they belonged; and that the participants of those rallies used transport belonging to their organisations for the purpose of participating in these rallies.

The statements of Shri B. K. Mittal, Assistant Secretary (Education) NDMC; Shri S. P. Goel, Asstt. Engineer I, NDMC; Shri Devi Singh, Painter, NDMC; Shri Krishan Lal Chaudhary of the Horticulture Department; Shri V. K. Kaushik, A. E. III(E); Shri Chandan Bedhab, President, Workers Union; Shri Mohan Singh, Junior Engineer and Shri J. C. Wadhwa, Senior Clerk, all NDMC employees and S/Shri Dhan Ram, President of the Employees Union; Madan Lal, Senior Vice President, Employees Union and Dalip Singh, Party Leader, all of Delhi Milk Scheme have also supported the participation of these organisations' employees and resources in the pro-Prime Minister rallies.

People from Neighbouring States Brought

The participation in the rallies was not confined to Delhi alone. Shri Krishan Chand, Lt. Governor deposed that

“.....some neighbouring States like Haryana, Rajasthan, Western U.P. also sent contingents for the purpose. All these arrangements were made under instructions from the P.M.'s House conveyed through Mr. Dhawan and the P.M. was kept informed about the developments from time to time.”

The records of DTC also clearly show that a number of buses were deputed to make trips outside the Union Terri-

tory of Delhi. Under the Motor Vehicles Rules, the buses going outside the Union Territory of Delhi are required to be issued special permits from the State Transport Authority for this purpose. (See Rule 9). The Secretary, State Transport Authority, has, however, informed the Commission by his letter dated November 28, 1977, that

“.....as per records maintained in this office no contract carriage permits were issued to the DTC for carrying contract parties outside the Union Territory of Delhi or to any private parties for use of the DTC vehicles outside the Union Territory of Delhi during the period from 12th June, 1975 to 25th June, 1975.”

According to Shri J. R. Anand, the then Traffic Manager, a number of buses booked by AICC through the Secretary to L.G. during this period were also sent outside the territory of Delhi, and that under the Motor Vehicles Act route permits had to be obtained for sending vehicles outside the Union Territory of Delhi, which was not done in this case; and that at a high level meeting at Raj Niwas, it was decided that the buses should be sent to the neighbouring districts of Haryana and U.P. and the instructions to allow the buses to pass the barriers had been given; that to ensure that the buses reached their destinations in the neighbouring States, the officers of the DTC were also deployed to accompany the buses; and that he had also been assured by Shri Navin Chawla that the police authorities and the State Transport authorities had been properly briefed and instructed to ensure that the buses crossed the borders without any route permits.

Shri Raj Roop Singh, Inspector, SHO New Industrial Township, Faridabad, has stated that after the announcement of the Allahabad High Court judgment, he received a telephonic message from the police Headquarters, Gurgaon, that as informed by the Deputy Commissioner, Gurgaon, about 100 DTC buses would be arriving from Delhi for the purpose of rallies in favour of Smt. Indira Gandhi; that he was told that the buses would report to the police station and that on demand from the Labour Inspectors, Officers of Industries Department and

other Government Agencies, Shri Raj Roop Singh should permit them to take the buses with them; that the police station started receiving telephonic messages from various places and the buses were directed to report to the officers concerned; that the majority of the buses were taken by the officers of the Labour Department and Industries Department and people from the factories located in Faridabad were carried to Delhi on those buses; that no records were maintained with regard to the number of buses received or despatched; that the police was asked to arrange supply of trucks or other conveyance, e.g. four wheelers, for carrying the people to Delhi; that the police used to ask the Truck Unions and Transport companies to supply the required number of vehicles; that this was done under the direction of the District Magistrate and the trucks were collected in SDM's court at Ballabgarh, where the Block Development Officers (BDOs) or Tehsildars used to take charge of the vehicles; and that the Patwaris and Gramsewaks were detailed to take trucks to the villages and to collect the people from there to carry them to Delhi.

Sub-Inspector Khan Chand, SHO Sadar Police Station, Gurgaon, stated that the SSP Gurgaon and the senior Civil Officers had also arrived on the scene and under the directions of senior officers some buses were sent to the city while others were sent to various factories for carrying people to Delhi. Sub-Inspector Jagdish Lal, SHO Police Station City, Gurgaon has stated that :—

“.....The empty trucks passing the road were also sometime detained and asked to report at the Tehsil Headquarters for the purpose..... BDOs and Tehsildars used to take charge of these vehicles and detailed the Patwaris, Gramsewaks etc. for taking these vehicles to villages and bringing people from there for taking them to Delhi.”

Bansi Lal's Directive

Shri N. K. Garg, District Magistrate, Rohtak has stated that on June 12, 1975, Shri Bansi Lal, Chief Minister Haryana,

rang him from Haryana Bhawan, New Delhi round about 10.30 a.m. and informed him that the Prime Minister had been unseated in the Allahabad High Court judgment, and desired that truck loads of people, as many as possible be sent from 2.30 p.m. onwards to the P.M.'s House; and that in that connection Shri Garg should contact the local MLA, Lala Shri Krishan Das who would muster the Congress workers and that Bansi Lal had also directed that the persons should raise slogans; that pursuant thereto he immediately got in touch with Shri Krishan Das and conveyed the whole message to him and called Shri S. H. Mohan, SSP, and asked him that he should make an effort to get as many trucks as possible for taking these people to Delhi. He also stated that he had received a similar message from Ch. Dalbir Singh, the then Deputy Minister for Shipping in the Central Cabinet.

The statement of Shri Garg is supported by the statement of Shri S. H. Mohan. Shri M. K. Miglani, who was then holding the office of the District Magistrate, has also confirmed in his statement the instructions given by Shri Bansi Lal, the then Chief Minister, Haryana. According to Shri Miglani, he learnt from the local leaders that out of 100 DTC buses that had come to Faridabad factory area only about 40 buses load could be sent, whereas the remaining buses had to return empty because they were unable to muster enough factory workers for this purpose.

On June 13, 1975 and again on June 18, 1975, about 800 to 900 employees of DESU participated in pro-P.M. rallies outside the residence of Smt. Indira Gandhi at the call of the Delhi State Electricity Workers Union. This is supported by Shri S. N. Srivastava, Chief Labour Welfare Officer, DESU, and Shri K. P. Saxena, Controller Rajghat Power House.

Another major rally took place on June 20, 1975, where as many as 497 DTC buses had been requisitioned by the organisers of the rally as against the permissible number of 95 buses, which could have been booked on special hire by private parties on one single day. Efforts were also made in the State of Haryana to contribute to the rally and this is seen from the

statements of S/Shri N. K. Garg, District Magistrate Rohtak S. H. Mohan, SSP Rohtak and M. K. Miglani, District Magistrate Gurgaon. According to Shri N. K. Garg, District Magistrate, Shri Bansi Lal had told him that this was a prestigious rally and a personal and crucial affair. So the District Administration should not lag behind in this task.

The state of affairs in this regard was not different in the State of Punjab. The Chief Secretary, Shri R. S. Talwar, has stated that :

“When it came to my knowledge that official machinery was being utilised for organising transport and mustering men and money for the purpose, I advised the then Chief Minister not to let Government and semi-Government agencies and their personnel being used in support of a political struggle with which they as such were not concerned. This advice was not liked, nor did it have much effect and official machinery continued to be utilised for mobilising men, money and transport to be sent to Delhi.”

Special Trains Arranged

According to the records of the Northern Railway, three special trains were arranged—one each from Varanasi, Lucknow and Kanpur on June 19, 1975, which arrived in New Delhi/Delhi on June 20, 1975. Two of these special trains had been booked by known Congressmen. The identity of the party requisitioning the special ex-Varanasi special train was not available on the file but the special train was arranged for the Congress delegates. For return journey two special trains were sent on June 21, 1975.

From the State of Rajasthan also, according to the Rajasthan State Electricity Board records, 58 trucks belonging to the State Electricity Board were ordered by the Chief Minister to be placed at the disposal of the Workers' Union. Even though the Chairman of the Electricity Board, Shri Mangal Behari, had directed that appropriate charges should be made,

but no payment of hire charges was made either by the Government or by the Workers' Union.

On June 22, 1975, the Opposition parties had organised a rally which was to be addressed by Shri Jaya Prakash Narayan. This caused considerable concern in the official circles. This is seen from the statement of Shri Krishan Chand, Lt. Governor, who stated that :

“Several meetings were also held in the Home Ministry to consider as to how best the situation developing from the speeches of Shri Jaya Prakash Narayan could be dealt with. At the official level, the view was that whatever might be done in respect of other leaders, Shri Jaya Prakash Narayan's arrest would make it more difficult to preserve public peace than if he was not arrested. . . . This view eventually did not prevail. However, Shri Jaya Prakash Narayan could not come to Delhi to address the meeting at Ramlila Grounds on June 22, 1975.”

Govt. Bodies Vied With Each Other

While Government bodies were vying with each other to show their support to or sympathy for the Prime Minister by misusing Government resources, there were Government employees, both highly and lowly placed, who were not willing to be a party to what they thought was wrong and improper in terms of employment of Government resources for a political party for partisan purposes. Shri R. N. Bhatnagar of the NDMC opposed the diversion of the NDMC trucks from the normal duties to proceed to the P.M.'s House, and lay in front of a truck of the NDMC which was sought to be diverted to proceed to the P.M.'s House. He pleaded that if the employees and the authorities wanted to signify their support to Smt. Indira Gandhi, they were welcome to do so but not at the cost of the civic resources.

Certain employees of the DESU, who refused to participate in these rallies, were allegedly beaten up by the more

enthusiastic amongst the supporters of the Prime Minister.

Shri Mangal Behari, IAS, the Chairman of the Rajasthan Electricity Board, became the victim of the wrath of the State Government of Rajasthan as he had refused to fall in line with the demand for sending the Electricity Board workers in the Electricity Board trucks, free of cost to attend the rally in Delhi arranged on June 20, 1975 to show support to and solidarity with Smt. Indira Gandhi. The details of the incident will be set out hereafter when the Commission deals with the case of Shri Mangal Behari.

While the Government resources in Delhi and elsewhere were being utilised to demonstrate support in favour of the Prime Minister, the law was also discriminately applied to the Congress party as against the other parties. Enforcement of prohibition of meetings under section 144 of the Criminal Procedure Code, which had become a normal feature in the vicinity of the Prime Minister's House, was relaxed when it came to demonstrations and rallies arranged by the Congress party in support of the Prime Minister. This matter was reported to the President, who sent for the Lt. Governor of Delhi and enquired of him as to why the other parties were not being given the same facilities as were being given to the Congress party. The Lt. Governor stated before the Commission that he had told the President that if the opposition parties were also directed to have the same facilities, that would have led to clashes creating a law and order situation. The Lt. Governor further stated that this relaxation was made in favour of the Congress party in the order under section 144 of the Code of Criminal Procedure at the instance of the then Prime Minister.

Ministers' Movements Watched

While these demonstrations of sympathy and support to the Prime Minister were going on apace, the Intelligence Bureau of the Government of India was being used to maintain surveillance on the activities of some of the important Congress leaders and Ministers. The Commission came across a Top Secret note dated June 18, 1975, sent by the then Director.

Intelligence Bureau, to the Prime Minister's Secretariat. It contains matters which among other things could have been compiled only on the basis of a physical watch and telephone tapings of the persons concerned. This raises a very important issue which has relevance to the assault on the privacy of the individuals and even of Ministers of Government for purposes which are other than those strictly necessary for ensuring the security of the State.

Shri Jagjivan Ram, then Minister in Smt. Indira Gandhi's Cabinet stated before the Commission that even before the imposition of the Emergency, his movements were watched and that his telephone was tapped. This he was able to assert on the basis of the information, which was furnished to him by the concerned officials, who owed loyalty to him. He was very critical of the Intelligence Bureau, who he said, was feeding the Prime Minister with information some correct, some incorrect and some fabricated. After the imposition of the Emergency, the watch on him was intensified. Shri Jagjivan Ram felt very strongly about the physical watch on the Ministers and citizens as it was a gross interference with the rights of citizens and their individual freedom which should not be permitted in a democracy. He felt that this was happening even before the Emergency and was intensified during the Emergency and according to him it had not ceased even after the Emergency. He was also critical of the employment of the Intelligence Bureau for assessing the election prospects of the Congress, and ascertaining through the Intelligence Bureau the suitability of candidates for contesting the election on behalf of the Congress Party. Intelligence Bureau officers conducting such inquiries were fed with misleading information by interested candidates and in consequence the feed back to the Prime Minister by the Intelligence Bureau proved equally misleading.

Drastic Steps Mooted

The decision to take certain drastic steps including even the declaration of Emergency was, apparently, in contemplation even as early as June 22, 1975. On June 22, 1975, Shri R. K. Dhawan rang up Andhra Pradesh Chief Minister

Shri J. Vengala Rao, and told him to be available at Delhi on June 24, 1975, when the judgment of the Supreme Court relating to the stay order applied for by Smt. Gandhi pending decision of the appeal filed by her was expected to be announced. Presumably, the order which the Supreme Court would make was to be the deciding factor on whether the drastic action contemplated to be taken, should in effect be instituted. If the judgment had been in the nature of a categorical and an unconditional stay, probably no action of the nature, which was ultimately taken, would have followed. But the Supreme Court gave only a conditional order. On June 24, 1975, Shri Justice Krishna Iyer delivered his judgment on the appeal of Smt. Indira Gandhi. The operative portions of the judgment are as follows :

- (i) Subject to paragraph (iii) below there will be a stay of the operation of the judgment and order of the High Court under appeal.
- (ii) Consequently, the disqualification imposed upon the appellant as a statutory sequel under section 8A of the Act and as forming part of the judgment and order impugned will also stand suspended. That is to say, the petitioner will remain a Member of the Lok Sabha for all purposes except to the extent restricted by para (iii) so long as the stay lasts.
- (iii) The appellant petitioner, a Lok Sabha Member, will be entitled to sign the register kept in the House for the purpose and attend the Session of the Lok Sabha. But she will neither take part in the proceedings in the Lok Sabha nor vote, nor draw a remuneration in her capacity as a Member of the Lok Sabha.
- (iv) Independently of the restrictions under para (iii) on her Membership of the Lok Sabha, her right as Prime Minister or Minister so long as she fills that office to speak in and otherwise to take part in the proceedings of either House of Parliament or

attend sitting of the Houses (without the right to vote) and to discharge other functions such as are laid down in the Article 74, 75, 78, 88 etc. or under any other law and to draw salary as Prime Minister shall not be affected or detracted from on account of the conditions contained in the stay order."

Since the judgment was conditional, it appears to have been decided that the plan of taking drastic action was to be gone through with expedition and despatch.

According to Shri Krishan Chand, Lt. Governor, Delhi, even as early as the evening of 23rd, a decision had been taken to take the Opposition leaders into custody soon after the Opposition rally, scheduled for June 24, was held. Lists of the Opposition leaders, which were to be arrested were also under preparation,

It appears from the report dated June 18, 1975, of the Director of the Intelligence Bureau, Shri Atma Jaya Ram that considerable political activity took place between June 15 & 18. The important aspects of the political activity were that Shri Krishan Kant, Shri Chander Shekhar and Shri Mohan Dharia were active in putting forth the view that Smt. Indira Gandhi should step down and that the party should elect a new leader. Smt. Lakshmi Kanthamma was also of this view. Shri Krishan Kant pointedly expressed the view that so long as Smt. Gandhi remained in office the Opposition would get "a one-line programme" and it could snowball into a revolution. Shri Mohan Dharia was advised by Shri Y. B. Chavan in the afternoon of June 17 not to raise any dissent in the Parliamentary Party meeting on June 18. S/Shri Chander Shekhar and Krishan Kant met Shri Bahuguna on June 17, 1975 at U.P. Nivas. Substantial portions of this report have not been verified to be correct and some of them have been denied by Shri Jagjivan Ram, who made his statement before the Commission.

Some of the important events between June 23 and 25, 1975

It was expected that a rally would take place, headed by

Shri Jaya Prakash Narayan on June 24, 1975. In the evening of June 23 an indication was given to Shri Krishan Chand, Lt. Governor by Shri R. K. Dhawan that the Opposition leaders may have to be taken into custody after the rally on June 24 and lists of prominent political leaders to be arrested were prepared by S. P. (CID) at P.M.'s House. Shri Krishan Chand stated that he was shown the lists and that changes were made in the lists and continued to be made from time to time as a result of continued discussions at P.M.'s House, but that he did not see the final list. He also stated that the Opposition rally did not take place on June 24 as announced to take place on that day, and so the action proposed to be taken on June 24, was stayed.

On June 24, Shri Justice Krishna Iyer announced the judgment. The Hindi version of the judgment broadcast over the All India Radio gave the complete story. This gave rise to certain angry reactions and the Minister spoke to the Director of News. Within a short time a revised Hindi version was broadcast which was intended to be favourable to Smt. Indira Gandhi, as broadcast in the English bulletin at 4 p.m. In the meanwhile, the authentic copies of the judgment were obtained. According to Shri Krishan Chand, after the import of the judgment was fully realised, it was decided to take drastic action against the Opposition leaders as soon as there were tangible signs of any effort on their part to dislodge the Prime Minister from her office and it was decided by the Prime Minister that action would be taken on June 25 after the Opposition rally.

On June 24, 1975, Shri J. Vengala Rao received a telephonic message from Shri R. K. Dhawan requesting him to meet the Prime Minister on June 25. Shri Vengala Rao has stated that Smt. Indira Gandhi informed him that having regard to the prevailing conditions and the contemplated country-wide agitation, it had been decided to take strong and deterrent action; and as this was sure to cause resentment and there was a possibility of some violent action, it would be necessary to take all preventive actions including arrests of persons who were likely to cause disturbance. He further stated that he

was requested to pass on the message to the Chief Minister of Karnataka, who could not be present and that both the Chief Minister of Karnataka and Shri Vengala Rao were asked to be available on the telephone on June 25 when the final decision of the Government of India would be communicated to them by Shri Dhawan. Shri Vengala Rao left by an IAF plane, which was specially arranged for him for making a trip to Bangalore. He stated that he met the Chief Minister of Karnataka at Bangalore, apprised him of what the Prime Minister wanted him to tell him and in the evening he reached Hyderabad by the same plane.

Shri P. C. Sethi, Chief Minister of Madhya Pradesh, was told at the residence of the Prime Minister on the morning of June 25 by Shri Om Mehta, Minister of State for Home Affairs, about the guidelines that he would have to observe in taking into custody certain persons, who were capable of creating disturbances. According to Shri P. C. Sethi, it took place in the presence of the Prime Minister.

The Prime Minister tried to get in touch with Shri Harideo Joshi, Chief Minister of Rajasthan, but she was unsuccessful in conveying that message to Shri Harideo Joshi on telephone. Shri Sethi was then asked to contact Shri Harideo Joshi at Banswara on his way to Bhopal and convey the same message to him. Accordingly, Shri Sethi went to Bhopal via Banswara by an IAF aircraft. At Bhopal Shri Sethi took steps in pursuance of the instructions that had been given to him by the Prime Minister. Shri Harideo Joshi returned to Jaipur by the same aircraft, which after leaving Shri Sethi at Bhopal, had come to Banswara for this purpose.

Misuse of IAF Aircraft

The records maintained at the Air Headquarters of the IAF confirm the flights of Shri Vengal Rao, Shri P. C. Sethi and Shri Harideo Joshi by the IAF aircraft on June 25, 1975. No payments were apparently made by anyone for the use of the IAF aircraft.

Shri S. K. Misra, who was the Principal Secretary to

the Chief Minister, Haryana, has in his statement before the Commission, stated that between 12 noon and 2 p.m. on June 25, 1975, he received from Delhi a telephonic information from Shri Bansi Lal, the then Chief Minister of Haryana, asking him to alert the Deputy Commissioners to remain at their Headquarters and be available on telephones and also to reserve huts at Sohna Tourist Complex for two VIPs, who were to reach there on the night of June 25/26, 1975. Lists of persons to be taken into custody were to be prepared by A.D.I.G., C.I.D. Shri Misra met Shri Bansi Lal at about 10 p.m. on his return from Delhi. At that time the latter told him that Emergency was expected to be declared that night. This statement of Shri S. K. Misra is corroborated by the statement of Shri N. K. Garg, the then Deputy Commissioner, Rohtak, who had also met Shri Bansi Lal at Rohtak at about 4.30 p.m.

Shri M. K. Miglani, who was the Deputy Commissioner at Gurgaon, had taken steps to reserve two huts in Sohna Tourist Complex on June 25 in pursuance of the message received from Shri S. K. Misra. He also contacted the Lt. Governor of Delhi and in response to his directions detailed one of his officers to reach Haryana Bhawan, New Delhi, at about 10 p.m. on the night of June 25, 1975, where the Delhi Administration authorities were to contact him.

The District Magistrate, Darbhanga (Bihar) had conveyed to the then Chief Minister of Bihar a message, which he had received from Patna, to the effect that the Chief Minister of Bihar was to contact the Prime Minister's House at about 9 p.m. on the night of June 25. Accordingly, the Chief Minister contacted the Prime Minister's House and after the telephonic talk that the Chief Minister had with the Prime Minister, the Chief Minister is reported to have told the District Magistrate that he wanted to get back to Patna the same night by road and he wanted to know the provisions under the Defence of India Rules with regard to the Press. The Chief Minister told the District Magistrate to convey to the Home Secretary and IGP the desire of the Chief Minister that they should meet him at his residence at about 2.30 a.m. on the night between June 25/26, 1975.

According to the statement of Shri Krishan Chand, all arrangements in connection with the impending arrests were discussed at a meeting in the afternoon of June 25 in the room of Shri R. K. Dhawan in the presence of Shri Om Mehta, the then Minister of State for Home Affairs, Shri Bansi Lal and Shri Bajwa, S.P. (CID), Delhi Administration. Shri Krishan Chand then called a meeting at about 7.30 p.m. at Raj Niwas at which the Chief Secretary, I.G. Police, Deputy Commissioner, DIG (Range) and others were present. The Chief Secretary of Delhi Administration, Shri J. K. Kohli had been instructed to visit the Tihar Jail to arrange necessary accommodation in the jail for those who would be rounded up in the course of the night between June 25/26, 1975 and taken to Tihar Jail. Accordingly, Shri Kohli had visited the Tihar Jail at about 8.15 p.m. in the night, checked up the availability of accommodation there and had tipped off the Superintendent of Jail that he should be prepared to receive about 200 "Naga Political Prisoners.", by the next morning.

No Morning Edition of Certain Newspapers

Efforts were also made to ensure that some important newspapers were prevented from bringing out the morning editions on June 26, 1975. Shri B. N. Mehrotra, ex-General Manager, Delhi Electric Supply Undertaking had stated that he was called to Raj Niwas by the Lt. Governor at about 10 p.m. and told that the electricity connections to the Press were to be disconnected from 2 a.m. that night and Shri Krishan Chand said that these were the orders from the Prime Minister's House and had got to be carried out. Shri Mehrotra carried out the orders and reported compliance thereof at about 2 a.m. to Shri Navin Chawla, Secretary to the Lt. Governor.

Efforts were also made to prevent publication of newspapers in Chandigarh and Bhopal. Shri N. P. Mathur, who was the Chief Commissioner at Chandigarh, had not received any direct instructions either from the Home Secretary or from any other responsible quarters in Delhi. Shri N. P. Mathur had contacted over the phone on June 25, 1975 the Home Secretary, Shri S. L. Khurana to obtain confirmation of the

instructions of the Chief Minister of Punjab. Shri Khurana disclaimed any knowledge on the subject. He, therefore, did not act on the verbal instructions received by him from Shri Zail Singh, Chief Minister of Punjab, to lock up "The Tribune" and its Editor, Shri Madhavan Nair at Chandigarh.

News Gagged

Initially instructions were issued by the Chief Minister of Madhya Pradesh at about 9 or 10 p.m. on June 25, 1975 to the effect that news about the arrests should not appear in the newspapers of Bhopal and other important places. The same instructions were subsequently countermanded as testified by Shri Narendra Prasad, the then S.P., Bhopal.

It would, therefore, appear clear that in varying degrees the Chief Ministers of several States were taken into confidence as early as the morning of June 25, and they had been instructed to take steps to take action on receipt of the advice from the Prime Minister's House that night. Those who had information to this effect were the Chief Ministers of Andhra Pradesh, Karnataka, Madhya Pradesh, Rajasthan, Haryana, Punjab, Bihar and West Bengal. The Lt. Governor of Delhi was fully in the picture even before June 25, 1975.

Imposition of Emergency Suggested by Ray

Shri Sidharth Shankar Ray, Chief Minister of West Bengal, has stated that he received a message from the Prime Minister's Secretariat on the morning of June 25, and, accordingly, he went to her house. When she came into the room where he was waiting, she had some reports in her hand and she stated that the country was in great difficulty, and that in view of the all-round indiscipline and lawlessness, she wanted that something should be done. According to Shri Ray, she had told him on two or three occasions prior to this that India required a shock treatment and something had to be done and some sort of emergent power or drastic power was necessary. Shri Ray remembered that one such occasion when she had mentioned about the shock treatment was sometime before the announcement of Allahabad judgment on June 12, 1975. On this occasion he had told her that they could manage with the

laws, which were already on the statute books. In this context he had also mentioned the success with which they had tackled the law and order problems of West Bengal within the framework of the laws then in force. According to Mr. Ray, the reports that she read out indicated that there was lawlessness or threats of lawlessness in many parts of the Northern India; that while they were discussing, a bearer came in with a piece of paper from which she read out and said that this was a report giving advance information about what Shri Jaya Prakash Narayan was going to say at a public meeting scheduled for that day in Delhi; that Shri Jaya Prakash Narayan would be calling for a mass movement within two or three days all over India and that the usual things would be said by him; such as, parallel administration, parallel courts, students not to join Universities, Schools and Colleges; appeal to policemen and to armed forces not to obey what were supposed to be illegal orders etc. Shri Ray said that he did not know from where this report originated. According to Shri Ray, there were certain things, which when they came from the Prime Minister, he could not say that they were totally wrong, particularly if they were factual; but, according to him, she was firm on the factual aspect that those reports indicated that India was drifting towards chaos and anarchy. Shri Ray then stated that he told her that he would like to consider the steps that had to be taken, after consulting the relevant literature on the subject; that she gave him the impression that she was seriously and sincerely disturbed with the conditions prevailing in the country; and that he asked for some time to consult the relevant law and left the Prime Minister's house; that he came back at about 4.30 or 5 p.m. and told her that she could consider if she so desired, Article 352 of the Constitution for the purpose of imposing internal Emergency; and thereupon she asked Shri Ray to go along with her to the President immediately.

Three Vital Questions

The President was then contacted and an appointment was taken and she went to the President along with Shri Ray. She gave to the President a summary of what she had told Shri Ray with regard to the facts; that the President heard her

for about 20 minutes to half an hour and then asked Shri Ray as to what were the exact words in the Constitution; that the President then told the Prime Minister to make her recommendation; and when she was returning with him from the President's house, he told her that she should involve the other leaders also in that decision; that though he did not name anyone in particular, except the name of Shri Dev Kant Barooah, who was the President of the Indian National Congress, he wanted that she should involve the other leaders and talk to them about this matter; that she wanted to know the answers to three questions, which she had raised :

“Firstly, she wants to take a decision without going to the Cabinet. Is it possible? Can it be done?

Secondly, what should be the language of the letter to be addressed to the President?

Thirdly, what should be the text of the Proclamation”?

Shri Ray thereafter consulted the Business Rules and a notification pertaining to proclamation of Emergency in 1971. According to Shri Ray the first category dealt with matters, which must go to the Cabinet; the second category dealt with matters, which need not go at all to the Cabinet; and the third category dealt with matters which could be dealt with by the Prime Minister, but had to be ratified by the Cabinet. Smt. Gandhi said that she wanted to take the decision herself and that she would call a meeting of the Cabinet early next morning. Shri Ray then told her that if she wanted to take the decision herself, she should write recommending to the President the proclamation of Internal Emergency and avail herself of the relevant Rules, as provided in the third category of the Business Rules. Shri Ray prepared two drafts. According to him, the letter, which Smt. Gandhi had written to the President recommending the proclamation of the Emergency and which was published subsequently in the proceedings of the Commission, was not the draft which he had made on the subject and given to the Prime Minister. According to Shri Ray, Shri Barooah was also called in later in the evening and

his advice was sought by Smt. Gandhi as to the kind of speech she should make on the radio announcing the proclamation of Emergency. Smt. Gandhi, Shri Barooah and Shri Ray worked over the speech and this exercise took a long time perhaps about three hours. This was because Shri Sanjay Gandhi used to come into the room and ask his mother to come out. Smt. Gandhi would then go out and not return for 5 to 10 minutes, and what she did when she went out, Shri Ray did not know.

Locking up of High Courts

After finishing the speech writing, when he was going out through the door of the room, Shri Ray heard to his surprise from Shri Om Mehta that orders had been passed to lock-up the High courts, the next day and to cut off the electricity connections to all newspapers. Shri Ray was surprised because he had told her that under the Emergency one could not take any action unless rules were framed. Shri Ray said that the locking up of the High Courts and cutting off of electricity connections could not just happen and he told that to those who were present there. He stayed on and wanted to see Smt. Gandhi and convey to her his reactions. He said that he would not leave unless and until she saw him because what was happening was important. Smt. Gandhi was late in coming and while he was waiting Shri Sanjay Gandhi met him in a highly excited and infuriated state of mind and told him quite rudely and offensively that he did not know how to rule the country. Shri Ray did not lose his temper but made him understand that he should mind his own business and should not try to interfere with what was not his sphere. Later Smt. Gandhi came and he told her about the impending closure of the High Courts and cutting off of electricity connections to newspapers, Smt. Gandhi immediately said that this should be stopped.

Shri Om Mehta in his deposition before the Commission has stated that he had given information to Shri Ray in the Prime Minister's House that night regarding the intended closure of the courts and cutting off of electricity, which had come to his knowledge while he was waiting in one of the rooms of the Prime Minister's House on that night.

Shri Brahmananda Reddy, the then Home Minister, has said in his statement that he was called to the house of the Prime Minister at about 10.30 p.m. and was told that on account of the deteriorating law and order situation it was felt necessary to impose Internal Emergency. He told Smt. Gandhi that there was already an Emergency on and that the powers already available under the existing Emergency could be availed of to deal with the situation. Thereafter, he left, but he was sent for again a little later and he was told by Smt. Gandhi that his earlier suggestion had been examined and it was found that the declaration of Internal Emergency was considered necessary. Shri Brahmananda Reddy thereupon told her to do what she thought was best. He has stated that on this occasion he also signed a letter to the President of the Republic making reference to the telephonic conversation which the then Prime Minister had with the President and appended the draft proclamation of Emergency for the President's assent along with his letter. The letter signed by Shri Brahmananda Reddy was on a plain sheet of paper and was not on a sheet with the letter-head of the Home Minister of India.

Shri Akhtar Alam, who functioned as the Special Assistant to the President of India, has stated that an important letter from the Prime Minister's House was delivered to him at about 10.30 p.m. on June 25, 1975, and that he delivered it to the President, who sent for his Secretary, Shri K. Balachandran and also Shri Neelkanthan, Deputy Secretary, who dealt with such letters. Some discussion ensued between the President and the Secretary about the wording of the letter about which Shri Balachandran raised certain doubts. At about 11.20 p.m. Shri Dhawan came and he brought with him some papers. He says that he did not know what the papers were and he did not know whether the President signed those papers. The next morning at about 10.30 or 11 a.m. Shri Akhtar Alam was given by the President the letter from the Prime Minister and he kept it in his custody till he handed it over to Shri Balachandran when Shri Akhtar Alam left the post in February, 1977.

Shri K. Balachandran in his deposition has referred to the top secret letter received from the Prime Minister Smt. Indira Gandhi to the President. This letter referred to the

discussion which the Prime Minister had with the President earlier in the day. She had stated that the President was satisfied on the score of the imminent danger to the security of India due to internal disturbances. She had also stated that if the President was satisfied on this score, a proclamation under Article 352(1) of the Constitution had become necessary; and that she was enclosing a copy of the draft proclamation for the President's consideration. Shri Balachandran has stated that there was no draft proclamation enclosed with the letter. According to Shri Balachandran the Prime Minister had also stated that she was not consulting the Cabinet due to shortage of time and the matter was urgent; and that she was, therefore, permitting a departure from the Transaction of Business Rules in exercise of her powers under Rule 12 thereof. According to Shri Balachandran he had advised the President that it would be Constitutionally impermissible for him to act in the manner suggested in that letter; and that he had to act on the advice of his Council of Ministers; and, therefore, his personal satisfaction in this matter would not arise. The letter from the Prime Minister indicated that the Cabinet had not considered the matter. Moreover, it was worded in such a manner as would make it appear that the decision to declare Emergency was that of the President based on his personal satisfaction. The President, apparently, saw the force of this argument and contacted the Prime Minister on the telephone immediately thereafter. Afterwards, he left the President's room, and came back after about 10 minutes. In the intervening brief period, Shri Dhawan had visited the President and had delivered the draft of the proclamation of Emergency for his signature. The President told him that he had signed the proclamation and given the same to Shri Dhawan, who had taken it back with him along with the Prime Minister's letter. The next day Shri Akhtar Alam had told Shri Balachandran over the telephone that a revised letter had been received from the Prime Minister, which was subsequently passed on to him by Shri Akhtar Alam in February 1977, and he kept it in his file.

P. M's Letter to President

The Prime Minister's letter and the proclamation of Emer-

gency which are available in the President's office file are reproduced below :—

"TOP SECRET"

PRIME MINISTER

INDIA

NEW DELHI June 25, 1975.

"Dear Rashtrapatiji,

As already explained to you, a little while ago, information has reached us which indicates that there is an imminent danger to the security of India being threatened by internal disturbance. The matter is extremely urgent.

"I would have liked to have taken this to Cabinet but unfortunately this is not possible tonight. I am, therefore, condoning or permitting a departure from the Government of India (Transaction of Business) Rule 1961, as amended up-to-date by virtue of my powers under Rule 12 thereof. I shall mention the matter to the Cabinet first thing tomorrow morning.

"In the circumstances and in case you are so satisfied, a requisite Proclamation under Article 352(1) has become necessary. I am enclosing a copy of the draft Proclamation for your consideration. As you are aware, under Article 352(3) even when there is an imminent danger of such a threat, as mentioned by me, the necessary Proclamation under Article 352(1) can be issued.

"I recommend that such a Proclamation should be issued tonight, however late it may be, and all arrangements will be made to make it public as early as possible thereafter.

With kind regards,

Yours sincerely,
Sd/- Indira Gandhi"

"PROCLAMATION OF EMERGENCY"

In exercise of the powers conferred by Clause 1 of Article 352 of the Constitution, I, Fakhruddin Ali Ahmed, President of India, by this Proclamation declare that a grave emergency exists whereby the security of India is threatened by internal disturbance.

New Delhi-25th June, 1975.

PRESIDENT"

On the basis of the evidence it is clear that some of the important functionaries in the Home Ministry, Cabinet Secretariat and the Prime Minister's Secretariat, who should have been consulted before such an important decision was taken, did not know anything about the proclamation of Emergency till very late and some of them learnt about it only on the morning of June 26, 1975.

Shri P. N. Dhar, Secretary to the Prime Minister in his statement has said that he knew about it only when he was called to the Prime Minister's House around 11.30 p.m. on June 25, when he was given for perusal the draft of the speech that the Prime Minister was going to make over the All India Radio.

Shri B.D. Pande, the Cabinet Secretary, received a phone-call from the Prime Minister's House at about 4.30 a.m. on June 26, and was told that a Cabinet meeting was scheduled to take place at 6 a.m. that morning. He knew about the proclamation of Emergency for the first time that morning only. He was surprised as to how and who functioned to bring about the large number of arrests which had taken place between 25th and 26th June. Normally all instructions for such expeditious actions were routed through the Ministry of Home Affairs which used their own channels of communications.

Emergency Not Discussed by Cabinet

According to Shri B. D. Pande, the need for the declara-

tion of Emergency or the situation in the country warranting any such declaration had not figured in any of the Cabinet meetings preceding June 26, 1975.

Shri Atma Jaya Ram, Director, Intelligence Bureau, has stated that he learnt about the proclamation of Emergency only after he went to the office on June 26.

Shri S. L. Khurana, who was the Home Secretary to the Government of India, had known about it only when he attended the Cabinet meeting on 26th morning for which he received intimation past 6 a.m. Accordingly, he arrived at the Cabinet meeting only around 6.30 a.m. when the meeting was already over.

Shri H. R. Gokhale, former Minister of Law and Justice came to know about the proclamation of Emergency for the first time at the Cabinet meeting held on the morning of June 26, 1975. Neither he nor his Ministry was consulted with regard to the proclamation of Emergency at any time before, nor was the proclamation vetted by him or by his Ministry.

Some of the special features of the proclamation of Emergency, as gathered from the official records, are as follows: —

- (a) on the economic front there was nothing alarming. On the contrary, the whole-sale price index had declined by 7.4 per cent between December 3, 1974 and the last week of March 1975 as per the Economic Survey 1975-76, a Government of India Publication;
- (b) on the law and order front, the fortnightly reports sent by the Governors of various States to the President of India and by the Chief Secretaries of the States to the Union Home Secretary indicated that the law and order situation was under complete control all over the country;
- (c) the Home Ministry had received no reports from the State Governments indicating any significant deter-

- ioration in the law and order situation in the period immediately preceding the proclamation of Emergency;
- (d) the Home Ministry had not prepared any contingency plans prior to June 25, 1975, with regard to the imposition of internal Emergency;
 - (e) the Intelligence Bureau had not submitted any report to the Home Ministry any time between 12th of June and 25th of June, 1975, suggesting that the internal situation in the country warranted the imposition of internal Emergency.
 - (f) the Home Ministry had not submitted any report to the Prime Minister expressing its concern or anxiety about the internal situation in the country. Till after the Emergency was lifted, the Home Ministry did not have on its file the copy of the communication which was sent by the Prime Minister to the President recommending imposition of the Emergency;
 - (g) while the Director of Intelligence Bureau, the Home Secretary, the Cabinet Secretary and the Secretary to the Prime Minister had not been taken into confidence, Shri R. K. Dhawan, the then Additional Private Secretary to the Prime Minister, had been associated with the preparation and promulgation of the Emergency right from the early stage;
 - (h) Shri Om Mehta, the then Minister of State in the Ministry of Home Affairs, appears to have been taken into confidence much earlier than the Home Minister, Shri K. Brahmananda Reddy, who came into the picture only when the draft proclamation was forwarded to the President;
 - (I) while the Lt. Governor of Delhi and the Chief Ministers of Haryana, Punjab, Madhya Pradesh, Rajasthan, Karnataka, Andhra Pradesh, Bihar and West Bengal

had been given advance intimation by the Prime Minister about the contemplated action, no such advance information was given to the Governments of U.P., Maharashtra, Gujarat, Tamil Nadu, J & K, Tripura, Orissa, Kerala, Meghalaya and other Union Territories. In fact, Shri H. N. Bahuguna, the then Chief Minister of Uttar Pradesh, has stated in his affidavit that he came to know about the proclamation of Emergency on the morning of June 26, when he was having break-fast along with Shri Uma Shankar Dikshit and Shri Keshav Deo Malaviya, the Central Ministers, and they were as surprised as he was about the promulgation of Emergency.

Indira Gandhi Summoned to File Statement

As stated earlier, a notice under rule 5(2)(a) of the Commissions of Inquiry Rules was issued to Smt. Gandhi requesting her to file her statement in terms of rule 5(3). No such statement was filed by her. Smt. Gandhi was also issued a summons under section 8B of the Commissions of Inquiry Act. Though she responded to the summons under section 8B of the Act, she declined to take oath and give evidence on oath when the Commission desired to examine her under Section 5(2) and according to the procedure analogous to the provisions of the Civil Procedure Code. But in one of the letters addressed by her to the Commission, dated November 21, 1977, in response to the invitation which was initially extended to her to assist the Commission, Smt. Gandhi had submitted a detailed reply to the Commission in regard to certain matters and, *inter alia*, raising certain objections to the procedure adopted by the Commission. In the course of her reply, she touched on the subject of declaration of Emergency and stated :

"I should further like to point out that the terms of reference of this Hon'ble Commission are one-sided and politically motivated, while they empower the Hon'ble Commission to enquire into the excesses committed during the emergency, they are silent about the circumstances which led to its declaration. This country is vast and

beset with deep-rooted and wide-ranging problems. The administrative machinery is fragmented. Urgent measures have to be taken. Programmes are implemented at various levels and by different individuals and agencies. Some excesses in their implementation cannot always be avoided nor do they always come to notice at that time. I have publicly expressed regret for any unjust hardship caused to any individual. But if the professed purpose of the inquiry is to check abuse of power in the future, it is equally imperative that the circumstances which created chaotic conditions in the nation before the emergency should also be enquired into and not allowed to be repeated. For two years preceding the emergency the country was in the grip of grave crisis. The economic situation had deteriorated due mainly to internal and international causes beyond our control. Interested parties and groups wished deliberately to aggravate the situation for their own gain. Freedom of speech and expression were used to spread hatred and parochial regional sentiments. Noble institutions of learning were turned into hot-beds of political intrigue. Public property was destroyed at the slightest excuse. A Minister in the present cabinet is reported to have proudly claimed, "In November last (1975) in the Union State of Karnataka alone, we caused derailment of 52 trains". The attempt was to paralyse national life. The dissolution of the Gujrat Assembly was forced by undemocratic means. Duly elected legislators were beaten and intimidated into resigning from their seats in the Assembly. Relying upon the judgment of the Allahabad High Court, the demand for my resignation was made in the name of democracy and morality. But what was that morality and how did democracy come in? If at all, moral considerations were on my side as nothing had been found by the High Court against me which smacked of moral turpitude. I had lost on a legal technicality but law also gave me the right to reconsideration of the judgment by the highest court. And the act of seeking to remove a duly elected leader of the majority party through threats to gherao me and with a

call to the Army and the Police to revolt could not be justified in the name of any known democratic principles. A chaotic state of affairs similar to that in India before July 1975 prevailed in France when de Gaulle came to power in 1958. His major response was constitutional reform and the introduction of Article 16 in the new Constitution which goes a long way to show how necessary it became for my government to resort to the emergency provisions in the Constitution if India were to pull herself out of the impending disaster. The new Article provided *inter alia*, that "when the regular functioning of the constitutional governmental authorities is interrupted, the President of the Republic shall take the measures commended by the circumstances" to restore order.

"It must also be born in mind that it would be impossible for a democratically elected government to function effectively if it is to live under the fear of politically inspired inquisitorial proceedings against its policies and decisions by a subsequent government."

Smt. Gandhi sent yet another reply dated December 2, 1977, in response to another invitation, which was extended to her by the Commission when the case dealing with the circumstances leading to the declaration of Emergency was coming up for the First Stage of its hearing before the Commission from December 5, 1977 and the following days. The relevant portions of her reply are reproduced below :

"In fact, that the declaration of Emergency, according to this Hon'ble Commission, might be an excess and, therefore, calls for an inquiry, is a matter which does not fall within the purview of this Hon'ble Commission. The proclamation of Emergency by the President was a Constitutional step. It was approved by the Cabinet and duly ratified by both Houses of Parliament in terms of Article 352(2) of the Constitution. After the ratification, the proclamation which was political in character, became an Act of Parliament. In the United States the exercise of political power by the President has been held to be beyond challenge. Chief Justice Marshall observed in *Marbury V. Madison*:

"By the Constitution of the United States the President is invested with certain, important political powers in the exercise of which he is to use his own discretion, and is accountable only to his country in his political character and to his own conscience. The Subjects are political. They respect the nation, not individual rights, and being entrusted to the executive the decision of the Executive is conclusive".

"Under the Indian Constitution, on the other hand, the proclamation of Emergency has been made subject to ratification by Parliament.

No authority in this country, not excluding any commission appointed under the Commissions of Inquiry Act, can sit in judgment over such an Act of Parliament. For any political decision, the Government under our Constitution is answerable only to Parliament. If this Hon'ble Commission arrogates to itself the power to determine that the declaration of Emergency was an excess, this Hon'ble Commission will not only be stultifying the Constitutional Scheme, but also establishing a precedent which will make serious inroad into Parliamentary supremacy with disastrous consequences to Parliamentary freedom.

-Even the terms of reference of this Hon'ble Commission do not warrant such an inquiry. They are strictly confined to the determination of alleged excesses during the Emergency or in the days immediately preceding it.

But apart from this, I should like to bring to the notice of the Hon'ble Commission that while making its pronouncement on my submission that the terms of reference were one-sided and politically motivated and that it was equally imperative that this Hon'ble Commission should go into the circumstances which led to the declaration of Emergency, this Hon'ble Commission observed as follows :

"But one thing I propose to bring to the notice, I am only concerned with the declaration of Emergency, if it amounts to an excess and not otherwise. If on consideration of the

material before me, I am prima facie of the view that declaration of Emergency could be regarded as an excess, an inquiry in open will be made. If, however, there is no such view formed by me, no such inquiry will be made."

"This observation of the Hon'ble Commission, I most respectfully submit, is not sustainable. In the first place it is tantamount to saying : There shall be an inquiry into the declaration of Emergency if I can be damned in the process, but there shall be no inquiry if others whose actions justified the declaration of Emergency, are likely to be damned. Secondly, it is difficult to imagine how this Hon'ble Commission can take any decision regarding the declaration of Emergency without full consideration of the range of circumstances and incidents which had accumulated, for a long time preceding the proclamation, into an imminent threat to paralyze duly elected Governments at the Centre and in the States.

Emergency Defended

During that period, ostensibly the attacks were concentrated upon me. In reality the political opposition had been using this strategy to weaken the Central Government and subvert its socialist and progressive programmes for quite some years. It was a question of change versus the status quo. Secular, democratic socialism on the one hand and retrograde, communal and capitalistic forces on the other had been struggling against each other to gain the upper hand. The split in the Congress in 1969 gave an edge to this confrontation. The nationalisation of banks and other measures which disturbed entrenched privileges and vested interests, and offered opportunity and help to the poor and weaker sections of our society, created such tremendous popular upsurge that communal and capitalistic elements probably lost all hope of being able to successfully fight on an ideological plane. Hence they changed their methods. Similar such political phenomenon was not peculiar to India. Recent history is replete with such instances.

This vicious campaign of character assassination and de-

nigration waged by political opponents denuded Indian politics of all ideological debates. Even in the 1971 Lok Sabha elections, the opposition did not put forth any alternative economic or social programme. I was the focus of attack as the first target. Ordinary human decency was lost in the process. Their decisive defeat at the polls frustrated their faith in the democratic process. There was then a short interlude during which India faced one of the gravest challenges with which any nation has been confronted. The influx of ten million refugees from Bangladesh, aggression and the subsequent war, unprecedented country-wide drought and the global inflationary spiral aggravated by the oil crisis, and the other factors would have upset the economic balance of any rich and developed country. India was fighting for her economic survival. It was during this period that the then Opposition resorted to extra-constitutional means to paralyse our democratic institutions. As I have explained in my previous statement, there was hardly any sphere of national life which was not sought to be disrupted.

The inevitable distress of many sections of our people was exploited to mount attacks on duly elected Governments and Assemblies of the day. We cannot forget the tragic circumstances leading to the dissolution of the Gujrat Assembly only a few months after its constitution.

It was in this political atmosphere prevailing in the country that the judgment of the Allahabad High Court was delivered and was seized upon by the opposition to whip up political frenzy against me. Although I was in the immediate target, the real design was to dislodge the Congress Government and to capture power through extra-constitutional means. If a duly elected Government can be allowed to be pulled down by threats of violence and demonstrations in the streets and by incitement of the army and the police to revolt, the democratic structure of the nation would collapse. In 1958, while putting the case for constitutional reform the French Prime Minister, M. Gallard said, "Democracy is only in consequence an anarchy if those who hold power by the will of the majority do not also enjoy an authority corresponding to the responsibilities which they assume."

"As Prime Minister of the country I could not abdicate my responsibility to stem the impending disaster merely for fear that my motive in proclaiming the emergency could be suspected. When the democratic institutions of a nation are held to ransom, and the Government of the day rises to the occasion to meet the challenge, certain freedoms of some individuals might be affected. That in fact is the rationale behind Article 352 of the Constitution which authorises the declaration of Emergency. Emergency was not intended to cause suffering and I have expressed deep sorrow for any hardship caused.

It may not be out of place to draw the attention of this Hon'ble Commission to the present Prime Minister, Shri Morarji Desai's recent observations in the Rajya Sabha that there was "nothing like absolute right to anybody." "Every right is subject to the right of the whole society. If the rights of the whole society are in danger, the Government is bound to take action to prevent that danger."

In these circumstances, the Hon'ble Commission's pre-determination of certain dates while circumscribing the scope of its inquiry, belies reality. It has been repeatedly proclaimed by members of the present Union Government that it was allegedly because of the Allahabad High Court Judgment of the 12th June, 1975, and the qualified stay given by the Supreme Court on 24th of June, that the Emergency was declared for personal reasons, namely, to stultify the judgment by extra-legal means and to maintain my position as Prime Minister by extra-constitutional methods. I have to point, out, with utmost respect, that the Commission appears to have projected the theory propagated by my political opponents.

By putting the inquiry beforehand into a predetermined chronological matrix the evidence would naturally proceed under the conditioning of this predetermined matrix, and this untested material will be systematically publicised to make it appear as proof. This, in my humble opinion, directly defeats the ends of justice."

In response to the Commission's inquiry, the Cabinet

Secretariat has brought to the notice of the Commission the relevant portions of the Government of India (Transaction of Business) Rules, 1961. Rule 7 of these Rules reads as follows :

“All cases specified in the Second Schedule to these Rules shall be brought to the Cabinet”.

Clause (da) of the Second Schedule of the Government of India (Transaction of Business) Rules, 1961, reads as follows :

“(da) —Cases relating to a proclamation of emergency under Articles 352 to 360 of the Constitution and other matters related thereto.”

In the light of the foregoing Rule, it is not understood how this provision could have been circumvented by the application of Rule 12 of the same Transaction of Business Rules. Rule 12 of the Government of India (Transaction of Business) Rules reads as follows:

“12. Departure from Rules : The Prime Minister may, in any case or classes of cases, permit or condone a departure from these rules to the extent he deems necessary.”

In this context, the following information furnished by the Cabinet Secretariat regarding the Transaction of Business is relevant to the issue :

“The Business of the Government is transacted in accordance with the Transaction of Business Rules and the Allocation of Business Rules, both of which have been promulgated under Article 77 of the Constitution. The Allocation of Business Rules provide that the business of the Government shall be transacted in the Ministries, Departments, Secretariats and Offices specified in the First Schedule to these rules. The distribution of subjects among the departments is specified in the Second Schedule to these rules. While the President can, on the advice of the Prime Minister, change the allocation of business between departments, nothing in the rules seems to provide for the Prime

Minister's Secretariat transacting any business allotted to a particular Ministry.

By virtue of entry 27 under the Home Ministry, matters relating to the emergency provisions of the Constitution (other than financial emergency) are to be dealt in the Home Ministry. This, read with Rule 3 of the Transaction of Business Rules, therefore, requires that all business pertaining to the emergency provisions shall be transacted in the Home Ministry, with cases relating to the proclamation of Emergency being brought before the Cabinet.

The normal procedure for submission of cases to the Cabinet is for the Ministry concerned to send a Note for the Cabinet to the Cabinet Secretariat. This note contains the proposal needing Cabinet approval and should have the approval of the Minister concerned. Thereafter the item is placed before the Cabinet and approval, if accorded, is conveyed to the Ministry by the Cabinet Secretariat. If time is short, the Cabinet Secretariat obtains the approval of the Prime Minister under Rule 12 of the Transaction of Business Rules, and thereafter authorises the Ministry concerned to proceed further in the matter."

"Since the Home Ministry has allotted the work relating to the Emergency provisions of the Constitution, proposals relating to the proclamation of Emergency should normally originate from that Ministry. This would be particularly so when the Emergency is to be declared on grounds of internal disturbances, as the Home Ministry deals with the Intelligence Bureau, Preventive detention and National Integration. It is the Home Ministry which is in touch with the State Governments on matters relating to law and order. The Cabinet Secretariat did not, however, receive any proposals from the Home Ministry in respect of the Proclamation issued on the 25th of June."

It may be pointed out that even in 1971 when a war was being waged with Pakistan, a proclamation of Emergency was issued without invoking Rule 12 of the Transaction of Business Rules. A regular meeting of the Council of Ministers was convened and the Proclamation was issued thereafter, after obtain-

ing clearance, from the Home Ministry. The Cabinet Secretariat conveyed to the Home Ministry the authorisation to issue the proclamation. Thereafter, the Presidential proclamation was issued.

Emergency Declaration—P. M.'s Exclusive Decision

The circumstances leading to the declaration of Emergency pursuant to the advice of the Prime Minister leave little room for doubt that the decision to impose Emergency, when there was already in existence an Emergency proclaimed as early as 1971, was exclusively the decision of the Prime Minister. None of her Cabinet Ministers, except Shri Brahmananda Reddy was even aware of the proposal to advise the President pursuant to which a declaration of Emergency was to be made. Even Shri Brahmananda Reddy, Home Minister, was not consulted; but he was merely informed shortly before the advice was tendered and his assistance was taken only for obtaining a letter from him intimating the decision of Smt. Gandhi and for forwarding the draft Proclamation to the President, pursuant to which the declaration of Emergency was issued. This assistance of Shri Brahmananda Reddy appears to have been taken only as a matter of form and merely because his assistance was perhaps required to formally forward the draft Proclamation to the President.

It is necessary, however, to say something about the Internal Emergency, which was declared. Under Article 352, as it stood on the relevant date, "(1) If the President is satisfied that a grave emergency exists whereby the security of India or of any part of the territory thereof is threatened, whether by war or external aggression or internal disturbance, he may, by Proclamation, make a declaration to that effect." The condition on which an Emergency may be proclaimed is : the satisfaction of the President that emergency exists whereby the security of India or any part of the territory of India is threatened, whether (a) by war, or (b) by external aggression, or (c) by internal disturbances. The satisfaction may be based on any one or more of the three grounds. The declaration of Emergency by the President has no different effect according as the satisfaction of the President depends upon the existence of the State of

war or of external aggression or of internal disturbance. Once a declaration of Emergency is made on satisfaction of one or more of the grounds, the consequences described by Articles 353 and 358 come into operation. It is open to the President to declare that the right to move the court for enforcement of any of the rights conferred by Part III of the Constitution as may be mentioned in the order shall remain suspended for the period during which the proclamation is in force, or for such shorter period that may be specified in the order. The Constitution contemplates declaration of only one Emergency, whether the satisfaction of the President depends upon the existence of Emergency arising out of war or out of external aggression or internal disturbance. The Emergency declared has no different qualities or connotations, according as the ground on which the President is satisfied, depends upon the existence of war or external aggression or internal disturbances. It may be recalled that there was an Emergency already declared and was in operation since December 1971. That Emergency had never been withdrawn. The Defence of India Rules were in operation as promulgated under the Defence of India Act enacted as an aftermath of the Emergency. The provisions of Article 358, by which the fundamental rights under Article 19 were suspended, were also in operation. The Constitution in the opinion of the Commission does not contemplate the issue of an Emergency upon an Emergency already existing, nor prevents the courts from entertaining any challenge to the declaration of this additional Emergency. But the provisions of the Constitution were amended by the 39th Amendment of the Constitution Act, which prevented a challenge being raised. But even when there was already in existence and in operation an Emergency under which powers could be exercised, another Emergency was declared and the original Rules i. e. Defence of India Rules were modified as Defence and Internal Security of India Rules, 1975.

Shock Treatment

This was more in the nature of a shock treatment, than a legally permissible Emergency, which could be declared according to the law then in force.

If, however, an Internal Emergency could be declared

apart from the External Emergency, the powers which were exercised before any Rules were framed, i.e. disconnecting the electricity connections of newspaper offices were wholly unauthorised, since there was no law which conferred upon any authority such power. Again, the action taken by the authorities under the directions of the Prime Minister to arrest a number of political leaders was not supported by any law. As will be pointed out hereafter, orders could but were, in fact not issued under the Maintenance of Internal Security Act or any other statutory provision by any authority competent in that behalf after due satisfaction on matters submitted before that authority. Prima facie, therefore the disconnection of electricity connections of a number of newspapers and orders for arrests of a number of political leaders and others without complying with the requirements of law, was unauthorised and amounted to wrongful arrests and detentions; and the disconnection of the electricity was against the provisions of the Indian Electricity Act, 1910.

Assault on Individual Liberty

It may be necessary also to mention that the conclusions arrived at by the Intelligence Bureau after mounting surveillance upon political leaders and others, including tapping of their telephones raise a grave issue of public interest. It has relevance to the assault on the liberty of an individual, which in a democratic country has very great importance and significance. Even the Ministers of the Government were not spared in the action taken by the Intelligence Bureau. They were subjected to the indignity of being shadowed and their telephones were tapped. Such a power, if at all, could be exercised only when authorised by statutory provisions and circumstances strictly necessary for ensuring the security of the State in grave times either of internal disturbance or external aggression or war and not at other times. On the materials placed before the Commission there does not appear to be any statutory authority pursuant to which this action of the Intelligence Bureau was taken. In his statement to the Commission, Shri Atma Jay Ram, the then Director, Intelligence Bureau, has stated that, 'it was the

normal or usual practice to give such intelligence orally or in writing". Such action does not appear to be justified by the existence of any circumstance necessary for ensuring the security of the State against External aggression, war or internal Emergency.

As already submitted, it is for the Government to decide whether or not the Intelligence Bureau may be used for collecting information for purposes other than those strictly necessary for the security of the State. It would certainly be a travesty of the democratic institutions if the Government constituted by a political party is entitled to watch the activities of other political parties and even of members of its own party. If, however, such power is to be conferred on this institution, it must be by a statute or statutory Rules authorising it in that behalf. It is also to be ensured that this watch or surveillance does not degenerate into abuse and/or misuse of authority, which may well militate against individual freedom and liberty. A provision should, therefore, be made to see that it is resorted to only in extreme emergencies, when it is thought that it is appropriate to do so. In any event, this watch of the Intelligence agency on individuals and the materials collected thereby should be open to scrutiny to a Board or a Panel composed of officers or of public men before authorising the continuance of the watch. It should be possible to harmonise the demands of the security of the State with the democratic liberties.

The problems that the I.B. is being called upon to handle are increasingly becoming more and more complex, to be left to the judgement and decision of one individual or even a hierarchy of individuals involved directly with the job. It needs to be realised that the I.B. as an institution plays a very important and vital role in the life and affairs of the nation. On its being able to function efficiently, effectively and yet impartially and objectively, depends not only the security of the State but also the liberty of the citizens. Considering, therefore, the stakes that are involved in the proper and purposeful functioning of the I.B., it is imperative that it gets the benefit of advice, guidance and wisdom of a body of eminent, experienced and patriotic group of individuals drawn from different disciplines and whose loyalty

and personal integrity cannot ever be called into question. This in turn will generate the requisite faith and confidence of the citizens of the country in this very important institution on the fair, correct and proper functioning of which alone would eventually depend the safety, the security and the liberty of the people of this country.

This is only to emphasise that the Intelligence Bureau should not be entitled to act as a super-watch-men over the activities of politicians to whatever party they belong and the activities of the Intelligence Bureau should be subject to regulation and control in so far as these activities concern some of the clandestine parts which have come to the notice of the Commission, to ensure that this does not degenerate into misuse or abuse of authority. In a strict theoretical sense in a democratic country any secret operation of the nature conducted by the Intelligence Bureau which have come to the notice of the Commission, would be contrary to the democratic norms. The Intelligence Bureau should not be its own judge of its operations with regard to the necessity or the propriety thereof, nor should it be allowed to act as an agency or an instrument of politicians or to degenerate into an institution of controlling the opponents of the political party in power or elements within the party in power with which the controlling authority of the party does not see eye to eye.

In the present case the watch on a senior Minister of the Cabinet rank and tapping of the telephone of Shri Jagjivan Ram could not be justified. It is somewhat of a mysterious circumstances that such surveillance should have been maintained and allowed to continue. There is no evidence as to who ordered it, what steps were taken to ensure that the reports emanating from the Bureau were tested and found to be correct; and what were the safeguards the Government took to prevent and protect itself from acting on incorrect and incomplete information?

Water Gate Affair

The Water Gate affair and its aftermath in the United States of America led to some very useful improvisations of

built-in safeguards for overseeing the activities of that country's Intelligence Agencies.

The Commission recommends that appropriate safeguards are necessary and should be devised by the Government so as to protect the activities of the Intelligence Bureau being used as an instrument of political spying either by the Government or by someone in the Government. This issue has been raised to concentrate attention and if considered appropriate to generate public debate on the question.

It is also necessary to invite attention to the misuse of Air Force aircraft. It appears that for the benefit of individuals for travelling on State duty or for State work Indian Air Force aircraft have been used surreptitiously and, according to the existing Rules, those persons were not entitled to the use of the aircraft. The Commission recommends to the Government the framing of appropriate Rules in this behalf and also to scrutinise whether the use of the aircraft on June 25, 1975 in the circumstances were warranted and, if not, whether bills for charges appropriate in that behalf were duly tendered and, if not tendered to identify those responsible for breach of the Rules.

MISA Misused to Harass Political Opponents

Attention may also be invited to the gross irregularities to which the provisions of the Maintenance of Internal Security Act and provisions of the Defence of India Rules were misused to the detriment of political opponents. This question will be dealt with at some length hereafter. But it may be sufficient at this stage to observe that the minimum requirements of the provisions of the Maintenance of Internal Security Act and the Defence of India Rules were not complied with, either at the behest of Smt. Indira Gandhi or her aids and orders were made without any grounds, without any satisfaction or maintenance of any record regarding the satisfaction of competent authorities and personal liberty of many citizens was taken away and they continued to remain deprived of that liberty for substantial periods even in face of the safeguards which were incorporated

against misuse of section 16A of MISA which was disregarded with impunity.

In Delhi and in the States, which had advance information about the promulgation of Emergency, a large number of arrests/detentions followed under MISA in which the safeguards guaranteed against the misuse of the Act were ignored and grounds of detentions were not furnished in a large number of cases and in many cases grounds of detentions were prepared and even pre-dated and sent many days after the persons concerned had been arrested/detained in jails. In a number of cases grounds of detentions had no relevance to the factual positions and in a few cases grounds were fabricated by the police and the Magistrates did not hesitate to sign them. An era of collusion between the police and the Magistracy ensued. In many cases oral instructions were issued from the State Headquarters for arrests of persons under MISA. In quite a few cases the persons were initially taken into custody under the preventive sections of law and thereafter detained under MISA. This was the device, which appears to have been resorted to in the Union Territory of Delhi shortly after the promulgation of Emergency. A number of persons were arrested on false charges under section 108 or section 151 of the Code of Criminal Procedure or under both these sections. Such persons were produced before the Magistrates and the Magistrates in a number of cases either declined to grant bail or there was delay in effecting the orders of bail and in the meanwhile orders of detentions were procured from the Magistrates, which were passed not infrequently on non-existent or fabricated grounds. The manner in which the provisions of MISA were used was nothing short of perversion and mockery of its provisions and all the safeguards and guarantees that had been promised in the Parliament when the MISA Bill was enacted, were totally disregarded. Many apprehensions, which were expressed by the Members of Parliament, who spoke against conferment of such wide powers when the Bill was enacted, came true.

The safeguards enshrined in the enactment were rendered meaningless by the callous misapplication of this Act by the police and the Magistracy, in many cases with the full knowledge

and concurrence of some of the State Governments. The use and/or the misuse of this Act raises issues, which requires examination in the larger context. At no time, either normal or abnormal, should there be any possibility of misuse of the powers of arrests. It needs to be made clear to all those responsible for overseeing the correct application of the powers of arrest/detention by the junior officers, that the senior functionaries at the bureaucratic and political levels would be held directly accountable for any misuse or abuse of the powers of arrest and detention.



Designed and produced by the Directorate of Advertising & Visual Publicity, Ministry of I. & B., Government of India and printed at Delhi Press, New Delhi-110055.

8/2/78—PP111

English 50,000

July 1978