

SWARAJYA

(Founded by KHASA SUBBA RAU)

Vol. XIX. No. 48

MADRAS, MAY 31, 1975

Price 40 p.

REVOCATION OF EMERGENCY

R. VENKATARAMAN

THE PROLONGATION of emergency by the Government of India is an abuse of the Constitution and a denial of liberty to the citizen. Article 352, sub-article (1), of the Constitution, which empowers the President to issue a proclamation, postulates that the President shall be satisfied that a grave emergency exists whereby the security of India or any part of the territory thereof is threatened whether by war or external aggression or internal disturbances. Before an emergency can be declared, three conditions must be satisfied, namely: (a) The President should be satisfied about the existence of a grave emergency; (b) the emergency in question must be such as to threaten the security of India or any part of the territory thereof, and (c) the emergency should be caused by either war or external aggression or internal disturbances. Unless all these conditions are satisfied, a declaration of emergency cannot be made by the President.

The emergency, which was proclaimed in 1962 in the wake of the Chinese aggression, remained in force till 1969, even though the aggression ended within a few weeks and there were no threats of attack. The present emergency proclaimed in 1971 immediately after the Pakistani aggression, still remains in force, even though the hostilities had ceased in December 1971. Thus, it will be observed that out of the 25 years during which our Constitution has been in force, nearly 11

years have been under proclamations of emergency.

As a consequence of the proclamation of emergency, the Union Government has been clothed with extraordinary powers. It has the power to extend the term of Parliament for periods of one year at a time and thus perpetuate itself till the revocation, at its own whim and pleasure, of the emergency, overriding Article 83 (2) of the Constitution which provides for automatic dissolution of the House of the People on the expiry of the period of five-years. It can suppress the fundamental rights guaranteed under the Constitution such as equality before law (Article 14), freedom of expression, association, trade, etc. (Article 19) and deprive the citizens of access to courts by way of *habeas corpus* (Articles 21 and 22). It can take over and control business or industry. Parliament may make laws in respect of State subjects and can modify the manner of distribution of revenues between the Union and the States.

The Union Government has not been slow to use these extraordinary powers flowing out of the declaration of emergency. The Defence of India Act and the Rules framed thereunder vesting enormous powers on the Union Government were promulgated in 1971. It was followed by the Maintenance of Internal Security Act and amendments thereto, providing for preventive detention without trial. The Presidential

order under Article 359 suspended the right of access to courts under Articles 14, 21 and 22 of the Constitution in respect of detentions under the M.I.S.A. In short, the fundamental rights granted to the citizen under the Constitution have been snatched away in the name of emergency.

Emergency provision similar to ours does not exist in any other democratic Constitution in the world. The Weimar Constitution of the Third Republic of Germany, which vested the executive with comparable extensive powers, enabled Hitler to become a dictator. And it behoves us, therefore, to see that our constitutional provisions are not misused or abused. A clear duty is, therefore, cast on the Union Government to see that the emergency is revoked and normalcy restored as early as possible. The Union Government, on the other hand, seems to be sticking to the vast powers vested in it by the proclamation. Every conceivable excuse is brought out for the continuance of the emergency, none of which is tenable. For instance, the Home Minister stated in the Lok Sabha on August 21, 1974, that "the question of continuance of emergency is kept in constant review in the light of relevant security considerations of the progress of the process of normalization of relations with Pakistan and the over-all economic situation in the country." The Prime Minister also stated that "there may not be a war emergency but I think the economic emergency is just as

severe for the country as it ought to be in war time." Even a cursory reading of Article 352 of the Constitution will show that the grounds advanced by the Home Minister and the Prime Minister cannot be a basis for a proclamation of emergency under Article 352. Neither on the ground of security considerations, nor of normalization of relations with Pakistan or of over-all economic situation in the country can a proclamation under Article 352 be issued. The fact that Pakistan is buying arms from other countries will not also constitute a ground for the issue of a proclamation, unless the President is satisfied that there is "an imminent danger" to the security of India. Nor can the over-all economic situation in the country justify the continuance of the proclamation, since it is not one of the three conditions stipulated in the Constitution for such an issue. Besides, dictatorial powers under emergency cannot be the reward for an inefficient Government's erroneous economic policies.

The grounds on which the proclamation of emergency was issued in 1971 do not exist any more. The hostilities between India and Pakistan had ceased, exchange of occupied territories has been completed, the prisoners of war have been repatriated and finally, official meetings between the two countries are taking place from time to time. It follows, therefore, that the continuation of the emergency is invalid. The eminent jurists, who examined the legal situation at a Seminar on "Emergency in Constitutional Democracy" have reached a near-unanimous conclusion that the continuance of the emergency is not warranted in the circumstances and that strong public opinion should be created against the continuance of the proclamation of emergency. We fully endorse the conclusions and appeal to enlightened public opinion to exert pressure for the termination of the emergency, since it lends itself to the possibility of perpetuation of the present Parliament and the present executive, opening the door for a possible dictatorship.



The young man is in a state of shock following a serious accident while he was working outdoors on an installation job. He is suffering from 'ventricular fibrillation'—spasmodic fluttering of the heart which has resulted in almost total non-functioning of this vital organ. There is no perceptible pulse. The ambulance team has set up a special device known as a defibrillator. The heart is subjected to a brief electrical shock which brings it to a complete standstill for a few fractions of a second. This also puts an end to the fatal fluttering condition. Immediately afterwards the heart is able to start beating normally. The electrical shock has saved the accident victim's life. The name given to the defibrillator is "Sirecord", and it was developed by Siemens for emergency cases being dealt with by ambulance teams, works doctors and sport physicians, as well as for use in the accident and intensive-care wards in hospitals. The victim's ECG is taken at high speed via the two electrodes of the portable mains or battery-powered equipment and displayed on the built-in screen. The doctor can tell whether the above symptoms are present and, if so, press a button which immediately triggers the electrical shock via the same electrodes. The screen also shows when the heart starts beating normally again.—(The German Tribune)

