

# The Indian Road to Serfdom

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## Abstract

*The narrative behind the imposition of National Emergency in India has been studied through a motley of political triggers; the final being the Allahabad High Court judgment in voiding the election of Indira Gandhi, the then Prime Minister of India. Although there is much credence in this narrative, it belies bringing to fore, a consistent structural erosion of constitutional mechanisms that allowed for this imposition. The article argues that the lure of socialist ideology pursued through the central planning bodies yielded this undesirable and unintended consequence of economic deprivation and political tyranny, culminating through the Emergency. It demonstrates this through the reading of Hayek, especially the basic thesis in *The Road to Serfdom* that socialist planners assume a level of responsibility for economic governance that could not be safely trusted to any individual or a group of individuals.*

## 1 Introduction

India has made tremendous economic progress in the last decade, reflecting in its Gross Domestic Product (GDP) growths. Not only the economy, but the momentous progress is also reflected in other key dimensions: health, education and living standards, and a host of other indicators. This encompassed in the incidence of multidimensional poverty (MPI). Some 300 million multidimensionally poor now lead better lives<sup>1</sup>. Most scholars would argue that this growth was possible only post 1991 economic reforms in India, when private sector substantially participated in the economy. Particularly, some scholars argue that it was Indira Gandhi, more than Nehru, that had stymied economic and political progress in India. Mostly because Indira Gandhi's socialism meant choosing the radical path of choking private sector through regulation (Bhagwati and Desai 1970) [4]

## 2 Withering away of the Constitution

### 2.1 The early signs

The Soviet Union stood as the beacon for the socialist lure – through its promised pinnacle of central planning. Although by the late 1940s much of its glory was fading away, some of western intellectual circles believed that central planning could be combined with democratic politics to yield a rational economic allocation of resources. The case was no different with Indian educated elites, many of whom were educated in the United Kingdom, and came under the influence of the Fabian society. This was at a time when the Fabian Society was led by prominent socialists, including Harold Laski, and Beatrice Webb. In fact, many of the intellectuals at the society were the first ones to support home rule in India (Moscovitch 2012)[10]. Hence, it was natural for the Indian intellectuals to gravitate towards the Fabian society.

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The Indian independence movement was now *reimagined* to be a confluence of both a national freedom movement and a social revolution. The two strands of major thought processes that attracted Indian elite to socialism can be summed as below. First, some of these Indians equated mercantilism to capitalism; and they wanted to fight the 200 years of barbaric economic and political repression impelled by the British. Second, the support for socialism arose from the ideological leanings of people who supported home rule in India. BK Nehru's statement sums this up "the burning issue for us was Indian independence; the socialists and communists supported it; the capitalists and Conservatives opposed it. Ergo, socialism (or communism) was good; capitalism bad" (Nehru 1977: 20)[11].

The most prominent leader who espoused both of these strands of thought was the first Prime Minister of India, Jawaharlal Nehru. Encapsulated in the following words of his "Democracy and capitalism grew up together in the nineteenth century, but they were not mutually compatible. There was a basic contradiction between them, for democracy laid stress on the power for many, while capitalism gave real power to the few" (Nehru 2004a [1936]: 547)[12].

With independence, came a massive mandate for Nehru led constituent assembly to shape India into a republic. With little opposition (which mostly came from Gandhi, the Communists and Marxists) to the constituent assembly, it created a framework of individual rights, with checks and balance, and separation of powers with a focus on federalism. With this powerful Constitution, the other important institution that Nehru created was the Planning

Commission, which was created to ensure economic justice and equality in India. As stated earlier, these two institutions were a confluence of two ideas - democratic politics through the Constitution, and the socialist ideals through the Planning Commission.

## 2.2 Central Planning *versus* Constitution

The Planning commission was chaired and headed by the Prime Minister. Its primary responsibility was to design the Five Year Plans (FYP). These plans had extraordinary details of allocation of resources across all sectors, and industries of economy. Most of this was undertaken by public sector, leaving little space for the private sector. This was evident through the Industrial Policy Resolution, 1948. Indeed, Bhagwati and Panagariya argue that Nehru adopted a "gradualist" policy, of eventually increasing the size of public sector through the five year plans[5]. This was in stark contrast to his daughter Indira Gandhi's radical nationalization plans, which we shall see later in section 3.

Nonetheless, Nehru laid down a command and control economy through a "maze of Kafkaesque controls" (Bhagwati 1970)[4]. The Constitution entered troubled waters because of these arbitrary controls. As shown by Shruti Rajagopalan (2015)[14], the following five step cycle frequently occurred in India.

1. The Planning Commission, led by the Prime Minister, created Five Year Plans for the economy.
2. To attain the goals in these FYPs the central and state legislatures passed legislation.
3. This legislation was challenged in courts and was subject to independent judicial review.

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4. Often such legislation was struck down as unconstitutional for violating Fundamental Rights of individuals.
  5. To give validity to void and unconstitutional legislation, Parliament amended the Constitution.

Shruti Rajagopalan's analysis further shows that fourteen instances of the first forty-four amendments to the Constitution were a direct result of incompatibility between Planning and the Constitution of India.

In fact, the first amendment to the Indian Constitution was done in 1951, which created the infamous ninth schedule. The ninth schedule was a clever legal innovation that circumvented judiciary, by declaring that a set of legislation present in the ninth schedule were not subject to judicial review. The ninth schedule was created in order to give legitimacy to a host of land re-distribution legislation (central and state) that were struck down as unconstitutional by the judiciary. Unsurprisingly, the redistribution came from the first FYP.

The First FYP intended to address the issue of land reform with in order to increase agricultural production, and also to, protect peasants' interests in land. It was clear that aggregation of land holdings was key to increase productivity; and to further peasants' interests, a process of breaking up large feudal estates for redistribution was to be undertaken; essentially to do away with the *zamindari* system. For this, land ceilings had to be imposed, and surplus land was to be redistributed. Because the Indian state hardly had money in its coffers, it could not compensate the private *zamindars*, in plausibly a just way as specified under article 31. Forcible acquisitions were stopped

by high courts, and were declared unconstitutional. So, the first amendment was passed to dilute the Right to Private Property laws, effectively giving force to the first FYP.

Symbolically, the first amendment represents all the five step cycles that had the same design; beginning from design of FYPs, ending with amendment of the Constitution. In fact, many scholars argue that a substantial part of Constitution was chipped away and diluted to make way for socialism. The famed Nanabhoy Palkhivala (1974)[13] described the amendment process as the systematic defiling and defacing of the Indian Constitution. Subramanian (2007)[15] discussed, with empirical evidence about the degradation of Indian bureaucracy and judiciary.

Scholars contend that Nehru did not intend to weaken the Constitution, and as long as he was at the control, things remained to a large extent, democratic. But as we shall see, things were not to remain the same way. In fact, Hayek sought to demonstrate that the consequences of the policy choice of socialism would lead them down a path that they themselves would never want to go if they made their choices in full knowledge of the consequences of their choice. It is quite clear from Nehru's conviction and writing, that he would have never trodden this path, had he known that he was laying down a path for massive curbing of freedom and liberties that his daughter would undertake. Hayek in his *The Road to Serfdom* says "Is there a greater tragedy imaginable, than that, in our endeavour consciously to shape our future in accordance with our highest ideals, we should in fact unwittingly produce the very opposite of what we have been striving for?" (Hayek, 1944, p. 5)[8].

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This brings us to the questions of policy choice, and unintended consequences. And naturally leads to the next section of Indira Gandhi's tryst with socialism.

### **3 Indira Gandhi's tryst with Socialism**

#### **3.1 A radical approach**

Indira Gandhi abandoned the "gradualist" approach espoused by Nehru to increase the footprint of public sector. Instead, she chose a much more radical path of nationalization, coupled with a strangling approach towards the private sector participation. To speak in C. Rajagopalachari's<sup>2</sup> words, this was the pinnacle of the "license-quota-permit" raj, a moniker used to denote a gargantuan bureaucratic red tape in India. According to some scholars, Indira Gandhi came to power with no real socialist convictions; it was more a political convenience. One of the reasons she embraced socialism was because the ones that supported her in the Congress party were the young socialists organized under the Congress Forum for Socialist Action. As Bhagwati and Panagariya argue, "she made the agenda of her socialist allies her own" (Bhagwati and Panagariya 2014)[5]. More importantly, it was her advisor P.N Haksar, who persuaded her to embrace socialism (Guha, 2007)[6].

She then came with the *Ten-Point Program*, which included the social control of banks, nationalization of insurance, nationalization of foreign trade, limits on urban incomes and property, tightening of controls on large firms, and an end to the privileges and privy purses of the former rulers of princely states. But, simultaneously, there was a major breakthrough in the Indian judiciary when

the Supreme Court held that the Parliament's power to amend the Constitution was not unquestionable in the *Golak Nath v State of Punjab*. Earlier I had discussed the issue of the ninth schedule, through which any law could circumvent the judicial review. In this judgment the court held that the Parliament could not amend the Constitution to give validity to unconstitutional law which violated fundamental right. This laid the basis for most of the clashes between the judiciary and Indira Gandhi's government. And it is in this light we shall interpret the ten-point program.

#### **3.2 Ten Point Program and *The Road to Serfdom***

At this juncture Hayek's (and Mises') reading becomes crucial. Hayek's most famous work, *The Road to Serfdom* was not a deterministic book, it was rather a book with warnings for the ones enamoured with socialist ideology. In the following analysis, I shall show how Indira Gandhi flouted almost all the warnings which constitute the basic thesis of *The Road to Serfdom*.

##### **3.2.1 *Golak Nath* case and rule of law**

Indira Gandhi did not welcome the *Golak Nath* case. With majority in the Parliament, she swiftly proceeded to introduce the twenty-fourth and the twenty-fifth amendment of the Constitution. The twenty-fourth amendment was a direct response to the *Golak Nath* case where it stated that the Parliament could amend any part of the Fundamental Rights section (Part III) of the Constitution. As a direct evidence for Indira Gandhi's overhanded rule, this amendment actually meant that the parliament could amend *any* part

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of the Constitution, not just the Fundamental Rights.

This was a direct threat to rule of law, where discretion of Parliament prevailed over checks and balances established in the Constitution. The twenty-fourth amendment set out to destroy the primacy of fundamental rights, and to do away with judicial review in order for the ninth schedule to be protected; most of the ninth schedule contained laws that were legislated to implement the five-year plans (essentially central planned). Hayek would have argued that under the rule of law, not discretion, but rules must prevail, and therefore planning is incompatible with the rule of law (Hayek 1944: 92)[8]. Let us now take another instance, and move to the twenty-fifth amendment.

### **3.2.2 Nationalization and impossibility of rational economic calculation**

In 1969, the Indira Gandhi's government nationalized 14 banks and brought majority of bank branches into the control of the government. The Supreme Court had struck down nationalization as illegal and unconstitutional, because it did not offer adequate compensation for the owners of the bank. To do away with the hiccups caused by the courts, the twenty-fifth amendment was legislated; directly to make way for nationalization of banks. The amendment bulldozed through the Fundamental Rights and Directive Principles of the Constitution and made it possible to acquire banks almost whimsically, and without adequate compensation.

Indira Gandhi in a popular radio speech, argued, “control over the *commanding heights* of the economy is necessary, particularly in a poor country where it is extremely difficult to mobilize adequate resources for development”. She said

that the nationalized banks would serve the common good and to give credit not only to the rich and big businesses, but also to “millions of farmers, artisans and other self-employed persons” (Gandhi 1969)[7]. It was quite clear from Indira Gandhi's speech that her government wanted to plan and exercise complete control over the economy, which was justified through the garb of rational economic allocation of resources.

Mises (1922)[9] and Hayek both deftly showed the now famous impossibility of rational economic allocation. The reasoning is summarised as following. Socialism (as shown in the Indian case as well) means social ownership of means of production and doing away with private property. Mises argued that without private ownership of means of production, there would be no exchange, and without market prices emerging from exchange, the social planners cannot rationally allocate these goods. Hayek takes off where Mises left, and he builds on this work of this impossibility and says that due to the impossibility of rational economic calculation, social planners will require *unlimited* discretion to execute the plan (Hayek 1944: 144; Boettke 1995: 12)[8][2]. By the late 1960s, it was clear that Indira Gandhi was headed in this direction, where she did not hesitate and even justified assuming unconstitutional powers for sake of meeting socialist goals.

### **3.2.3 *Kejriwal v State of Punjab* case: the restoration of Indian democracy**

Perhaps the most famous case in India judiciary is the *Kejriwal v State of Punjab*. The land of a mutt was arbitrarily taken over by the Government of Punjab under the garb of land

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reforms. Leading jurist, Nanbhoy Palkhivala convinced the seer to fight this arbitrary use of power in the Supreme Court. The court responded by constituting the largest ever bench of 13 judges. A 7-6 majority judgment struck down the arbitrary powers of the Parliament to legislate laws beyond judicial purview. They outlined the *basic structure doctrine* of the Constitution. Where the court held that amending power of the Parliament cannot be exercised in a manner that destroys fundamental features of the constitution.

The routine abuse of the ninth schedule was now subject to the basic structure doctrine. Even till date, this judgment has been responsible for protection of Indian democracy (as we will see later). It unfortunately, did not consider private property to be a part of basic structure. So, Indira Gandhi's march towards nationalization continued well into early 1970s.

Indira Gandhi's government proceeded to nationalize coal mining in 1971, and copper mining in 1972. And as the agenda of ten-point program, general insurance was nationalized in 1972. And by 1974, all of the textile mills were nationalized. Almost all of this was either under judicial review or was struck down as unconstitutional by Indian courts. To which Indira Gandhi famously said "We should be vigilant to see that our march to progress is not hampered in the name of the Constitution". Large scale nationalization massively abetted monopolization of Indian economy, due to the Monopolies and Restrictive Trade Practices Act (MRTP), 1969. Bhagwati and Panagariya argue that in addition to the usual licensing procedures, firms were required to take additional approval from the Central government for all new undertakings,

expansion, mergers, amalgamations, and takeovers. Unsurprisingly this was the death knell for Indian economy.

### 3.3 The downslide in Indian Economy

Bhagwati and Panagariya show that the complete switch to socialism was disastrous for India. The economy took a nosedive with per-capita incomes rising just 0.3 percent annually between 1965 and 1975, and private final consumption, which is one of the key drivers of the Indian economy slowed down even more. By the mid-1970s, evidence was visible that the rapidly expanding government controls had closed nearly all avenues to growth.

Moreover, some laws like the MTRP combined with the newly legislated Foreign Exchange Regulation Act, 1973 (FERA) introduced a whole new layer of regulations, on an already over-regulated economy. This not only crippled the private sector but also created a huge black market for foreign goods; corruption ran amok in government offices (Rajagopalan 2015)[14]

Again, Hayek has valuable wisdom to offer here. He says when a social planner is faced with failure, the planner has a tendency to increase government action, as opposed to withdrawal. Once the interest groups are unleashed by the relaxing of liberal constraints, the tendency and direction are toward responding to the failure with more government direct action not less. Which turned out to be the most precise argument in case of Indira Gandhi. This leads to my next section on the episode touted as the darkest period in Indian democracy - The Emergency.

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#### 4 The imposition of emergency in India

During the 1971 general elections, Indira Gandhi contested and won from Rae Bareilly constituency. Raj Narain who had lost the election against Indira Gandhi, had gone to the court alleging malpractice by her during the elections. The High Court of Allahabad found Indira Gandhi guilty of accused charges, and declared her elections null and void. And on 25 June 1975, Indira Gandhi imposed emergency in India; it is popularly believed that imposition of Emergency was a reaction to her election being cancelled. However, as I have shown above, the pursuit of central planning and socialist ideologies had already eroded checks and balances in the Constitution, and indeed this also paved way for imposition of emergency. For Indira Gandhi, it seemed to herself and her advisers that all deterrents must be stopped to meet the goals, even if it was unconstitutional.

The emergency meant that the elections stood cancelled, almost all civil liberties were suspended. Even Right to Life was withdrawn during this period. The draconian Maintenance of Internal Security Act (MISA) was arbitrarily used to arrest more than a 100,000 people, including top leaders in the opposition political parties, journalists, scholars and activists. All of them were detained without a trial for over a year. The command and control nature of state policy assumed new proportions.

As Shruti Rajagopalan argues, the state controlled all aspects of everyday activity from the timings of trains to demographics. Indira Gandhi's government came up with a twenty-point economic programme to increase agricultural and industrial production, improve public services and

fight poverty and illiteracy. In addition to the official twenty points, Indira Gandhi's son Sanjay Gandhi declared his own five-point programme promoting literacy, family planning, tree planting, the eradication of casteism, and the abolition of dowry. During the Emergency, the two projects merged into a twenty-five point programme. The Planning Commission arbitrarily declared that population control was of the highest priority. The failure of the government to provide food security was instead blamed on over-population.

Extraordinarily detailed plans went into setting targets for the number of health centres, doctors, nurses and contraception. This was to be implemented through the five year plans. It also announced positive incentives, such as small cash payments on undergoing sterilization procedures like male vasectomy, and encouraged the use of technology in free state hospitals to aid gender selection, as a means of population control. Traditionally and culturally the male child is preferred in India and some families choose to abort female fetuses. Introduction of this during Emergency has now led to the widespread problem of female foeticide problem in India (Rajagopalan 2015)[14].

Meanwhile, the government set out to negate yet another judgment of the Supreme Court. This time it passed the Thirty-Ninth Amendment to the Constitution. The Amendment sought to withdraw the election of the Prime Minister from the scope of the judicial review process, and to declare the decision of Allahabad High Court, as void.

Using the basic structure, the Supreme Court declared the parts of the Thirty-Ninth

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Amendment unconstitutional as it violated essential features of the Constitution. As I had stated above, the basic structure doctrine helped save democracy in India. The amendment destroyed the checks and balances amongst democratic institutions of India, and violated the right to equality of status and opportunity by creating a privileged position for the Prime Minister. And the Supreme Court rightly struck it down.

#### **4.1 Forty-Second Amendment: pinnacle of political tyranny**

Perhaps the most destructive amendment to the Indian constitution was the forty-second amendment which was passed in 1976, during the emergency. It reveals a clear tendency of political tyranny as defined in a Hayekian sense. It went to read “The democratic institutions provided in the Constitution have been subjected to considerable stresses and strains and that vested interest have been trying to promote their selfish ends to the great detriment of public good. It is, therefore, proposed to amend the Constitution to make the directive principles more comprehensive and give

them precedence over those fundamental rights which have been allowed to be relied upon to frustrate socio-economic reforms for implementing the directive principles.”

The Amendment pegged the Parliament, both above the Constitution and the judiciary. The Fundamental Rights were now subject to Directive Principles, or socialist welfare agenda of the State. Clearly, one of the great contributions of *The Road to Serfdom* was the demonstration that democratic politics would have to be suppressed in order for the socialist economic plan to be fulfilled. Either

democracy would give way to planning, or planning would be curtailed to permit democratic decisions. A spate of these amendments initiated by Indira Gandhi stand testimony for Hayek’s claim. As a case in point, it was the forty-second amendment, that declared India a “Socialist” state in the Preamble to the Constitution.

### **5 Conclusion**

Hayek wrote *The Road to Serfdom* at a crucial stage in the 20th century, at the fag end of the second world war. Although the ideas of western civilization had just won the war, the Communist and Socialist system had grown in legitimacy in the process. The lure of combining socialist policies with democratic principles gained traction amongst educated Indian elites, who went on to lead the country; Jawaharlal Nehru was the most prominent of the lot. Nehru came back to India and created incompatible institutions of the Planning Commission and the Constitution. Hayek’s argument was that fascination with the socialist ideal will prove to be our undoing unless we recognize the warning signs. Yet, even in face of stiff opposition Indira Gandhi exploited some of the most vulnerable issues in the fault lines of Indian Political Economy – central planning and the lure of socialist ideology. This led to Hayekian undesirable and unintended consequences in both economic and political realms.

The basic thesis of *The Road to Serfdom* that socialist planning requires economic planners to assume a level of responsibility for economic life in a country which is both cumbersome to the point of impossible, and powerful beyond any reasonable limit that could



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be safely trusted to any one individual or group of individuals was clearly ignored by Indira Gandhi. Jawaharlal Nehru laid down a prototype by diluting the powers of the Constitution in ensuring checks

and balances among the legislature, the executive and the judiciary. However, Indira Gandhi exploited this to the fullest extent, and thus Emergency was a natural outcome of this draconian process.

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- 1 *According to the 2018 global Multidimensional Poverty Index (MPI) released by the United Nations Development Programme (UNDP)*
  - 2 *C. Rajagopalachari, also known as Rajaji, remained one of the most bitter critics of Nehru and Indira Gandhi's economic policies. He even floated the Swatantra Party represented a more liberal alternative of economic governance*

