

Book Review

Giorgio Agamben, *State of Exception*, University of Chicago Press, 2005.

Reviewed by Monis Ahmad

Giorgio Agamben's seminal work the *State of exception* is primarily dealing with the nuances of theorising, when it comes to using/enforcing emergency power provisions by modern constitutional states. To quote Agamben, "the unstoppable progression of what has been called a "global civil war," the state of exception tends increasingly to appear as the dominant paradigm of government in contemporary politics. This transformation of a provisional and exceptional measure into a government technique threatens to radically alter, and at times have altered the structure and meaning of the traditional distinction between constitutional forms". The state of exception from the outset is a point of indeterminacy between democracy and absolutism. In this context the concept of bio-politics borrowed from Michel Foucault to further expatiate on the control of state when it comes to enforcing and controlling law over its citizens deserves a mention.

The book begins with German jurist Carl Schmitt's argument on the question of sovereign which can be understood as an entity having power to deliberate upon the state of exception. The concept had been treated as a political fact, which needs further scrutiny under the ambit of juridical analysis. Therefore state of exception calls for a practice of making exception in order to better deal with an extreme situation of emergency where the application of law through normal or routine affair administrative and judiciary interventions would create abruptness and chaos, without mitigating the emergency. Under which a polity must be entitled to its right to decide whether to suspend the application of its law on the basis that the situation called abnormal, demands it.

Agamben takes this further by arguing the justification for the state of exception is that it calls for a creation of zone in which the application of law is suspended but in its meaning remains in force. By further distinguishing between "norm" and "decision", where in these zones of so-called noramalcy, the norms govern action. On the

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contrary in the state of exception, it is the decision that comes to determine the primary form of political action. This form of role reversal has to its theoretical nuance what Agamben calls the “force of”.

In the state of exception, Agamben points out that “decrees, provisions, and measures that are not formalised as laws in the process takes the form of “force” and here he highlights on the separation of “force of law” from “law”. Under which state of law, on the one hand, oversees norm having its presence but is not applied, whereas, acts devoid of value of law acquire its force. This understanding towards suspended norms, during states of exception, in-toto provides a remarkable insight about the acts bereft of legal character. A clear example, are immunity provisions enjoyed by the State/administration in the Armed Forces Special Powers Act, 1958.

It is undeniable that the features of the state of exception, presents a picture of oddity when it comes to lay man understanding how law ought to work and take its course. In its larger categorisation the facet of temporariness and specificity is what should define and decide the efficacy of it(state of exception). The period especially after the first world war of the twentieth century hitherto, denotes the phase of the state of exception becoming the norm; and Agamben, while mentioning about Walter Benjamin’s famous observation in his “Theses of history” quotes:

The tradition of the oppressed teaches us that the ‘state of exception’ in which we live. We must attain to a concept of history that accords with this fact. Then we will clearly see that it is our task to bring about the real state of exception...

Benjamin was positing his views about the Nazi Germany (a twelve-year state of exception), whereas Agamben sees its arrival at the beginning of the 20th century although the concept is traced by him from the Roman practice of “Iustitum” courtesy the French Revolutionary Constitution, and its Napoleonic successors which dwells on the idea of state of exception. Through the twentieth century, the states of exception came to demonstrate how instead of being instances of single isolated happening/ events gradually acquired the form of standard norm. From being applied to diverse purposes ranging from wartime-preparations, the years of great depression, and suppressing worker-movements. Under this arrangement, this voluntary creation of a permanent state of emergency has begun to define the practices of contemporary states/ nation state, even those founded on the values of democracy. This portended a scenario which we are witness to in the form of breakdown of classical separation of powers. The executive in collusion with the legislative has taken upon an overbearing role with greater sway to issue decrees having the force of law (AFSPA in North-Eastern states of India along with Jammu and Kashmir or the emergency provisions mentioned in article 352 and article 356 of the Indian Constitution).

In the global scheme of things, this emergency situation could be seen as observed by Agamben during the George Bush(erstwhile US President) regime’s infamous Guantanamo Bay executive order of preventive/pre-trial and punitive detention of terror suspects/allegedly implicated, which has had serious consequences. By snatching away the legal status of the individual, thereby taking away their identity and

reducing them to mere detainees. In the latter half of the book the states of exception occupy a recurring congruent theme through the history of post- Enlightenment constitutional democracies, with France being its starting point.

In modern times, they have become a standard norm if not an aberration that this state of exception has developed into a new form where these modern-nation states single party state led neo liberal states through its paradigm of Foucault's bio politics and governmentality along with Althusserian security apparatus is the normal technique of government.

To put it succinctly, the national security state – with its ubiquitous surveillance program and police procedures, has precipitated in its post modern form of twenty first century permanent state of exception.

In India the ever static permanence of AFSPA even though territorially and spatially compartmentalised, has made the mechanics of making this emergency the default choice by the state rather than exception. Therefore the state of exception has today reached its maximum worldwide deployment as observed by Agamben. The normative aspect of law can for administrative convenience be obliterated and tweaked with impunity by a governmental violence that in its claim of applying the law ignores international law externally, thereby producing a permanent state of exception internally.