



## Ordinance Raj in India

**D. C. Chauhan**

Associate Professor, Govt. College Nagina (NUH), Department of Higher Education Haryana, India

---

### ARTICLE DETAILS

#### Research Paper

**Accepted:** 25-04-2025

**Published:** 10-05-2025

#### Keywords:

*Ordinance, promulgation, repeated misuse, political interests, executive overreach, legislative process, judicial scrutiny.*

---

---

### ABSTRACT

The Ordinance making power of the President and State Governors is enshrined in the Constitution of India to meet extraordinary circumstances in emergency situations. But, in some cases, this power has been repeated use for political ends. This tendency promoted executive overreach, it undermines the legislative process and it led the judicial scrutiny of Ordinances. It is inconsistent with and a negation of principle of separation of powers. It eroded the principle of parliamentary sovereignty and it disturbed the system of check and balance. Hence, the Ordinance power should be used in emergency situations on reasonable grounds.

---

**DOI : <https://doi.org/10.5281/zenodo.15453780>**

---

The constitution of India enshrined the law making power to the Legislature, however, the Executive is authorised to promulgate the Ordinances in the intermission of the legislature. Usually, the executive have promulgated the Ordinances in emergency situation, but in some cases, the executive had repeated use of Ordinances to fulfill its political interests, it promoted the executive Overreach, it undermines the role of legislature and it led the judicial scrutiny of Ordinances. This tendency greatly disturbed the balance of power between three organs of the government and it has negative consequences on the Indian political system. This scenario provides the relevance of this research paper. This paper analyses the constitutional provisions of ordinance power, use of Ordinance power since 1952, its consequences on the Indian political system, judicial response to the use of ordinance power. Also, this paper suggests remedial measures for the proper use of Ordinance power.



## CONSTITUTIONAL PROVISIONS OF ORDINANCE POWER

The Ordinance making provisions in the Constitution of India are derived from the Government of India Act, 1935. Article 123 of the Constitution empowered the President of India to promulgate Ordinances while the intermission of Parliament and Article 213 of empowered the State Governor to promulgate Ordinances while the legislature is not in session. The President is authorized to promulgate Ordinances on matters within the Union List and in some cases, the Concurrent List. The President can exercise this power on the advice of council of ministers. This provision provided that circumstances exist that require immediate action. The Ordinance carries the same legal force as a law passed by the legislature. It remains in force for a maximum period of six weeks from the next gathering of Parliament. If Parliament pass a resolution approving the Ordinance, it becomes a law if Parliament does not approve the ordinance within this period, it automatically ceases to operate. The President's power to issue ordinances is meant to be exercised only in extraordinary situations when immediate action is required while the Parliament is not in session. The ordinance making power ensures that the government can solve the matters of national importance like national security, economic crisis, public emergencies those require immediate legislation without unnecessary delay of regular legislative process. Thus, it is a temporary solution of urgent matters and it cannot become a substitute of the normal legislative process.

### Use of Ordinance Power

The President of India have been promulgated Ordinances as follows<sup>1</sup>:

Sr. No	Name of Prime Minister	Ruling party or coalition	Year of Promulgation	No.Ordinances
1	Jawaharlal Nehru	Indian National Congress	1950-1964	66
2.	Lal Bahadur Shastri	Indian National Congress	1964-1966	9
3	Indira Gandhi	Indian National Congress	1966-1977	132
4.	Morarji Desai	Janata Party	1977-1979	21
5	Charan Singh	Janata Party	1979-1980	7
6	Indira Gandhi	Indian National Congress (I)	1980-1984	56



7	Rajiv Gandhi	Indian National Congress (I)	1984-1989	37
8.	V.P. Singh	National Front	1989-1990	10
9.	Chandrashekhar	Janata Dal (Socialist)	1990-1991	6
10	P.V. Narsimha Rao	Indian National Congress (I)	1991-1996	108
11.	H.D. Deve Gowda	United Front	1996-1997	23
12	Inder Kumar Gujral	United Front	1997-1998	23
13	Atal Bihari Vajpayee	BJP-led Coalition Government, National Democratic Alliance-I	1998-2004	58
14.	Manmohan Singh	United Progressive Alliance-I&II	2004-2014	62
15.	Narendra Modi	National Democratic Alliance-II	2014-2019	32

Under the Jawaharlal Nehru (Congress) regime 66 Ordinances were promulgated during the period 1952 to 1964. Under the regime of Lal Bahadur Shastri (Congress) 9 ordinances promulgated from 1964-1966. Under the regime of Indira Gandhi (Congress) 132 Ordinances promulgated from 1964-1977. It was the highest number of ordinances were promulgated. Under the regime of Morarji Desai (Janata Party) 21 Ordinances were promulgated from 1977 to 1979. Under the regime of Charan Singh (Janata Party-S) 7 ordinances were promulgated from 1979 to 1980. During the regime of Indira Gandhi (Congress-I) 56 Ordinances were promulgated from 1980 to 1984. Under the regime of Rajiv Gandhi (Congress-I) 37 ordinances were promulgated from 1984-1989. Under the regime of V.P. Singh (National Front) 10 ordinances were promulgated from 1989 to 1990. Under the regime of Chandrashekhar (JD-S) 7 ordinances were promulgated from 1990 to 1991. Under the regime of P.V. Narsimha Rao (Congress-I) 107 ordinances were promulgated from 1991 to 1996. This number was considerably highest. Under the regime of H.D. Deve Gowda (United Front) 23 ordinances were promulgated from 1996 to 1997 and under the regime of Inder Kumar Gujral (United Front) 23 ordinances were promulgated from 1997 to 1998. Under the regime of Atal Bihari Vajpayee (NDA) 58 Ordinances were promulgated from 1998 to 2004. Under the regime of Manmohan Singh (UPA) 62 ordinances were promulgated from 2004 to



2014. Under the regime of Narendra Modi (NDA) 32 Ordinances were promulgated from 2014 to 2019.<sup>2</sup> It is noteworthy that 142 ordinances were promulgated on financial matters, 115 ordinances were promulgated on home matters, 52 ordinances were promulgated on labour matters, 52 ordinances were promulgated on commerce / Industries matters and 29 ordinances were promulgated on law & justice matter from 1952 to 2019.<sup>3</sup> Mostly economic and commercial matters have been resolved through ordinances by the executive.

The number of ordinances issued during the First(1952-1957), Second(1957-1962), Third(1962-1967) and Fourth (1967-1971) Lok Sabha was 37, 20, 31 and 34 respectively. During Fifth Lok Sabha (1971-77) 93 ordinances were promulgated. The number fell to 27 during the Sixth Lok Sabha (1977-79), but during the Seventh Lok Sabha (1980-1984), the number again rose to 58, but came down to 35 during the Eighth Lok Sabha (1984-1989). Only 5 ordinances issued during the Ninth Lok Sabha (1989-1991). The number rose to 114 during the Tenth Lok Sabha (1991-1996). The number of ordinances issued during the Eleventh(1996-1997), Twelfth (1997-1998), Thirteenth (1999-2004) and Fourteenth (2004-2009) Lok Sabha was 32, 22, 33 and 36 respectively. During the Fifteenth Lok Sabha (2009-2014) 25 ordinances were promulgated. During the Sixteenth Lok Sabha (2014-2019) 32 ordinances were promulgated<sup>4</sup>. President, Pranab Mukherjee, cautions NDA government headed by Narendra Modi against taking Ordinance route. He underscored his views through video conference that Ordinance route should not be taken for normal legislation. It is meant for a specific purpose to meet an extraordinary situation under extraordinary circumstances. The framers of the constitution...imposed certain restriction on this extraordinary power to replace it later within a time frame by the legislators<sup>5</sup>.

#### Consequences on Indian political system

The Ordinance power to the President and State Governors is provided by the Constitution in emergency situations as a temporary measure to solve the national importance matters. Usually, the Ordinances have been promulgated in emergency situations to take immediate action to solve the national importance matters. But, in some of the cases, the Ordinance power fulfills the political interests of ruling party or coalition, it was not justified. .

It is observed that the executive have been mostly resolved economic and commercial matters, controversial matters or short term objectives through the Ordinances. It undermines the role of Parliament, bypassing the legislative process of discussion, debate, amendment and voting on proposed laws in the Parliament. It reduced the accountability of the executive and it expanded the powers of the executive and the bureaucracy. This tendency disturbed the balance of power between legislature and



executive. It has negative consequences on the principle of parliamentary sovereignty. The repeated issuing of Ordinances to fulfill political ends in normal situations is inconsistent with and a negation of principles of separation of powers and it weakened check and balance system, which is necessary to the democratic governance. It increased authoritative governance in the country. It encourages a shift toward 'Ordinance Raj in India.' As Amita Singh opined that law making by Ordinances route broke the power balance and it increasing the executive's power. It seems that government has ruling through Ordinances . It is dangerous trend in the country.<sup>6</sup>

### **Judicial Response on Ordinances**

The judiciary have the authority to examine whether an ordinance violates the constitutional provisions or encroaches upon the legislative competence of the legislature. The judiciary can scrutinize the weather the ordinance really addresses an emergency or is used inappropriately for political ends. The Court can review the procedural aspects, including the necessity and urgency of the ordinance, and its compliance with the constitutional provisions.

The Hon' ble Supreme Court gave a landmark judgment on ordinance in the D.C. Wadhwa vs. State of Bihar case (1986). The Supreme Court ruled that the Governor of Bihar's repeated re-promulgation ordinances was unconstitutional. The Court knock down the illogical practices of an ordinance making power as a deviation from the democratic principles. The Court held that the reinvocation of an ordinance is a bad practice. It can be defined as a misuse of the constitutional power. The legislature is authorized to make any law. The court also ruled out that the president and the governor are not the sole authority of law making through the ordinances. This power cannot be used to serve the political ends or circumvent the legislature process. The Court also ruled that the continuous reinvocation of ordinances without legislative approval was unconstitutional. Such actions deemed a fraud on the constitutional provision, as they allowed the executive to overstep its bounds and usurp the in Legislative function, thereby under of separation of powers.<sup>7</sup>

In Krishan Kumar Singh & Ors. vs. State of Bihar & Anrs. case (1994), A 7-judge Constitutional bench of the Supreme Court held that the authority which has been conferred by the constitution to the president and the governor is constitutional in nature. The Court held that the ordinance making power to the president and the governor is being provided only in some necessary circumstances when then legislature is not in the position of making any law. The ordinance making power is under the judicial



control. The Court made it clear that the judiciary can review the ordinance making power of the president and the governor.

Obviously, the executive's power of promulgation of ordinance is judicially reviewable. The Court can scrutinize the emergency situation and constitutionality of ordinances. Legal expert, Rajender Sachar opined that governance by ordinance is undemocratic and unconstitutional. On the other hand, Fali S. Nariman opined, Article 123 and 213 make it clear “there is a tilt in the balance of constitutional powers and functions, the Executive branch, both at the Centre and in the States, is in the driving seat of governance...the mere re-promulgation of the ordinance does not make it ultra- virus Article 123”.<sup>10</sup>

**Hence, the judiciary has check on the misuse of ordinance power by the executive. In fact, the judicial s scrutiny acts as a safeguard to prevent misuse of ordinance power by the executive.**

## **REMEDIAL MEASURES**

The following remedial measures may be used for the proper use of ordinance power-

1. The Executive should use the ordinance power in emergency situation under exceptional circumstances like national security, economic crisis, public emergencies and this power should not misuse to fulfill the political interest.
- 2 The legislature should follow the proper legislative process like discussion, debate, amendment and voting before approval of ordinances.
3. The judiciary may be carefully scrutinize the ordinances and it should be stuck down such ordinance which promulgated for political ends.
4. A democratic convention should be developed for the proper use of ordinance power on reasonable grounds and it should not be used for political purposes.
5. The vigilant public opinion will be political influence on the ruling party or coalition to proper use of ordinance power.

## **CONCLUSION**

The Ordinance power to the President and the State Governorensrined in the Constitution to meet extraordinary circumstances in emergency situation, when Parliament/Assembly was not in session. The



ordinance power has been used in emergency situation, but in some cases, it has been used to fulfill the political interest, which is not justified. It eroded the parliamentary sovereignty and it undermines the normal legislative process. This tendency promoted the executive authoritarianism. It has negative consequences on the Indian political system. The repeated use of ordinance power by the Executive for political ends is inconsistent with and a negation of political theory of separation of powers and it disturbed the system of check and balance. The judiciary played a vital role in this regard and it checked the use of ordinance power for unreasonable grounds. Hence, the Executive should be used the ordinance power in extraordinary circumstances in emergency situation on reasonable grounds and this power should not be used for political ends for smooth working of the Indian political system.

### References

1. *Presidential Ordinances 1950-2014*, Fifth Revised edition, 2015, Lok Sabha Secretariat, New Delhi, 2015, pp. 1-99.
2. *Ibid*, pp.1-99.
3. *Ibid*.
4. *Ibid*.
5. Mukherjee, Pranab, *The Tribune*, New Delhi, January 20, 2015.
6. Singh, Amita, *Rajasthan Patrika*, Jaipur, January 4, 2015, p.4.
7. *D.C. Wadhwa & Ors. v. State of Bihar & Anrs.*, AIR 1987, SC 579.
8. *Krishan Kumar Singh & ors. v. State of Bihar & Anrs* (2017), 3 SCC 1.
9. Sachar, Rajinder, *The Tribune*, New Delhi, January 12, 2015.
10. Nariman, Fali S., *The Tribune*, July 27, 2015.