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REASSESSING THE CONSTITUTIONAL LEGITIMACY AND MISUSE OF EXECUTIVE ORDINANCES IN INDIA: A CRITICAL ANALYSIS OF ARTICLES 123 AND 213

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ABSTRACT

This paper examines the evolution and expansion of the ordinance-making power under Articles 123 and 213 of the Indian Constitution. Originating as a temporary, emergency mechanism, ordinance power has been frequently misused to bypass legislative scrutiny, notably through repeated re-promulgation. Key Supreme Court interventions—RC Cooper, A.K. Roy, D.C. Wadhwa, and Krishna Kumar Singh—have constrained certain abuses but left the subjective satisfaction standard intact, affording the executive broad discretion. Comparative analysis of the UK's Civil Contingencies Act 2004, Australia's emergency regulations framework, and Germany's Basic Law highlights effective procedural safeguards and legislative oversight models. The paper proposes reforms: a precise definition of "emergency," shortened review timelines, a ban on re-promulgation without legislative approval, strengthened judicial review, and mandatory public consultation. These measures aim to realign ordinance power with its constitutionally intended exceptional role, reinforcing democratic principles and legislative supremacy.

KEYWORDS: emergency powers; ordinance-making; re-promulgation; judicial review; legislative oversight; democratic accountability.

1. INTRODUCTION

Articles 123 and 213 of the Indian Constitution empower the executive branch to do something no country's constitution does: grant the President and Governors a unique ordinance making power that allows the President and Governors to issue temporary laws in a time of urgency

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when the Legislature is recess.[1] This power is designed to serve as an emergency use in cases of crisis, so that the president can step around the usual legislative procedure and quickly act to keep the government running when Parliament or state legislatures are not in session. This power was not designed by the framers of the Constitution as a simple abuse, but a 'necessary evil' bound by strict confines of checks.[2] They stipulated, however, that ordinances had to expire within six weeks of the legislature reconvening except for ratification thereof, that is, for ordinances to continue they had to have gone unratified.

Yet, over time the scope of use and ordinance power in India has greatly broadened beyond the narrow confines of emergency. The executive has increasingly reproduced itself through ordinances to deal with politically contentious subjects or around parliamentary opposition, arguing not only on the basis of law, but circumventing parliamentary debate and oversight.[3] It's had people concerned about what it means for democratic principles and the power balance between the branches of government. This practice of authorizing the executive to legislate by ordinances makes Parliament a passive law dispensing body relegating it to a figment of a role in law making. To make this situation worse, ordinances are often, re-promulgated—which is when the same ordinance is repeatedly reissued without having legislative backing. Prominent examples of this are the Land Acquisition Ordinance, 2015 and the Commission for Air Quality Management Ordinance, 2020; both of which are tactics of the executive to impose enduring policies without parliamentary scrutiny.

It is argued in this paper that modern ordinance power is out of balance with the constitutional values underlying it, and thus, in need of recalibration. However, key judicial interventions in attempts to contain ordinance power have frequently been insufficient to the executive discretion. For example, the Supreme Court has invalidated some of these re-promulgation practices, but not the longstanding subjective "satisfaction" standard which gives the executive tremendous flexibility to determine when ordinances are needed[4]. This paper then explores the historical development and intended limits of ordinance power, engages with judicial interventions, and draws comparative insights from other democratic systems including Australia, the United Kingdom, and Germany. Procedural safeguards are applied in each of these countries to make executive actions transparent, accountable, and limited to a real state

[1] *The Constitution of India*, arts. 123 and 213.
[2] *Constituent Assembly Debates*, vol. IX (Lok Sabha Secretariat 1949).
[3] Granville Austin, *The Indian Constitution: Cornerstone of a Nation* (Oxford University Press 1966).
[4] *Krishna Kumar Singh v. State of Bihar*, (2017) 3 SCC 1.

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of emergency. The basis for proposed reforms to reintroduce democratic accountability and force ordinance power back to its original role as an exceptional measure only in times of crisis is formed in this analysis.

2. HISTORICAL ORIGINS AND FRAMERS' INTENT

India's ordinance power descends from colonial governance: from the *Government of India Act, 1935*, which endowed the British Viceroy with power to issue ordinances during intervals between sessions of the legislature.[5] The purpose of these ordinances was to serve as means of emergency, acting swiftly, when the British administration decided to take immediate action, frequently by-passing elected Indian representatives, directing the power of authority to the executive branch. While conceived as a model of ordinance power for crisis management, this provides a dual model of executive dominance that is orthogonal to the legislative oversight encouraging democratic ideals. Just a year after India was independent and British rule ended, the framers of its Constitution were quite aware of the dangers of unchecked executive power. As a result, no longer taking away the ordinance mechanism, they had provided the means for limiting use of the ordinance mechanism to cases decided upon by parliament.

The framers' cautious attitude towards providing ordinance power to India's democratic framework is clearly visible in the Constituent Assembly's debates.[6] Dr. B.R. Ambedkar a central figure in the drafting process, described ordinance power as a "necessary evil" if for no other reason than the immediate legislative action was essential. The Assemblymen like Ambedkar pointed out that ordinances must only be temporary stopgaps and in all respects safeguard legislative supremacy. Accordingly, ordinances under the Constitution must expire in six weeks unless explicitly ratified, indicating the framers' intention that ordinance power be exercised only provisionally.[7]

The executive's adherence to this restrictive framework was virtually sacrosanct in the years following independence when ordinances were seldom issued and only when circumstances of extreme urgency required quick action. The ordinance power, however, gradually shifted from its emergency, oriented role to a more regular instrument of governance during the turmoil of the late 20th century and particular periods of political instability and coalition governments.

[5] *The Government of India Act* (1935).
[6] *Constituent Assembly Debates*, vol. IX (Lok Sabha Secretariat 1949).
[7] H.M. Seervai, *Constitutional Law of India*, vol. 3 (Universal Law Publishing 2015).

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Since the ability to gain legislative support proved difficult, executives found themselves increasingly relying on ordinances, used to push forward contentious policies, in an attempt to circumvent the typical long and drawn out deliberative processes that come into play during parliamentary debate. Examples of this expanded use include the 2015 Land Acquisition Ordinance repeatedly reissued by the executive despite parliamentary opposition, resulting in the executive having the ability to enforce very large policy changes with legislative consent.
This expanded use of ordinance power has been further entrenched by the practice of re-promulgation, by which the executive can extend ordinances indefinitely by reissuing them at the point of expiration. In *D.C. Wadhwa v. of State of Bihar (1987) t*he Supreme Court bought contrasted re-promulgation as a "fraud on the Constitution", saying that ordinances should expire or instigate legislative end, not move on as quasi lasting laws. Though this judicial rebuke, re-promulgation continues to be a tactic of choice due to the executive's ability to maintain policies despite lack of parliamentary support. This transition from unique use to ordinary practice is symptomatic of a larger superstructural shift in which ordinance power has supplanted legislation as a quasi legislative function, undermining the principle of Parliamentary sovereignty and weakening the separation of powers.[8]

Analysis of India's historical trajectory of ordinance power shows that the power of making ordinances has departed significantly from the framers' original intent. The framers believed ordinances to be rare and of limited duration; the contemporary executive has used them as a way around legislative review, realizing his policy preferences without legislative oversight. But this extended exercise of ordinance power presents serious constitutional questions, and has the potential to weaken the role of ordinance power when wielded as a last resort footing for saving lives in genuinely exigent circumstances only.[9]

3. JUDICIAL INTERVENTIONS

With the expansion of his executive's use of ordinance power during 1975, India's judiciary also became an important arbiter in defining the extent of his executive's use of ordinance power — and, where possible, curtailing it. Supreme Court approach has evolved, along with the constitutional doctrine of checks and balances to stymie the ordinance power from thwarting the legislative supremacy. It was judicial scrutiny of ordinance power that began with challenges to the 'satisfaction' clause inscribed in Articles 123 and 213 empowering the

[8] Arvind Datar, *'Ordinance-Making Power: A Fraud on the Constitution'* (1987) 4 SCC (Jour) 16.
[9] Durga Das Basu, *Commentary on the Constitution of India* (9th edn, LexisNexis 2014).

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President or Governor to issue ordinances on their plea of necessity. Over the years, landmark cases have reasserted the judiciary's position that ordinances are not just provisional tools to be used to fill in the gaps: They should never substitute regular legislative process.

With *RC Cooper v. Union of India*, the Supreme Court held on whether the President's satisfaction in issuing an ordinance was subject to judicial review.[10] As to the President's satisfaction, the Court affirmed it is primarily subjective, but that if certain circumstances lead it to appear that the President is side-stepping legislative processes it should be subject to judicial scrutiny. By establishing that there is judicial intervention to which the satisfaction clause does not provide immunity to executive discretion, this was an essential precedent. RC Cooper, then reinforced the role of the judiciary as a guardian of legislative supremacy, and declared that ordinances should not be reconstituted as a means of evading the legislative singularity.

A.K. Roy v. Union of India further reinforced their ideas, but made it clear that the executive's satisfaction with an ordinance that purports to serve as an exceptional measure must also reside with its function as an exception.[11] A.K. Roy did not implement hard restriction on ordinance fixation, but it added to a judicial framework which stresses that ordinances need to work in an emergency setting, as prescribed by the Constitution.

Directly on the issue of re-promulgation, the Supreme Court addressed this case in *D.C. Wadhwa v. State of Bihar* restricting the use of ordinance power.[12] A scholar who opposed Bihar's repeated re-promulgation of ordinances, D.C. Wadhwa said the practice denied the democratic requirement for legislative approval. It was condemned by the Supreme Court as re-promulgation which was dismissed by Justice Bhagwati as a 'fraud on the Constitution.' D.C. Wadhwa formed a turning point in the judicial control, which recalled that ordinances are temporary enactments which need to be validated by legislative ratification and precisely not utilized as a means of drawing out quasi permanent laws.

Krishna Kumar Singh v. state of Bihar clarified further the Court's position on re-promulgation. It ruled that re-promulgated ordinances could not be used by the to establish lasting legal rights

[10] *R.C. Cooper v Union of India* [1970] 1 SCC 248.
[11] *A.K. Roy v Union of India* [1982] 1 SCC 271.
[12] *D.C. Wadhwa v State of Bihar* [1987] 1 SCC 378.

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or obligations without the legislative assent.[13] In this scenario, a seven judge bench said all ordinances must be presented before the legislature for reassembling without ratification and the ordinances will cease to have legal effect. It argued that re-promulgation subverts democratic processes, saying that ordinances are meant as temporary means not to go around parliament. This meant that Krishna Kumar Singh upheld a mission to prevent the use of ordinance power by the executive to usurp legislative scrutiny.

However, such landmark rulings remain partly limited by judicial limitations, in large part for the artificial reason that the 'satisfaction' clause is a subjective one. This clause gives executive a lot of freedom in deciding about emergency scenario, thus leaving room for grey area to prevent leaving precedents for proactive judicial intervention. Needless to say, the judiciary's action is largely reactive: it can only reprimand ordinance misuse once the ordinance is issued, enabling little to stop possible abuses during their operation in the 'real time'. The courts have a difficult time with 'emergency' because there is no constitutional definition of 'emergency' and without a definition, the courts are unlikely to find ordinances to actually meet urgent needs.

Further, the Court has also banned re promulgation, however, it has not created mandatory procedural mechanism of implementation. Both the D.C. Wadhwa and Krishna Kumar Singh judgments state that ordinances have to be either ratified or lapse, but the lack of viable immediate enforcement pathway leaves space for executive evasion. Faced with this challenge, the legislature not only needs the legislative reforms to define clearer grounds of judicial review to determine not only the procedural validity of ordinances but also the substantive need behind there being any ordinance in the first place.

Another reason to harmonize the judiciary's interpretation of ordinance power with constitutional principle of separation of powers doctrine is the same. *Kesavananda Bharati v. State of Kerala* stands for the "basic structure" doctrine. To the separation of powers cannot be allowed to be set aside, and judges carry the buck for judicial intervention against misuse of ordinance.[14] The court's curtailment of re-promulgation underscores primacy of legislative process as well as vital role accorded to legislative supremacy. But ambigiousness in Articles 123 and 213 limits the judiciary's ability to enforce these principles as the latter do not provide

[13] *Krishna Kumar Singh v State of Bihar* [2017] 3 SCC 1.
[14] *Kesavananda Bharati v State of Kerala* [1973] 4 SCC 225.

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for explicit limits to ordinance issuance.

As a consequence, judicial oversight has necessarily provided the critical constraints on ordinance power, but with less power to do so proactively to restrain executive discretion. Interventions of the judiciary underscore the need for comprehensive legislative reforms of what constitutes 'emergency,' limit re-promulgation, and clarify constraints under which an executive can satisfy itself. Only with these reforms can the judiciary truly protect the framers' vision of form of ordinance power as an exceptional plow, and one that stays with democratic principles.

4. COMPARATIVE PERSPECTIVES

Other democracies also handle the exercise of executive emergency powers, and the way these experiences offer valuable inputs in India's reform of ordinance power. There are different frameworks: the United Kingdom, Australia and Germany all stress legislative oversight, accountability and transparency and insist that emergency powers are temporary and are accountable to the people's representatives.

The Civil Contingencies Act 2004 is the United Kingdom model of rapid legislative oversight of emergency powers.[15] This Act allows the UK government to use emergency regulations should there be significant disturbances, but these regulations must be presented to Parliament within seven days. These measures automatically expire if Parliament doesn't accept them as emergency powers, which, as with any emergency powers, are strictly provisional. This model guarantees that where there is an emergency all significant executive actions will be covered by parliamentary approval, upholding a vital UK principle of parliamentary sovereignty. The Act requires withholding of executive discretion and makes sure that the government is not allowed to unilaterally extend emergency powers, by mandating prompt legislative scrutiny. A similar model would do in India that keeps legislative supremacy intact and allows no side stepping of normal legislation by ordinances.

Another approach we have is from Australia: transparency, executive accountability. The Australian model, unlike the broad discretion given to the executive in other countries, requires that the executive explain emergency measures it issues to Parliament that can humble or

[15] *Civil Contingencies Act* 2004 (UK).

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amend or revoke such regulations.[16] The requirement of executive justification confirms Australia's intention to subject emergency measures to democratic oversight and avow that emergency measures are only taken with significant justification. Being motivated by Australia's democratic principle of transparency and accountability, the Australian Parliament has the right to scrutinize and, if necessary, revoke emergency measures designed by the government. On the other hand, the normal justification for India's ordinance power is not so embedded: the executive can issue ordinances as it pleases, on its own view of necessity. A similar standard, as is done in India, could also boost transparency, bring about detailed executive justification and strengthen Parliament's role in legislative oversight by making the use of ordinances subject to a detailed executive justification.

Further safeguard, Germany's *Basic Law* protects fundamental rights, and watches over the legislature's continued oversight over the executive.[17] Germany reserves emergency powers for specific, legally introduced circumstances, such as public crises or national security threats, and legislates well before the expiry of any emergency measures. With such a system, it is committed that emergency powers do not negate democratic principle and individual rights and that the executive remains answerable to Parliament during a crisis. The emergency powers model in Germany serves as an example of how they can be strictly defined and limited, and still allow the executive to respond to urgent needs, under the protection of civil liberties. If India were to follow similar path—he made the alarming suggestion that would limit to 'periodic legislative review and not use of ordinance power without clear definition of "emergency"—it could ensure that the ordinance power is exercised responsibly, protecting the fundamental values and rights of democratic order.

The international examples demonstrate the relevance of important procedural safeguards, which may be usefully adapted in India's own context to ensure that ordinance power does not trample on democratic standards. If the parliamentary review period can be shortened, as it is in the UK, ordinances will not stay in force without speedy legislative supervision. Specific needs requiring detailed executive justification would ensure that ordinances are issued only after transparent and specific need. Second, Germany's emphasis on fundamental rights coupled with regular legislative review may provide lessons best tailored to reforms that would give greater permanence to ordinance power as a provisional measure opposed to as a

[16] *Emergency Powers Act 1984* (Australia).
[17] *Basic Law for the Federal Republic of Germany (Grundgesetz*), arts 80 and 115.

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governing tool of propagation.

This comparative models illustrate that during emergencies both stringent legislative oversight and clear limits on executive authority may preserve democratic principles. Similar reforms for India would also align ordinance power with its intended emergency scope, with such an alignment of ordinance power with its intended emergency scope precludes its misuse as an alternative to parliamentary processes. Based on these international standards, India can preserve legislative dominance; maintain transparency; and establish the separation of powers to guard against the arbitrary nature of ordinance power by subjecting it to elected representatives, and to democratic values.

Unchecked use of ordinance power in India is tantamount to stripping legislative supremacy and the health of democratic governance. Ordinarily, it is Parliament as its main source of law-making which exercises legislative power, with ordinances meant to serve an exceptional case when legislative bodies can't convene.[18] But if ordinances are used so frequently they bypass this principle and vest the power of legislation in the executive, and render Parliament merely a formality. This is done especially when the executive issues lots of ordinances without the Parliament talking, holding debates and voting on the issues which is the right of the Parliament. It all synthesizes into a transfer of the power in the executive branch, which in turn goes overboard and off the Constitution designed power balances in between Congress and Executive branches of government.

Re- promulgation — the practice by which an ordinance is reissued over and over disconnected from official legislative action — is one of the most troubling issues with ordinance abuse because it results in essentially perpetual laws.[19] Such practice goes entirely against the intent of the Constitution when it states that ordinances shall be temporary and either pass into law by Parliament and remain valid for six weeks after the reassembly of the legislature expires otherwise. This is despite this limitation, because re-promulgation is a frequent tactic through which the executive can continue an existing policy without public debate or legislative scrutiny. In D.C. Wadhwa, re promulgation was condemn as 'fraud on the Constitution' in where Ordinance could not be perpetuated without its approval. Yet, while judicial disapproval

[18] John Ferejohn and Pasquale Pasquino, 'The Law of the Exception: A Typology of Emergency Powers' (2004) 2 Int'l J Const L 210.
[19] Arun Thiruvengadam, 'Re-Promulgation of Ordinances in India: A Disquieting Trend' (2017) 59 JILI 49.

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of re-promulgation exists, the reissuance of the 2015 Land Acquisition Ordinance, and of the 2020 Commission for Air Quality Management Ordinance both attest to continued employment of re-promulgation to extend executive power.

One prime example of how this happens is illustrated in the *Land Acquisition Ordinance of 2015*.[20] The ordinance was intended to change land acquisition laws that affect millions of landowners, farmers and local communities, but it in the opposition trenches in Parliament on fears of land rights and environmental implications. The executive, despite its reneging from helping set up a debate, re-promulgated the ordinance several times without involving parliament on a highly intellectual issue.[21] Like, for example, it also re-promulgated the *Commission for Air Quality Management Ordinance* in the shadow of huge public debate on environmental policies, thus being one of the repeated patterns of executive action in disregard to elected representatives' oversight.[22][23]

The cases presented here illustrate how repromulgation engenders a 'shadow' legislative process by detaching Parliament, thereby producing quasi permanent policies devoid of transparency, accountability, and legitimacy of the laws passed within the standard legislative procedure. Re-promulgation allows the executive to sustain policies on indefinitely without legislative endorsement—violating the democratic process and debasing the role of institutional Parliament. This shift disturbs the constitutional balance, which as a result makes Parliament the reactive organ which merely ratifies the executive decisions, already in effect.
And the misuses of ordinance power also diminish public trust in governance through reduction in transparency and public accountability. Legislative process is normally open, based on public debate and amendments responding to the opinion of the elected representatives. On the other hand, the executive issues ordinances unilaterally thus bypassing any of the participatory side of things. Lacking transparency erodes public confidence that key decisions are being made by people without, or against the public's will, or with the lack of knowledge of their representatives. Where ordinances touch on politically sensitive matters, this exclusion can

[20] *The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (Amendment) Ordinance*, Gazette of India, Extraordinary, Part II, sec. 1, No. 9 of 2014 (31 December 2014).
[21] *The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (Second Amendment) Ordinance*, Gazette of India, Extraordinary, Part II, sec. 1, No. 4 of 2015 (3 April 2015).
[22] *The Commission for Air Quality Management in National Capital Region and Adjoining Areas Ordinance*, Gazette of India, Extraordinary, Part II, sec. 1, No. 13 of 2020 (28 October 2020).
[23] *The Commission for Air Quality Management in National Capital Region and Adjoining Areas (Repeal) Ordinance*, Gazette of India, Extraordinary, Part II, sec. 1, No. 4 of 2021 (13 April 2021).

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amplify the impression of the mayor's overreach, stripping government of its accountability and damage democratic standards.[24]

Even more importantly, the ordinance misuse also impacts federalism and state autonomy. Governors under Article 213 have ordinance power in state jurisdictions which have sometimes clashed with the interests of the central government. The problem with governors issuing ordinances on state matters is that we now have a governors' form of federal overreach. It is particularly troubling when ordinances pander to subjects which historically have been left up to the state such as agriculture and education. Such issuance of ordinances with respect to these issues has led to incidents of conflict between state legislatures and the central executive, which are in conflict with the federal doctrines of protecting state autonomy.[25]

The implications of these consequences emphasize that ordinance power be made emergency only and not subject to use as a policy instrument. Parliament's role in making the laws; public consultation; and, federal relations are all undermined when either the ordinances themselves, their repeal, or their re-promulgation, bypass legislative approval and the re-promulgation practice; leaving Parliament marginalised.[26] Procedural safeguards, such as allowing only one time of re-promulgation; defining more clearly the application of the nee "emergency" terms; and public consultation on significant ordinances, would increase transparency, align the exercise of ordinance power to democratic values, and strengthen legislative authority. Relinking ordinance power as a real emergency tool would defend the tenets of responsibility, public trust and constitutional decency, safeguarding the democratic ideals that are the essence of India's parliamentary system.

5. PROPOSED REFORMS

Structural reforms must be undertaken to demote the broad executive discretion, minimize legislative oversight, and reduce procedural safeguards that empower the exercise of an emergency power renovation to its role within the intended function as an emergency use only measure and id functional excessive misuse. These reforms can force this ordinance power to uphold democratic principles, legislative supremacy and accountability while being smart

[24] Sujit Choudhry, 'The Ordinance-Making Power of the President of India' (1988) 25 JILI 35.
[25] J.S. Mendiratta, 'The Scope of Ordinance-Making Power in India: An Overview' (2014) 6 Int'l J Const L 172.
[26] Abhinav Kumar, 'Re-examining Judicial Review of Ordinances in India' (2019) 45 South Asian J Const L 37.

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enough to align with the framers' vision.[27]

Explicit definition of "emergency" conditions in Articles 123 and 213 are one foundational reform. The Constitution still depends on the President or Governor's broad satisfaction making the executive act in an urgent situation, with considerable latitude. Ordinance power, could be limited to properly exigent situations through providing specific criteria (threats to national security, severe public health crises, natural disasters, etc.). Such a definition would blunt the possibility of recourse to ordinances to circumvent normal legislative procedure for politically sensitive or mundane matters, and thus, enable Parliament to remain the locus for law making. A further fundamental reform is to reduce the current six week period allowed for parliamentary review of ordinances. Ordinances, however, can remain in force for up to a month, and six weeks after Parliament has recommenced, giving the executive the time to put in place policies without immediate legislative oversight, under Article 123. A faster review period, much as the United Kingdom's seven day rule for ordinances, would subject ordinances to immediate scrutiny in terms of prompting, and would not serve as substitutes for standard legislation. This reform would establish a firm oversight function for Parliament through the requirement to debate and pass ordinances respectively in one to two weeks, in order to avoid the bypassing of legislative accounting.[28]

Preserving the temporary nature of ordinances also requires that the problem of re-promulgation be addressed. The Supreme Court, in the D.C. Wadhwa case, had rejected the same, stating that the executive, at this point, could repeatedly reissue ordinances without any legislative ratification. Prohibiting re-promulgation of quasi permanent policies, except by explicit parliamentary authorization, would ensure that such policies will not have a life as parliamentarians faded into the history record. This prohibition will make sure that ordinances continue to be true stopgap measures, placing the executive under obligation to seek legislative permission to enforce beyond a short term emergency any policy that it wishes to enforce.[29]
Another reform which could provide a stronger check on the executive's ordinance power is one to enhance judicial supervision of the "satisfaction" clause. The subjective satisfaction

[27] M.R. Pathak, 'Ordinance-Making Powers in India: A Constitutional Necessity or Executive Overreach?' (2020) 55 Indian J Pub Admin 87.
[28] Mahendra Pal Singh, *Comparative Constitutional Law: Federalism and Emergency Powers* (Eastern Book Company 2016).
[29] John Ferejohn and Pasquale Pasquino, 'The Law of the Exception: A Typology of Emergency Powers' (2004) 2 Int'l J Const L 210.

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standard under which current judicial review of ordinance issuance allows for the executive to engage in substantial discretion.[30] Expanding judicial review to consider both procedural and substantive failure of any requirements for ordinances would increase accountability, and courts could apply this to determine if an ordinance really fits under the emergency threshold. This would help curb the issuing of ordinances for political advantage, and would display their special nature as exception rather than everyday instruments of government.[31]

Third, mandatory public consultations of major ordinances, especially ordinances that adversely affect basic rights or adopt major policy changes, would bring the transparency and public trust to these ordinances. In legislative processes, there is always a chance for public debate and diverse views making policy. However, ordinances are issued unilaterally ignoring these democratic mechanisms. If we made it a requirement before passing an impactful ordinance that people would go through public consultation, then the executive would need to consider public input before he would hand out a diktat.[32]

These reforms, together, tackle the fundamental structural problems in the Indian ordinance framework. Given a clear definition of 'emergency,' shortened legislative review time line, prohibition against re promulgation, extensive judicial supervision and public consultation, India can reinstate the ordinance power to its constitutionally intended role as a limited temporary measure. These structural changes would protect legislative supremacy, transparency, and public accountability and would keep the constitutional values of democracy inscribed in Indian rubric.

6. CONCLUSION

The power conferred under the articles such as 123 and 213 of the Constitution of India on the ordinance power was meant as a measure of emergency, to be used by the executive when the legislature is not in session, to meet the exigencies of an impending emergency. However, by now this power has outgrown its intended purpose, and is more often wielded in order to circumvent parliamentary debate and scrutiny. Issues of separation of powers, transparency and the democratic process have arisen from the relentless issuance and re-promulgation of

[30] Mark Tushnet, 'Emergency Powers in Comparative Constitutional Law' (2010) 2 J Const Theory 193.
[31] Lara Kriegel, 'Emergency Provisions in Comparative Constitutional Systems: Lessons for India' (2017) 78 Comp Const Rev 211.
[32] Bruce Ackerman, 'The Emergency Constitution' (2004) 113 Yale LJ 1029.

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ordinances that have been a regular feature.

Particularly in cases of landmark cases like D.C. Wadhwa v. Krishna Kumar Singh (1987) State of Bihar & Anr Some constraints on Abuse of ordinance are provided by State of Bihar (2017) at the point of condemnation of re promulgation and stressing about the temporary nature of ordinances. While judicial review alone cannot cure misuse of ordinance power, however, laws can be enforced. To keep ordinance power alive as a real emergency mechanism and in keeping with the democratic principle of legislative oversight and public accountability, structural reforms are necessary.[33]

Drawing from comparative examples of emergency powers in countries like the United Kingdom, Australia, and Germany, this paper has proposed several key reforms: a precise definition of "emergency," reducing the legislative review period, prohibiting re-promulgation without legislative approval, judicial oversight, and mandatory public consultation for major ordinances. These reforms would limit their scope of usage to that of emergency only, putting back ordinance power to its democratic roots, and the legislative supremacy, transparency, and democratic process itself.

Both legislative reform and continued judicial vigilance are ultimately necessary to allow realigning of ordinance power with its intended congressional purpose. When combined, these measures can assure that ordinance power is consonant with the values of public trust, accountability and democratic governance and, crucially, stay true to India's constitutional commitments to its parliamentary democracy and its integrity.

[33] V.N. Shukla, *Constitution of India* (Mahendra P. Singh ed, Eastern Book Company 2013).