

INTERNATIONAL JOURNAL FOR LEGAL RESEARCH AND ANALYSIS



Open Access, Refereed Journal Multi Disciplinary
Peer Reviewed

www.ijlra.com

DISCLAIMER

No part of this publication may be reproduced, stored, transmitted, or distributed in any form or by any means, whether electronic, mechanical, photocopying, recording, or otherwise, without prior written permission of the Managing Editor of the *International Journal for Legal Research & Analysis (IJLRA)*.

The views, opinions, interpretations, and conclusions expressed in the articles published in this journal are solely those of the respective authors. They do not necessarily reflect the views of the Editorial Board, Editors, Reviewers, Advisors, or the Publisher of IJLRA.

Although every reasonable effort has been made to ensure the accuracy, authenticity, and proper citation of the content published in this journal, neither the Editorial Board nor IJLRA shall be held liable or responsible, in any manner whatsoever, for any loss, damage, or consequence arising from the use, reliance upon, or interpretation of the information contained in this publication.

The content published herein is intended solely for academic and informational purposes and shall not be construed as legal advice or professional opinion.

**Copyright © International Journal for Legal Research & Analysis.
All rights reserved.**

ABOUT US

The *International Journal for Legal Research & Analysis (IJLRA)* (ISSN: 2582-6433) is a peer-reviewed, academic, online journal published on a monthly basis. The journal aims to provide a comprehensive and interactive platform for the publication of original and high-quality legal research.

IJLRA publishes Short Articles, Long Articles, Research Papers, Case Comments, Book Reviews, Essays, and interdisciplinary studies in the field of law and allied disciplines. The journal seeks to promote critical analysis and informed discourse on contemporary legal, social, and policy issues.

The primary objective of IJLRA is to enhance academic engagement and scholarly dialogue among law students, researchers, academicians, legal professionals, and members of the Bar and Bench. The journal endeavours to establish itself as a credible and widely cited academic publication through the publication of original, well-researched, and analytically sound contributions.

IJLRA welcomes submissions from all branches of law, provided the work is original, unpublished, and submitted in accordance with the prescribed submission guidelines. All manuscripts are subject to a rigorous peer-review process to ensure academic quality, originality, and relevance.

Through its publications, the *International Journal for Legal Research & Analysis* aspires to contribute meaningfully to legal scholarship and the development of law as an instrument of justice and social progress.

PUBLICATION ETHICS, COPYRIGHT & AUTHOR RESPONSIBILITY STATEMENT

The *International Journal for Legal Research and Analysis (IJLRA)* is committed to upholding the highest standards of publication ethics and academic integrity. All manuscripts submitted to the journal must be original, unpublished, and free from plagiarism, data fabrication, falsification, or any form of unethical research or publication practice. Authors are solely responsible for the accuracy, originality, legality, and ethical compliance of their work and must ensure that all sources are properly cited and that necessary permissions for any third-party copyrighted material have been duly obtained prior to submission. Copyright in all published articles vests with IJLRA, unless otherwise expressly stated, and authors grant the journal the irrevocable right to publish, reproduce, distribute, and archive their work in print and electronic formats. The views and opinions expressed in the articles are those of the authors alone and do not reflect the views of the Editors, Editorial Board, Reviewers, or Publisher. IJLRA shall not be liable for any loss, damage, claim, or legal consequence arising from the use, reliance upon, or interpretation of the content published. By submitting a manuscript, the author(s) agree to fully indemnify and hold harmless the journal, its Editor-in-Chief, Editors, Editorial Board, Reviewers, Advisors, Publisher, and Management against any claims, liabilities, or legal proceedings arising out of plagiarism, copyright infringement, defamation, breach of confidentiality, or violation of third-party rights. The journal reserves the absolute right to reject, withdraw, retract, or remove any manuscript or published article in case of ethical or legal violations, without incurring any liability.

THE ORDINANCE MAKING POWER UNDER ARTICLE 123 AND 213. LIMITS OF EXECUTIVE LEGISLATION IN A CONSTITUTIONAL DEMOCRACY

AUTHORED BY - KAMALPREET KAUR

Abstract

The ordinance-making power under Articles 123 and 213 of the Indian Constitution grants the President and Governors authority to promulgate laws during legislative recesses. Originally designed as an emergency measure to ensure governance continuity, this power has evolved into one of the most debated features of executive authority in India. While it serves as a crucial tool in addressing urgent legislative needs, concerns persist about its frequent and politically motivated use, which risks undermining parliamentary supremacy and democratic accountability. Judicial pronouncements, including *D.C. Wadhwa v. State of Bihar* and *Krishna Kumar Singh v. State of Bihar*, have repeatedly emphasized that ordinances are temporary, exceptional, and subject to legislative ratification and judicial review. The study critically examines the historical evolution, constitutional framework, and judicial interpretation of ordinance-making, highlighting its misuse and the need for safeguards. It also draws a comparative perspective with other democracies like the U.K. and the U.S., suggesting that stricter procedural limitations, transparency mechanisms, and robust judicial checks are vital to prevent executive overreach. Ultimately, the ordinance-making power must function within the constitutional spirit, striking a balance between executive efficiency and the principles of representative democracy.

Keywords - Ordinance-making power, Articles 123 and 213, Executive legislation, judicial review, Constitutional democracy, Misuse of ordinances

Background of the study

The ordinance-making authority conferred by Articles 123 and 213 of the Indian Constitution grants exceptional legislative power to the executive, enabling the President and Governors to enact laws in the absence of Parliament or State Legislatures in session. This power, designed as an emergency measure, guarantees governance continuity and addresses critical crises necessitating quick legal action. Nonetheless, it prompts apprehensions about the

equilibrium of authority in a constitutional democracy, as frequent or capricious use may erode legislative primacy and democratic accountability. Judicial interpretations and constitutional constraints aim to avert misuse, underscoring the notion that ordinances are provisional and extraordinary¹.

Importance and scope of study

This study is important since it analyzes the constitutional balance between executive efficacy and legislative authority under Articles 123 and 213. The scope includes the historical origins, judicial scrutiny, abuse, and democratic implications of ordinance-making power, offering insights into the imperative for executive authority to function within constitutional boundaries in India².

Research problem and questions

The core research problem is whether ordinance-making power strengthens governance or undermines parliamentary democracy through misuse.

The study raises questions such as:

- To what extent does the executive's ordinance-making bypass legislative authority?
- How have courts restricted misuse?
- What safeguards ensure ordinances remain temporary, exceptional, and constitutionally valid?

Objectives of the study

- To examine the scope, nature, and constitutional limits of ordinance-making powers under Articles 123 and 213.
- To analyse judicial interpretations and landmark rulings addressing the misuse and legitimacy of executive ordinances.
- To evaluate the democratic implications of ordinance-making and suggest safeguards to prevent executive overreach.

¹ Reena Kansal, "Ordinance making power and its impact on parliamentary form of government a critical analysis" *Sodhganga* 153 (2020).

² Saumya Ranjan Dixit, "APPLICATION OF THE BASIC STRUCTURE DOCTRINE TO THE POWERS OF PROMULGATING ORDINANCES," 4 1–30 (2020).

Research Methodology

This study follows a doctrinal research methodology, analysing constitutional provisions, judicial interpretations, and scholarly literature. It reviews landmark cases like *D.C. Wadhwa v. State of Bihar* and *Krishna Kumar Singh v. State of Bihar*, alongside academic critiques. Secondary sources like books, articles, and case law are used to critically evaluate executive ordinance-making powers.

Review of Literature

(Varshney & Sharma, 2023)³ The power of ordinances, meant for emergent conditions, might have been misused in India to avoid legislative approval. Executives have been re-promulgating ordinances time and again without submitting them to legislatures, which erodes parliamentary democracy. This paper analyzes the character and practice of ordinances, and also emphasizes judicial interventions to rein in such misuse by scrutinizing their legality.

(GARG, 2022)⁴ The Indian Constitution allows the President and the Governors of States to pass ordinances in times of emergency. But this power is mostly abused to circumvent the legislature. The present paper critically analyzes the extent, abuse, and loopholes in the Constitution of ordinance-making, and how governments misuse it and the role of the judiciary in curbing such excesses.

(Chaturvedi, 2020)⁵ The Executive is given the power under the Constitution to issue ordinances in exigent circumstances when there is an immediate need for legislation. It is a species of delegated legislation and has both advantages and disadvantages. The present paper follows its historical development, judicial examination, and discretionary character, and analyzes its compatibility with separation of powers while posing the question as to whether it promotes necessity or eviscerates the legislative power.

(Patnaik, 1996)⁶ The book by Raghunath Patnaik offers a comprehensive analysis of the

³ Rahul Varshney and Sachin Sharma, "Executive Legislation in India: Legality of Ordinance Making Power," 6 *Praxis International Journal of Social Science and Literature* 170–5 (2023).

⁴ SUKRIT GARG, "A Critical Overview of Ordinance Making Power," 5 *International Journal of Law Management & Humanities* 1–11 (2022).

⁵ Subir Kumar and Pranjal Chaturvedi, "Ordinances & Administrative Legislations: Discretion Involved in a Legislative Power Vested in the Executive," 1 *Indraprastha Law Review* 1–7 (2020).

⁶ Raghunath Patnaik, *Powers of the President and Governors in India With Special Reference to Legislative and Ordinance-Making*, 1st ed. (Deep & Deep Publications, 1996).

President's ordinance-making powers under Article 123 and Governors under Article 213, tracing their constitutional roots and judicial interpretation. It delves into historical background, checks against abuse, and landmark Supreme Court decisions that defined the limits of executive power. It examines critically how these powers operate within India's constitutional democracy.

(DAM, 2010)⁷ This book provides a historical and doctrinal examination of the President's ordinance powers under a parliamentary democracy, reviewing case law and constitutional convention. It investigates the effect of ordinance-making on the tension between executive and legislative powers, with focus on problems of abuse and judicial oversight. The study also investigates the conflict between expedient governmental intervention and the constitutional restraint of executive legislation.

(Gerangelos, 2020)⁸ The extent of the general executive power under Article 53 of the Indian Constitution and Section 61 of the Australian Constitution is an important constitutional question. Different from particular powers of the President and Governor-General, it raises questions on executive authority limits, its position with respect to parliament, and civil rights. A comparative analysis of Indian and Australian jurisprudence shows merits, challenges, and lessons for the formation of future constitutional regulation of executive power.

(S, 2013)⁹ The article discusses whether the President's power of ordinance-making constitutes a parallel legislative power, reviewing such debates in the past and landmark Supreme Court decisions such as *A.K. Roy v. Union of India*. It notes such constitutional protections against its misuse and finds that although such large power rests in the executive arm, judicial and constitutional controls are important to balance power in a constitutional democracy.

Analysis

Ordinance Making Power

The power of making ordinances in India is an important legislative power vested in the President under Article 123 of the Constitution and the Governor under Article 213. It

⁷ Shubhankar DAM, "Constitutional Fiats: Presidential Legislation in India 's Parliamentary Democracy," 24 *Columbia Journal of Asian Law* 1–61 (2010).

⁸ Peter Gerangelos, "The General Executive Power of the Union of India and the Commonwealth of Australia: A Comparative Analysis," 32 *National Law School of India Review* 1–46 (2020).

⁹ Dam S, *Origins and Practice. In: Presidential Legislation in India: The Law and Practice of Ordinances. Comparative Constitutional Law and Policy*, 1st ed. (Cambridge University Press, 2013).

enables the executive to issue laws when Parliament or the State Legislature is not sitting, facilitating the continuance of governance and meeting exigencies. Nevertheless, the power is not unfettered and is fettered with constitutional restraints. Ordinances have to be ratified by the legislature within six weeks of reconvening, or they lapse. Judicial review prevents them from infringing on basic rights or circumventing parliamentary procedures. Although essential for emergency rule, abuse can erode democratic norms, which is why meticulous and restrained use of such power is important¹⁰.

Historical and Evolution

The ordinance-making power in India finds its roots in the colonial administrative framework established during British rule. Initially, the Viceroy, under the Government of India Act, 1935, was vested with the authority to promulgate ordinances when the legislature was not in session. Post-independence, this mechanism was adopted to enable the executive to address urgent legislative needs, thereby ensuring continuity in governance. The framers of the Indian Constitution recognized that in a vast and diverse country like India, situations could arise where immediate legislative action was necessary, and waiting for the Parliament or State Legislature to convene could be impractical. Consequently, Articles 123 and 213 of the Constitution were incorporated, empowering the President and Governors, respectively, to issue ordinances with the force of law during legislative recesses¹¹.

Origin of Ordinance Making Power in India

The origin of the ordinance-making power in India is intrinsically linked to the need for a flexible and responsive governance system. While the Parliament remains the primary law-making body, the ordinance mechanism acts as a temporary legislative tool to address unforeseen or emergent situations. The power, however, is not unlimited; it is circumscribed by constitutional safeguards, including the requirement that an ordinance must be laid before the legislature and can cease to operate if disapproved. This system was designed to maintain a balance between executive efficiency and legislative oversight, ensuring that the democratic principle of law-making remains intact¹².

¹⁰ Amit Yadav Sharma, Vijaylaxmi, *Ordinance Making Powers in Indian Constitution: A Critical Analysis*, 1st ed. (LAP LAMBERT Academic Publishing, 2020).

¹¹ Amit Yadav, *Ordinance Making Powers in Indian Constitution: A Critical Analysis*, 1st ed. (Lexis Nexis, 2020).

¹² Chandrasekaran Mridul Bhardwaj, "An Analysis of the Power to Issue Ordinance in India," 42 *Statute Law Review* 305–312 (2021).

Key Amendments and Judicial Interpretations

Over time, judicial scrutiny and constitutional amendments have refined the scope and limits of the ordinance-making power. Landmark cases, such as *A.K. Gopalan v. Union of India* and *A.K. Roy v. Union of India*, clarified that ordinances are temporary legislative measures and cannot be misused to bypass parliamentary authority. Judicial interpretations have emphasized that the power is exceptional and must conform to the principles of necessity and urgency. Amendments and evolving judicial doctrines have reinforced that while ordinances facilitate governance, they are subject to rigorous checks, maintaining the supremacy of the legislature within India's constitutional democracy¹³.

Scope and Extent of Executive Legislation

In a constitutional government such as India, the legislative authority is mostly vested in the Parliament and State Legislatures. Nevertheless, Articles 123 and 213 of the Constitution authorize the President and State Governors, respectively, to promulgate ordinances while the legislature is dissolved. Ordinances possess the force of law but are not permanent, meant to meet urgent legislative requirements. Executive legislation is thus an exceptional means of filling gaps between legislatures so that governance and pressing policy issues are not delayed owing to procedural holdups. Its scope, however, is constitutionally defined, and it cannot be utilized arbitrarily to circumvent democratic processes.

- **Nature and Purpose of Ordinances** - Ordinances are interim legislations issued by the executive in the name of the Constitution. Their nature is two-fold: legislative and executive. Although they are promulgated by the executive, their legislative effect is binding like that of any Act of Parliament or State Legislature. The main function of ordinances is to allow for instant legislative action in circumstances where there is an urgent need to respond e.g., emergency, fiscal crisis, or public welfare matters—when the legislature is not sitting. Judicial interpretation underlines that ordinances have to be applied sparingly and in case of genuine urgency and not for convenience of the executive. Landmark rulings, like *A.K. Gopalan v. Union of India* and *D.C. Wadhwa v. State of Bihar*, uphold that ordinances should not infringe on the legislative domain or be exploited for political purposes¹⁴.

¹³ Raja Ram Agarwal, "Constitutional Amendments — A Legal Analysis" *EBC India*, 2020.

¹⁴ Pranaya Sahay, "Understanding Re-promulgation of Ordinances under Articles 123 and 213 of the Indian Constitution and its Direct Challenge to Parliament's Supremacy in the Area of Law Making," 4 *INTERNATIONAL JOURNAL OF LAW MANAGEMENT AND HUMANITIES* 564–9 (2021).

- **Areas Permissible under the Constitution** - The Constitution lays down precise boundaries in terms of subject matter and extent of ordinances. Executive legislation may apply to any field for which the legislature is competent to pass laws, such as finance bills, social reform bills, and public safety ordinances. Ordinances, however, cannot run counter to basic rights or encroach on the powers vested in the executive. Article 123 categorically excludes the possibility of ordinances perpetuating themselves in existence; they have to be laid before the legislature upon its revival and will expire if not ratified within six weeks. Equally, State Governors under Article 213 are similarly constrained. In practice, there are permissible spheres involving emergency amendments to laws, administrative decrees, and crisis management interventions. Judicial review is aimed at ensuring that ordinances are still a constitutional device for emergency purposes and not a standing substitute for legislative power, providing the fine balance between effective governance and democratic accountability¹⁵.

Constitutional Provisions: Articles 123 and 213

Articles 123 and 213 of the Indian Constitution authorize the President and the Governors to issue ordinances in cases when Parliament or State Legislature is not in session. These articles provide for ensuring urgent legislative requirements without awaiting normal legislation, thus ensuring continuity of government.

- **Article 123: President's Power to Promulgate Ordinances** - Article 123 gives power to the President to promulgate ordinances when either House of Parliament is not sitting, but only in cases where urgent action is required. These ordinances have the same validity as an Act of Parliament but have to be ratified within six weeks of the reassembly of the legislature. The President acts on the advice and recommendation of the Council of Ministers, making the executive accountable¹⁶.
- **Article 213: Power of Governor to Promulgate Ordinances** - Article 213 authorizes the Governor of a State to issue ordinances when the State Legislature is not sitting and urgent legislative action is necessary. Ordinances made under this article are as legally valid as State Legislature enactments but need to be laid before the legislature for approval in six weeks on reconvening.

¹⁵ Nikhil Pratap, "Conflicting Fundamental Rights Under the Indian Constitution," 7 *Columbia Law School* 1–31 (2022).

¹⁶ Dharmendra Kumar Singh, "An analysis of judicial trend and attitude towards executive legislation (article 123/213) of indian constitution," 6 *International Journal of CURRENT ADVANCED RESEARCH* 1–8 (2017).

- **Comparative Analysis** - Both Articles 123 and 213 demonstrate a similar mechanism at the Union and State levels to address immediate legislative requirements. Inasmuch as the scope and impact are widely comparable, the distinction is primarily in their application Article 123 works at the national level with the President, while Article 213 works at the State level with the Governor. Judicial review in either case holds the exercise of these powers within constitutional parameters¹⁷.

Judicial Pronouncements

Shamsher Singh v. State of Punjab (1974) 2 SCC 831

Here, the Supreme Court reiterated that the ordinance-making power under Articles 123 and 213 is a special power for extraordinary situations necessitating immediate legislation. The Court declared that ordinances should not be employed to circumvent the legislative process for customary law-making. The judgment reasserted the rule that the executive should operate within the scheme of the Constitution, and ordinances should not violate fundamental rights or transgress the legislative jurisdiction of the legislature¹⁸.

R.C. Cooper v. Union of India (1970) 1 SCC 248

The Court scrutinized the legitimacy of ordinances made during an emergency period and ruled that during such times, the President or Governor cannot exercise legislative functions unilaterally. The ruling explained that the ordinances cannot violate constitutional provisions nor override basic rights. The Court noted that ordinances are preliminary measures and must be tabled before the legislature for approval, exhibiting a balance between executive exigency and parliamentary sovereignty¹⁹.

D.C. Wadhwa v. State of Bihar (1987) 3 SCC 224

This case dealt with the abuse of ordinances by the executive. The Supreme Court reaffirmed that ordinances are not a replacement for law-making by the legislature and need to be limited to situations of urgency. The Court invalidated some of the ordinances that were issued without meeting the tests of urgency or necessity, with emphasis on judicial checks as a major check

¹⁷ Aastha Sachdeva and Akankshu Sodhi, "Article 123: A Constitutional Quandary or a Detrimental Dilemma?," 6 *International Journal of Law Management and Humanities* 1301–9 (2021).

¹⁸ Indian Kanoon, *Shamsher Singh v. State of Punjab 2 SCC 831*, 1974. available at- <https://indiankanoon.org/doc/1382698/>

¹⁹ Dibakar Dam, *R.C. Cooper v. Union of India 1 SCC 248*, 1970. available at- <https://thelegalquorum.com/r-c-cooper-v-union-of-india-1970-a-landmark-judgment-on-bank-nationalization/>

against the abuse of power by the executive²⁰.

Krishna Kumar Singh v. State of Bihar (2017) 10 SCC 1

In this case, the Court reiterated checks on the power of promulgating ordinances, pointing out that promulgation of ordinances on the same topic time and again to circumvent legislative scrutiny goes against constitutional values. According to the Court, ordinances should not defeat the purpose of the legislature, and the executive shall prove actual urgency for their promulgation.

Together, these cases highlight that although ordinance-making power under Articles 123 and 213 is extensive, it is contained by constitutional restrictions, judicial review, and legislative sanction, thereby establishing an equilibrium between executive efficiency and democratic accountability²¹.

Balanced Powers in a Constitutional Democracy

A constitutional democracy maintains a fine balance between the legislative and the executive, upholding the rule of law yet facilitating efficient governance. Article 123 (President) and Article 213 (Governor) ordinance-making powers provide such a balance, as they provide the executive short-term law-making powers during the absence of legislatures but compel compliance with constitutional constraints.

- **Role of Parliament and State Legislatures** - State legislatures and parliament are the main law-making institutions, representing the democratic will. Ordinances come in as a stopgap when legislatures are in recess, avoiding paralysis of government. Their presence does not fill in, but supports, legislative power, buttressing the representative system²².
- **Procedural Safeguards and Limitations** - Procedural inspections like insisting on presidential or gubernatorial assent, keeping ordinances within a six-week time span after reassembly, and adhering to basic rights cut back on capricious making of law. These mechanisms infuse accountability, openness, and legislative control into the executive's provisional power.

²⁰ Shruti Mayur, *D.C. Wadhwa v. State of Bihar* 3 SCC 224, 1987. available at- <https://lawfoyer.in/d-c-wadhwa-ors-vs-state-of-bihar-ors-19861987-air-579/>

²¹ Sujata Porwal, *Krishna Kumar Singh v. State of Bihar* 10 SCC 1, 2017. available at- <https://legaldesire.com/case-comment-on-krishna-kumar-singh-anr-v-state-of-bihar-ors/>

²² Anandita Uppal & Anshi Gandhi, "Ordinance-Making Power In India: Striking A Balance Between Necessity And Overreach," 6 *IJLLR Journal* 1–8.

- **Checking Abuse of Power** - Judicial review and parliamentary oversight check abuse of ordinance powers. Courts can invalidate ordinances that violate constitutional safeguards, while legislatures can deny or modify them. These impose a balance of power, keeping executive action a facilitative tool instead of an unfettered legislative surrogate.

Essentially, ordinance-making power is a functional instrument under a constitutional democracy, but its validity relies on strict compliance with procedural protections and parliamentary control in order to avert executive excesses²³.

Controversies and Misuse of Ordinance Power

Article 123 and Article 213 of the Indian Constitution provide for the ordinance-making power whereby the President and Governors are empowered to enact laws when the Parliament or the State Legislature is in session. Although this provision ensures parliamentary or legislative efficiency in the face of emergencies or urgent circumstances, it has been a point of contention and criticism because it can be abused. Ordinances are intended to be short-term, but prolonged or politically driven application can circumvent the customary legislative process, disrupting democratic accountability.

- **Instances of Political Exploitation** - There have been many examples where the power to make ordinances has been employed for political advantage instead of true legislative requirement. Governments have from time to time issued ordinances to force through unpopular policies without inviting legislative debate, especially if opposition in the Parliament or State Legislature could veto the proposals. Such behavior is commonly decried as means of executive excesses, enabling party-in-power to impose their agenda with inadequate debate and openness. A good example is the ordinances passed to change significant provisions in financial or administrative legislation at politically contentious times, prompting charges of executive overreach²⁴.
- **Debates on Executive Overreach** - There has been debate among scholars and jurists on whether making ordinances is an executive overreach. It is argued by critics that constant use of ordinances undermines the parliamentary system because it enables the executive to legislate temporarily at will, possibly circumventing democratic checks and balances. The Supreme Court of India has also dealt with these issues in the cases

²³ Joyita, "Ordinance making powers of the Executive in India" *prsindia*, 2013.

²⁴ Chandrasekaran Mridul Bhardwaj, "An Analysis of the Power to Issue Ordinance in India," 42 *Statute Law Review* (2019).

of A.K. Gopalan v. Union of India and A.K. Roy v. Union of India, stressing that ordinances cannot be used as a substitute for normal legislative procedures and should be restricted to extraordinary situations. These arguments highlight the conflict between the necessity for quick governance and the ideals of representative democracy.

- **Public and Academic Critiques** - Academically and in the public eye, abuse of ordinances tends to be associated with concerns over transparency, accountability, and constitutional decency. Scholars of law point out that ordinances, when abused, are likely to undermine public confidence in democratic institutions, as citizens feel that laws are being made without debate and agreement. Media and civil society groups tend to criticize ordinances for political motivation, content, and timing and demand better judicial and legislative control to ensure executive legislation falls within constitutional democratic limits.

Articles 123 and 213 grant the executive the mandate to respond to pressing legislative requirements, their abuse has raised political, judicial, and scholarly issues. The power of ordinance-making should, therefore, be exercised in a restrained manner, with transparency, and adherence to democratic norms to uphold constitutional integrity²⁵.

Comparative Analysis

The power of the President and Governors to make ordinances in exercise of Article 123 and Article 213 of the Indian Constitution enables them to legislate when the respective legislature is not sitting. Although this power is exercised to tackle emergent situations, it is generally viewed as being potentially susceptible to executive abuse. Comparative analysis with other democratic countries gives a perspective on balancing efficiency with legislative dominance.

- **Executive Law-Making in the U.K.** - In the United Kingdom, the executive has limited law-making powers in the form of statutory instruments and delegated legislation. Parliament entrusts powers to the executive in certain spheres, but these powers are strictly regulated, subject to review by parliamentary committees, and by and large cannot circumvent the legislative process. Unlike the Indian system of ordinances, the U.K. provides continuous legislative scrutiny, minimizing the chances of abuse and upholding the doctrine of parliamentary sovereignty²⁶.

²⁵ Joyita, "Ordinance making powers of the Executive in India" *prsendia*, 2013. available at <https://prsendia.org/theprsblog/ordinance-making-powers-of-the-executive-in-india?page=30&per-page=1>

²⁶ Richard Whitaker, Duncan Sim and Graeme Cowie, "Delegated powers and framework legislation" *House of Commons Library* (2024).

- **U.S. Emergency Legislative Powers** - The United States favors executive action in times of emergency mainly through presidential declarations, executive orders, and emergency powers under legislation such as the National Emergencies Act (1976). These powers, though time-limited, well-specified, and subject to judicial review, rest with Congress, which can revoke any emergency proclamation. Courts also intervene often if executive action oversteps constitutional parameters. This model is focused on checks and balances to ensure that emergency powers are temporary and answerable²⁷.
- **India's lessons** - India's provisions for ordinances to make law, though useful in times of pressing governance, have come under attack for widespread abuse and avoiding parliamentary debate. Comparative experience offers a few lessons: first, imposing more stringent temporal and procedural constraints, akin to the U.S., can secure executive restraint. Second, making legislative sanction obligatory within a fixed timeframe after promulgation can improve accountability. Third, having a system of parliamentary or judicial review can prevent ordinances from infringing on basic rights or upsetting the democratic equilibrium. Instituting such measures would bring India's emergency legislation within the framework of constitutional democracy, upholding legislative pre-eminence while enabling swift executive action where necessary.

Although Articles 123 and 213 authorise the executive to make laws temporarily, comparative analysis highlights checks, transparency, and accountability to avoid undermining parliamentary prerogatives and sustaining constitutional democracy. The lessons from the U.K. and U.S. indicate that a viable executive law-making is achievable without undermining democratic values²⁸.

Findings

- Article 123 and Article 213 ordinance-making powers are meant as temporary, exceptional measures to provide continuity of governance when legislatures are not functioning.
- Judicial review (e.g., D.C. Wadhwa and Krishna Kumar Singh cases) confirms that ordinances should be temporary, exceptional, and not a substitute for normal legislation.

²⁷ Elizabeth Goitein, "Emergency Powers: A System Vulnerable to Executive Abuse" *Brennan center*, 2023.

²⁸ *Ibid.*

- Misuse occurs if executives re-promulgate ordinances or circumvent parliamentary debate, compromising democratic accountability.
- Procedural checks such as obligatory legislative assent within six weeks—are essential to forestall executive excesses.
- Relative comparison with the U.K. and U.S. indicates India requires stricter controls to match constitutional democracy.
- Findings identify that even though ordinances are crucial for pressing requirements, their political or excessive usage undermines legislative dominance and democratic values.

Results of the Study

The research uncovers that the ordinance-making power granted by Articles 123 and 213 of the Indian Constitution was intended to be an emergency measure to provide continuity in governance while the legislature is not in session. Yet, constitutional history and judicial examination show that this power has been most commonly used for political convenience instead of actual urgency. Iconic cases like *D.C. Wadhwa v. State of Bihar* and *Krishna Kumar Singh v. State of Bihar* affirm that the re-promulgation of ordinances without parliament's sanction erodes democratic accountability. The conclusions deduce that although ordinances are constitutionally valid, they should be temporary, exceptional, and open to legislative and judicial review.

Answers to Research Questions

- **To what extent does the executive's ordinance-making bypass legislative authority?**

The study finds that frequent reliance on ordinances, especially through repeated promulgations, does bypass legislative supremacy, converting an exceptional tool into an alternate law-making process.

- **How have courts restricted misuse?**

Judicial pronouncements have consistently emphasized that ordinances cannot be substitutes for legislation and must be justified by urgency. The Supreme Court has invalidated ordinances where the requirement of necessity was not met.

- **What safeguards ensure ordinances remain temporary and exceptional?**

Constitutional provisions mandate that ordinances lapse within six weeks of legislative

reassembly unless approved. Judicial review, legislative scrutiny, and democratic norms act as vital safeguards, though these mechanisms need stronger enforcement to prevent misuse.

Suggestions / Recommendations

- **Tighter Time Limits** – Implement provisions that ordinances should be laid before the legislature within a specific timeframe (e.g., 15 days), without which they would automatically lapse.
- **Judicial Review** – Create a provision for judicial review at the earliest to review whether actual urgency prevailed at the time of promulgation.
- **Prohibition of Re-Promulgation** – Prevent repeated re-promulgation of ordinances dealing with the same subject matter, already found to be unconstitutional, and enshrine this as a principle specifically in the Constitution.
- **Legislative Accountability** – Mandate a specific statement of reasons for overturning an ordinance, laid before the legislature for public and parliamentary scrutiny.
- **Comparative Best Practices** – Borrow procedural protection from regimes such as the U.S. (time-limited emergency powers with oversight by Congress) and the U.K. (ongoing parliamentary scrutiny) to reinforce executive restraint.
- **Public Transparency** – Require publication of ordinances with explanatory notes in readable formats to increase democratic alertness and curtail arbitrary application.

Conclusion

In conclusion the Ordinance-making power under Articles 123 and 213 is crucial in India's constitutional democracy to provide governance during parliamentary recesses. Its constant misuse for political expediency, however, undermines legislative dominance and democratic accountability. Judicial interventions have attempted to restore equilibrium, but loopholes continue to exist. Ordinances need to stay exceptional, short-term, and justified by actual urgency and not political expediency if they are to be legitimate. Strengthening safeguards of procedure, guaranteeing checks by the judiciary and the legislature, and adopting better practices from other democracies can maintain the constitutional balance between executive effectiveness and parliamentary dominance. Finally, the judicious exercise of ordinance-making powers is necessary to maintain the essence of India's constitutional democracy.

Bibliography

- Reena Kansal, “Ordinance making power and its impact on parliamentary form of government a critical analysis” *Sodhganga* 153 (2020).
- Saumya Ranjan Dixit, “Application Of The Basic Structure Doctrine To The Powers Of Promulgating Ordinances,” 4 1–30 (2020).
- Rahul Varshney and Sachin Sharma, “Executive Legislation in India: Legality of Ordinance Making Power,” 6 *Praxis International Journal of Social Science and Literature* 170–5 (2023).
- Sukrit Garg, “A Critical Overview of Ordinance Making Power,” 5 *International Journal of Law Management & Humanities* 1–11 (2022).
- Subir Kumar and Pranjal Chaturvedi, “Ordinances & Administrative Legislations: Discretion Involved in a Legislative Power Vested in the Executive,” 1 *Indraprastha Law Review* 1–7 (2020).
- Raghunath Patnaik, *Powers of the President and Governors in India With Special Reference to Legislative and Ordinance-Making*, 1st ed. (Deep & Deep Publications, 1996).
- Shubhankar DAM, “Constitutional Fiats: Presidential Legislation in India ’s Parliamentary Democracy,” 24 *Columbia Journal of Asian Law* 1–61 (2010).
- Peter Gerangelos, “The General Executive Power of the Union of India and the Commonwealth of Australia: A Comparative Analysis,” 32 *National Law School of India Review* 1–46 (2020).
- Dam S, *Origins and Practice. In: Presidential Legislation in India: The Law and Practice of Ordinances. Comparative Constitutional Law and Policy*, 1st ed. (Cambridge University Press, 2013).
- Amit Yadav Sharma, Vijaylaxmi, *Ordinance Making Powers in Indian Constitution: A Critical Analysis*, 1st ed. (Lap Lambert Academic Publishing, 2020).
- Amit Yadav, *Ordinance Making Powers in Indian Constitution: A Critical Analysis*, 1st ed. (Lexis Nexis, 2020).
- Chandrasekaran Mridul Bhardwaj, “An Analysis of the Power to Issue Ordinance in India,” 42 *Statute Law Review* 305–312 (2021).
- Raja Ram Agarwal, “Constitutional Amendments — A Legal Analysis” *EBC India*, 2020.

- Pranaya Sahay, “Understanding Re-promulgation of Ordinances under Articles 123 and 213 of the Indian Constitution and its Direct Challenge to Parliament’s Supremacy in the Area of Law Making,” 4 *International Journal Of Law Management And Humanities* 564–9 (2021).
- Nikhil Pratap, “Conflicting Fundamental Rights Under the Indian Constitution,” 7 *Columbia Law School* 1–31 (2022).
- Dharmendra Kumar Singh, “An analysis of judicial trend and attitude towards executive legislation (article 123/213) of indian constitution,” 6 *International Journal of CURRENT ADVANCED RESEARCH* 1–8 (2017).
- Aastha Sachdeva and Akankshu Sodhi, “Article 123: A Constitutional Quandary or a Detrimental Dilemma?,” 6 *International Journal of Law Management and Humanities* 1301–9 (2021).
- Indian Kanoon, *Shamsher Singh v. State of Punjab* 2 SCC 831, 1974.available at <https://indiankanoon.org/doc/1382698/>
- Dibakar Dam, *R.C. Cooper v. Union of India* 1 SCC 248, 1970.available at <https://thelegalquorum.com/r-c-cooper-v-union-of-india-1970-a-landmark-judgment-on-bank-nationalization/>
- Shruti Mayur, *D.C. Wadhwa v. State of Bihar* 3 SCC 224, 1987.available at <https://lawfoyer.in/d-c-wadhwa-ors-vs-state-of-bihar-ors-19861987-air-579/>
- Sujata Porwal, *Krishna Kumar Singh v. State of Bihar* 10 SCC 1, 2017.available at <https://legaldesire.com/case-comment-on-krishna-kumar-singh-anr-v-state-of-bihar-ors/>
- Anandita Uppal & Anshi Gandhi, “Ordinance-Making Power In India: Striking A Balance Between Necessity And Overreach,” 6 *IJLLR Journal* 1–8.
- Joyita, “Ordinance making powers of the Executive in India” *prsendia*, 2013.
- Chandrasekaran Mridul Bhardwaj, “An Analysis of the Power to Issue Ordinance in India,” 42 *Statute Law Review* (2019).
- Joyita, “Ordinance making powers of the Executive in India” *prsendia*, 2013.available at <https://prsendia.org/theprsblog/ordinance-making-powers-of-the-executive-in-india?page=30&per-page=1>
- Richard Whitaker, Duncan Sim and Graeme Cowie, “Delegated powers and framework legislation” *House of Commons Library* (2024).

- Elizabeth Goitein, “Emergency Powers: A System Vulnerable to Executive Abuse”
Brennan center, 2023.
- *Ibid.*

