



# P.L.RAJ IAS & IPS ACADEMY

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## 4. Ordinance Power and Parliamentary Decline – Polity

The Supreme Court (Number of Judges) Amendment Ordinance, 2026 was promulgated to increase the sanctioned strength of the Supreme Court, reviving intense debate on India's increasing executive reliance on ordinances and the declining role of Parliament in legislative decision-making. The Constituent Assembly envisaged ordinance-making as an extraordinary mechanism for genuine emergencies when Parliament is not in session – not as a substitute for normal legislative process. Critics argue frequent ordinance use disturbs constitutional balance between Executive and Legislature, weakens parliamentary supremacy, and normalizes governance by executive decree.

### 1. Constitutional Framework of Ordinances

#### Article 123 – Ordinance-Making Power of the President

1. Empowers President to promulgate Ordinance when both Houses of Parliament are NOT in session
2. Circumstances requiring immediate legislative action
3. Ordinance has same force and effect as Act of Parliament (temporary law)
4. **Must be laid before Parliament** when it reassembles
5. Must receive Parliamentary approval within **six weeks from date of reassembly**
6. If Parliament does not approve within prescribed period – Ordinance ceases to operate automatically

#### Enactment Process

1. Decision taken by Union Government (President acts on aid and advice of Council of Ministers)
2. Proposal submitted to President based on Union Cabinet recommendation
3. President may return recommendation for reconsideration
4. If Council of Ministers reiterates advice – President **constitutionally bound to promulgate** regardless of modification

#### Withdrawal and Invalidity

1. President may withdraw Ordinance at any time before expiry on Council of Ministers' advice
2. Ceases to operate if both Houses pass resolutions disapproving before six-week expiry
3. **Void ab initio** if legislating on subject outside Parliament's legislative competence
4. Subject to judicial review like any Act of Parliament

### 2. Article 213 – Governor's Ordinance Power (State Level)

1. Empowers Governor to promulgate Ordinance when State Legislature NOT in session
2. Same force and effect as Act of State Legislature
3. Governor exercises on aid and advice of Council of Ministers
4. **Conditions** – Legislative Assembly not in session; Governor satisfied immediate action necessary
5. Must be laid before State Legislature when it reassembles
6. Ceases after **six weeks** from reassembly unless approved
7. Governor may withdraw before expiry

### 3. Judicial Safeguards on Ordinance-Making Power

| Case (Year) | Key Principle Established |
|-------------|---------------------------|
|-------------|---------------------------|

|                            |                                                                                         |
|----------------------------|-----------------------------------------------------------------------------------------|
| R.C. Cooper (1970)         | Ordinances subject to constitutional limitations and judicial review                    |
| A.K. Roy (1982)            | Ordinances should be used only in situations of genuine urgency                         |
| D.C. Wadhwa (1987)         | Re-promulgation of Ordinances is a fraud on the Constitution                            |
| Krishna Kumar Singh (2017) | Ordinance-making subject to judicial review; cannot become routine legislative practice |

#### 4. Concerns Raised by Frequent Use of Ordinances

##### Executive Overreach

1. Excessive use strengthening Executive's law-making role at expense of Legislature
2. Disturbs constitutional balance between Executive and Parliament
3. Means of avoiding legislative resistance, political scrutiny

##### Weakening Parliamentary Supremacy

1. Parliament risks becoming body merely approving Executive decisions
2. Legislative branch's role in policy formulation, law-making diminished
3. Weakens spirit of responsible government envisaged by Constitution

##### Reduced Public Accountability and Transparency

1. Parliamentary debates allow citizens to assess proposed laws' merits, implications
2. Ordinances bypass this public process limiting transparency, democratic accountability
3. Citizens deprived of observing how different viewpoints are debated, reconciled

##### Precedent for Governance by Executive Decree

1. Frequent promulgation risks normalizing executive law-making
2. Exceptional constitutional powers gradually becoming routine governance instruments
3. Weakens democratic institutions, erodes constitutional conventions

#### 5. Arguments Supporting the Ordinance Route

1. **Immediate action needed** – Urgent legislative intervention when Parliament not in session
2. **Administrative efficiency** – Ensures governance continuity addressing pressing issues without legislative delay
3. **Time-sensitive challenges** – Rapid response to judicial directives, economic developments, public health emergencies, national security
4. **Constitutionally sanctioned** – Article 123 expressly authorizes; legitimate when genuine necessity exists
5. **Subject to Parliamentary approval** – Temporary measures requiring approval within constitutional timeframe preserving Parliamentary supremacy

#### 6. Declining Role of Parliament – Emerging Trends

##### Centralisation of Decision-Making

1. Major policy decisions increasingly originating within Cabinet, party leadership, PMO
2. Parliament often involved only at final approval stage

##### Decline in Committee Scrutiny

1. Increasing Bills enacted without referral to Department-Related Standing Committees
2. Restricts expert consultation, stakeholder participation, evidence-based assessment

##### Compressed Legislative Debates

1. Several Bills passed with limited discussion, shortened debate durations
2. MPs receiving fewer opportunities to scrutinize provisions, propose amendments

##### Disruptions and Political Polarisation

1. Frequent disruptions reducing effective working time

2. Legislative proceedings reflecting partisan confrontation rather than constructive deliberation

### Erosion of Question Hour

1. Key instrument of executive accountability witnessing reduced effectiveness
2. Weakening Parliamentary oversight of government actions

### 7. Significance of Parliament in Democracy

1. **Deliberative democracy** – Primary forum for debate, negotiation, consensus-building; transforms public preferences into legitimate laws
2. **Executive accountability** – Scrutinizes government through Question Hour, Zero Hour, Parliamentary Committees, Adjournment Motions, No-Confidence Motions
3. **Representative character** – Platform for diverse social, regional, linguistic, cultural, political interests
4. **Source of legitimacy** – Laws deriving legitimacy from public reasoning, debate, scrutiny, consultation
5. **Guardian of constitutional democracy** – Prevents power concentration in Executive
6. **Financial oversight** – Control over public purse through Budget, Demand for Grants, PAC
7. **Link between citizens and state** – MPs articulating constituents' aspirations, grievances at national level

### 8. Way Forward

1. **Mandatory committee scrutiny** – For significant, complex Bills ensuring thorough examination
2. **Regulate ordinance use** – Detailed justification demonstrating urgency, necessity for invoking Article 123
3. **Guaranteed debate periods** – Major legislation with minimum debate time
4. **Revitalise Question Hour** – Protect from suspension, dilution strengthening ministerial accountability
5. **Improve legislative research** – Professional support enabling MPs to engage effectively in scrutiny
6. **Review Anti-Defection provisions** – Greater legislative freedom balancing stability with independent judgment
7. **Pre-legislative consultation** – Institutionalize stakeholder, civil society, expert engagement in law-making

### 9. Conclusion

The Supreme Court Judges Ordinance 2026 raises fundamental questions about Indian parliamentary democracy's health — while ordinances remain constitutionally legitimate for genuine emergencies, their routine use risks undermining Parliament as the central institution of democratic deliberation and weakening the constitutional balance between Executive and Legislature.

**Source** – <https://www.thehindu.com/news/national/chief-justice-of-india-surya-kant-new-judges-to-supreme-court/article71050982.ece>