

## This shortcut weakens democracy

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*What does the repeated use of ordinance-making power mean for a democratic nation with a robust parliamentary system, ask Harsimran Kalra and Kaushiki Sanyal, in the context of the recent promulgation of the National Food Security Ordinance shortly before the next session of Parliament.*

The promulgation of the National Food Security Ordinance on July 5, shortly before the Parliament session, has raised many eyebrows. Political pundits are speculating that it is a last ditch attempt by the UPA to garner votes before the 2014 general elections. The UPA 2, on its part, has blamed the repeated disruptions in Parliament for this executive intervention.

Leaving political motives aside, the circumstances in which this ordinance was promulgated also raise the issue of propriety. An ordinance can be promulgated by the president only when Parliament is not in session and 'immediate action' is required. Therefore, it is in the nature of an emergency power, rather than a means to bypass the legislature. Given that Parliament is going to reconvene in a few weeks and there is already a similar Bill pending in Parliament, has the government acted within the lakshman rekha crafted by the Constitution over the executive's law making capacity?

The power of ordinance was devised to overcome extraordinary circumstances, however, this power has not been used sparingly. Over 600 ordinances have been promulgated in India. Except, 1963, not a single year has gone by without the government resorting to the ordinance-making power. In fact, in 1994, 34 ordinances were promulgated, the highest in a year till date. Also, in this year itself, the government has promulgated four more ordinances, including the Criminal Laws (Amendment) Ordinance, which amended India's rape laws.

Successive governments have given short shrift to the 'emergency' test. Right from the inception of the Constitution, reliance was often placed on ordinance powers to deal, not with emergencies, but failures in negotiating the legislative process. Within the first 20 years after the Constitution was adopted, over 30 ordinances were promulgated a few days before Parliament began or after it ended. The two recent ordinances - Criminal Law (Amendment) Ordinance and the Food Security Ordinance - also hardly meet the emergency criteria. Both these ordinances seek to address deep-rooted problems of the country, which have been raised by many experts and activists over the years. The government has not shown any urgency in taking action over the years so it is not clear what recent emergency triggered their promulgation. Moreover, both these ordinances replaced related Bills that were already at an advanced stage in the legislative process. The Criminal Laws (Amendment) Bill was pending with the standing committee while the discussion on the food security Bill had already been initiated in the Budget session of Parliament.

Parliamentary process and democratic checks are circumvented when an ordinance is issued while a related Bill is pending in Parliament. Instances of this disregard for the spirit of the Constitution are many, right from 1954 when the Press (Objectionable Matters) Amendment Ordinance was promulgated. Other instances include the Essential Commodities (Special Provision) Ordinance, 1997 and the Indian Telegraph (Amendment) Ordinance, 2003.

In light of the public debate that raged around both the recent ordinances, due opportunity ought to have been secured to discuss the issues in Parliament. Although the ordinance has to stand the test of Parliament and be passed within six weeks of the session, this is more in the nature of a check in the political plan of the government. Passage of the ordinance on the floor of the House within the stipulated time becomes a face saving exercise instead of a deliberative, consensus building effort. What does the repeated use of ordinance-making power mean for a democratic nation with a robust parliamentary system? Are there structural weaknesses that need to be addressed so that governments are not allowed to rely excessively on ordinances? The time is ripe to devise measures that would deepen our democratic credentials such as allowing for wider public consultations; encouraging governments to engage with the Opposition to break the legislative log-jam and a stricter test of 'emergency' for issuing an ordinance that would be open to assessment by the legislature.

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