



POLITICS OF ORDINANCE: A STUDY OF J.L. NEHRU ERA

Dr. Surender Singh
Assistant Professor ,
Department of Political Science ,
R.K.S.D. (P.G) College, Kaithal (Haryana).



ABSTRACT

The power to make ordinance have been an evocative of British rule in India. It was conceptualized through the various Government of India Acts and then post-independence era it was adopted under article 123 of the Indian Constitution. These powers of law making by the Government of India were consciously shaped on elements of the Government of India Act, 1935 (Articles 42 and 43), and based on other emergency legislation-making powers in other countries. Bequeathed by colonialism, these powers were strengthened despite a long period of one party majority. An ordinance is a special kind of executive decision (issued by a Governor or President on the advice of the State or Central Government respectively) that operates as a law. Although lawmaking power usually lies with the legislative branch of the government, the executive is given the power to issue ordinances in exceptional situations, with the ordinances remaining in force for a limited period of time. The legislature can enact a law incorporating the provisions of an ordinance. However, the legislature can also pass a resolution disapproving the ordinance, in which case the ordinance will cease to operate. The legislature can also choose to do nothing, in which case the ordinance will lapse within six weeks from the beginning of the next session of Parliament or the relevant State Legislature.¹

Making law through ordinances is one of the most controversial powers that have been vested with executive in India. It is a substitute of legislative power of the legislature and is meant to be used only in situation comprising of emergencies. However, in practicality this power has been misused by the executive and is used avoid the legislative process. Present form of ordinance making power is more curtailed as compared to British period; still it leaves plenty discretion at the hand of executive to use it erroneously for political gains. Due to misuse of this power, it is necessary to examine its history and constitution provision regarding ordinance in Indian Constitution. Beside, an effort will be made to know how ordinance is necessary for law making. How executive is overlooked the legislative in the name of law making? Why law making through ordinance could not avoided? These and others related question is the main thrust of this research paper.

KEY WORDS:- Government of India, Ordinance, Constitution, Executive, Legislative, Speaker, Prime Minister, President

INTRODUCTION

On the eve of Republic Day 2015, President Pranab Mukherjee opined that 'ordinance route breaches trust of people' as he said that "Legislature is a platform where progressive legislations using civilized dialogue and enacting law without discussion impact the law-making role of the parliament. It breaches the trust reposed in it by the people. This is neither good for the democracy nor for the policies relating to those laws".² It was not the first time when President Mukherjee had expressed his displeasure regarding ordinance raj as 19 January 2015, while he had warned the government against

ordinance be used only in compelling circumstances, along with displeasure to opposition parties for disruption in the Parliament as he said that to meet certain exigencies and under compelling circumstances, the framers of the Constitution deemed it necessary to confer limited legislative power upon the executive by way of promulgation of ordinances when the Legislature is not in session and circumstances justified immediate legislation. The framers also deemed it necessary to impose certain restrictions on this extraordinary legislative power by constitutionally mandating replacement of such ordinances within a timeframe by the legislators.³ President Mukherjee had also asked the government why the hurry before clearing land ordinance.⁴ The President's views regarding ordinance raj repeats history of ordinance raj since Nehruvian era. S.L. Shankhdar has observed that "The issue of promulgation of ordinances has been a subject of telling correspondence between Speaker G.V. Mavalankar and Prime Minister Nehru. Mavalankar felt acutely that in a parliamentary system laws must be made on the floor of the House and not by executive. He said that the constitutional power of issuing ordinance, as should be exercised selectively and when there was really such urgency that the matter could not wait till the next session was held. He decried the use of this power as an alternative to parliamentary power. It happened always that whenever an ordinance was issued, speaker Mavalankar would at once write to the Prime Minister and point out that there was no urgency. Once speaker Mavalankar was so incensed that he didn't agree to the prorogation of a session so that government may not have legal authority to issue, an ordinance. This must have troubled Prime Minister Nehru, for whenever a ministry would propose an ordinance, he would return it. This showed Nehru's extreme form of deference to the Speaker that he had to forego his undoubted power of promulgating an ordinance, when a situation called for the issue of an ordinance. He also agreed to debate the issue in the House. The government clearly emphasized that they and they alone were the judges of the necessity of an ordinance and the occasion when they should promulgate it. But Nehru realized that legal and enabling power is one thing and the exercise of it in a democratic way is another. Prime Minister Nehru saw the wisdoms of speaker Mavalankar in refraining the government from acting irresponsibly".⁵ The issue of promulgation of ordinances by the President had been the subject matter of constitutional importance from the very beginning. Though in initial years of Indian Republic, the than President Dr. Rajendra Parsad had never expressed his displeasure over any ordinance but the than speaker G.V. Mavalankar had voiced his objections to the than Prime Minister J.L. Nehru which is evident from correspondence between Speaker Mavalankar and Prime Minister Nehru.

Writing to the Minister of Parliamentary Affairs on 25 November 1950, speaker Mavalankar said, "The procedure of the promulgation of Ordinances is inherently undemocratic. Whether an ordinance is justifiable or not, the issue of a large number of ordinances has psychologically, a bad effect. The people carry an impression that government is carried on by ordinances. The House carries a sense of being ignored, and the Central Secretariat perhaps gets into the habit of slackness, which necessitates ordinances, and an impression is created that it is desired to commit the House to a particular legislation as the House has no alternative but to put its seal on matters that have been legislated upon by ordinances. Such a state of things is not conducive to the development of the best parliamentary traditions".⁶ In reply to the above letter, Prime Minister Jawaharlal Nehru wrote on 13 December 1950, "I think all of my colleagues will agree with you that the issue of ordinances is normally not desirable and should be avoided except on special and urgent occasions. As to when such an occasion may or may not arise, it is a matter of judgment. Not only the government of a state, but also private members of the Parliament are continually urging that new legislation should be passed. Parliamentary procedure is sufficient to give the fullest opportunities to consideration and debate and to check errors and mistakes creeping in. That is obviously desirable. But, all this involves considerable delay. The result is that important legislation is held up. Every Parliament in the world has to face this difficult problem and various proposals have been made to overcome it".⁷

Again, in his letter of 17 July 1954, to the Prime Minister, Speaker Mavalankar stated "The issue of an ordinance is undemocratic and cannot be justified except in cases of extreme urgency or emergency. We, as first Lok Sabha, carry a responsibility of laying down traditions. It is not a question of present personnel in the government but a question of precedents; and if this ordinance issuing is not

limited by convention only to extreme and very urgent cases, the result may be that, in future, the Government may go on issuing ordinances giving Lok Sabha no option but to rubber stamp the ordinances. I may invite your attention to one more aspect, namely, the financial aspect involved in the amendment to the Indian Income tax Act, 1922. It is not directly a taxation measure, but it is intended for the purpose of collection of taxes. Indirectly, it affects the finances and it would be a wrong precedent to have an Ordinance for such a purpose".⁸ The Prime Minister, in his reply on 19 July 1954, wrote "We have been reluctant to issue ordinances and it is only when we have felt compelled to do so by circumstances that we have issued them. You will appreciate that it is the responsibility of the Government to decide what steps should be taken in a particular contingency. The Constitution itself has provided for the issue of Ordinances where such necessity arises and that discretion has to be exercised by Government. We have issued in the past a very limited number of ordinances and we have always placed before Parliament the reasons for having issued each one of them. I am myself unable to see why this should be considered undemocratic. Of course, this power, like any other power, may be abused and Parliament will be the ultimate judge as to whether the use of this power has been right or wrong".⁹

No doubt use of ordinance provision by the government will always be controversial but Nehru in regard to land reforms was so concerned to go to any length including ordinance route which is evident from his letter dated 15 June 1951 to the chief ministers in which he had stated that "In regard to the *Zamindari* legislation, we have to go ahead now as speedily as possible. Even so, it is desirable to take every step after full consideration and with as large a measure of cooperation as possible. We cannot, of course, permit any lack of co-operation by a section of the people to stop us from going ahead in this respect. But it will probably make for speed if we consider criticisms and, where they are valid, meet them, either by executive action or even, if necessary, by some amending legislation".¹⁰

So far as Nehruvian policy regarding ordinance is concerned, each and every union government followed it. Till date 660 ordinances have been promulgated as follows:

Ordinances promulgated during different Lok Sabhas¹¹

Prime Minister	Lok Sabha Session	Lok Sabha Year	Ordinances Promulgated
Jawaharlal Nehru	1 st	1952-1957	39
Jawaharlal Nehru	2 nd	1957-1962	20
Jawaharlal Nehru (1962-1964), Gulzarilal Nanda (1964) Lal Bahadur Shastri (1964-1966) Gulzarilal Nanda (1966) Indira Gandhi (1966-67)	3 rd	1962-1967	31
Indira Gandhi	4 th	1967-1970	38
Indira Gandhi	5 th	1971-1977	99
Morarji Desai (1971-1979) Charan Singh (1979-1980)	6 th	1977-1980	28
Indira Gandhi	7 th	1980-1984	58
Rajiv Gandhi	8 th	1984-1989	35
Vishwanath Pratap Singh (1989-1990) Chandra Shekhar (1990-1991)	9 th	1989-1991	16
PV Narasimha Rao	10 th	1991-1996	77
Atal Bihari Vajpayee (May 16- June 1, 1996) H.D. Deve Gowda (June 1 1996- April 21, 1997) I.K. Gujral (April 21, 1997-March 19, 1998)	11 th	1996-1998	77
Atal Behari Vajpayee	12 th	1998-1999	25

Atal Behari Vajpayee	13 th	1999-2004	33
Dr. Manmohan Singh	14 th	2004-2009	36
Dr. Manmohan Singh	15 th	2009-2014	25
Narendra Modi	16 th	2014-2019	23
Total			660

As the use or misuse of ordinance provision of the Indian Constitution (Article 123) had always been debatable, it is pertinent here to peep into the minds of constitution famous. Proposed Article 102 (Article 123 of the constitution) was discussed in the Constituent Assembly on 23 May 1949. The major objection to proposed Article 102 was raised by Pandit Hirday Nath Kunjru as he moved amendment, "That in sub-clause (a) of clause (2) of article 102, for the words 'six weeks from the re-assembly of Parliament' the words 'thirty days from the promulgation of the Ordinance' be substituted". Article 102 requires that: "An ordinance promulgated under this article 'shall be laid before both Houses of the Parliament and shall cease to operate at the expiration of six weeks from the re-assembly of Parliament, or if before the expiration of that period resolutions disapproving it are passed by both Houses, upon the passing of the second of these resolutions".¹²

He argued that "This is a vital matter to which the Constitutions recently passed in several European countries have attached the greatest importance. The power of passing an ordinance is equivalent to giving the executive the power of passing a law for a certain period. If there is such an emergency in the country as to require that action should be immediately taken by the promulgation of an ordinance, it is obviously necessary that Parliament should be summoned to consider the matter as early as possible. Suppose that law and order in the country are seriously affected and the government of the day consider it necessary that an ordinance should be promulgated at once in order to prevent the situation from deteriorating or to bring it under control, it is obvious that if the legislature is not sitting, the executive must be enabled to arm itself with adequate power to maintain the peace of the country but it is equally necessary that the legislature should be summoned without avoidable delay to consider the serious situation that makes the promulgation of the ordinance necessary. I do not therefore see why an ordinance promulgated by the Governor-General should be in force for several months...my objection is not merely that the period during which the ordinance may remain in force is too long; it also relates to the character of the ordinance that may be promulgated. The executive may in a hurry pass an ordinance which though partially necessary, may not be required in all its details. It is therefore necessary that the legislature should be given an opportunity, not merely of considering the situation requiring the passing of an ordinance, but also the terms of the ordinance. It is quite possible, sir, that the legislature, while taking the view that some legislation is necessary, may not agree completely with the executive, and may modify the ordinance that has been promulgated. For these two reasons, sir, I consider it very necessary that the power of passing an ordinance given to the executive should be much more limited than it would be under article 102. I hope that my honourable friend Dr. Ambedkar will give the matter the consideration that it deserves and will agree with me that this is a matter in regard to which, if necessary, the House may be asked to postpone consideration, if he is not ready with the necessary amendment. It is quite possible sir, that the amendment in the form in which I have put it may be defective. It may be perfectly easy for a member to get up and point out the defects in it. But what is necessary is not that destructive criticism should be resorted to, but that such action should be taken as will be consistent with the new constitutional status of the country, and be in conformity with the responsibilities of the legislature".¹³

Dr. P.S. Deshmukh while favouring the proposed article argued that "We are here dealing with the legislative powers of the President and we have got to take notice of the fact that at the present moment governments have ceased to be merely policemen or judges. A time there was when the governments of the world were only policemen and judges. But now-a-days there is nothing that is outside the sphere of governmental activity. Amongst other things, governments of the present day are shop-keepers; they are commission agents and even contractors. Every sort of duty that an ordinary

citizen was performing is being performed by the state under the exigencies of the present circumstances. I therefore feel that the powers that we are giving to the President are all the more necessary because the day to day administration has become so complex".¹⁴ Mahboob Ali Baig Sahib cautioned against misuse of the article by reasoning that "Pandit Kunzru has clearly pointed out that the ordinance regime might continue for six months, and for six weeks added on to six months. Now the question is whether it is desirable that in a democracy, where you have got people's representatives in the country who could be summoned at short notice, that you should give any opportunity to the executive to postpone calling the Parliament which the executive is entitled to do for six months and give six weeks more. It is I submit undemocratic and will lead to executive oppression, to say the least. What I find in the present day is the tendency on the part of members of the cabinet to bring forward legislation or make proposals in the Constitution itself based upon the present fears. The government in power or the persons in charge of these matters considers that tension always exists and provision must be made for it, giving the executive power to meet any contingency. Well, we are prepared to give power to the executive to meet the situation the moment any contingency arises. When Parliament can be called at once within a week or ten days, I do not see any reason why we should allow an opportunity to delay calling the Parliament in order to decide whether the ordinance promulgated should continue. It is fraught with danger and the chances are that the executive might arrogate to itself the powers and will be tempted to postpone calling the Parliament So, Sir, democratically-minded Dr. Ambedkar must be able to accept the suggestion embodied in the amendment of Pandit Kunzru".¹⁵

Dr. Ambedkar Replied to all objections and rejected all the Amendments by observing that "The provisions contained in article 102 do not confer upon him any power which the Central Legislature itself does not possess, because he has no special responsibility, he has no discretion and he has no individual judgment. Consequently my submission is that the argument which was profounded by my friend, Pandit Kunzru, went a great deal beyond the provisions of article 102. If I may say so, this article is somewhat analogous; I am using very cautious language to the provisions contained in the British Emergency Powers Act, 1920. Under that Act, also, the King is entitled to issue a proclamation, and when a proclamation was issued, the executive was entitled to issue regulations to deal with any matter, and this was permitted to be done when Parliament was not in session. My submission to the House is that it is not difficult to imagine cases where the powers conferred by the ordinary law existing at any particular moment may be deficient to deal with a situation which may suddenly and immediately arise. What is the executive to do? The executive has got a new situation arisen, which it must deal with ex-hypothesis it has not got the power to deal with that in the existing code of law. The emergency must be dealt with, and it seems to me that the only solution is to confer upon the President the power to promulgate a law which will enable the executive to deal with that particular situation because it cannot resort to the ordinary process of law because, again ex-hypothesis, the legislature is not in session. Therefore it seems to me that fundamentally, there is no objection to the provisions contained in article 102".¹⁶

So, if today somewhat preference of ordinance raj by the present Union Government in the name of development which requires foreign investment may be controversial or debatable but not all together non-desirable. But in this regard Nehru's views on development and foreign investment require urgent need of consideration for the benefit of the people of India. In his letter dated 15 September 1954, to Chief Ministers he had expressed his views as "I am convinced that anywhere, and more especially in India, the peaceful democratic approach is the best in the long run. In India, I would say it is the best even in the short run because any other approach would lead to conflicts and great friction and this comes in the way of constructive work. Therefore, our approach has to be on these lines, but our ideal has to be a socialist economy. Meanwhile, we have to work for greater production as well as greater employment and the two have to be linked together. We have also to remember that we cannot rely too much on external help...foreign investments can be accepted in the measure they fit into the framework of the plan and do not imply excessive financial obligations. In addition to this, of course, there is the political aspect. Foreign aid brings political complications and ultimately perhaps a measure of economic control. The question, therefore, arises about our capacity for saving and investments, this

investment being not primarily based on the profit motive but in our fulfilling the demands of our Plan".¹⁷

CONCLUSION

Thus, the issue of ordinance always is debatable not only in India, but also outside the country. Constituent Assembly has added this article in the constitution for emergency purpose only. But the massive use of this article 123 in India not only questionable but also sometimes unnecessary. Many times it has been used to fulfill the political objective. In Nehru period it has used mostly for genuine purpose because the then speaker of Lok Sabha was more cautious rather than government. But after Nehru era it has been used mainly to fulfill the political desire for the name of development and narrowness of regional political parties. This is the most controversial provision of Indian Constitution till date. Let debate going on for better future of Indian democracy.

REFERENCES:

1. Trupti Daphtary, Ordinance and their Consequences, <http://www.manupatrafast.in/NewsletterArchives/listing/Hariani/2017/Feb/ORDINANCES%20AND%20THEIR%20CONSEQUENCES.pdf>.
2. **The Indian Express**, New Delhi, 26 January, 2015
3. **The Indian Express**, New Delhi, 20 January, 2015
4. **The Indian Express**, New Delhi, 02 January, 2015
5. S.L. Shankdhar, Nehru and Presiding officers, **The Journal of Parliamentary Information**, Vol.XXXII, No.2, June 1986, pp.320-321.
6. [Http://www.164.100.47.134/internet/pract and proc/chapter XXIII.pdf](http://www.164.100.47.134/internet/pract and proc/chapter XXIII.pdf).
7. **Ibid.**
8. **Ibid.**
9. **Ibid.**
10. Madhav Khosla (ed.), **Letters for a Nation from Jawahar Lal Nehru to His Chief Ministers 1947-1963**, Penguin, New Delhi, 2014, pp.121-122.
11. Presidential Ordinances 1950-2014, http://www.164.100.47.194/loksabhawriter_eaddata/UpdatesEventLSS_635907162497207518_presidential_address_english.pdf. Also See, NDA takes Ordinance Route: Narendra Modi regime outstrips UPA's Pace but lags behind Nehru, Indira, <https://www.firstpost.com/india/nda-takes-the-ordinance-route-narendra-modi-regime-outstrips-upas-pace-but-lags-behind-nehru-indira-5223831.html>
12. Constituent Assembly Debate, vol. VIII, p.206.
13. **Ibid.**, pp.206-207.
14. **Ibid.**, pp.210-211.
15. **Ibid.**, pp.212-213.
16. **Ibid.**, p.214
17. Supra note 9, p.180