

Publication: The Economic Times

Date: 24 July 2014

Headline: Ordinance has become a parallel & preferred legislative arrangement

## Ordinance has become a parallel & preferred legislative arrangement

PUBLISHED ON JULY 24, 2014

BY BIBEK DEBROY

Many years ago, I used to work at the Gokhale Institute of Politics and Economics, Pune. At that time, I had a colleague named D.C. Wadhwa and he had just (1983) published a book titled, "Re-promulgation of Ordinances: A Fraud on the Constitution". That book was an eye-opener, because it was about misuse of ordinances in the State of Bihar. Much later (2008), D.C. Wadhwa followed this up with another book, concerning the Supreme Court case that followed. Rather oddly, there isn't much stuff on ordinances, whether at the level of State Assemblies or Parliament. All of us are vaguely aware about Article 123 in the Constitution (for Parliament). "If at any time, except when both Houses of Parliament are in session, the President is satisfied that circumstances exist which render it necessary for him to take immediate action, he may promulgate such Ordinance as the circumstances appear to him to require." Every once in a while, we will read media reports about how the government of the day is misusing the ordinance route and how the opposition is raising a stink about this. When I came across a book by Shubhankar Dam (Singapore Management University School of Law), titled, "Presidential Legislation in India, the Law and Practice of Ordinances", Cambridge University Press, 2014, I was interested.

This is not a book review. (Read the book.) Like several others, I had an impression about ordinances – they are exceptional, used when "immediate action" is required. You have that impression because no one has done "research" on ordinances, D. C. Wadhwa wasn't quite that. The Dam book has data between 1952 and 2009 and focuses on Parliament. During this period of roughly 60 years, we have had an average of 10.6 ordinances per year. I don't know if this figure will surprise you. It surprised me. I had no idea the number was that high. Almost once every month, there has been a need for "immediate action". 17.7% of the legislation during this period has been in the form of ordinances, bypassing Parliament, so to speak. That's a very high figure too. The worst periods for ordinances (in absolute numbers) were 1970s and 1990s. In other words, the situation isn't improving. It's getting worse. Eventually, an ordinance has to be passed by Parliament. Otherwise, it lapses, or has to be withdrawn. 77.7% of ordinances eventually became legislation passed by Parliament. In other words, Parliament would have passed the law. What was the hurry?

Let me give you a quote. "Included in the Constitution as an 'exceptional' arrangement, the mechanism of ordinances has, in the course of sixty years, become just another legislative arrangement. Indeed, in many ways, it has become a parallel arrangement, and often, the preferred legislative arrangement. To cabinets opposed to even elemental measures of transparent or scrutiny, ordinances are a comfortable alternative: they require no discussion, debate or vote." We have an image of Parliament. It's supposed to pass legislation and there are several reasons for discomfort with the way Parliament functions. Hence, there are suggestions about improving its functioning too, though perhaps this doesn't receive as much of attention as it should. Why aren't we that interested in something that bypasses, at least initially, Parliament?