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## **Ordinances have been 'handy tool' since 1952**

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'They infected governance long before Parliament took a disruptive turn'

When the President promulgated the Citizenship (Amendment) Ordinance on Wednesday, it was the ninth invocation of Article 123 by the Modi government in a little over seven months, but it was also the 646th ordinance since 1952.

In fact, says Shubhankar Dam, Assistant Professor of Law at the Singapore Management University, and author of *Presidential Legislation in India: The Law and Practice of Ordinances*, the past 15 years or so have actually seen a "rather significant decline" in the number of ordinances.

Contrary to public perception — fuelled by successive governments citing disruptions in Parliament to justify the ordinance route — Professor Dam points out that "ordinances infected governance in India long before Parliament took a disruptive turn; the Nehru-Gandhi years were especially damaging."

Though Jawaharlal Nehru, the freedom fighter, had called ordinances — in play since 1861 — a "charter of slavery", he along with B.R. Ambedkar battled for its inclusion during the Constituent Assembly debates, and 66 ordinances were promulgated under Prime Minister Nehru's watch between 1952 and 1964. If he paved the way for repeated use of Article 123 by governments that followed, he also made a U-turn on ordinances as an acceptable norm within the political class.

Once out of government, every political party bills ordinances as "authoritarian" and a subversion of parliamentary democracy, but a cursory look at the ordinances promulgated over the years shows how Article 123 becomes a handy tool of governance once in power.

The Janata Party years (1977-1980) saw 28 ordinances, the National Front years (1989-1991) 16, the United Front years (1996-1998) 77, and the first incarnate of the BJP-led National Democratic Alliance (1998-1999 and 1999-2004) saw 58 ordinances.

In all, the last decade of the United Progressive Alliance saw 61 ordinances being promulgated, inviting the charge of "ordinance raj" from the BJP, among others, with current Finance Minister Arun Jaitley then calling the use of Article 123 "an abuse of the legislative power to issue ordinances".

Now, Mr. Jaitley is fighting criticism over the slew of ordinances in the fortnight after the close of the Winter Session of Parliament as a demonstration of the "firm commitment and determination of the government to reforms" and an announcement to the world including investors that India

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“can no longer wait even if one of the Houses (of Parliament) waits indefinitely to take up its own agenda.”

This has translated into some ordinances, like the potentially divisive Land Acquisition Ordinance being promulgated without an attempt to take the Bill first to Parliament, even though the Lok Sabha has functioned largely disruption-free. This is something the UPA did too; in fact, only six of the 36 ordinances promulgated in the 14th Lok Sabha and only three of the 25 in the 15th Lok Sabha involved Bills stuck in Parliament.

Governments are particularly prone to introducing ordinances without prior attempt at tabling Bills before Parliament. UPA-1 introduced eight ordinances in its first six months in power, none of them first taken to Parliament, including ordinances repealing the stringent anti-terror legislation.