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The SC Ordinance Is a Warning About Parliament

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The SC Ordinance Is a Warning About Parliament

 **The Indian Express** 3 June 2026 **GS2**

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INTERVIEW ANGLE

"Ordinances have a specific emergency purpose. Has India normalised them as a routine legislative shortcut, and what reform would restore Parliament's primacy?"

The SC strength ordinance bypasses Parliament's deliberative function. This is less about the immediate measure than about the normalisation of ordinance use as a governing tool — demanding judicial vigilance and parliamentary reform.

THE ARGUMENT IN ONE LINE

Ordinances are emergency safety valves, not governing shortcuts — using one to increase SC strength normalises executive bypass of Parliament's deliberative primacy.

THE CONSTITUTIONAL PROVISION

PROVISION	DETAIL
Article 123	President can promulgate ordinances when Parliament is not in session AND immediate action is necessary
Validity	Same force as Act of Parliament; must be placed before Parliament within 6 weeks of reassembly; lapses if not approved
SC review	D.C. Wadhwa (1987); Krishna Kumar Singh (2017) — ordinances cannot circumvent Parliament

WHAT THE ORDINANCE DID

- Raised **sanctioned SC strength from 34 to 38** (incl. CJI) — a significant constitutional change.
- Could have been introduced as a **Bill in Parliament's last session**.

UPSC RELEVANCE

PAPER	RELEVANCE
GS2	Polity — Article 123, separation of powers, ordinance power, parliamentary supremacy
Prelims	Article 123 (ordinances); D.C. Wadhwa case 1987; Krishna Kumar Singh 2017; ordinance lapses in 6 weeks

Sources: *Indian Express*, *PRS Legislative Research*

Source: The SC Ordinance Is a Warning About Parliament — Ujyari.com | Free UPSC & State PCS Editorial Analysis

• KEY ARGUMENTS AT A GLANCE

The executive's recourse to an ordinance to increase SC strength — rather than introducing a Bill in Parliament — reflects a pattern of bypassing legislative deliberation, raising constitutional concerns about checks and balances and demanding urgent parliamentary procedural reform and judicial vigilance to preserve the separation of powers.

✓ SUPPORTING

- Article 123 allows the President to promulgate ordinances "if at any time, except when both Houses of Parliament are in session" he is satisfied that circumstances exist which render immediate action necessary — the provision is an emergency safety valve, not a routine legislative pathway.
- Increasing the SC's sanctioned strength is a significant constitutional change affecting the judiciary's capacity; it merits Parliamentary debate and scrutiny, not executive unilateralism — the subject matter itself highlights the tension between two branches of government.
- The pattern of ordinance use — particularly for measures that Parliament could have addressed in the preceding session — signals that the executive treats Parliament as a ratification chamber, not a deliberative body.


COUNTER

The government argues that the SC backlog was urgent and the ordinance expedited relief to litigants; critics concede that some urgency existed but maintain that the measure could have been introduced in Parliament's last session with the same legislative outcome and more democratic process.


WAY FORWARD

Require the government to justify any ordinance in a "necessity statement" tabled with Parliament; limit the scope of Article 123 to genuine national emergencies through a constitutional amendment or a Supreme Court ruling on ordinance power's proportionality; streamline Parliament's schedule to reduce the temptation of ordinance route.

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MAINS ANSWER FRAMEWORK
QUESTION

"Frequent recourse to ordinances reflects a structural weakening of Parliament as the primary law-making body." Critically examine. (250 words)

INTRODUCTION

The SC (Number of Judges) Amendment Ordinance, 2026, expanded the Supreme Court's sanctioned strength outside Parliament's walls. The specific measure may be desirable — fewer pending cases is a legitimate goal — but the process raises a constitutional concern that goes beyond the immediate subject: the normalisation of ordinances as a governing tool.

BODY

Article 123 of the Constitution permits Presidential ordinances when Parliament is not in session and "circumstances exist which render it necessary to take immediate action." The provision was designed as a safety valve for genuine emergencies — not as a parallel legislative track for policy preferences that could wait for Parliament to convene. When the government uses an ordinance for matters within Parliament's competence, debatable on their merits, and not inherently time-critical (the SC had been operating with a backlog for years; a few more months for a Bill would not materially harm litigants), it

subtly shifts the separation of powers.

Parliament's role as a deliberative, examining, scrutinising body — questioning the executive, amending legislation, giving voice to regional concerns — is diminished when consequential decisions arrive as presidential faits accomplis. The Supreme Court's own jurisprudence on ordinances (*D.C. Wadhwa v. State of Bihar, 1987*; *Krishna Kumar Singh v. State of Bihar, 2017*) requires that ordinances not be used to bypass Parliament; the judiciary should apply this standard rigorously.

Parliament itself must also reform its scheduling to ensure sessions are frequent and long enough to remove the executive's temptation to legislate by ordinance.

CONCLUSION

The SC ordinance is less alarming for what it contains than for what it represents: a legislative culture in which the executive routinely prefers the faster, less scrutinised ordinance route. Restoring Parliament's primacy requires both judicial vigilance on ordinance constitutionality and parliamentary scheduling reforms that eliminate the "no session" pretext.

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