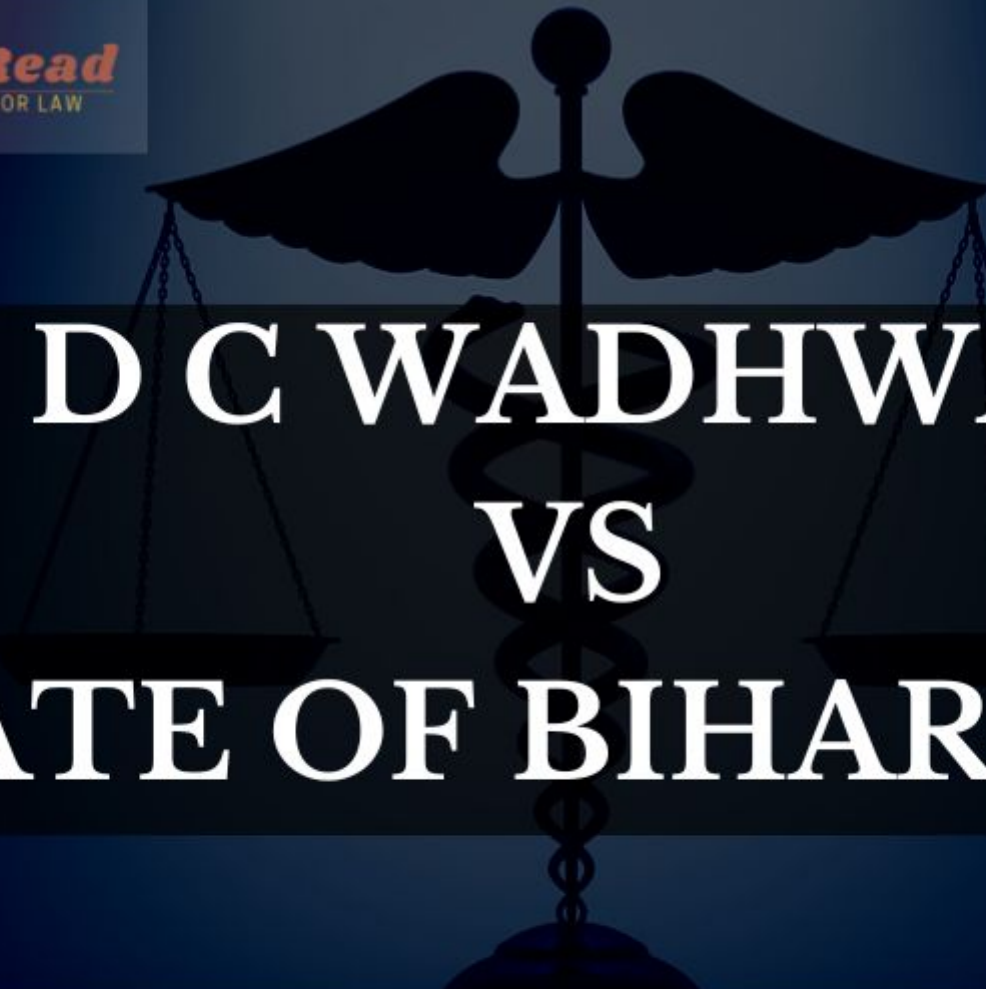



Landmark Judgement

Case Summary: D C Wadhwa v. State of Bihar (1987)



D C WADHWA
VS
STATE OF BIHAR

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The Apex Court of India has questioned **the governor's authority under Article 213 of the Indian Constitution** to re-promulgate ordinances for an infinite duration in the matter of D C

Wadhwa v. State of Bihar.

One of the country's biggest challenges to curbing the executive branch's inappropriate use of power is the repeated proclamation of the same ordinance. There have been many emergency situations throughout India's constitutional history that required the administration to enact a legislation or resolution and put it into action right away.

Being an executive authority, it is the constitutional power bestowed upon the President and the Governors of the state to take immediate action in such emergency situations when both the houses of the parliament are not in session. Through the process of promulgating ordinances, **the legislative branch's primary authority to enact laws is transferred to the executive branch.**

Within 42 days of the start of the legislative sessions, the promulgated ordinances must be approved by the parliament in order to become official legislation. However, because state governors frequently re-promulgate ordinances for an infinite amount of time, this has created a great deal of space for the abuse of executive power and procedures throughout the nation. This questions the inadequacy of the constitutional machinery in the country and the power granted to the state's executive authority, i.e. the governor.

Overview

The constitutional provisions enshrined under Articles 123 and 213 of the Indian Constitution deals with the ordinance making power of the executive. Article 123 of the Indian Constitution states that the president of the country has the power to promulgate an ordinance only when both the houses of parliament are not currently in session and when an emergency situation exists. **The president's authority to issue an ordinance has the same legal force and effect as a parliamentary statute.**

Additionally, Article 213 states that a state governor may issue an ordinance only in three circumstances: either the state legislative assembly is not in session or both of the state legislature's houses are not in session, or the nation is experiencing an extraordinary or emergency. An ordinance issued by a state's governor will have the same legal force and effect as a state legislature's law.

It should be noted that the ordinance must be presented to both chambers of the legislature and that it expires six weeks after both houses reassemble. Essentially, the executive's exceptional authority to promulgate ordinances cannot be used in place of the nation's parliament or state legislature's legislative authority.

Factual Context of the Case

According to the case's facts, Petitioner No. 1 was a professor of economics who was studying land tenures in the state of Bihar. After conducting research, he informed the court that approximately 256 ordinances were passed in the state between 1967 and 1980. Due to periodic re-promulgation of ordinances, these promulgated ordinances were in effect for a considerable amount of time, often between one and fourteen years.

Approximately sixty-nine of the 256 ordinances were repeatedly re-promulgated with the president's previous agreement. It is significant that the ordinances were being re-promulgated in accordance with the proper parliamentary procedure in order to maintain their validity while the executive branch assumed responsibility for enacting laws in the state of Bihar.

The Bihar State Assembly was unable to operate efficiently due to inefficiencies. The court heard challenges to the state governor's promulgation and re-promulgation of the ordinances for an indeterminate period of time without considering the requirements of the ordinance's provisions at that time.

The scope and intent of Article 213 of the Indian Constitution, which addresses the governor's authority to promulgate ordinances, were therefore contested in a writ petition sent to the Apex Court of India under Article 32 of the Indian Constitution.

As a result, the constitutionality of three ordinances enacted by the governor of Bihar is in doubt. These are:

Bihar Forest Produce (Trade Regulations) Third Ordinance, 1983;

The Third Ordinance of the Bihar Intermediate Education Council, 1983

The Third Ordinance of Bihar Bricks Supply (Control), 1983.

The aforementioned ordinances were challenged by four petitioners. Petitioner No. 1 is a professor of economics who studied the nation's constitutional framework in great detail, particularly as it related to the promulgation and re-promulgation of ordinances. Petitioner No. 2 is a village resident who produces and distributes forest products, but because of a clause in the relevant first ordinance, i.e. According to the Bihar Forest Produce (Regulations of Trade) Third Ordinance, 1983, the seller's total power to determine the pricing and quantities to be sold has been curtailed.

The petitioner's fundamental rights were violated when the state government assumed total authority over the forest produce disposal, raising concerns about the ordinance's constitutionality. Furthermore, an intermediate pupil of A.N. College, Patna has contested the constitutionality of the Bihar Intermediate Education Council Third Ordinance, claiming that he has been negatively impacted by the restriction of his rights or has the capacity to do so.

Because of the stipulations of the Bihar Brick Supply (Control) Third Ordinance, the State now controls every aspect of the brick industry's production, distribution, and operation. Due to the ordinance, Petitioner No. 4, a brick manufacturer, has filed a writ petition contesting the ordinance's constitutionality.

Problems and Legal Facts

Did the governor of the State of Bihar abuse the authority granted to him by article 213 of the Indian Constitution by re-promulgating ordinances?

Arguments

The petitioners' claims

The Adv represented the appellants. The following claims were **made by Soli J. Sorabji**: Clause (5) of the Bihar Forest Produce (Regulation of Trade) **Third Ordinance, 1983** gave the State a total monopoly over the regulation of buying and selling forest produce, which goes against the principles of the constitutional mandate.

The state government, or any other forest officer authorized by the state government who is in control of the produce, alone determines the price at which the forest produce may be bought and sold. The ordinance's Clause (7) makes this clear.

The Bihar Brick Supply (Control) Third Ordinance declares the state to be the sole proprietor and determines the price at which the bricks are produced, delivered, disposed of, and consumed.

The Bihar state administration has been re-promulgating ordinances for an infinite amount of time with the purpose of keeping them in effect even while parliamentary sessions are not taking place.

The Respondent's Arguments

Adv. represented the respondents. L.N. Sinha is primarily satisfied with the following points:

The provisions of the Bihar Bricks Supply (Control) Third Ordinance, 1983 and the Bihar Forest Produce (Regulations of Trade) Third Ordinance, 1983 have expired and were passed by the parliament as legislation, giving the petitioners no legal standing to file a writ petition in the Supreme Court. A legislative proposal for the third ordinance, the Bihar Intermediate Education Council Third Ordinance, has already been presented to the parliament.

Since he is an outsider and cannot oppose the re-promulgation of ordinances through a writ petition, Petitioner No. 1 has no legal stake in contesting the current case.

The respondent argued that as the writ petition against the Bihar Intermediate Education Council, Third Ordinance is solely academic in character, the court should not become involved.

According to Article 213 of the Indian Constitution, an ordinance must continue to be legal even after the governor re-promulgates it.

A decision was made.

The Bihar government believed that the executive branch may issue ordinances when needed and that the state legislature was not required to pass them. This is obviously in violation of the Indian Constitution's tenets.

In light of this, the Supreme Court has decided that the government's re-promulgation practice cannot be justified as a legitimate use of legislative power. The following findings were noted:

The governor's authority to enact an ordinance under Article 213 should only be used in extreme circumstances and when the state legislature's two houses are not in session.

Every ordinance that the governor promulgates must be presented to the parliament's houses within six weeks of its reassembly. Unless it is transformed into an enactment or has been rejected by the legislature before it expires, an ordinance has a maximum lifespan of seven and a half months.

The legislature is India's principal legislative body. In such emergency situations, the executive only manages the legislative process when the legislature is not in session. An ordinance issued by **the governor under article 213 is an emergent power** that can only be used when the parliament is not in session and the emergency situation calls for quick action.

It goes against the norms of a democratic country to transfer the legislative authority to the executive branch in times of emergency. Only in the most dire circumstances may the authority be used.

The principles of the Indian Constitution indicate that the ongoing issuance of ordinances is not a suitable remedy because the legislature has the authority to enact the ordinance. Without consulting the legislature, the ordinance cannot be perpetually extended through re-promulgation.

The justices in this case believed that the re-promulgation of an ordinance should be regarded as colorable legislation because the executive branch has unjustifiable authority to promulgate and re-promulgate ordinances, which goes beyond the authority granted by the constitution. According to the doctrine of colorable legislation, "a constitutional authority cannot do indirectly what it is not permitted to do directly." If a clause gives the executive the constitutional authority to carry out a specific act, it shouldn't be allowed to be violated because of an underlying exception because that would be fraud.

he **seminal case of KC Gajapati Narayan Deo & Ors also provides an explanation of the doctrine. v. Orissa State.**

To put it another way, the Act's substance—rather than just its form or appearance—is what matters. If the Act's subject matter is something that the legislature is not authorized to legislate on, then the law's form is irrelevant. It would still be condemned even if it were clothed. The legislature cannot use an indirect approach to breach the constitutional prohibitions.

The legislative nature of an enactment or legislation is considered to be colorable in nature if it is used indirectly to benefit and enable the executive authority to surpass their constitutional powers, as was correctly held in another landmark case. When an ordinance's issuance clause states that it may be issued in an emergency but will expire after six weeks for the assembly of the houses, it is considered to be of colorable nature. However, if the state government has the option to validate the ordinance after six months, it is considered to be of colorable nature.

Typically, the government does this to satisfy political demands that allow the authorities to use their power in a colorful manner. Ordinances that are genuinely created by the executive branch rather than the legislative can be used to govern the lives and liberty of a nation's population. A compromise on constitutional norms would result from such a strategy choice, enabling the government to violate constitutional laws created especially to address unanticipated situations.

Although it is true that the court lacks the ability to review the governor's authority, there is no disagreement about the governor's level of satisfaction, as was mentioned in the case. As a result, the court ruled that every ordinance must be approved by the legislature and, if needed, should be developed into an enactment. A law that blatantly violates constitutional principles does not require interpretation, and anything that deviates from these standards ought to be declared unconstitutional. Therefore, the Court has ruled that,

"We hope and trust that this practice won't continue in the future, and that whenever an ordinance is created and the government wants to keep its provisions in effect after the legislature is assembled, a bill will be brought before the legislature to enact those provisions into an **Act.**" **Ordinance-Raj must not exist in the nation.**

The Bihar Intermediate Education Council Ordinance, 1983 will no longer be in effect as the Supreme Court has finally ruled that it is unconstitutional. The government would give Petitioner No. 1, who has done a great deal of study on the state government's re-

promulgation of ordinances, Rs. 10,000 as compensation for the inconvenience and for filing the writ petitions.

In conclusion

In its ruling, the Supreme Court of India declared an ordinance's illogical use of power to be a "subversion of the democratic process" and a "**colourable exercise of power.**" The court further ruled that re-promulgating an ordinance is a violation of the democratic process as well as a fraud and abuse of the authority provided to the executive by constitutional provisions. The court has the authority to scrutinize the ordinance-making process, and if an ordinance is passed in an unfair way, the superior court has the authority to declare it unconstitutional.

The Indian constitution's authority to enact ordinances should only be utilized in cases of extreme urgency; it should not be exploited to further the political objectives of any one person. Additionally, the legislative has the power to enact laws, the executive branch has the authority to carry them out, and the judiciary is responsible for interpreting them. The executive branch is not permitted to carry out the legislative branch's primary role in the legislative process. If this is not addressed, Indian citizens will be subject to laws enacted by the executive rather than the legislature, which would undermine the fundamental purpose of the constitution.