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Executive Overreach by Minority Governments in India

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Abstract

A provision in the Indian constitution allows the executive to make laws in the event one of the two houses of parliament is not in session. This provision was intended to allow the executive to act in case there's an immediate legislative necessity and the parliament cannot be convened. Using a bargaining model with asymmetric information we show how parties within the parliament may reach an agreement on legislations when the ruling party does not command a majority (minority government). The model makes predictions about lawmaking patterns by the legislature when the parliament is in session, and ordinances by the executive when the parliament is not in session. Our three empirical findings are consistent with this model. First we find a lack of correlation between legislations and ordinances for majority governments but a negative correlation for minority governments as parliament is substituted out by the executive when the government lacks the numbers in parliament. Second, we find that minority governments are less successful in converting ordinances into parliamentary legislation. Third, we find that the spacing of ordinances within a break is skewed towards the start of the break for minority governments as they rush to pass ordinances when parliament goes out of session. These results indicate that contrary to constitutional mandate, ordinances have been used by governments to bypass parliament when they lack the numbers there. This strengthens executive power at the expense of the legislature and this may have long run institutional consequences.[1]

1 Introduction

Article 123 in the Indian Constitution authorises the President, the constitutional head of State, to promulgate laws known as "ordinances". The President may do so only if at least one House of Parliament is not in session. Also, circumstances must be such that immediate action is necessary. The President's role though is a formal one. In keeping with India's

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parliamentary model of governance, the Council of Ministers led by the Prime Minister decide if an ordinance is necessary, and draft its content. Because ordinances are similar to parliamentary legislation, Article 123 confers primary legislative powers on the executive; ministers may effectively enact parliamentary legislation without involving Parliament. How has the executive in invoked this power to legislate? This paper analyses how the ordinance mechanism has been put to varying use by majority and minority governments in India.

Parliamentary systems may have either majority or minority governments. Minority governments are sort of an aberration. They lack majority support in the legislature by definition, and yet hold the reigns of powers. Much of the scholarship in political science suggests that minority governments produce different legislative outcomes compared to majority governments.

On one hand, Roubini and Sachs (1989) find that, the size and persistence of budget deficits in the industrial countries is the greater with divided government. This is especially true, they argue, of governments that lasted less than three years. They argue that such short tenures of minority governments make indiscriminate spending more likely because agreements among coalition partners are difficult to achieve in that duration. Coalition partners may prefer an overall reduction in budget deficits, but their specific budget-cutting priorities are likely to vary. And the veto power of even small parties in coalition governments means that reductions or austerity is unlikely; the status quo – high deficits – is the most likely outcome. Edin and Ohlsson (1991) use the same data to make a narrower claim: Large and persistent budget deficits particularly correlate with minority governments. The number of coalition partners matter less, they argue; rather, the status of governments in Parliament affects their ability to reduce deficits.

On the other hand, Martin and Vanberg (2004), argue that the relevance of Parliament to the legislative process increases when coalition governments are in power. Coalition partners often use the parliamentary process to "moderate" policy proposals that are inimical to their electoral fortunes. On the other hand they argue that having a parliamentary majority leads to the executive being stronger and the parliament becoming less relevant for shaping legislations.

To motivate our paper we begin with table 2 where we present a stylized fact about how minority and majority governments differ in passing laws through ordinances. In this table we observe that minority governments pass 0.94 more ordinances in each session compared to majority governments. We observe that this relationship is robust even when we control for the length of time when the parliament is not in session. In columns (3) and (4) we observe that this finding remains robust when we use the fraction of seats held by the single largest party rather than a dummy for majority government (which takes value 1 when the sum of the shares of all parties in government exceeds 1/2). Finally we see a reverse pattern for bills passed in parliament – majority governments pass 5.25 more bills on average per session compared to minority governments. These results are statistically significant and suggests that there are important differences between majority and minority governments in terms of

relevant the parliament is for shaping legislation.

In what follows we first present the institutional details in section 2. We construct a model that explains this phenomenon and makes further predictions about the differences in the patterns of ordinance making between majority and minority governments. This model and its extensions are presented in sections 3 and 4. In section 5 we present our empirical results, and section 6 concludes.

2   Institutional Background

Separation of powers is a key feature of modern constitutions. Often associated with the writings of John Locke and Montesquieu, the concept mandates separate but interdependent powers among the three principal organs of a State, that is the legislature, the executing and the judiciary. The separation, it is commonly argued, promotes efficiency and protects liberty better.[2] A neat division, however, is an ideal: The complexities of administering governments often compel functional compromises. As a result, constitutions occasionally confer legislative powers on the executive and executive powers on the legislature. Shared legislative powers between the legislature and the executive in the Indian Constitution reflect one such compromise.

Article 123 authorises the Council of Ministers to effectively enact parliamentary legislation.[3] Yet this mechanism is not meant to function like a parallel Parliament. Certain procedural and substantive conditions must be met both before ordinances may be promulgated. First, India has a bicameral system, and ordinances are impermissible if both Houses of Parliament are in session. They may be promulgated only if at least one House of Parliament is not in session. In other words, procedurally speaking, if the ordinary mechanism to legislate is available, the Council of Ministers cannot resort to ordinances. Secondly, the Council of Ministers must be satisfied that circumstances exist which render it necessary for [it] to take immediate action. This is a substantive requirement. Ministers cannot invoke Article 123 merely because it is convenient to do so; the threshold of "immediacy" must be met. The parliamentary Rules of Procedure also treat this requirement seriously. The Rules, for example, mandate that a statement explaining the necessity for an ordinance must be laid before both Houses of Parliament once the latter reconvene.

What counts as circumstances that make it necessary to take immediate action is not readily clear. Notice that the substantive condition has two components; one about timing, the other about threshold. First, circumstances [must] exist. Read narrowly, this may be mean that circumstances that justify the promulgation of an ordinance must exist at a point in time when at least one House of Parliament is not in session. If the circumstances arose before Parliament broke up that is, Parliament was aware of the circumstances before going into

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[2]Persson, Roland, and Tabellini (1997) show how in an incomplete contracts setting, separation of powers can create a conflict of interests between the executive and the legislature leading to information revelation and higher welfare for the electorate.

[3]See section A for the full text of Article 123.

recess then an ordinance to address those circumstances is impermissible. A wider reading of existence, however, would permit ordinances under this second scenario. It would mean that as long as circumstances exist, irrespective of when they arose, ordinances are permissible if at least one House of Parliament is not in session. The second component has to do with the threshold of such a circumstance. What sort of circumstances must exist before an ordinance may be promulgated? Article 123 says that the circumstances must be such that renders it necessary to take immediate action. The Supreme Court has taken the view that the Council of Ministers are the sole judge of whether an ordinance is immediately necessary; the court will not second guess ministerial assessments (*R. C. Cooper v Union of India* 1970). Consequently, in India today, Council Of Ministers decide if circumstances are such that makes it necessary to take immediate action. This has important implications for the ordinance mechanism. A government that is unsure of securing a majority support in Parliament for a particular Bill may resort to an ordinance and, thereby, circumvent Parliament. Similarly, a government that wants to avoid public debate on a Bill at least initially may promulgate an ordinance at a point when Parliament is not in session. Or governments may choose to take the ordinance route to pursue reforms that are politically unpalatable and set the agenda in a way that makes it difficult for Parliament to reverse course later on.

Ordinances are an exceptional arrangement, and they have important implications for the parliamentary system as a whole. Yet the Constituent Assembly – the body tasked with framing Indias Constitution – had remarkably little to say about it. In 1949, broadly two justifications were offered during the debates. Some members justified the provision on grounds of slow transport. Parliament would not be in session always, and in case of legislative urgency, it would not be possible, to gather members at short notice (Constituent Assembly Debates, 23 May 1949, p. 206).[4] Therefore, an alternative arrangement, albeit for a temporary duration, was necessary. Second, some members insisted that there was no likelihood of abuse. The Council of Ministers, they argued, were representatives of the people, and an abuse of this provision would be electorally costly. In addition, the President would act as a check against the unnecessary use of this extraordinary power (p. 212). Mostly importantly, to the charge that the executive might arrogate to itself [legislative] powers and postpone calling the Parliament, the fear, some members argued, was unfounded. The Council of Ministers, to remain in power, must enjoy the confidence of the Lower House of Parliament, and improper use of the provision would necessarily invite censure of that House (pp. 214-215). With that, the provision was voted into the Constitution.

It is worth pointing out that the few members who opposed the provision and the many who defended it, spoke of the executive in monolithic terms. The executive in a parliamentary system may be of many kinds, but fundamentally it is either a majority or a minority government. With majority governments, the question of parliamentary censure does not arise, or rarely arises. The party that is in power, by definition, is also in a majority in Parliament. Consequently, it is unlikely that the party in power would be censured by its own members in

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[4]The Constituent Assembly debate are publicly available on the Parliament of India website.

Parliament. With minority governments, the challenge is a different one. This provision may indeed incentivise minority governments to legislate without involving Parliament. While the possibility of censuring such governments is real (given their lack of majority in Parliament), the provision offers a method by which to bring legislation into existence that may not necessarily enjoy parliamentary support. These concerns, however, were not properly articulated. Both sides in the debate assumed a generic executive, failing to notice that a parliamentary system may have different kinds of governments and they may opt to invoke Article 123 for altogether different reasons.[5]

3 Model

A particular legislative agenda arises at the start of each session. This agenda is a function of s. To give a concrete example due to popular discontent over inequality a demand for an increase in the top marginal tax rate on income may arise. The bill based on such a legislative necessity will be enacted with a particular s, which in this case would be the new tax rate that is proposed in the bill.

The bill if enacted gives the government a payoff of $u_g(s)$ and coalition partners a payoff of $u_c(s)$. We assume that the preferences of the government and the potential coalition partners are continuous and single peaked in s. Without loss of generality we assume that $\bar{s} > \underline{s}$ where $\bar{s}$ and $\underline{s}$ are the respective peaks for the government and the coalition. We assume that these are common knowledge.

If the bill is unable to pass, the government can promulgate it as an ordinance. The government's payoff, if it takes the ordinance route, is discounted by a random variable Θ which takes values 1 or $\theta \in (0,1)$ with probability q and $1-q$ respectively. Θ is a reduced form way of capturing several things. First, it captures the impatience of the government when it comes to legislation. It may also indicate how reluctant the a government is to pass the bill as an ordinance. In particular a type θ government feels some reluctance going the ordinance route whereas a type 1 government feels no such reluctance. More importantly since an ordinance needs to be continually re-promulgated or eventually passed by the parliament, *ceteris paribus* the government naturally prefers to pass it through the parliament. The government privately observes the realization of Θ whereas the coalition only knows the distribution. We assume that the discount factor does not apply to the coalition. Adding a discount factor that affects the coalition complicates the analysis without adding anything interesting by way of results.

Timing:

1. Legislative agenda arises and the government privately observes the realization of Θ.

2. The coalition makes an offer to support some s.

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[5]See Dam (2014) for more institutional details and a discussion on the constituent assembly debates.

3. If the offer is accepted by the government, s becomes a law with the support of the coalition.

4. If the offer is rejected, the government waits till the session lapses and then passes s that it unilaterally chooses.

Proposition 1. *There is a unique equilibrium where the coalition offers $s^* \in [\underline{s}, \overline{s}]$ that solves $u_g(s^*) = \max\{\theta u_g(\overline{s}), u_g(\underline{s})\}$. The government accepts this when $\Theta = \theta$ and rejects otherwise promulgating an ordinance with $s = \overline{s}$ in the event of rejection.*

Proof. We begin with showing that any offer s that the coalition makes to the government must be between $[\underline{s}, \overline{s}]$. To see this note that the preferences of both players are single peaked with bliss points of $\underline{s}$ and $\overline{s}$ for the coalition and the government respectively. Hence both the coalition and the government strictly prefer a policy of $\underline{s}$ over any policy with $s < \underline{s}$ and similarly both prefer a policy of $\overline{s}$ over any policy with $s > \overline{s}$. Hence by continuity $u(s)$ in s, for any policy not in $[\underline{s}, \overline{s}]$ that is accepted by the government, the coalition can increase its own payoff by offering a policy in $[\underline{s}, \overline{s}]$ that keeps the payoff of the government constant.

This game can be solved backwards. First note that if no agreement is reached the government will promulgate an ordinance with $\overline{s}$ in the break. This gives a payoff of $\Theta u_g(\overline{s})$ to the government and $u_c(\overline{s})$ to the coalition. Consequently the reservation payoff for the government is $\theta u_g(\overline{s})$ when $\Theta = \theta$ and $u_g(\overline{s})$ when $\Theta = 1$. The reservation payoff of the coalition is $u_c(\overline{s})$. Hence in an equilibrium any proposal of with $s < \overline{s}$ must be rejected by the government when $\Theta = 1$. Similarly when $\Theta = \theta$ a proposal s is accepted if and only if $u_g(s) \geq \theta u_g(\overline{s})$.

The payoff of the coalition as a function of s is

$$
\begin{aligned}
(1-q)u_c(s) + qu_c(\overline{s}) \quad &\text{for} \quad s \in [s^*, \overline{s}] \\
u_c(\overline{s}) \quad &\text{for} \quad s < s^*.
\end{aligned}
\tag{1}
$$

Note that $u_c(s) \geq u_c(\overline{s})$ for $s \in [s^*, \overline{s}]$. Since $u_c(s)$ is strictly decreasing in s for $s \geq s^*$, we find that s^* is the unique value of s that maximizes this payoff. Hence in equilibrium the coalition always offers s^* which is rejected when $\Theta = 1$ and accepted when $\Theta = \theta$. In case of rejection the government passes an ordinance with $s = \overline{s}$. $\qquad\square$

This game is repeated over N periods each time with a new legislative agenda and Θ. Note that when the government is in the majority, it does not require coalition support to pass a bill. In this case the government always legislates $\overline{s}$ in parliament.

3.1 Testable Implications

Based on the model, when the government has majority and hence does not require support from other parties in the parliament, it simply passes the bill $\overline{s}$. In addition to this assume that when there is a break, on each day of the break a legislative necessity arrives with some probability which requires the government to promulgate an ordinance. To model this we use

the random variable $\hat{Y}$ which takes value 1 with probability p if the legislative necessity arises and 0 otherwise each day for T days of the break. Whenever a legislative necessity arises the government promulgates an ordinance.

Let X and Y be the random variables that represent the number of legislative agendas that become salient in a session of parliament and its corresponding break. Both these follow a binomial distribution. Let the length of the session and the break be T_1 and T_2 days respectively. Then

$$\mathbb{P}(X = x) = \binom{T_1}{x} p^x (1-p)^{T_1 - x} \qquad \text{and} \qquad \mathbb{E}(X) = pT_1 \tag{2}$$

and similarly

$$\mathbb{P}(Y = y) = \binom{T_2}{y} p^y (1-p)^{T_2 - y} \qquad \text{and} \qquad \mathbb{E}(Y) = pT_2 \tag{3}$$

We can derive the equilibrium distribution of bills and ordinances (X^* and Y^*) in a period. Where the government has majority (B) this is simply

$$X_B^* = X \qquad \text{and} \qquad Y_B^* = Y. \tag{4}$$

Since X_B^* and Y_B^* are independently distributed we have $\text{Cov}(X_B^*, Y_B^*) = 0$ in a majority government. On the other hand when government is in minority (A) the distribution is given by

$$X_A^* \qquad \text{and} \qquad Y_A^* = Y + X - X_A^* \tag{5}$$

where X_A^* follows a binomial distribution on the support $\{0, 1, \dots X\}$. We observe that in minority governments X_A^* and Y_A^* may not be independent. We can derive the covariance

$$
\begin{aligned}
\text{Cov}(X_A^*, Y_A^*) &= \mathbb{E}_{X,Y}(\text{Cov}(X_A^*, Y_A^* | X, Y)) + \text{Cov}(\mathbb{E}(X_A^* | X, Y), \mathbb{E}(Y_A^* | X, Y)) \\
&= -\mathbb{E}_{X,Y}(\text{Var}(X^* | X, Y)) + \text{Cov}((1-q)X, Y + qX) \\
&= -q(1-q)\mathbb{E}(X) + q(1-q)\text{Var}(X) \\
&= -p^2 q(1-q)T_1 < 0
\end{aligned}
\tag{6}
$$

Testable Implication 1. *Bills passed in a session and ordinances promulgated in the subsequent break are negatively correlated during tenures of minority governments and uncorrelated during the tenures of majority governments.*

This is true since $\text{Cov}(X_B^*, Y_B^*) = 0$ and $\text{Cov}(X_A^*, Y_A^*) < 0$. Moreover since minority governments use ordinances to promulgate bills that would be passed in parliament under majority governments, we would expect them to do so early in the break. This gives us testable implication 2.

Testable Implication 2. *The likelihood of observing ordinances is decreasing in the number of days elapsed from the start of the break for minority governments and uncorrelated for majority governments.*

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4   Bundling Bills

In our model we have assumed that bargaining over the content of each law is independent of any other legislative necessities that arise during a session. This assumption may be unreasonable since the coalition may make a simultaneous offer to support several bills. The government would have to then consider the offer on different bills as one package. In this section we extend our baseline model to allow for this possibility. We find that this modification does not change testable implication 1 and 2.

To allow for maximum possibility of bundling bills together we make the extreme assumption that the coalition waits till the last day of session to make a take it or leave it offer on all legislative necessities that have arisen in that session.[6] If the government rejects, no bills are passed in that session and the government passes ordinances in the break. The government's acceptance of the offer depends on the realization of Θ across all legislative necessities in the session.

The government receives a bill specific payoff from each bill i and this is denoted by $u_g^i(s_i)$. Similarly the coalition receives a payoff of $u_c^i(s_i)$ for each bill. We continue to assume that $\underline{s}_i$ and $\bar{s}_i$ are the preferred policy of the coalition and the government respectively and $\underline{s}_i < \bar{s}_i$ for all i. In addition we now assume that $u_g^i(s_i)$ and $u_c^i(s_i)$ are strictly quasi-concave. If the offer is rejected the government passes an ordinance with policy $\bar{s}_i$ for legislative necessity i. Let L be the set of legislative necessities for which $\Theta = \theta$, and the complement L^c contain the legislative necessities with $\Theta = 1$. The reservation payoff of the government is given by

$$\theta \sum_{i \in L} u_g^i(\bar{s}_i) + \sum_{i \in L^c} u_g^i(\bar{s}_i). \tag{7}$$

The government privately observes the state of the world L which can be one of 2^X states since there are X legislative necessities. For a proposed policy vector $\mathbf{s}$ with elements $s_1, s_2, \ldots s_X$, define

$$U_g(\mathbf{s}) \equiv \sum_{i=1}^X u_g^i(s_i) \qquad \text{and} \qquad U_c(\mathbf{s}) \equiv \sum_{i=1}^X u_c^i(s_i) \tag{8}$$

Proposition 2. *Assuming $u_g^i(s_i)$ and $u_c^i(s_i)$ are strictly quasi-concave, there is a policy proposal $\mathbf{s}^*$ that the coalition offers and this is rejected by the government with positive probability.*

Proof. We will first prove that there is a unique offer that the coalition makes. Next we will show that this offer is associated with a strictly positive probability of rejection. We begin with the observation that $s_i^* \geq \underline{s}_i$ for all i. This is true since if not the coalition could always increase its payoff without increasing the probability of rejection by replacing any $s_i < \underline{s}_i$ by $\underline{s}_i$.

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[6]If on the other hand the coalition made offers that must be accepted or rejected as soon as legislative necessities arise, it would limit the possibility of bundling these offers with future legislative necessities that arise in the session, and this takes us closer to out baseline model.

The coalition's problem is to find the **s** that maximizes

$$U_c(\mathbf{s}) \qquad \text{subject to} \qquad U_g(\mathbf{s}) \geq \theta \sum_{i \in L} u_g^i(\bar{s}_i) + \sum_{i \in L^c} u_g^i(\bar{s}_i). \qquad (9)$$

The realization of L is unobservable to the coalition. Note that in the optimal offer $\mathbf{s}^*$ this constraint must bind for at least one realization of L. If not, the coalition can reduce some s_i thereby increasing its payoff without increasing the probability of rejection. Hence we can proceed by finding the optimal vector $\mathbf{s}^L$ for each state possible state L. We now show that that such a $\mathbf{s}^L$ exists.

$u_g^i(s_i)$ and $u_c^i(s_i)$ are quasi-concave in s_i and hence $U_g(\mathbf{s})$ and $U_c(\mathbf{s})$ are also quasi-concave. Moreover there is a bliss point for the coalition and the government at $\underline{\mathbf{s}}$ and $\bar{\mathbf{s}}$ respectively. Taking $\underline{\mathbf{s}}$ as origin we see that the indifference curves over for the aggregate coalition utility $U_c(\mathbf{s})$ are strictly concave with respect to the origin and the indifference curves over for the aggregate government utility $U_g(\mathbf{s})$ are strictly convex with respect to the origin. Hence for a given realization of L, the indifference curve defined by reservation payoff of the government must have a unique intersection point with the highest possible indifference curve of the coalition that is tangent to the indifference curve defined by the government's reservation payoff. This unique point is defined as $\mathbf{s}^L$ that maximizes the utility of the coalition subject to the government receiving its reservation payoff.

For an offer $\mathbf{s}^L$ that the coalition makes let $\hat{q}(\mathbf{s}^L)$ be the probability with which the state of the world is one where the reservation payoff of the government is greater than $U_g(\mathbf{s}^L)$, and the offer is rejected. Hence the maximization problem for the coalition simplifies to

$$\max_{\mathbf{s} \in, \{\mathbf{s}^1 \dots \mathbf{s}^{2X}\}} (1 - \hat{q}(\mathbf{s})) U_c(\mathbf{s}) + \hat{q}(\mathbf{s}) U_c(\bar{\mathbf{s}}). \qquad (10)$$

Since the maximization is over a finite set of vectors, a maximum exists. It is generically unique. If there are more global maxima, we pick the one that maximizes $1 - \hat{q}(\mathbf{s})$, the probability of acceptance.

Finally to see that $\hat{q}(\mathbf{s}^*) > 0$ note that $\hat{q}(\mathbf{s}^*) = 0$ is true only when the coalition offers $\mathbf{s} = \bar{\mathbf{s}}$. Since $\Theta = \theta$ with positive probability, the coalition can improve its expected payoff by offering any $\mathbf{s}^L$ as this is accepted with a positive probability.

□

5 Empirics

We have collected data on X^* and Y^*, the number of bills and ordinances passed in each session and the corresponding break, from 1952 to 2007. In addition to this we also have data on the exact dates on which each ordinance was promulgated. We take testable implications 1 and 2 to the data. See table 1 for the summary statistics.

Testable Implication 1   To begin with in table 2 we observe that there is a systematic difference in legislative performance under majority and minority governments. Majority governments promulgate fewer ordinances per session and enact more bills in parliament. This is true even after controlling for the length of the break.

In table 3 we take testable implication 1 to the data by regressing

$$Y_t^* = \alpha + \beta X_t^* + \gamma \text{Controls}_t + \epsilon_t, \tag{11}$$

where X_t^* is the number of bills passed in session t and Y_t^* is the number of ordinances promulgated in the subsequent break. In this table we run the regression separately for the sub-samples of sessions with majority and minority governments. In Panel A and we find that there is a negative relationship between the number of bills passed in a session and the number of ordinances promulgated in the subsequent break. In Panel B we perform the same regression for the sub sample of sessions where the government in power had majority, and we see that no such relationship exists. In each year there are typically three sessions of parliament – spring, monsoon, and winter. In column (2) we control for Season dummies and to control for any within year cyclical variation in pattern of ordinance making.

It is possible that some minority governments are very active in promulgating ordinance and this drives our results. In column (3) we control for Lok Sabha dummies which is a dummy for each government that has been in power in our sample period. We see that the results in Panel A and B are robust to this inclusion. In column (4) we include year dummies and this is a more stringent specification than (3) since the Lok Sabha only changes once every 5 years. We see that the negative correlation for minority governments remains robust to this inclusion and is therefore unlikely to be driven by variation in ordinance making that comes from there being greater or fewer ordinances in a given year.

It is natural that the length of time in a break is positively affects the number of ordinances that are promulgated. If the number of bills in a session is somehow correlated with the length of the subsequent break, our results may be biased. To address this concern, in column (5) we control for the length of the break and find that our results are robust to its inclusion. Finally in columns (6) and (7) we include the entire battery of controls together and find that our results are unaffected. Note that we cannot control Lok Sabha dummies and Year dummies in the same regression since the Year dummies subsume changes of government over time.

Classifying Governments   We wish to examine whether there is a systematic difference in the pattern of ordinance making by majority and minority governments. We define majority government to be one where the party that forms the government has more than 50% seats in the Lok Sabha. A concern with this definition is that it is possible that there are coalition majority governments that are classified as minority governments even though the parties in the coalition together have over 50% of the seats. When defining minority governments this way we need to be mindful of the possibility that the mechanics of our model may not apply

to such coalition governments since the parties within the government may have decided on legislative bargain at the start when they come together to form the government. As a result it may be more appropriate to classify these as minority governments instead. In India the only government that would potentially change its classification from minority to majority if we use this definition is the Janata Government from the 6th Lok Sabha which held office between March 1977 to August 1979.[7] In table 3 we run the regressions from table 2 after changing the classification of majority/minority governments in line with this discussion. We see that the results are robust to this change in classification. All other coalition governments in India were minority governments

Finally in table 4 run the following regression:

$$Y_t^* = \alpha + \beta X_t^* + \delta X_t^* * \text{SLP Seats}_t + \lambda \text{SLP Seats}_t + \gamma \text{Controls}_t + \epsilon_t, \tag{12}$$

where SLP Seats is the fraction of seats held by the single largest party. Using the interaction term in this regression we attempt to test whether the negative relationship between bill and ordinances diminishes as the share of seats held by the single largest party increases. This may be true since a minority government with close to 50% seats may find it easier to bargain with potential allies. On the other hand the failure of bargaining is likely to be more common for a minority government that is well short of the 50% mark as it need to convince more allies to forge a successful coalition.[8] If this is the case we expect β to be negative but δ to be positive. This is what we find in table 4.

Repromulgating Ordinances   Ordinances are temporary legislation; to become permanent they must be approved in Parliament. Article 123 mandates that ordinances must be presented before both Houses of Parliament, and ratified within six weeks from the day Parliament reconvenes again. Otherwise, ordinances cease to operate. They may also be withdrawn by the President, or may lapse. While ordinances clearly require parliamentary ratification to become permanent, there are two ways by which they may become quasi-permanent without such approval.

First, consider the possibility of re-promulgation. Article 123 is silent about it. The Supreme Court has taken the view that the Council of Ministers may re-promulgate an ordinance under limited circumstances (*D. C. Wadhwa v State of Bihar* 1987). Consequently, ministers may prolong the life of an ordinance simply by re-promulgating it after the reassembled Parliament goes away from session once again. Secondly, the court has also taken the view that if an ordinance ceases to operate, all official actions done or initiated during the time, the ordinance was in force will remain permanently valid (*State of Orissa v Bhupendra*

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[7]The case of Janata Government in 1977 is somewhat ambiguous as it formed a coalition minority government to start with but was soon allied with Congress for Democracy which joined the government leading to the coalition have over 50% of the seats in Lok Sabha.

[8]We prefer to use these results as robustness checks rather than as our baseline specification since it is possible that the single largest party may not be part of the government. This has happened only once – the BJP was the single largest party in the 11th Lok Sabha (1996-98) but sat in the opposition.

Bose 1962). Both these are important mechanisms by which to prolong the life of an ordinance, or confer permanence on actions taken under it. And this has important implications for how governments may invoke Article 123. Because a failed ordinance can generate permanent outcomes, governments may resort to the mechanism in the full knowledge that it would not be able to convert the ordinance into an Act of Parliament. This is particularly true of minority governments that by definition lack majority support in Parliament; the ability to achieve legislative objectives even under a failed ordinance is likely to incentivise governments in favour of more.

By its very nature a repromulgation implies that the original legislative necessity arose before the session of parliament, and the consequently the government had a full session to convert the ordinance into parliamentary legislation. Hence it appears that the executive is overreaching its power when it repromulgates ordinances as and when they cease to operate. It is interesting to note that all the 59 instances of repromulgation of ordinances have occurred during the tenures of minority governments. This strongly suggests that ordinances are being used in a way that is inconsistent with the constitutional mandate in Article 123.

Converting Ordinances   The other mechanism to ensure that an ordinance becomes permanent is to convert an ordinance into an act of parliament by presenting it before parliament and calling for a vote. One way of testing whether minority governments use ordinances only in cases where immediate action is required is to see if there is a difference in the number of ordinances that are converted into bills by parliament when it reconvenes. If ordinances are being used in a way consistent with the constitutional mandate in Article 123 we ought not to expect any systematic difference in their conversion based on whether they are promulgated by majority or minority governments. On the other hand if minority governments use ordinances as a substitute legislative route for lawmaking within parliament, the model from 3 would apply, and following testable implication 1 we expect minority governments to be less successful in converting ordinances into parliamentary legislations.

In table 6 we test this by regressing

$$\text{Unconverted Ordinances}_t = \alpha + \beta\text{Majority Govt}_t + \gamma\text{Controls}_t + \epsilon_t, \qquad (13)$$

where Unconverted Ordinance$_t$ is the difference between the number of ordinances promulgated in the previous break and the number of ordinances that are passed as parliamentary legislation in session t. In columns (1) to (4) we observe that majority governments have fewer unconverted ordinances than minority governments. This is true after including Season dummies, the length of session t, and the length of the break in $t-1$ when the ordinances in question were promulgated.[9]

One concern with these results above is that these results are driven by the fact that

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[9]Note that the number of observations drops since we exclude the contiguous break-session observations where the government has changed. Note also that in this regression we cannot control for Year or Lok Sabha dummies as these are collinear with the Majority Government variable.

majority governments pass fewer ordinances, and consequently have fewer ordinances to convert into parliamentary legislations in the subsequent interval. We attempt to address this in columns (4) to (8) by using the fraction of ordinances that remain unconverted as our dependent variable. We observe that the all results remain significant at the 1% level indicating that minority governments are able to convert a smaller fraction of the ordinances they pass into parliamentary legislations.

Testable Implication 2   Finally we examine the timing of ordinances within breaks for majority and minority governments. Figure 1 shows the distribution of ordinances over the
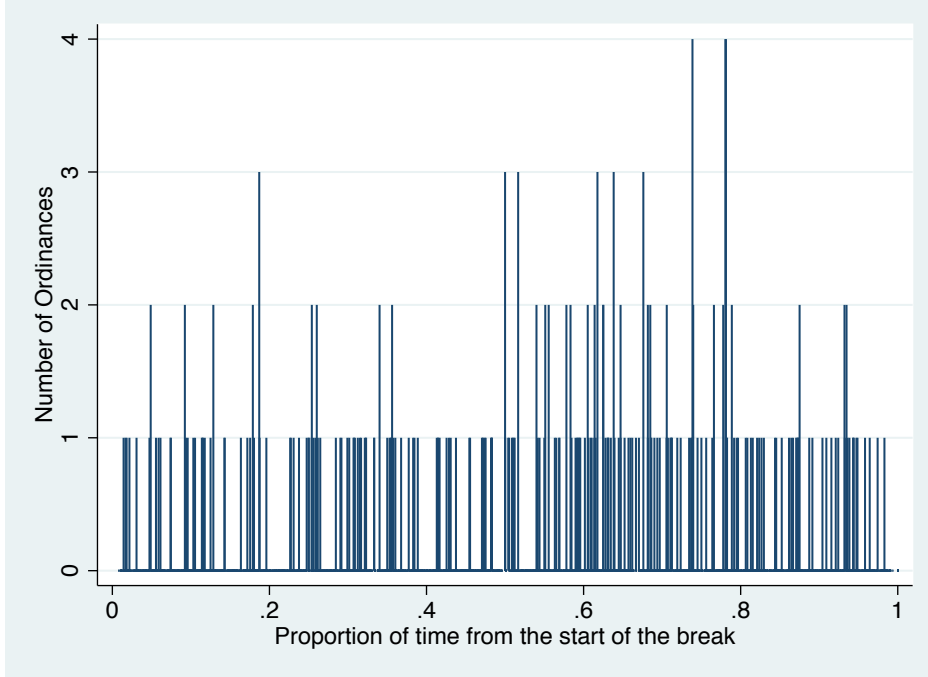
Figure 1: Majority Governments

proportion of time elapsed from the start of the break for majority governments.[10] Given testable implication 2 we expect to see ordinances being randomly placed within a break for majority governments whereas for minority governments we expect them to be concentrated at the start of the break. In figure 2 we observe that this is indeed the case. To examine this further we run the following regression:

$$Y_t = \alpha_i + \beta \text{Days Elapsed Since start of the Break}_t + \epsilon_t, \tag{14}$$

where Y_t is number of ordinances passed on day t. We regress this on the number of days on day t that have elapsed since the start of the break. We control for session dummies α_i, which

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[10]The number of ordinances is aggregates across all breaks under majority governments. For example, the number of ordinances on .2 represents the total ordinances across all breaks under majority governments that were passed on the day when 20% of the days from the start of the break had elapsed.

Figure 2: Minority Governments

account for things such as differences in the total number of ordinances passed in each break. The results presented in table 8 strongly support testable implication 2. We observe that the number of ordinances is declining in the number of days elapsed for minority governments and no such relationship exists when we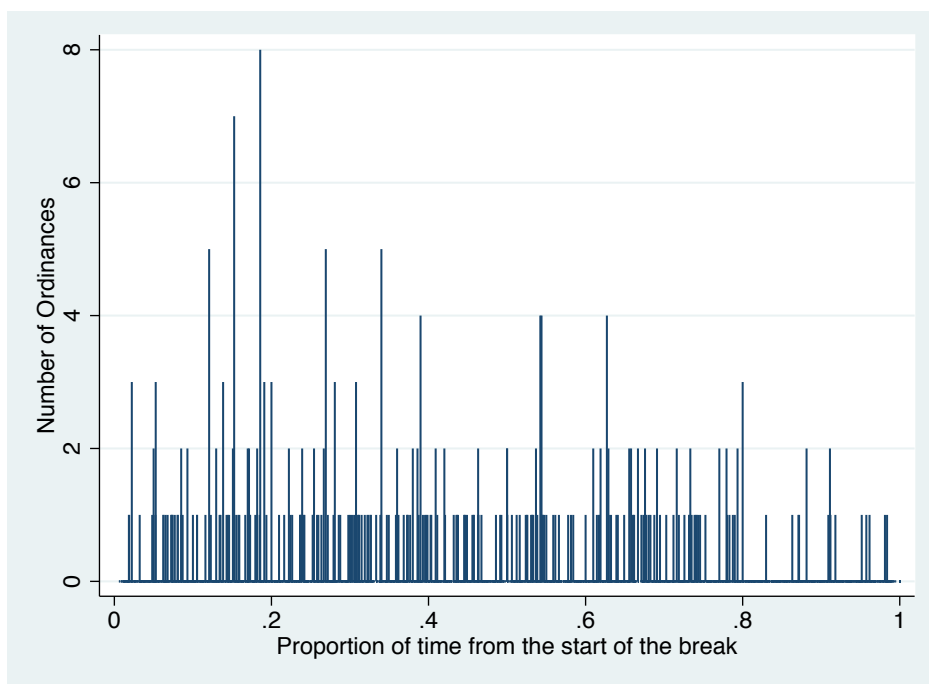 run the regression for majority governments. In column (2) we change the regressor to the proportion of days elapsed from the start of the break to account for differences in the length of breaks, and we observe that our results are unaffected by this. In column (3) we find that our results are robust to performing a negative binomial regression. This is reassuring since our dependent variable is a count variable that is positively skewed with many zeros as there are no ordinances passed on large fraction of the days in a break. In columns (4) and (5) we change our dependent variable to one that takes value 1 when there is at least one ordinance passed on the day and zero otherwise. This is to check whether our results are driven by a few outlier days where many ordinances are passed. We observe that this doesn't change our results, both with the OLS regression and the Logit regression.[11]

A potential problem with the results presented in table 8 is that we assume that the relationship between the number of ordinances passed on a day and the number of days elapsed from the start of the break is linear. To relax this assumption run

$$Y_t = \alpha_i + \beta D_t + \epsilon_t, \tag{15}$$

[11]We prefer Logit here since we have Overall Session Dummies. Estimating this with Probit would create the incidental parameter problem.

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where D_t is a dummy variable that takes value 1 if less than 20% of the break has elapsed on date t and zero otherwise. Given testable implication 2 we expect β is positive for only for minority governments as they rush to promulgate ordinances as when the break commences. We see that this is indeed true in columns (1) and (2) as the estimates for β are positive and significant. Indeed we find that the estimates for β for majority governments are negative and significant indicating that in fact majority governments are less likely to pass ordinances at the start of the break. In columns (3) and (4) we change the threshold for D_t to 25%, and in columns (5) and (6) we change it to 30% and observe that the results remain unchanged.

6   Conclusion

The Indian constitution allows the executive to pass laws in events where immediate action is required and the parliament is not in session. We have shown that this provision has been abused by governments to enact their legislative agenda by bypassing parliamentary scrutiny when they lack the support in parliament. We have constructed a simple model that features failure of negotiation between minority governments and potential coalition partners leading to governments using the ordinance route. This model predicts a negative relationship between parliamentary legislations and ordinances for minority governments, a pattern that is borne out in our empirical results. Consistent with the model we also find that minority governments are more likely to fail in converting ordinances into parliamentary legislations. Finally minority governments are also more likely to pass ordinances at the start of the break indicating that they use ordinances to act on legislative necessities that arose when parliament was in session.

Our results contribute to the literature on the differences in the behavior of minority and majority governments. They show that minority governments may compensate for their weakness in the legislature by attempting to substitute out legislative functioning through exercise of executive power. Although this behavior may be welfare enhancing since it allows minority governments to find a way out of potential legislative dysfunction, it also allows them to make fewer efforts to forge a consensus or at least a working majority in parliament. This may create long run institutional costs as executive power is strengthened at the expense of the legislature.

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A   Text of Article 123

123. Power of President to promulgate Ordinances during recess of Parliament

1. 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

2. An Ordinance promulgated under this article shall have the same force and effect as an Act of Parliament, but every such Ordinance

   (a) shall be laid before both House of Parliament and shall cease to operate at the expiration of six weeks from the reassemble 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 those resolutions; and

   (b) may be withdrawn at any time by the President Explanation Where the Houses of Parliament are summoned to reassemble on different dates, the period of six weeks shall be reckoned from the later of those dates for the purposes of this clause

3. If and so far as an Ordinance under this article makes any provision which Parliament would not under this Constitution be competent to enact, it shall be void.

B   Graphs and Tables

Table 1: Summary Statistics

Variable	Obs	Mean	Std. Dev.	Min	Max
Bills by Session	175	19.57143	9.129609	0	47
Ordinances by Breaks	177	3.440678	3.655341	0	24
Length of Session	177	52.62147	29.55385	2	192
Length of Break	176	62.96023	24.46954	3	175
Unconverted Ordinances	175	.8171429	2.128283	0	13
Majority Govt	177	.5310734	.5004492	0	1
Fraction of Single Largest Party Seats	177	.5675691	.1758702	.271331	.752809
Ordinance per day in Break	20748	.0293522	.2244432	0	8

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Table 2: Executive and Legislative Outcomes under Minority Governments

	(1)	(2)	(3)	(4)	(5)	(6)
	Total ordinances in the break				Total bills by parliament in session	
Majority Govt	-.947451* (.5529791)	-.8889939* (.5247203)			5.257857*** (1.345532)	
Fraction of seats of SLP			-2.854867* (1.556254)	-2.558356* (1.487466)		14.48368*** (3.767059)
Constant	3.986667*** (.4197804)	.8467139 (.7903912)	5.061012*** (.9244861)	1.82578 (1.149126)	16.50685*** (1.027248)	11.34674*** (2.239939)
Length of Break		.0496937*** (.0106156)		.0490913*** (.0106341)		
N	177	176	177	176	175	175

* $p < 0.1$, ** $p < 0.05$, *** $p < 0.01$

Table 3: Substitution of Parliamentary Legislation with Ordinances

Dependent Variable: Total ordinances in the break

	(1)	(2)	(3)	(4)	(5)	(6)	(7)
Panel A: Minority Govt							
Number of Bills	-.1114341**	-.1018251*	-.1007348**	-.1332727**	-.1247936**	-.0910595*	-.1144802*
	(.0482358)	(.0540344)	(.0463468)	(.0541462)	(.0481324)	(.0512749)	(.0573727)
N	73	73	73	73	72	72	72
Panel B: Majority Govt							
Number of Bills	.0533783	.0568724	.0093442	-.0266432	.0288032	-.0081056	-.01595
	(.0404045)	(.0413824)	(.0412552)	(.0464694)	(.0356576)	(.0376351)	(.0417747)
N	102	102	102	102	102	102	102
Season Dummies	-	X	-	-	-	X	X
Lok Sabha Dummies	-	-	X	-	-	X	-
Year Dummies	-	-	-	X	-	-	X
Length of Break	-	-	-	-	X	X	X

* $p < 0.1$, ** $p < 0.05$, *** $p < 0.01$

Table 4: Substitution of Parliamentary Legislation with Ordinances

Dependent Variable: Total ordinances in the break

	(1)	(2)	(3)	(4)	(5)	(6)	(7)
Panel A: Minority Govt							
Number of Bills	-.1076139**	-.1011696*	-.1005858*	-.1344457**	-.1228361**	-.0944299*	-.1159006*
	(.0526736)	(.0584264)	(.0502259)	(.0578717)	(.0530871)	(.0552675)	(.0606523)
N	62	62	62	62	61	61	61
Panel B: Majority Govt							
Number of Bills	.0469605	.0532927	.0030742	-.0310891	.0287989	-.0078087	-.0161005
	(.0379715)	(.0391807)	(.0391222)	(.0443127)	(.0332427)	(.0358709)	(.0398534)
N	113	113	113	113	113	113	113
Season Dummies	-	X	-	-	-	X	X
Lok Sabha Dummies	-	-	X	-	-	X	-
Year Dummies	-	-	-	X	-	-	X
Length of Break	-	-	-	-	X	X	X

* $p < 0.1$, ** $p < 0.05$, *** $p < 0.01$

Table 5: Substitution of Parliamentary Legislation with Ordinances

Dependent Variable: Total ordinances in the break

	(1)	(2)	(3)	(4)	(5)	(6)	(7)
Number of Bills	-.2437159**	-.2469817**	-.207106**	-.247274**	-.2785918***	-.225123**	-.2631836**
	(.0983739)	(.1002205)	(.0980536)	(.1088219)	(.0928355)	(.0939159)	(.1015459)
Number of Bills X	.404719**	.41406**	.3013192*	.3090627	.4301648***	.3079587*	.3424841*
Fraction of seats of SLP	(.1731946)	(.1748901)	(.1718169)	(.1879924)	(.1630364)	(.1628053)	(.1742447)
Fraction of seats of SLP	-10.02547***	-10.23244***			-9.870688***		
	(3.60342)	(3.636859)			(3.398933)		
N	175	175	175	175	174	174	174
Season Dummies	-	X	-	-	-	X	X
Lok Sabha Dummies	-	-	X	-	-	X	-
Year Dummies	-	-	-	X	-	-	X
Length of Break	-	-	-	-	X	X	X

* $p < 0.1$, ** $p < 0.05$, *** $p < 0.01$

Table 6: Conversion of Ordinances into Parliamentary Legislations

	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
	Unconverted Ordinances from the Previous Break				Unconverted Ordinances from the Previous Break / Total Ordinances from the Previous Break			
Majority Govt	-1.051218***	-1.050285***	-1.020756***	-1.043408***	-.1807304***	-.1776933***	-.1783146***	-.1761177***
	(.2749193)	(.2750933)	(.2758435)	(.2748403)	(.0475689)	(.0475417)	(.0479611)	(.047866)
Length of Session			-.0073781	-.0075121			-.0004067	-.0003937
			(.0061913)	(.0061612)			(.0010752)	(.0010744)
Lag Length of Break				.0111815				.0010844
				(.0069779)				(.0012177)
Constant	1.38806***	1.473252***	2.054124***	1.462462**	.2797947***	.2243645***	.1979785*	.2553587**
	(.2105278)	(.2927989)	(.5684192)	(.6754528)	(.0364274)	(.0506016)	(.1178701)	(.0986355)
N	162	162	162	162	162	162	162	162
Season Dummies	-	X	X	X	-	X	X	X

* $p < 0.1$, ** $p < 0.05$, *** $p < 0.01$

Table 7: Timing of Odinances Within a Break

	(1)	(2)	(3)	(4)	(5)
	Number of ordinances on the day			Ordinance Dummy	
	OLS	OLS	N.Binom	OLS	Logit

Panel A: Minority Govt

	(1)	(2)	(3)	(4)	(5)
Days Elapsed	-.0007537***		-.0132464***	-.0004781***	-.0121872***
	(.0002127)		(.0034518)	(.0001278)	(.003089)
Prop Days Elapsed		-.0774409***			
		(.0176137)			
N	4888	4888	4888	4888	4888

Panel B: Majority Govt

	(1)	(2)	(3)	(4)	(5)
Days Elapsed	.000326		.0054407	.0001888	.0043083
	(.0001802)		(.0032812)	(.0001337)	(.0031039)
Prop Days Elapsed		.0303222*			
		(.0137357)			
N	4915	4915	4915	4915	4852

All regressions have Overall Session Dummies
*$p < 0.1$, ** $p < 0.05$, *** $p < 0.01$

Table 8: Timing of Odinances Within a Break

Dependent Variable: Number of ordinances on the day

	(1)	(2)	(3)	(4)	(5)	(6)
	OLS	N. Binomial	OLS	N. Binomial	OLS	N. Binomial

Panel A: Minority Govt

	(1)	(2)	(3)	(4)	(5)	(6)
First 20%	.0308005** (.0120787)	.4105519** (.1830351)				
First 25%			.0268619** (.0110459)	.4050276** (.1714999)		
First 30%					.0303865*** (.0104341)	.3971525** (.1620053)
N	5115	5115	5115	5115	5115	5115

Panel B: Majority Govt

	(1)	(2)	(3)	(4)	(5)	(6)
First 20%	-.0126337* (.0070309)	-.3395034* (.1837627)				
First 25%			-.0172133*** (.0064239)	-.4636239*** (.1716318)		
First 30%					-.0159272*** (.0060717)	-.4163045*** (.1577444)
N	7509	7509	7509	7509	7509	7509

All regressions have Overall Session Dummies
*$p < 0.1$, ** $p < 0.05$, *** $p < 0.01$