



Promulgation and Re-promulgation of Ordinances

For Prelims: [Ordinance](#), [Parliament](#), [Governor](#), [Banking Companies \(Acquisition and Transfer of Undertakings\) Ordinance, 1969](#), [Judicial review](#), R.C. Cooper v. Union of India (1970).

For Mains: Enactment of Ordinances in India, Repromulgation of Ordinance.

Why in News?

Recently, an [Ordinance](#) was promulgated by the Indian President, giving the [Lieutenant Governor of Delhi](#) power over services in the **National Capital Territory (NCT)**.

- The Ordinance established a "**National Capital Civil Service Authority**" consisting of the [Chief Minister](#) and two senior IAS officers, allowing them to decide matters through majority voting.
- Critics argue that this **move effectively creates a situation where the elected Chief Minister's views can potentially be overruled.**

What are Ordinances in Indian Polity?

- **About:**
 - **Article 123 of the Constitution** of India grants the President certain law-making **powers to promulgate ordinances when either of the two Houses of [Parliament](#) is not in session**, in urgent situations.
 - Hence, it is not possible for the ordinances to be issued by Parliament.
 - When an ordinance is promulgated but the **legislative session is yet to commence, the ordinance remains in effect as law**. It has the same force and effect as an Act of the legislature.
 - But it requires subsequent **ratification by Parliament within six weeks of its reassembly.**
 - An ordinance promulgated by the President has a maximum **validity of six months and six weeks from the date of its promulgation.**
 - The [Governor of a state](#) can also issue ordinances under **Article 213** of the Constitution of India, when the **state legislative assembly is not in session.**
 - If the **two Houses start their sessions on different dates, the later date is considered (Articles 123 and 213).**
- **Enactment:**
 - In the process of enacting an ordinance, the **decision to bring forth the ordinance lies with the government**, as the [President](#) acts on the advice of the **Council of Ministers.**
 - If the **President deems it necessary, s/he may return the Cabinet's recommendation for reconsideration.**
 - However, if it is sent back (with or without reconsideration), the President must promulgate it.
- **Withdrawal:**
 - The **President can withdraw an Ordinance**, and both Houses of Parliament can pass

resolutions to disapprove it, potentially leading to its lapse. **Rejection of an ordinance would, however, imply the government has lost majority.**

- However, If an Ordinance enacts a **law that falls outside the purview of Parliament's competence, it is considered void.**

▪ **Repromulgation of Ordinance:**

- When an Ordinance lapses, the government can choose to re-promulgate it if necessary.
- In a 2017 case, the Supreme Court ruled that repeated **re-promulgations without legislative consideration would be unconstitutional and a violation of the legislature's role.**
 - The court **emphasised that the power to issue an Ordinance should be treated as an emergency measure** and not as a means to bypass the legislature.

Note: An ordinance like any other legislation **can be retrospective i.e., it may come into force from a back date.** It may also **modify or repeal any act of Parliament or another ordinance.**

Advantages	Disadvantages
They allow quick and effective action on urgent matters.	They bypass the democratic process of law-making and reduce parliamentary oversight.
They enable policy implementation without legislative hurdles.	They undermine the principle of separation of powers and encroach on the domain of the legislature.
They provide legal certainty and clarity in case of a judicial gap or ambiguity.	They create legal instability as they are temporary and subject to change or repeal.
They reflect the responsiveness and accountability of the executive branch.	They may be misused for political or personal gains or to avoid public scrutiny or debate.

What are the Other Past Judicial Pronouncements on Ordinances?

- **R.C. Cooper v. Union of India (1970):** This case challenged the [Banking Companies \(Acquisition and Transfer of Undertakings\) Ordinance, 1969](#), which nationalised 14 major banks in India.
 - The [Supreme Court](#) held that the **President's satisfaction regarding the necessity of an ordinance is not immune from judicial review and can be challenged.**
 - The Court also held that an **ordinance is subject to the same constitutional limitations as an Act of Parliament** and cannot violate any fundamental rights or other provisions of the Constitution.
- **A.K. Roy v. Union of India (1982):** This case challenged the **National Security Ordinance, 1980**, which provided for [preventive detention](#) of persons for up to one year without trial.
 - The Supreme Court **upheld the validity of the ordinance but laid down some safeguards for its operation**, such as **periodic review by an advisory board**, communication of grounds of detention to the detenu, and **opportunity for representation against detention.**
 - The Court also **observed that an ordinance should not be used as a substitute for parliamentary legislation** and should be resorted to only in cases of extreme urgency or unforeseen emergency.
- **D.C. Wadhwa v. State of Bihar (1987):** This case challenged a series of ordinances issued by the **Governor of Bihar between 1967 and 1981** on various subjects, some of which were promulgated several times without being placed before the state legislature.
 - The **Supreme Court struck down all the ordinances as unconstitutional and held that re-promulgation of ordinances is a fraud on the Constitution** and a subversion

- of the democratic legislative process.
- The **Court also held that an ordinance lapses automatically if it is not approved by the legislature within six weeks** of its reassembly and cannot be continued by repromulgation.

Source: IE

PDF Refernece URL: <https://www.drishtias.com/printpdf/promulgation-and-re-promulgation-of-ordinances>

