



Mains Practice Question

Q. The frequent promulgation of ordinances is an assault on the democratic structure of the Constitution. Critically analyse. (250 words)

13 Oct, 2020 GS Paper 2 Polity & Governance

Approach

- Introduce the concept of ordinances with constitutional articles (for both President and Governors) for the same.
- Briefly explain the need for the promulgation of ordinances.
- Discuss the issues with the frequent promulgation of the ordinances.
- Also give some examples to show the frequent promulgation and re-promulgation of the ordinances in the country.
- Conclude suitably on a positive note.

Introduction

- Article 123 of the Constitution grants the President certain law-making powers to promulgate ordinances during the recess of Parliament. These ordinances have the same force and effect as an Act of Parliament but are in the nature of temporary laws.
- Likewise, the Governor of a state can issue ordinances under Article 213 of the Constitution, when the state legislative assembly (or either of the two Houses in states with bicameral legislatures) is not in session.
- The ordinance making power is the most important legislative power of the President and the Governor. It has been vested in them to deal with unforeseen or urgent situations.

Body

Need for the promulgation of ordinances

- **Immediate action requirement:** Temporary law making power has been conferred on the President and the Governor under the Constitution of India to meet the unforeseen and extraordinary situations which require immediate action to which the ordinary law prevailing at that time cannot handle.
- **Legislature not in session:** An ordinance can be issued only when both Houses of Parliament, Lok Sabha and Rajya Sabha, are not in session. But it is not possible to pass a law immediately to grip the suddenly arisen circumstances due to procedural formalities, President/Governor may prorogue the Legislature and issue an ordinance.

Issues with frequent promulgation of ordinances

- **Deliberate bypassing of the legislature:** At times there are instances that legislature is being deliberately bypassed to avoid debate and deliberations on contentious legislative proposals. This is against the ethos and spirit of democracy. Repromulgation of ordinances: As observed by the Supreme Court, **re-promulgation of ordinances is a “fraud”** on the Constitution and a subversion of democratic legislative processes, especially when the government persistently

avoids placing the ordinances before the legislature.

- For example, a series of ordinances were issued by the **Bihar Governor between 1989 and 1992** regarding the taking over of private Sanskrit schools by the state.
 - **Infringement of principle of separation of powers:** The power of the executive to issue ordinances goes against the principle of separation of powers as lawmaking is the domain of legislature.
 - **The satisfaction of the President:** Ordinance can be promulgated only when the President is satisfied that circumstances exist for the same thus providing the scope of misuse of the power.
 - When ordinances are frequently issued and re-issued, it violates the spirit of the Constitution and result in an '**ordinance raj**'. In **D.C. Wadhwa vs State of Bihar 1987**, the Supreme Court strongly condemned this practice and called it a constitutional fraud.
 - Since independence, numerous ordinances have been issued which clearly shows that this power has been used quite regularly instead of being the last resort.
-
- For example: **The Securities Laws (Amendment) Ordinance, 2014** was repromulgated for the third time during the term of the 15th Lok Sabha.
 - **The Indian Medical Council (Amendment) Ordinance, 2010** was re-promulgated four times. This happened despite the SC verdict in 1986 condemning such action.
 - The promulgation of **Jammu and Kashmir Reservation (Amendment) Ordinance, 2019** was seen as a politically motivated action.
 - More recently the BJP led government has released three ordinances: The Farmers' Produce Market Commerce (Promotion and Facilitation) Ordinance, 2020, The Farmers (Empowerment and Protection) Agreement on Price Assurance and Farm Services Ordinance, 2020 which appear to be an abuse of power.

Conclusion

Our Constitution has provided for the separation of powers among the legislature, executive and judiciary where enacting laws is the function of the legislature. The executive must show self-restraint and should use ordinance making power only in unforeseen or urgent matters and not to evade legislative scrutiny and debates.

PDF Reference URL: <https://www.drishtias.com/mains-practice-question/question-764/pnt>