



## Mains Practice Question

**Q.** Though ordinances making power of President is given under Article 123 of the Constitution, yet its frequent use goes against the spirit of constitution. Examine. (150 words)

22 Dec, 2018 GS Paper 2 Polity & Governance

### Approach

- Give brief idea of ordinance making power of President, its need and limits of its use
- Discuss how its arbitrary use undermines constitution
- List the limits set by Supreme Court in its various judgements for its use.

### Introduction

- The Article 123 of the Constitution gives the power and authority to the President of India to issue an ordinance when there is urgent need for action only and also when one of the Houses of Parliament is not in session. The ordinance has the same force and effect as a statute of Parliament and holds good only for a duration of six weeks from the reassembly of Parliament.
- However, in **RC Cooper vs. Union of India (1970)** the Supreme Court, held that the President's decision could be challenged on the grounds that 'immediate action' was not required; and the Ordinance had been passed primarily to bypass debate and discussion in the legislature.

**Body:** This extraordinary provision has largely been misused and abused in Indian politics widely because of lack of numbers in the house or to bypass legislative deliberation. It goes against the spirit of Constitution because:

- The separation of power under **Article 50**, confirmed as basic structure of constitution, is violated.
- It **bypasses the deliberation and discussion** done in parliament which provides the true credibility as well trust of the people to the concerned law. Ordinances are undemocratic path to lawmaking.
- With debates and cooperation other untouched aspect can also be included in the law.
- 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.
- In 1970, in its judgment in **Rustom Cavasjee Cooper vs Union of India**, the apex court has established that judicial intervention is absolutely necessary. So, when the executive abuses its power to issue ordinances, the judiciary could intervene.

### Way Forward:

Issuing ordinances in times other than emergency is not a good trend. The opposition has to display maturity, respect legislative procedures and should not disrupt the proceedings of the Parliament. Parliamentary sessions should be well-utilized to discuss and debate matters of national importance to decide upon the fate of the bills and ensure procedural law making in the country.

