

Ordinances during COVID

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The Executive has got the constitutional power of issuing ordinances in emergency situations. However, in recent years the misuse of this law-making power has become worrisome as it raises questions about the authority of the Parliament as the highest law-making body. With the monsoon session going on and a list of ordinances being in the queue to be passed, one needs to know the pros and cons of this extraordinary tool.

In news: Many ordinances have been promulgated during COVID-19

Placing it in syllabus: Indian polity – Ordinances

Static dimensions

1. Why are ordinances necessary?
2. Problems due to frequent use

Current dimensions

1. Checks and solutions to it
2. List of ordinances promulgated in 2020

Content:

Why are ordinances necessary?

- An Ordinance is a law made by the Government without obtaining the blessings of the legislature.
- **Article 123** of the Constitution of India, allows the President (on the recommendation of the Union Cabinet) to pass critical laws when the Parliament is not in session or to deal with extraordinary, unforeseen or emergency circumstances.
- The **Governor** has concurrent powers to issue ordinances for the state under **Article 213**.
- Such ordinances carry the full force of a law made by

the legislature.

- The law only **remains** in force for six weeks and once the Parliament is reconvened, at which time it **must be approved by both Houses of Parliament in order to become a law.**
- Ordinances have similar limitations as ordinary laws, as such they **cannot violate other laws and principles enshrined in the Constitution.**

Ordinances are necessary as they allow for prompt legislative action in situations of emergency.

Problems due to frequent use:

- Though Ordinance can be promulgated only when the President is satisfied that circumstances exist for the same, since independence, numerous ordinances have been issued which clearly shows that this power has been used quite regularly instead of being the last resort.
- At times there are instances that the **legislature is being deliberately bypassed to avoid debate and deliberations** on contentious legislative proposals which are against the spirit of democracy.
- Ordinances are seldom brought before the legislature but are **reissued again and again**, violating the spirit of the Constitution. E.g. 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.
- The ordinance-making power of the executive **contradicts the fundamental concept of separation of powers between the executive and the legislature.** Allowing the executive to make legislative changes, though temporary in nature, without the approval of parliament undermines the role of parliament as a legislative institution.

What are the checks and solutions to it?

- One way to minimise the need for Ordinances could be by **increasing the number of parliament sittings**, as in other democracies such as the UK, the US, Australia and Canada where the legislatures have an annual calendar of sittings such that they convene regularly through the year.
- The **National Commission to Review the Working of the Constitution (2002)** had recommended that Lok Sabha should have at least 120 sittings in a year, while Rajya Sabha should have 100 sittings.
- The Constitutional obligation that the authority to issue ordinances is to be used only to meet the emergent demands of extraordinary situations should be strictly adhered to.

Along with these, **following limitations exist** with regard to the Ordinance making power of the executive:

1. Legislature is not in session: The President can only promulgate an Ordinance when either of the two Houses of Parliament is not in session.
2. Immediate action is required: The President cannot promulgate an Ordinance unless he is satisfied that there are circumstances that require taking 'immediate action'.
3. Parliamentary approval during session: Ordinances must be approved by Parliament within six weeks of reassembling or they shall cease to operate. They will also cease to operate in case resolutions disapproving the Ordinance are passed by both the Houses.

Supreme Court judgements on ordinances:

RC Cooper vs. Union of India case (1970): SC held that the President's decision to promulgate ordinance could be challenged on the grounds that 'immediate action' was not

required, and the ordinance had been issued primarily to bypass debate and discussion in the legislature.

DC Wadhwa vs. the State of Bihar case (1987): that the legislative power of the executive to promulgate ordinances is to be used in exceptional circumstances and not as a substitute for the law-making power of the legislature.

Krishna Kumar Singh v. The State of Bihar case (2017): The seven judge constitution bench held that re-promulgation of ordinance is a fraud on the Constitution and the satisfaction of the President of India under Article 123 and of the Governor under Article 213 while issuing an Ordinance is not immune from judicial review.

List of ordinances promulgated in 2020:

The government has planned to clear 11 ordinances on priority in the ongoing monsoon session of parliament.

These include –

1. Taxation And Other Laws (Relaxation Of Certain Provisions) Ordinance, 2020 promulgated March 31.
2. Salaries, Allowances and Pensions of Members of Parliament (Amendment) Ordinance, 2020 promulgated on April 7.
3. Salaries and Allowances of Ministers (Amendment) Ordinance 2020 promulgated by the President Ram Nath Kovind on April 9.
4. Epidemic Diseases (Amendment) Ordinance 2020 promulgated on April 22.
5. Homeopathy Central Council (Amendment) Ordinance, 2020 promulgated on April 24.
6. Indian Medicine Central Council (Amendment) Ordinance, 2020 promulgated on April 24.
7. Essential Commodities (Amendment) Ordinance, 2020, promulgated on June 5.

8. Farmers Produce Trade And Commerce (Promotion And Facilitation) Ordinance, 2020, promulgated on June 5.
9. Farmers (Empowerment And Protection) Agreement On Price Assurance And Farm Services Ordinance, 2020 promulgated on June 5.
10. Insolvency and Bankruptcy Code (Amendment) Ordinance, 2020 promulgated on June 6.
11. Banking Regulation (Amendment) Ordinance promulgated on June 26.

Almost five to six of these ordinances will expire if not passed in this Session.

Mould your thought:

1. How does the frequent issuance of ordinances go against the spirit of democracy? What needs to be done to keep a check on the arbitrary power of the executive in issuing ordinances?

Approach to the answer:

- Write about the articles dealing with ordinance making.
- Note down the problems faced due to frequent usage
- Write the safeguards available including SC judgments
- Way forward (2-3 lines)