



Repromulgation of Ordinances

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This article is based on **“The ordinance route is bad, repromulgation worse”** which was published in The Hindu on 20/04/2021. It talks about the Associated issues with the frequent promulgation and repromulgation of the ordinance route.

Recently, the central government has repromulgated the **Commission for Air Quality Management** in the National Capital Region and Adjoining Areas Ordinance, 2020. The ordinance establishes a commission for air quality management in the National Capital Region.

This raises questions about the practice of issuing ordinances to make law and that of re-issuing ordinances without getting them ratified by Parliament.

Historically, in the 1950s, central ordinances were issued at an average of 7.1 per year. However, the number peaked in the 1990s at 19.6 per year. The last couple of years has also seen a high spike in ordinance promulgation (16 in 2019, 15 in 2020).

The ordinance was originally conceived as an emergency provision. However, in recent times the frequent use of ordinance route has led to the undermining the role of the legislature and the doctrine of Separation of powers.

Constitutional Provisions Regarding Ordinances

- The Constitution permits the central and state governments to make laws when Parliament (or the State Legislature) is not in session.
- The Indian Constitution, in Article 123, authorizes the executive to promulgate ordinances if certain conditions are satisfied.
 - Ordinances may be promulgated only if **at least one House of Parliament is not in session.**
 - President is satisfied that **“immediate action”** is necessary.
- The Constitution states that the ordinance will lapse at the end of six weeks from the time Parliament (or the State Legislature) next meets.
- Similar provisions also exist for **state governments under article 213.**

Supreme Court's Judgement on Ordinances

- **RC Cooper Case 1970:** Supreme Court in RC Cooper vs. Union of India (1970) 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 Case 1987:** The issue of frequent promulgation of ordinances was again brought up in the Supreme Court through a writ petition.
 - The petition was regarding the promulgation of 256 ordinances between 1967 and 1981 in Bihar.
 - This included 11 ordinances that were kept alive for more than 10 years and famously dubbed as ordinance raj.
 - The Supreme court held 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 Case 2017:** Supreme Court in Krishna Kumar Singh v. the State of Bihar held that the authority to issue ordinances is not an absolute entrustment, but is "conditional upon satisfaction that circumstances exist rendering it necessary to take immediate action".

It further stated that the re-promulgation of ordinances is a fraud on the Constitution and a subversion of democratic legislative processes.

Associated Issues with the Ordinance Route

- **Usurpation of Legislative Power:** As lawmaking is a legislative function, this power is provided for urgent requirements, and the law thus made has an automatic expiry date.
 - An ordinance "ceases to operate" six weeks after the two Houses reassemble, except if it is converted into an Act by then. Repromulgation sidesteps this limitation.
 - To repromulgate is to effectively extend the life of an ordinance and lead to the usurpation of legislative power by the executive.
- **Undermining the Doctrine of Separation of Powers:** In the Kesavananda Bharati v State of Kerala case 1973, the Supreme Court listed the **separation of powers as a "basic feature"** of the Constitution.
 - The ordinance mechanism, in effect, is designed to remedy situations of legislative urgency when Parliament is not in session; it is not an alternative to parliamentary legislation.
 - However, article 123 places no numeric limits on ordinances.
 - In this way, the repromulgation undermines the separation of powers, as it effectively allows the executive to make permanent legislation without legislative input or approval.

- **Ignoring Supreme Court's Judgements:** Even after tough judgments on the use of ordinances, both the Centre and state governments have ignored the Supreme Court's observations.
 - For example, in 2013 and 2014, the Securities Laws (Amendment) Ordinance was promulgated three times.
 - Similarly, an ordinance to amend the Land Acquisition Act was issued in December 2014, and repromulgated twice – in April and May 2015.

Conclusion

Indian 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.

Drishti Mains Question

Ordinances though were meant to be temporary, but repromulgation sidesteps this limitation and makes them permanent. Discuss.
