



## Mains Practice Questions

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**Q.** What are the various issues around ordinance making power of President and Governors? Also discuss the safeguards which are in place to prevent misuse of ordinance making power. (150 words)

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**Approach:**

- Briefly explain the ordinance making power of the President and the Governors.
- Discuss the various issues around ordinance making power.
- Mention about the safeguards in place to prevent its misuse.

**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**

Ordinance making power of the President or the Governor has various issues such as:

- **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 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.

Since independence, numerous ordinances have been issued which clearly shows that this power has been used quite regularly instead of being the last resort. The Constitution and judiciary have provided the following safeguards to prevent its misuse:

## **Constitutional Safeguards**

- An ordinance can be promulgated only when both Houses or either of the two Houses of Parliament is not in session or when the state legislature is not in session in case of Governor's ordinance making power.
- An ordinance can be issued only on those subjects on which the Parliament can make laws.
- An ordinance is subject to the same constitutional limitations as an Act of Parliament. Hence, an ordinance cannot abridge or take away any of the fundamental rights.
- Every ordinance issued must be laid before both the Houses of Parliament or state legislature within six weeks from the reassembly of Parliament or state legislature and it ceases to exist if it is not approved within six weeks of reassembly.
- Whenever a Bill seeking to replace an ordinance is introduced in the House, a statement explaining the circumstances that had necessitated immediate legislation through ordinance route should also be placed before the House.
- 44th Constitutional Amendment has reiterated that the satisfaction of the President to promulgate ordinance could be challenged in case an 'immediate action' was not required.

## **Judicial Safeguards**

- 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.
- It was argued in *DC Wadhwa vs. the State of Bihar* (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.
- 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".

## **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.