



drishti

Government Re-Promulgates Triple Talaq Ordinance

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The government has **re-promulgated** the **Muslim Women (Protection of Rights on Marriage) Ordinance, 2019**, banning the practice of instant triple talaq (**'talaq-e-biddat'**).

A Bill to convert the earlier ordinance, issued in September, 2018, was cleared by **the Lok Sabha in December** and is **pending in the Rajya Sabha**. Since the Bill could not get the Parliamentary approval, the fresh ordinance was issued.

Ordinance Making Power of President

- Under the Constitution, the power to make laws rests with the legislature. However, in cases when Parliament is not in session, and **'immediate action'** is needed, the President can issue an ordinance.
- **Article 123** of the Indian constitution empowers the **President** to promulgate ordinances.
- After the ordinance is notified it is to be laid before Parliament **within 6 weeks** of its first sitting.
- Parliament could either choose to pass the ordinance, disapprove it or it may lapse within the 6 week time frame.
- As **maximum gap between two session of a house can be 6 months** therefore maximum life of a ordinance can be **6 months and 6 weeks**.
- An ordinance made when both the Houses are in session is void. Thus, the power of the President to legislate by ordinance is **not a parallel power of legislation**.
- In addition, the President may chose to withdraw the ordinance.
- **In Cooper case, (1970)**, the Supreme Court held that the President's satisfaction can be questioned in a court on the ground of malafide.

The **38th Constitutional Amendment Act of 1975** made the President's satisfaction final and conclusive and beyond judicial review. But, this provision was deleted by the **44th Constitutional Amendment Act of 1978**. Thus, the President's satisfaction is justiciable on the ground of malafide.

- In the **D C Wadhwa case (1987)** the court ruled that successive re promulgation of ordinances with the same text without any attempt to get the bills passed by the

assembly would amount to violation of the Constitution and the ordinance so re-promulgated is liable to be struck down.

It held that the exceptional power of law-making through ordinance cannot be used as a substitute for the legislative power of the state legislature.

- In **Krishna Kumar Singh vs. State of Bihar (2017)**, the Supreme Court stated that ordinances are subject to judicial review, and do not automatically create enduring effects.