

## Government's power to promulgate, re-promulgate Ordinances

### Why in news?

The central government promulgated an Ordinance that undid the unanimous verdict of a 5 judge Constitution Bench of the Supreme Court.

### What is the background of the issue?

- The verdict gave the government of Delhi control over the transfer and posting of officials in the National Capital Territory (NCT), except with regard to public order, police, and land.

### What is an Ordinance?

- **Article 123** - Power of president to promulgate ordinances during recess of Parliament.
- He can also withdraw an ordinance at any time.
- **Article 213** - Power of governor to promulgate ordinances during recess of the state legislature.
- He can also withdraw an ordinance at any time.
- **Article 239B** - Power of administrator to promulgate Ordinances during recess of Legislature.
- **Article 13** - The definition of 'law' contained in Article 13 expressly includes ordinances.
- **Ratification within 6 weeks or 42 days** - Ordinances must be approved by the Parliament within six weeks from its reassembly or the **ordinance lapses** at the expiry of 6 weeks.
- According to articles of 123 and 213 if the two Houses start their sessions on different dates, the **later date** will be considered.
- **Lapse of ordinance** - The Ordinance may lapse earlier if the President withdraws it or if both Houses pass resolutions disapproving it.
- If an Ordinance makes a law that Parliament is not competent to enact under the Constitution, it shall be considered **void**.
- **Act of Parliament** - Ordinances have the same force and effect as an act of Parliament but are in the **nature of temporary laws**.
- **National emergency** - While a proclamation of national emergency is in operation, the President can issue ordinances on the state subjects also, if the Parliament is not in session.
- **Re-promulgation of Ordinance** - If an Ordinance lapses, the only option for the government is to reissue or re-promulgate it.
- **Non-justiciable** - **38 Amendment Act 1975** made the promulgation of ordinances by

the president, governors and administrators of union territories non-justiciable.

### What are the issues with ordinance?

- Re-promulgations without bringing the Ordinance to the legislature would usurp the legislature's function, and will be unconstitutional.
- Governors in many instances have misused the ordinance making powers to push their agenda.

### What are the judgements associated with Ordinances?

- **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**.
- **Krishna Kumar Singh and Another vs State of Bihar** - SC noted that legislation should normally be done by the legislature and the Governor's power to issue an Ordinance is in the nature of an emergency power.

### What are the implications of the ordinance?

- The Ordinance promulgated by the President gave the Lieutenant Governor of Delhi, who is appointed by the Centre, power over services, and established a National Capital Civil Service Authority.
- National Capital Civil Service Authority comprises of the Chief Minister and two senior IAS officials, which would decide matters by majority of votes of the members present and voting.
- This essentially creates a situation in which the view of the elected CM could potentially be overruled.

*Article 13 declares that all laws that are inconsistent with or in derogation of any of the fundamental rights shall be void.*

### Quick facts

#### Doctrine of Colorable Legislation

- Doctrine of Colorable Legislation means that if a legislature lacks the jurisdiction to enact laws on a specific subject directly, it cannot make laws on it indirectly
- To check the transgression of legislative authorities, the doctrine of colorable legislation came into existence.
- Colorable legislation suggests an encroachment on the legislative power.
- Colorable legislation is one of the doctrines under the Indian Constitution.

### References

1. [The Indian Express | Ordinances](#)
2. [IP Leaders | Colorable Legislation](#)



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