

## UPSC Civil Services Examination

### Political Science & International Relations

#### Topic: Ordinance Making Power of Indian Executive – Indian Polity Notes

##### What is the Ordinance in Law?

Ordinances are like a law but not enacted by the Parliament but rather promulgated by President of India when Lok Sabha and Rajya Sabha or either of those is not in session. Union Cabinet's recommendation is a must for an ordinance to be promulgated. Using ordinances, immediate legislative actions can be taken.

**Note:** For an ordinance to exist, it should be approved by the Parliament within six weeks of it being introduced. Parliament is required to sit within 6 weeks from when Ordinance was introduced.

##### What is Ordinance Making Power of Executive?

##### Ordinance Making Power of President

Article 123 deals with the ordinance making power of the President. President has many legislative powers and this power is one of them.

Details about President's ordinance making power is given in the table below:

President's Ordinance Making Power
He can only promulgate the ordinance under these circumstances: <ul style="list-style-type: none"><li>• When both the houses or either of the house is not in session</li><li>• Circumstances occur where the President thinks it necessary to act without waiting for houses to assemble</li></ul>
An ordinance can be retrospective in nature
An ordinance rolled out when both the houses are in session is void in nature
The Parliament has to approve the ordinance within six weeks from its reassembly
Acts, done and completed under the ordinance before it lapses, remains fully active
Unlike the Indian Constitution, most of the democratic constitution of the world don't give such ordinance making power to their President
It has no connection with the President's power to proclaim a national emergency
The power of ordinance making is not to be taken as a substitute for the legislative power. Only under

special circumstances, ordinances can be rolled out

President's power to roll out ordinance is justiciable on the ground of malafide

## What are the limitations of ordinance making power of President?

There are the following limitations:

1. President can promulgate an ordinance only when both the houses are not in session or only one house is in session.
2. For an ordinance to be promulgated, such circumstances should be there which deem it necessary for President to legislate through the ordinance

**Note:** Cooper Case 2011: Supreme Court held that the President's action can be put under judicial review with respect to ordinances. 38th Amendment Act termed President's ordinance making power final and conclusive and beyond judicial review; however, 44th Amendment to Indian Constitution reversed it and made President's satisfaction to bring ordinance justiciable.

3. Ordinances can be introduced only on those subjects on which the Indian Parliament can make laws.
4. Ordinances can not take away any rights of citizens that are guaranteed by the Fundamental Rights of the Indian Constitution.
5. Ordinance ceases to exist if parliament takes no action within six weeks from its reassembly
6. Ordinance also stands void if both the houses pass a resolution disapproving the ordinance

**Note:** The maximum life of an ordinance can be six months and six weeks.

## Comparison between Ordinance Making Power of President and Governor

Article 213 deals with the power of Governor to legislate through ordinances. His power of ordinance making is quite similar to the President's power. The comparisons between these two w.r.t. Ordinance making is given below:

Ordinance Making Power of President	Ordinance Making Power of Governor
He can promulgate ordinance when either Lok Sabha or Rajya Sabha is not in session or if both are not in session	He can promulgate ordinance when the Legislative Assembly is not in session in case of unicameral legislature or when both Legislative assembly and council are not in session in case of a bicameral legislature
He can roll-out an ordinance for only those matters on which Parliament (Lok Sabha & Rajya Sabha) can make laws	He can roll-out an ordinance for only those matters on which state legislature can make laws
His ordinances have the same effect on policies as parliament's acts will have	His ordinances have the same effect on policies as state's acts will have. If his ordinance legislates on matters which state government has no power on, the ordinance stands null and void
The ordinance introduced by him can be withdrawn anytime	The ordinance introduced by him can be withdrawn anytime

His power to promulgate ordinance is not a discretionary power. Council of Ministers' (headed by PM) advice is a pre-requisite	His power to promulgate ordinance is not a discretionary power. Council of Ministers' (headed by CM) advice is a pre-requisite
No instructions are needed by President's when he promulgates an ordinance	President's instructions on the following three cases are must: <ul style="list-style-type: none"><li>• If a bill containing the same provisions would have required the previous sanction of the President for its introduction into the state legislature</li><li>• If he would have deemed it necessary to reserve a bill containing the same provisions for the consideration of the President</li><li>• If an act of the state legislature containing the same provisions would have been invalid without receiving the President's assent</li></ul>