

# Constituent Assembly Debate on Ordinance Making Power of the President

Constituent Assembly debates are very important sources of material for the UPSC exam. In this article, we bring you the highlights of the Constituent Assembly debates on the ordinance making power of the President for the [IAS exam](#) polity, governance, and law segments.

## CA Debate on Ordinance Making Power of the President

The [Constituent Assembly Debate](#) regarding Article 102 was conducted on 23rd May 1949. The said article relates to the president's power to promulgate an ordinance. The said article is Article 123 of the present Indian Constitution i.e. 'Power of President to promulgate Ordinances during recess of Parliament.'

### Article 102, Draft Constitution, 1948

*(1) If at any time, except when both Houses of Parliament are in session, the President is satisfied that circumstances exist which render it necessary for him to take immediate action, he may promulgate such Ordinances as the circumstances appear to him to require.*

One member proposed that clause (1) be amended to restrict the ordinance-making power to when **neither House of Parliament was in session**, as the existing provision was too expansive.

- The Chairman of the Drafting Committee countered that this would render the power useless because both Houses of Parliament was involved in the passage of legislation.
- Hence, it was necessary to allow the [President](#) to exercise these powers even if one House was in session, because then 'the framework for passing law in the ordinary process does not exist'.
- *"That in clause (1) of Article 102, for the words 'when both Houses', the words 'when one or both Houses' and for the words 'such Ordinances', the words 'such Ordinance or Ordinances' be substituted respectively."*
- **The amendment was negated.**

Another member proposed that clause (1) be amended to include the proviso that no ordinance could 'deprive any citizen of his right to personal liberty except on conviction after trial by a competent court of law' was negated in voting.

- He justified this amendment by referring to the passage of ordinances in the British Provinces, which had subjected people to prolonged detention and deprived them of a trial. Even in emergency situations citizens should not be denied basic [fundamental rights](#).
- In response, the Chairman of the Drafting Committee stated that clause (3) of the Draft Article already stipulated that ordinances would be 'subject to the same limitations as a law made by the legislature by the ordinary process', including the requirement to pass laws that were congruent with the Fundamental Rights. Since Draft Article 15 ([Article 21](#)) already provided this protection to citizens, this amendment was unnecessary.
  - *(2) An Ordinance promulgated under this article shall have the same force and effect as an Act of Parliament assented to by the President, but every such Ordinance - (a) Shall be laid before both Houses of Parliament and shall cease to operate at the expiration of six weeks from the re-assembly of Parliament, or, if before the expiration of that period resolutions disapproving it are passed by both Houses, upon the passing of the second of those resolutions.*

A member suggested an amendment that required ordinances to be placed before Parliament **within four weeks from the date of promulgation**. The amendment was negated.

- He argued that when read with Draft Article 69 (Article 85), the effect of this provision was that an ordinance could potentially be in effect for up to seven-and-a-half months, which was an excessively long period of time. The imposition of a fixed time period within which an ordinance would expire was a necessary safeguard against the misuse of legislative power.
- While other members agreed with the reasoning behind this amendment, there was disagreement about the time period.
- One member proposed that the ordinance should automatically **expire thirty days** from the date of its promulgation. The amendment was negated.

Another member proposed that the clause be amended to ensure that an ordinance was laid before both houses **immediately after reassembly of Parliament**, wherein it would cease to operate unless approved by either House.

- In response, the Chairman of the Drafting Committee contended that these amendments did not account for emergency situations in which Parliament simply could not reconvene within the stipulated time frame.
- He argued that this was an emergency power **with a very restricted scope and that there were sufficient safeguards** within the Draft Article and the other parts of the [Constitution](#) which would prevent misuse.

The next amendment moved was - “Every such ordinance shall be laid before both Houses of the Parliament immediately after each House assembles and unless approved by either House of the Parliament by Specific Resolution, shall cease to operate forthwith.” This amendment was negated in voting.

- The main reason for bringing the aforesaid amendment was to give proper justification to the rule of law. It was appealed that the emergency power must not be granted in an extraordinary manner. It was recommended that the extreme power must not be given to the executive unless the same is approved by the Parliament.

## Conclusion

The framers of the Indian Constitution thus assigned special powers i.e. law-making powers to the President at the time when Parliament is not in session. The President of India can exercise this power only at the time of emergency. The President’s power of issuing ordinance at a time of emergency is similar to a law made by the legislature under the ordinary process. None of the laws passed by the legislature under the ordinary process was empowered to deprive citizens of their elementary rights. The same aspect is explicitly applicable to the President’s power of issuing ordinance at the time of emergency.

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