

# Ordinance Making Power of President & Governor - Indian Polity Notes

An ordinance is a law that is promulgated by the President of India only when the Indian parliament is not in session. President promulgates an ordinance on the recommendation of the union cabinet. Similarly, the Governor of Indian states can also initiate ordinances only when a legislative assembly is not in session when it is a unicameral legislature and when legislative assembly along with legislative council both are not in session when it is the bicameral legislature.

The topic 'Ordinance Making Power of Executive' is important for [IAS Exam](#) and its three stages - Prelims, Mains (GS-II) and Interview. This article will talk in detail about the ordinance making power of the President and the ordinance making power of the governor. It will also put forward the comparison between the ordinance making power of both the president and governor.

## Latest News related to Ordinance-

1. The Punjab Assembly passed a resolution and rejected the Centre's recent farm ordinances and the proposed Electricity (Amendment) Bill 2020.
  - The Farm ordinances were a part of the third portion of the economic package announced under Atmanirbhar Bharat Abhiyan to counter Covid-19 pandemic. Candidates can know more about [Atmanirbhar Bharat Abhiyan](#) on the linked page.
  - It is expected to allow free movement of agricultural produce between states and let the farmers decide to whom they want to sell their crops
  - The Ordinance included -
    - Farmers' Produce Trade and Commerce (Promotion and Facilitation) Ordinance, 2020
    - Farmers (Empowerment and Protection) Agreement on Price Assurance and Farm Services Ordinance, 2020
    - Essential Commodities (Amendment) Ordinance, 2020.
  - The Electricity (Amendment) Bill 2020 centralizes the power sector through the establishment of the Electricity Contract Enforcement Authority.

Aspirants can read more on [Farm Act 2020](#) on the linked page.

## What is the Meaning of Ordinance?

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 are given in the table below:

#### **President's Ordinance Making Power**

He can only promulgate the ordinance under these circumstances:

- When both the houses or either of the house is not in session
- Circumstances occur where the President thinks it necessary to act without waiting for the Parliament to assemble

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 of its reassembly

Acts, done and completed under the ordinance before it lapses, remain fully active

Unlike the Indian Constitution, most of the democratic constitutions of the world do not give 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 legislative power in special circumstances, ordinances can be rolled out

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

### **What are the limitations of the ordinance-making power of the 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:** In *RC Cooper vs. Union of India* (1970) the Supreme Court, while examining the constitutionality of the Banking Companies (Acquisition of Undertakings) Ordinance, 1969 which sought to nationalise 14 of India's largest commercial banks, held that the President's decision could be challenged on the grounds that 'immediate action' was not required; and the Ordinance had been passed primarily to by-pass debate and discussion in the legislature.

38th Amendment Act inserted a new clause (4) in Article 123 stating that the President's satisfaction while promulgating an Ordinance was final and could not be questioned in any court on any ground. however, the [44th Amendment to Indian Constitution](#) reversed it and made the President's satisfaction to bring ordinance justiciable.

1. Ordinances can be introduced only on those subjects on which the Indian Parliament can make laws.
2. Ordinances can not take away any rights of citizens that are guaranteed by the [Fundamental Rights](#) of the Indian Constitution.
3. Ordinance ceases to exist if parliament takes no action within six weeks from its reassembly
4. 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.

The ordinance-making power of the President is important for [UPSC 2022](#) and candidates may also learn the comparison between the ordinance-making power of the President and Governor.

### **Comparison between Ordinance Making Power of President and Governor**

Article 213 deals with the power of the 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:

<b>Ordinance Making Power of President</b>	<b>Ordinance Making Power of Governor</b>
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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 the 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

His ordinances have the same effect on policies as parliament's acts will have

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

No instructions are needed by President's when he promulgates an ordinance

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 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

His power to promulgate ordinance is not a discretionary power. Council of Ministers' (headed by CM) advice is a pre-requisite

President's instructions on the following three cases are must:

- If a bill containing the same provisions would have required the previous sanction of the President for its introduction into the state legislature
- If he would have deemed it necessary to reserve a bill containing the same provisions for the consideration of the President
- If an act of the state legislature containing the same provisions would have been invalid without receiving the President's assent

### Repromulgation of Ordinance

- In **Krishna Kumar Singh and Another v. State of Bihar 2017**, the Supreme Court examined a case where the state of Bihar re-promulgated an Ordinance several times without placing it before the legislature.

- A **seven-judge Bench of the court reiterated** that legislation should normally be done by the legislature, and the Governor's power to issue an Ordinance is in the **nature of emergency power**.
- **The court clarified that there might be circumstances permitting the re-promulgation of an Ordinance.** However, it said, repeated re-promulgations without bringing the Ordinance to the legislature would usurp the legislature's function, and would be unconstitutional.
- **The court declared the actions, in that case, to be "a fraud on constitutional power".**
- A Constitution Bench of the **Supreme Court headed by then CJI P N Bhagwati** held that:
  - **An Ordinance promulgated by the Governor to meet an emergent situation shall cease to be in operation at the expiration of six weeks from the reassembly of the Legislature.**
  - If the government wishes for the Ordinance to continue in force beyond the six-week period, it "has to go before the Legislature", which is the constitutional authority entrusted with law-making functions.

### **Frequently Asked Questions related to Ordinance**

#### **Q. When an ordinance can be passed?**

President can issue ordinance when one of the houses of the Parliament is not in session. The maximum validity of an ordinance is 6 months and 6 weeks. An ordinance will expire after 6 weeks once both houses of the Parliament are in session. A constitutional amendment cannot be made through the ordinance route.

#### **Q. Who has the power of making ordinance?**

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.

#### **Q. How many times ordinance can be issued?**

The present government has re-promulgated four ordinances in a span of two years. The Coal Mines (Special Provisions) Ordinance, 2014 was promulgated twice. The Land Acquisition Ordinance was promulgated thrice after which it was eventually allowed to lapse. The Negotiable Instruments (Amendment) Ordinance, 2015 was promulgated twice and the latest Enemy Property Ordinance was its fourth promulgation. This is probably the first time in our constitutional history that an ordinance has been re-promulgated for a fourth time at the Centre.

