Clamping Down On Ordinance Raj

Why ordinance route is preferred?

\n\n

\n
- The temptation to use the power vested in the President and the Governors under **Articles 123 and 213** of the Constitution is generally a result of one of the following three reasons.\n\n
  \n
  - Reluctance to face the legislature on particular issues.
  \n
  - Fear of defeat in the Upper House where the government may lack the required numbers.
  \n
  - The need to overcome standoff in the legislature caused by repeated and wilful disruption by a section of the Opposition.
  \n

\n
\n

\n\n

What Supreme Court has said in its recent judgement?

\n\n

\n
- The verdict of a seven-member Bench of the Supreme Court breaks new ground in highlighting the constitutional limitations on the cavalier resort to ordinances.
\n
- The Supreme Court had already declared in 1986, in D.C. Wadhwa, that **repeated re-promulgation of ordinances was unconstitutional.**
\n
- Now, in **Krishna Kumar Singh v. State of Bihar**, it goes deeper and concludes that the failure to place an ordinance before the legislature constitutes abuse of power and a fraud on the Constitution.
\n
- It noted in this case that a 1989 ordinance by which the State government took over 429 Sanskrit schools in Bihar was promulgated several times until 1992, but not once tabled in the State Assembly.

\n

\n\n

What are the implications?

\n\n

\n
- The judgment **widens the scope of judicial review of ordinances.**
\n
- The court can go into whether the President or Governor had any material to arrive at the satisfaction that an ordinance was necessary and to examine whether there was any tilted motive.
\n
- The judgment will be welcomed by those who believe in constitutional decorum, legislative control over lawmaking and the larger ethical basis for the exercise of power in any circumstance.
\n

\n\n

What are the other dimensions of ordinance?

\n\n

\n
- It is not always that the ordinance route can be neatly explained as a cynical move to privilege political expediency over parliamentary accountability.
\n
- While contending that ordinances should be issued only to meet certain exigencies and under compelling circumstances, it is equally important to understand that disruption as a parliamentary tactic plays a significant role.
\n
- A dysfunctional House sometimes constitutes a compelling circumstance in itself.
\n
- Generally, it is the combination of Opposition obstructionism and government obstinacy in not making any concessions to those across the aisle that derails legislative business and leads to ordinances.
\n
- The courts can only define the boundaries between the use and abuse of power, but it is up to parties in the legislature to observe the limits of constitutional propriety and show that they have both the time and the will to enact laws.
\n

\n\n

\n\n

Category: Mains | GS – II | Polity

\n\n

Source: The Hindu

\n

