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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