Repromulgating the Ordinance is Unfortunate

Why in news?

Recently central government has repromulgated the ordinance that aims establish a commission for air quality management in the National Capital Region.

When an ordinance can be issued?

- The Constitution permits the central and state governments to make laws when Parliament (or the State Legislature) is not in session.
- This power is provided for urgent requirements and the law thus made has an automatic expiry date.
- The ordinance will lapse at the end of six weeks from the time Parliament (or the State Legislature) next meets.
- Promulgation of the ordinance was originally conceived as an emergency provision but now it is used regularly.

How many times ordinance has been promulgated till now?

- In the 1950s, central ordinances were issued at an average of 7.1 per year and it peaked in the 1990s at 19.6 per year and then declined to 7.9 per year in the 2010s.
- In the last couple of years, it has seen a spike of 16 in 2019, 15 in 2020 and four till now.
- D.C. Wadhwa in a writ petition filed before Supreme Court discovered that state governments used this provision very often.
- Bihar had issued 256 ordinances between 1967 and 1981, of which 69 were repromulgated several times, including 11 which were kept alive for more than 10 years.
- In 2014, Centre has promulgated Securities Laws (Amendment) ordinance three times.
- Similarly, an ordinance to amend the Land Acquisition Act was issued in December 2014 and was repromulgated twice in 2015.
- The Indian Medical Council Amendment Ordinance was issued in September 2018 and again reissued in January 2019.
- The current case of the Commission for Air Quality Management is even more shocking.
- While the ordinance of October 2020 was laid in Parliament on the first day

of the Budget Session, a Bill to replace it was not introduced but the ordinance has been repromulgated now.

What is the Supreme Court view on this?

- In 1986, Supreme Court ruled that repromulgation of ordinances is contrary to the Constitutional scheme and a subversion of democratic legislative processes.
- It said this method is likely to be a colourable exercise of power by the government to ignore the legislature.
- It would enable the executive to transgress its constitutional limitation in the matter of law making in an emergent situation.
- This could indirectly bestow executives the law making function of the Legislature.

What are the takeaways from this?

- In the Constituent Assembly, while there was a discussion on how long the ordinance could remain valid, no one raised the possibility of an ordinance to be re-promulgated.
- Ordinances are used to tackle the emergency situations when the legislature is not in session.
- The time period of six weeks is given for the legislature to decide whether such a law is warranted.
- Repromulgation of ordinance amounts to usurpation of legislative power by the executive.
- Now both the central and state governments are violating this principle.
- Therefore the legislatures and the courts should check this practice.
- Reprogulmating the ordinance to establish the Commission for Air Quality Management raises question of misusing the ordinance making power without getting ratified by Parliament.

Source: The Hindu

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