

1. The ordinance making power of the legislature should be used sparingly and with due respect to the constitution. Discuss. (250 words)

Answer:

Background:-

- In a parliamentary democracy such as India, the ordinance promulgation power is supposed to be used as an exception and not as a matter of course. The constitutional scheme exists to ensure accountability of the political executive to the elected legislature.

Ordinance making in India:-

- **Articles 123 and 213 of the Constitution:-**
- These state that an ordinance may be promulgated to meet a certain circumstance, but must be laid before the legislature in question, and will expire within six weeks of the legislature being convened.
- An ordinance is thus, by definition, limited in time, and can cease to have effect even earlier, if the legislature passes a resolution disapproving the ordinance.

Misuse of ordinance making power:-

- The very nature of the ordinance might mean that a frequent resort to it is only self-defeating
- **Excessively used:-**
 - Following the washout of the second half of the budget session, three ordinances have recently been promulgated by the President.
 - First was the Criminal Law (Amendment) Ordinance, 2018, followed by the Fugitive Economic Offenders Ordinance, 2018, amendments to the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015 (henceforth Commercial Courts Act) were made through an ordinance. .
- **Misuse of ordinance power has been questioned:-**
 - Supreme Court acted on concerns about the manner in which the ordinance promulgating power has been used at the state level.
 - First, in limiting the manner in which ordinances may be repromulgated and second, in ensuring that ordinances cease to be in effect, if they are not placed before the legislature.
 - Without imposing any substantive limits on when an ordinance may be promulgated, the Supreme Court has restrained the government's ordinance-making power (though somewhat belatedly).
- **Self limiting:-**
 - Validity and legality of actions taken on the basis of an ordinance will be in limbo, unless subsequent legislation is passed to the same effect by the legislature.
 - Overuse of ordinances goes fundamentally against two core tenets of the rule of law, stability and consistency
- **Self defeating due to absence of Parliamentary scrutiny and feedback :-**

- Governments may favour the “ordinance route” because it makes for good optics or helps them avoid the difficult task of political negotiation in Lok sabha and Rajya sabha that is part and parcel of lawmaking. That, however, is a self-defeating exercise.
- Taking the ordinance route may only raise suspicions about the government’s motives and harden the opposition’s stand towards a measure, as was seen with the proposed amendments to the land acquisition law.
- The executive’s power to issue ordinances, therefore, goes against separation of powers; for it acts neither as a check nor as a balance on the authority exercised by the other branches of government.
- Ordinances passed in haste are often ill-designed

Why ordinance making is needed?

- It ought to be Power to legislate when Parliament is not in session.
 - When legislature is not in session: the President can only promulgate when either of the House of Parliament is not in session.
- **Immediate action is needed:**
 - The President though has the power of promulgating the ordinances but same cannot be done unless he is satisfied that there are circumstances that require him to take immediate action.
- Parliament should approve: after the ordinance has been passed it is required to be approved by the parliament within six weeks of reassembling. The same will cease to operate if disapproved by either House.
- During emergency

Way forward:-

- Even if there is broad consensus that a certain legislative measure is needed, parliamentary scrutiny is valuable in and of itself.
- Reference to the standing committee and open debate about the merits of a bill and its drafting are likely to address shortcomings or oversights in the law.
- **Ordinances are not immune from judicial challenge:-**
 - The Supreme Court, in Krishna Kumar Singh v. State of Bihar, made a series of pronouncements with potentially huge implications for the future of democratic governance in the country. The case raised intricate constitutional questions concerning the executive’s power to make law through ordinance.

PRACTICE QUESTIONS

Answer the following Questions

1. One year one election would be more appropriate for India rather than one nation one election. Examine. (250 words)
2. Examine the causes behind India’s decreased merchandised exports and depreciating currency. Also discuss various options available to India. (250 words)