

### **1. CRITICALLY EXAMINE THE ORDINANCE MAKING POWER OF THE PRESIDENT.**

Ordinances were first mentioned in the Government of India Act, 1935, which gave the authority to the Governor General to promulgate ordinances. In the Constitution of India, Article 123 empowers the President to promulgate ordinances during the recess of Parliament. He can promulgate an ordinance only when both the Houses of Parliament are not in session or when either of the two Houses of Parliament is not in session. An ordinance can be issued when one House is in session because a law can be passed by both the Houses and not by one House alone.

He can make an ordinance only when he is satisfied that the circumstances exist that render it necessary for him to take immediate action. In Cooper's case, the apex court held that the President's satisfaction can be questioned in a court on the grounds of malafide. Therefore, the decision of the President to issue an ordinance can be questioned on the ground that the President has prorogued one House or both the Houses of Parliament deliberately with a view to promulgate an ordinance on a controversial subject, so as to bypass the parliamentary decision and thereby circumventing the authority of the Parliament. By 44th Constitutional Amendment Act, 1978, it has been made that the President's satisfaction is justifiable.

Every ordinance issued by the President must be laid before both the Houses of Parliament when it reassembles. If Parliament takes no action at all, the ordinance ceases to operate on the expiry of six weeks from the reassembly of Parliament. The ordinance making power of the President in India is rather unusual and not found in most of the democratic constitutions of the world. The Supreme Court has held that the exceptional power of law-making through ordinances cannot be used as a substitute for the legislative power of the union or state legislatures.