

## Govt's power to promulgate Ordinances - why and how

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Recently, the central government promulgated an Ordinance that undid the unanimous verdict of a five-judge Constitution Bench of the Supreme Court.



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### What are the constitutional provisions related to Ordinance?

- **Article 123:** “If at any time, **except when both Houses of Parliament are in session**, the President is satisfied that circumstances exist which render it necessary for him to take immediate action, he may promulgate such Ordinances as the circumstances appear to him to require.”
- Ordinance shall have the **same force and effect as an Act of Parliament**.
- **Article 213:** It deals with the broadly analogous powers of the Governor to promulgate/ withdraw an Ordinance when the state legislature is not in session.

### When does an ordinance lapse?

- Ordinance is required to bring before **Parliament for ratification** and its failure of ratification will lead to lapse.
- Ordinance may lapse earlier if the President withdraws it.
- Ordinance also lapses if both Houses pass **resolutions disapproving it**.
  - Rejection of an Ordinance would, however, imply the **government has lost the majority**.
- If an Ordinance lapses the only option for the government is to **reissue or repromulgate it**.

### What is the validity of the Ordinance?

- Ordinance can last a **maximum of 6 months and 6 weeks** without ratification.
- It is valid for **six weeks, or 42 days** from the date on which the next session starts.
- **Note:** If the two Houses start their sessions on different dates, the later date will be considered.

### Who decides to bring Ordinance?

- Ordinances in India can be **issued by the President**.
- But the President acts on the advice of the Council of Ministers, it is in effect **the government that decides to bring the Ordinance**.

### Can the President reject the ordinance sent by the government?

- **No**, but the President may **return the recommendation** of the Cabinet once if she feels it warrants reconsideration.
- However, if it is **sent back again (with or without reconsideration)**, the president **has to promulgate it**.

### What are the cases related to the Ordinance?

#### Krishna Kumar Singh and Another v. State of Bihar

- SC said legislation should normally be **done by the legislature**, and the Governor's power to issue an Ordinance is like **emergency power**.

#### Dr D C Wadhwa and Ors v. State of Bihar and Ors (1986)

- A challenge was mounted against the [power of the Governor](#) to **repromulgate** various Ordinances in Bihar after **256 Ordinances** were promulgated between **1967 and 1981**.
  - Out of which **69 were repromulgated several times** and kept alive with the permission of the President.
- Court said there might be circumstances **permitting the re-promulgation** of an Ordinance, but **repeated re-promulgations** without bringing the Ordinance to the legislature would **usurp the legislature's function**, and will be **unconstitutional**.