

1. Ordinances are meant for exceptional circumstances and should not become a routine legislative tool.

Discuss the implications of frequent ordinance promulgation. How can the misuse of this power be curbed?

Ordinances are temporary laws promulgated by the President under Article 123 or by the Governor under Article 213 of the Indian Constitution when the legislature is not in session. These powers are meant for emergent situations, as seen in the Criminal Law Amendment Ordinance following the Nirbhaya case and the amendment to the POCSO Act after the Kathua rape case.

Implications of Frequent Ordinance Promulgation

1. Undermining Parliamentary Authority: Frequent use of ordinances can bypass the legislative process, diminishing the role of Parliament in law-making.

- Example: The re-promulgation of the Land Acquisition Ordinance in 2015, without sufficient parliamentary debate, raised concerns about bypassing legislative scrutiny.
- In Krishan Kumar Singh v. State of Bihar (2017), the Supreme Court ruled that failure to place an ordinance before the legislature constitutes an abuse of power and a fraud on the Constitution.

2. Weakening of Democratic Norms: Ordinances, when used excessively, can erode the principles of checks and balances, centralizing power in the executive.

- In R.C. Cooper v. Union of India (1970), the Court held that the President's decision to promulgate an ordinance could be challenged if 'immediate action' was not required, highlighting the misuse of ordinances to bypass legislative debate.

3. Legal Uncertainty: Ordinances, being temporary, can lead to legal uncertainty, especially if they lapse or are not ratified by the legislature.

- Example: The lapse of the Consumer Protection Ordinance in 2020 led to confusion among consumers and businesses.
- In Krishan Kumar Singh v. State of Bihar, the Court emphasized that repeated re-promulgation of ordinances without legislative approval creates legal uncertainty.

4. Policy Instability: Frequent changes in law through ordinances can lead to policy instability, affecting long-term planning and governance.

- Example: Between 1950 and 2014, over 600 ordinances were promulgated at the central level, indicating a recurring reliance on this tool.
- In T. Venkata Reddy v. State of Andhra Pradesh (1985), the Court recognized that ordinance-making power is a legislative function, but warned against its overuse, as it can lead to policy instability.

5. Erosion of Legislative Accountability: Ordinances reduce the scope for legislative debate and oversight, leading to a lack of accountability in law-making.

- Example: The frequent use of ordinances can erode the deliberative role of the legislature, reducing transparency and accountability in governance.

Curbing the Misuse of Ordinance Power

1. Judicial Review: Strengthen judicial scrutiny over the necessity and validity of ordinances to ensure they are used only in exceptional circumstances.

2. Legislative Reforms: Introduce stricter guidelines and limitations on the re-promulgation of ordinances to prevent their misuse.

- Example: A Parliamentary Committee could be established to review the necessity of each ordinance before re-promulgation, ensuring it aligns with the principle of 'immediate action' as set by the R.C. Cooper case.

3. Enhanced Accountability: Mandate detailed explanations from the executive on the necessity of an ordinance, subject to parliamentary approval within a specific timeframe.

Frequent promulgation of ordinances undermines the principle of separation of powers, concentrating excessive authority in the executive and weakening legislative oversight. To preserve this balance, it is crucial to enforce strict judicial and parliamentary checks, ensuring that ordinances remain a tool of last resort, used only in truly exceptional circumstances.

2. Analyze the challenges and potential benefits of adopting a Uniform Civil Code in India's diverse society.?

Article 44 of the Indian Constitution, the Uniform Civil Code (UCC) aims to replace personal laws based on religious scriptures and customs with a common set of laws governing every citizen.

Potential Benefits

1. Gender Equality: A UCC can eliminate discriminatory practices against women in personal laws, promoting gender justice.

2. National Unity:

- It could foster a sense of national integration by treating all citizens equally, irrespective of religion.
- Example: The Law Commission's 2018 report suggested that UCC could promote national unity by transcending religious differences, echoing the vision of leaders like Jawaharlal Nehru.

3. Legal Clarity:

- A UCC would simplify the legal system, reducing the complexity and conflicts arising from multiple personal laws.
- Example: Goa is often cited as a best practice example, as it follows a common civil code known as the Goa Civil Code, which has successfully unified personal laws within the state.

4. Secularism:

- Adoption of a UCC would strengthen the secular nature of the state by ensuring uniform application of laws across religions.

5. Social Reform:

- UCC could serve as a catalyst for modernizing and reforming regressive practices within different communities.
- Example: The Constituent Assembly Debates reflect a consensus on the need for UCC to abolish outdated customs and promote social progress, as argued by B.R. Ambedkar.

Challenges

1. Religious Diversity:

- India's multiple religions have distinct personal laws. Implementing a UCC may be perceived as an infringement on religious freedom.
- Example: The S.R. Bommai case (1994) emphasized the importance of protecting religious diversity, cautioning against the imposition of a uniform law that could be seen as encroaching on religious rights under Article 25.

2. Cultural Sensitivities:

- Different communities have deeply rooted customs and traditions that might resist standardization.
- Example: The Law Commission's 2018 report also pointed out the challenge of integrating varied customs, suggesting that reforms should respect cultural diversity.

3. Political Resistance:

- UCC is a politically sensitive issue, with parties and communities divided on its necessity and implementation.
- Example: The Shah Bano case led to political upheaval and the eventual enactment of the Muslim Women (Protection of Rights on Divorce) Act, 1986, showcasing the political complexities surrounding UCC.

4. Fear of Marginalization:

- Minority communities fear the UCC might dilute their cultural identity and impose a majority-centric legal framework.

5. Legal Complexity:

- Unifying diverse personal laws into a single code involves significant legal challenges, requiring careful drafting to avoid ambiguities.

Way Forward

Instead of completely doing away with differences between personal laws, the Law Commission has recommended amendments to tackle discrimination and inequality.

- **Reform in Hindu Religion:** Compulsory Registration of Marriages: Suggested through an amendment to the Registration of Births and Deaths Act.
- **Community of Property upon Marriage and Divorce:** Both spouses should be equally entitled to property acquired after marriage.
- **Bigamy upon Conversion:** Such second marriages enabled by conversion should be made void.
- **Deletion of Thirty-Day Notice Period under the Special Marriage Act, 1954:** To prevent misuse by disapproving kin to discourage the marriage.

Reform in Islam:

- **Codified Inheritance Law:** A uniform inheritance law applicable to both Sunnis and Shias, replacing the Muslim Personal Law (Shariat) Application Act, 1937.
- **Adultery as a Ground for Divorce:** Introduced as a valid ground for divorce through an amendment to the Dissolution of Muslim Marriage Act, 1939.
- **Criminalizing Polygamy:** The Nikahnama should clearly state that polygamy is a criminal offense.

Reform in Parsi Law:

- **Ostracization on Marriage with an Outsider:** Addressing the expulsion of Parsi women from the community upon marrying outside it.

Reform in Christianity:

- **Divorce:** Reducing the period for confirmation of a decree of divorce to align with other religions.

The issue of UCC should not be used as a tool for electoral gains. Instead, it demands thoughtful and informed discussions among judges, parliamentarians, and scholars to ensure that any move towards uniformity is well-considered and respectful of the nation's diverse fabric.