

Ordinance Making Power

- Power to executive to make perform the task of legislation.
- Granted to the President and the Governors under Art 123 and 213 of the Constitution, respectively
- Separation of powers?

Historical basis:

- Relic of foreign rule
- First conferred on the Gov-Gen of India by the Indian Councils Act, 1861: power to issue ordinances in case of emergency relating to peace and good government
- Later, the power given again to the Gov-Gen of India under Ss 42 and 43 of the Government of India Act, 1935; also given to the Governor's of Provinces under Ss. 88 and 89 of the said Act
- Majority of ordinances passed under the provisions were to suppress revolutionary activities, and to contain civil unrest in the context of Non-Cooperation Movement and the Civil Disobedience Movement

Need for Ordinance making power:

- Q. Why was the power perceived to be a tool of oppression included in a Constitution that wished to transform the destiny of a nation?
- Dr. B R Ambedkar:
"To provide a machinery for legislation during the period Parliament is not in session, but an immediate action is required in some matter."
"...it seems to me that the only solution is to confer upon the President the power to promulgate the law which will enable the executive to deal with that particular situation because it cannot resort to the ordinary process of law because, ex hypothesi, the legislature is not in session."
- Therefore, ordinance making power is an exceptional arrangement predicated on some form of legislative urgency.

Federal Limitations Upon Municipal Ordinance Making Power

C Cleary



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