

14. 12. 20

The features of the office of Vice President (V.P.)

- In Indian constitutional framework the incumbent is elected & removed by the designation of Vice President & not as chairman of Rajya Sabha. It is because if the designation of chairman was used then a constitutional could arise & the members of Rajya Sabha with different states can claim that their chairman should be elected only by the members of Rajya Sabha.
- Being an executive authority V.P. of India is authorised to perform a legislative function. It is because the Constitution does not define the subject matter of Executive Authority & principle of flexible separation of power has been adopted between Executive & Legislature.

• V.P. is not a member of Rajya Sabha. Again it is a deliberated provision incorporated by the makers of the Constitution to reduce the area of argument between States & centre that the Presiding Officer should be elected only by the members of Rajya Sabha.

• There is no ground mentioned in the Constitution to remove V.P. from the office. It is because if the ground had been mentioned, the possible ground would always be "Violation of Constitution" & based on this ground the members of Rajya Sabha & different States can claim that since the presiding incumbant has violated the Constitution as a presiding officer of Rajya Sabha only the members of Rajya Sabha should be allowed to ~~sate~~ & cast their vote in the process of removal.

- In Indian constitutional framework practically the office of V.P. is a proxy of govt. of India since the members of Lok Sabha where govt. of India is in majority are included in the process of election & removal.
- In the case of absence & vacancy for the office of V.P., the Deputy chairman of Rajya Sabha act as a presiding officer. At this time the official designation of presiding officer would be chairman of Rajya Sabha. It is because Deputy chairman is not only a member of Rajya Sabha but elected only by the members of Rajya Sabha.



Speaker

- Member of Lok. Sabha
- only Lok Sabha members participate in the election
- Grounds for Removal
- only Legislative Authority
- only Lok Sabha members remove the Speaker.
- does not take a separate oath

Vice President

- Not a member of Rajya Sabha
- Both the Lok Sabha & Rajya members participate in V.P. election
- there is no ground.
- Executive Authority performing legislative works
- Both L.S & R.S members involve in removal.
- As a V.P., the V.P. takes a separate oath.

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members
Ref. Laxmi Kant

Joint
sitting

Power, Authority & functions of President & Governor

▷ Ordinance Promulgating Power

Article 123 & 213 of the constitution incorporates the power of ordinance promulgation in the hands of Executive. Under Article 123 & 213, if President & governor are satisfied that a necessity arises to formulate law in different matters of policy & administration but both or any house of the parliament is not in session then Pres. & Governor under the ambit of their jurisdiction are authorised to promulgate an Ordinance.

features of Ordinance Promulgation :-

- ▷ The power of Ordinance Promulgation is conditional & not absolute. It can be exercised only when the legislature is not in session & based on the advice of Council of Ministers & P.M.

2) It is consistent with the principle of legislative supremacy, the power to promulgate ordinance is subject to legislative control since after the commencement of parliamentary session the ordinance should be passed within a period of 6 weeks.

3) It has a same force & effect as a law enacted by Parliament. Although it is not a parallel source of law making or independent legislative authority since it could be promulgated only when parliament is not in session. By ordinances, a new law could be formulated & existing law could be repealed or amended & a prevailing ordinance could be substituted.

4) The constitution has used different expressions like "cease to operate" "cease to have effect", void etc. Each of these expression has distinct connotation. The expression "cease to operate" has been codified within Art. 213 & 23. It is different from void & Repeal. If an ordinance get disapproved within 6 weeks of its publication it is not declared void ab initio. It means the subject matter of the temporary law is legal but parliament disapproved it.

5) The question as to whether rights, privileges, obligation & liabilities would survive after the ordinance cease to operate must be ~~to~~ determined as a matter of construction. The appropriate test to be applied by the court of law based on Public Interest, Constitutional Necessity & force & effect Rule.

Supreme Court in 2 of its landmark adjudication clarified the legal position of Ordinance Promulgation

In S.C. Wadhwa case 1987, court held that Ordinance making power is not a ~~parallel~~ parallel or substitute power of law making.

Re-promulgation of an Ordinance is permissible ~~as~~ only when parliament is not in a position to approve it & operation of an ordinance is required for public welfare & public interest.

Recently, in Krishna Kuma v/s State of Bihar case 2017, a 7 judge bench of Supreme Court by clarifying the legal position of Art 123 & 213 held that Ordinance Promulgation should be done in emergent & exceptional circumstances. Similarly, actions taken under an Ordinance,

would not necessarily survive if the ordinance lapse or cease to operate. Re-promulgation of ordinance constitute a fraud on constitution & re-promulgation is impermissible for 2 reasons—

a) It attempts to circumvent the legislature

b) It defeats the purpose of Art 123 & 213 which provide limited powers to executive

Court in the same case also held that if an ordinance influenced by oblique motive then Judicial Review would extend to verify the motive of respective govt.

Relevance of Ordinance in Indian Parliamentary Democracy :-

→ The way of ordinance promulgation always remain relevant in an organic & transforming ^{Parliamentary} Democracy like India. It is also very much relevant when there is a political & economical turmoil in the country

federalisation
of
cabinet
system

but circumstances immediate legal action. After 1989, with the federal era of coalition govt. & under new liberal reform strategy several initiatives were taken to revitalise every sector of the economy by incorporating the principle of choice & voice & market competition. Several new Regulatory Bodies were created to control both Public & Private Sector.

At the same time with the establishment of WTO, a new legal framework was created on the lines of Agreement like Agreement on Agriculture (AOA) Non-Agriculture Market access (NAMA), TRIPS, TRIMs etc. Similarly, several environmental reform were also taken for environmental conservation & ecological restoration after 1991.

It should be noted that new legal framework in every sector of economy with the establishment of Regulatory Bodies had taken place

by same road of Ordinance Promulgation.