

USE OF 'AT ONCE' IN ORDINANCES

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Oxford Dictionary defines the word 'Ordinance' as an authoritative order. It is a temporary law promulgated by a state or central government without putting the bill on the table of lower and upper house of the Parliament. This situation arises when the Parliament is not in session and there is an urgent need of the law to be passed so as to cope with an emergent situation. This power is granted to the executives by The Constitution of India¹. The main reason of bestowing the executive with the power of making ordinance, according to Pandit H N Kunzru (involved in framing the Indian Constitution), is "to deal with situations where an emergency in the country necessitated urgent action."² The validity of an ordinance is 6 weeks as it serves emergency situations when the Parliament is not in session. Before this period, it has to be introduced in the Parliament and passed by both the houses, otherwise it will lapse.

On the other hand Central Acts are those which are Acts of Parliament (Statutes passed by Parliament according to the procedure laid out in The Constitution of India) and include the Acts passed by Indian Legislature and Dominion Legislature before the commencement of the Constitution of India and Acts passed by Governor General in their legislative capacity before its commencement. This interpretation is evolved from the definition which has been provided under the definition section of General Clause Act, 1897.³

The General Clause Act, 1897 came into force to combine the General Clauses Act, 1868 and General Clauses Act, 1887. It contains all the general definitions which are applicable to Central Acts and Acts of Parliament. Its objective was to shorten the language of upcoming statute and to provide uniformity of expressions. Section 5 of the General Clause Act 1897

¹ INDIA CONST. art. 123.

² Nikita Rangrajan, *Ordinances in India*, LEGAL SERVICE INDIA (Nov. 24, 2017), http://www.legalservicesindia.com/article/print.php?art_id=1820

³ General Clause Act, 1897, No. X, Acts of Parliament, 1897 (India).

focuses on operation of enactments. When a bill is prepared, there is a particular date of commencement mentioned in it like it shall be deemed to come into force on 12th day of August 2017 or it shall come into force on such date as Central Government may, by notification in the official gazette, appoint or it shall come into force 'at once' (usually used with Ordinances) or it remains silent on the commencement. When the commencement clause is silent, it will attract Section 5(3) which says that it will come into force immediately on the expiration of the day preceding its commencement. For example, a bill gets the Presidential assent on 24th December 2017 at 3:15pm then it will be applicable from 00:00:01 hour of 24th December 2017.

If we have these many provisions catering all the possible situations then why do we use the word 'at once' in commencement clause of an ordinance? We can simply stay silent and not write anything.

When we look into Section 30 of General Clauses Act 1897 it gives a clear exception to Ordinances. It excludes ordinance from the expression 'Central Act' and word 'Act' used in Section 5 and Section 3 respectively. This section is equating ordinances to Acts.

When we see some of the judgments in cases like *Girjashanker V. Lalu*,⁴ the use of 'at once' is enunciated by the judges. The bench concluded that 'at once' is used when the ordinance have to come into force on that very day. Although publication is also necessary but ordinances are brought in the scenario where there is urgent need of it. So the ordinance will come into force as soon as it is signed by the authority so authorised. In the case mentioned His Highness came up with an Ordinance on 21st June 1949 and it is applicable from that very day and not from the date on which it was published in Rajasthan Gazette. Bench also made it clear that promulgation precedes publication and that these two words are not synonymous.

In *Showkat -un- Nissa Begum & Ors. V State of Hyderabad*,⁵ Chief Justice Naik said the oath taking ceremony is important, when it comes to promulgation of law. It may be a mere ceremony for administrative purposes but for promulgating an order it has its own importance. Without the oath, the President has no power to make an order. Even if he does so, it will not be recognised by any court of law and is likely to be struck down.

⁴ A.I.R. 1955 Raj 151 (India).

⁵ A.I.R. 1950 Hyd 20 (India).

The fact that an Ordinance is not included in the expression “Central Act” in the Section 5 or in the “Act” in Section 3, clause (13), tends to support the view that the nature of an ordinance is urgent which is to be promulgated on occasions requiring prompt action and must come into operation immediately and it could not be said that it can come into operation at some other point or some other time can be fixed for its coming into operation. Although publication is also an important step to be followed as the law passed by the legislature or executive should be known to the common man. Publication of law in the official gazette is done so that people should be aware what new law they have to abide to. Even Supreme Court in *Haria V State of Rajasthan*⁶ said that before a law can become operative, it must be broadcasted in some recognisable way so that all men may know what it is but the urgent need of coming into operation is the main reason why we use the word ‘at once’. The meaning and implementation of the word is expressed in the first judgment which said that coming into force as soon as the authorised person approves the ordinance. Publication is a hurdle in the path of ordinance so this step can be excluded while we go for its validity.

⁶ A.I.R. 1951 S.C. 467 (India).