

**WRAP Exams · wrapexams.com**

Prelims PYQ, Mains model answers, and copy evaluation. Write to the desk for this paper, a doubt, or the AI waitlist.

**ask@wrapexams.com · +91 85951 84903 · wrapexams.com**

Q12

**Discuss the essential conditions for exercise of the legislative powers by the Governor. Discuss the legality of re-promulgation of ordinances by the Governor without placing them before the Legislature.**

UPSC Civil Services Mains 2022 · GS II · 15 marks · Indian Constitution

Indian Constitution - historical underpinnings, evolution, features, amendments, significant provisions and basic structure.

**Core demand of the question**

- Discuss the essential conditions for exercise of the legislative powers by the Governor
- Discuss the legality of re-promulgation of ordinances by the Governor without placing them before the Legislature

**Revision summary**

**Article 213** allows a Governor's ordinance only when the legislature is not in session and immediate action is necessary.

The ordinance must be within State competence and, in listed cases, issued with the President's instructions.

It must be laid before the House and lapses on the constitutional timetable unless replaced by an Act.

**D.C. Wadhwa (1987)** held that serial re-promulgation without enacting a law is a fraud on the Constitution.

**Krishna Kumar Singh (2017)** held laying to be mandatory and re-promulgation a constitutional violation.

Ordinance power is exceptional legislation, not a standing alternative to the Assembly.

**Introduction**

**Article 213** lets a Governor promulgate an ordinance when the State legislature is not in session and immediate action is necessary. That power is a conditional legislative power, not a parallel Parliament; D.C. Wadhwa and Krishna Kumar Singh make re-promulgation without laying a fraud on the Constitution.

**Body**

**Essential conditions under Article 213**

- The Governor may legislate by ordinance only when the Legislative Assembly, or both Houses where there is a Council, is not in session; an ordinance when the House is sitting is not the design of **Article 213**.

- The Governor must be satisfied that circumstances exist which render it necessary for him to take immediate action; that satisfaction is not an unreviewable political whim after later case law, even if courts are slow to second-guess emergency.
- An ordinance has the same force as an Act of the legislature, but it is expressly temporary: it must be laid before the House or Houses, and it ceases six weeks after reassembly, or earlier if a resolution disapproving it is passed, or if it is withdrawn.
- Previous instructions from the President are required in the cases **Article 213(1)** itself lists - notably where the bill would have needed the President's previous sanction, where the bill would have been reserved, or where an Act of the State would have been invalid without the President's consideration - so the Governor is not a free-standing Union-bypass on those subjects.
- The subject-matter must still lie in the State's legislative competence; an ordinance cannot do what the legislature could not have done.

### Nature of the power

- Ordinance-making is legislative, not merely executive, which is why it can amend or repeal an Act, create offences, and levy within competence.
- **It remains exceptional:** the Constitution prefers debate in the House. Necessity and absence of session are the price of skipping that debate.
- Aid and advice of the Council of Ministers ordinarily binds the Governor here as elsewhere, subject to the limited zones of discretion the text and later cases recognise; **Article 213** is not a personal law-making fief.

### Re-promulgation without placing before the Legislature

- **D.C. Wadhwa v. State of Bihar (1987)** condemned the Bihar practice of re-promulgating ordinances for years without enacting them as Acts. The Court called colourable re-promulgation a fraud on the Constitution, because it usurped the legislature's role.
- **Krishna Kumar Singh v. State of Bihar (2017)**, a seven-judge Bench, held that laying an ordinance before the legislature is mandatory, that re-promulgation is a constitutional violation, and that ordinance power is not a parallel continuing legislature.
- Failure to place an ordinance before the House is not a trivial irregularity; the **2017** majority treated it as going to the root of the temporary legislative scheme.
- The Court also discussed when rights, privileges and liabilities arising under a lapsed or unaided ordinance may survive; that discussion does not legalise the re-promulgation itself.

### Legality, stated plainly

- A single ordinance that meets **Article 213**'s session, necessity, competence, and Presidential-instruction conditions is lawful.
- Re-promulgating the same ordinance as a substitute for a Bill, especially without laying, is unlawful after Wadhwa and Krishna Kumar Singh.
- Administrative convenience, an unready majority, or a wish to avoid debate is not "immediate necessity" in the constitutional sense.

### Flow diagram

Art 213 -> House not in session plus necessity  
Art 213 -> Must be laid before Legislature  
Must be laid before Legislature -> DC Wadhwa fraud on Constitution  
Must be laid before Legislature -> Krishna Kumar Singh 2017  
Krishna Kumar Singh 2017 -> Re-promulgation unconstitutional

## Conclusion

The Governor's legislative power exists only when the House is not sitting, immediate action is necessary, competence and **Article 213** instructions are respected, and the ordinance is laid and dies by the constitutional clock. Re-promulgation without placing the ordinance before the legislature is illegal: Wadhwa called it a fraud, and **Krishna Kumar Singh (2017)** confirmed that laying is mandatory and re-promulgation unconstitutional.

## Facts & figures

### Article 213

Power of the Governor to promulgate ordinances when the State legislature is not in session, subject to necessity, laying, lapse, and Presidential instructions in specified cases.

### D.C. Wadhwa v. State of Bihar (1987)

Struck at Bihar's practice of re-promulgating ordinances for long periods; called it a fraud on the Constitution.

### Krishna Kumar Singh v. State of Bihar (2017)

Seven-judge Bench on ordinances: mandatory laying, unconstitutionality of re-promulgation, ordinance power as exceptional.

### Six-week rule

An ordinance ceases to operate six weeks after reassembly of the legislature, unless earlier disapproved or withdrawn, as **Article 213** provides.

### Article 123

Analogous ordinance power of the President at the Union; the Wadhwa logic on re-promulgation is read with that parallel too.

WRAP Exams · Write. Read. Analyse. Practice. · <https://wrapexams.com/upsc/mains-answers/gs-2/2022/discuss-the-essential-conditions-for-exercise-of-the-legislative-powers-by-ne-governor-discuss-the-legality-of-re-promulgation-of-ordinances-by-the-governor-without-placing-them-before-the-legislature/> · [ask@wrapexams.com](mailto:ask@wrapexams.com) · [wrapexams.com](https://wrapexams.com)