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Article 123: President’s Ordinance-Making Power

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Article 123: President's Ordinance-Making Power

What if the country needs a law, but Parliament is not meeting? **Article 123** lets the President issue an **ordinance**. It has the force of an Act. But it is only a stopgap, and it has a clock on it.

When can the President issue an ordinance?

Clause (1): the conditions

The President can issue an ordinance at any time *except* when both Houses are in session.

So the bar applies only when the Lok Sabha and Rajya Sabha both sit.

If just one House sits, the power is still open.

The President must also be sure the case needs **immediate action**.

Sources: constitutionofindia.net

> **Quick check 1.** The President cannot issue an ordinance if even one House of Parliament is in session. *(True or False?)* See answer ↓

Clause (2): same force as an Act

An ordinance has the **same force and effect** as an Act of Parliament.

Every ordinance must be laid before both Houses.

The President may **withdraw** it at any time.

Sources: constitutionofindia.net; scobserver.in

The Governor’s parallel power

Article 213 gives Governors a matching power.

It works when the State Legislature is not in session.

The ordinance lapses six weeks after the Legislature reassembles.

Sources: constitutionofindia.net

How does an ordinance end?

Three ways out

An ordinance ends in one of three ways.

- It ceases to operate six weeks after Parliament reassembles.
- It ends when both Houses pass resolutions disapproving it. It ends when the second one passes.
- The President withdraws it.

If the Houses reassemble on different dates, the six weeks count from the later date.

Sources: constitutionofindia.net; indiankanoon.org

Clause (3): the competence limit

An ordinance cannot do what Parliament itself could not do.

If it makes such a provision, **Article 123(3)** says that provision is **void**.

Sources: constitutionofindia.net; indiankanoon.org

> **Quick check 2.** An ordinance stays in force for six months after Parliament reassembles. *(True or False?)* See answer ↓

How did the Constituent Assembly debate Article 123?

Draft Article 102, 23 May 1949

Article 123 began as **Draft Article 102**.

The Assembly debated it on **23 May 1949** and adopted it the same day.

One Member wanted the power only when neither House was in session. The Drafting Committee Chairman said that would make the power useless.

One Member wanted ordinances to end after thirty days. Others wanted them laid within four weeks.

The Chairman said Parliament might not meet in time in an emergency. The amendments failed.

A Member wanted to bar ordinances that took away personal liberty. The Chairman said the limits on ordinary laws already applied.

Sources: constitutionofindia.net

What have the courts said about re-promulgation?

D.C. Wadhwa v. State of Bihar (1986)

A five-judge bench led by Chief Justice Bhagwati decided **D.C. Wadhwa v. State of Bihar** on **20 December 1986**.

The Governor of Bihar had issued **256 ordinances** between 1967 and 1981.

Re-issuing them kept each alive for one to 14 years.

The Court called this a fraud on the Constitution.

It said the Executive was taking over the Legislature's job of making law.

Sources: indiankanoon.org

Why was it a fraud?

An ordinance is an emergency power.

It is meant to last only until the Legislature can act.

Re-issuing again and again lets the Executive make law without facing the Legislature.

That defeats the point of the six-week limit.

The case was about the Governor under Article 213. The same logic applies to Article 123.

Sources: indiankanoon.org; constitutionofindia.net

Krishna Kumar Singh v. State of Bihar (2017)

In **Krishna Kumar Singh v. State of Bihar**, a **seven-judge** bench ruled on **2 January 2017**.

The case began with a 1989 ordinance to take over 429 Sanskrit schools in Bihar.

A series of ordinances followed, and none was placed before the Legislature.

The Court held that re-promulgation is a fraud on the Constitution.

The majority view of Justice Chandrachud was that laying the ordinance before the Legislature is **mandatory**.

Justice Lokur saw it as directory. The Chief Justice left that point open.

Sources: scobserver.in

The two cases side by side

Both cases came from Bihar.

Wadhwa decided that repeated re-promulgation is a fraud.

Krishna Kumar Singh reached the same result with a larger bench.

It also dealt with laying the ordinance before the Legislature.

Sources: scobserver.in; indiankanoon.org

> **Quick check 3.** In Krishna Kumar Singh (2017), the Court allowed re-promulgation when the ordinance is placed before the Legislature. *(True or False?)* See answer ↓

123(1) Allowed unless both Houses sit
123(2) Force of an Act; lapses in six weeks
123(3) Void if Parliament could not enact it

Re-promulgation Held a fraud on the Constitution

Exam Edge

Previous Year Questions

Real questions on this topic.

What should you remember for exams?

Quick recap

- Article 123(1): allowed except when both Houses are in session.
- Article 123(2): same force as an Act; six weeks from reassembly.
- Article 123(3): void if Parliament could not enact it.
- Draft Article 102 was adopted on 23 May 1949.
- Wadhwa (1986): 256 ordinances kept alive by re-promulgation.
- Krishna Kumar Singh (2017): seven judges; re-promulgation is a fraud.

Sources: constitutionofindia.net; indiankanoon.org; scobserver.in

Practice MCQs

1. Under Article 123(1), the President can promulgate an ordinance at any time except when

A. either House is in session

B. the Lok Sabha is in session

C. the Rajya Sabha is in session

D. both Houses of Parliament are in session

See answer ↓

2. An ordinance under Article 123 ceases to operate how long after Parliament reassembles?

A. Six weeks

B. Four weeks

C. Six months

D. Two weeks

See answer ↓

3. Under Article 123(3), an ordinance provision that Parliament could not enact is

A. valid for six weeks

B. void

C. valid with Cabinet approval

D. valid until withdrawn

See answer ↓

4. The D.C. Wadhwa case (1986) concerned repeated re-promulgation of ordinances by the Governor of

A. Bihar

B. Punjab

C. Kerala

D. Tamil Nadu

See answer ↓

5. Krishna Kumar Singh v. State of Bihar (2017) was decided by a bench of how many judges?

A. Three

B. Five

C. Seven

D. Nine

See answer ↓

6. On what date did the Constituent Assembly adopt Draft Article 102, which became Article 123?

A. 23 May 1949

B. 26 January 1950

C. 26 November 1949

D. 8 September 1949

See answer ↓

Answer Key

1. **D.**
   The bar applies only when both Houses are in session.
   ↑ Q1
2. **A.**
   It lapses at the end of six weeks from reassembly.
   ↑ Q2
3. **B.**
   Clause (3) makes such a provision void.
   ↑ Q3
4. **A.**
   The Governor of Bihar issued 256 ordinances between 1967 and 1981.
   ↑ Q4
5. **C.**
   It was a seven-judge Constitution Bench ruling of 2 January 2017.
   ↑ Q5
6. **A.**
   Draft Article 102 was debated and adopted on 23 May 1949.
   ↑ Q6

Quick-check answers

1. **False.** Article 123(1) bars an ordinance only when both Houses are in session.
   ↑ 1
2. **False.** It ceases to operate at the end of six weeks from reassembly, unless the Houses disapprove it earlier. ↑ 2
3. **False.** It held re-promulgation a fraud on the Constitution. The majority said laying the ordinance before the Legislature is mandatory. ↑ 3

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