

AMENDMENT TO THE CONSTITUTION

Change is rule of nature. It is in our human nature to change. We do not stay in the same state for long time and it is true for the society too. No generation has a monopoly of wisdom nor has it a right to constrain future generations to mould the machinery of the government according to their requirements. No constitution can provide for all eventualities that would occur in a society. Constitution of India was drafted almost seven decades back catering to the needs of the society of that time. In order to adapt to the changing needs of new era of technological advancements and circumstances of growing people that would happen in future, framers of our constitution have tried to make it flexible.

Constitution is a document made by human beings and may need reassessment, modification and re-examination. It is true that the constitution reflects the dreams and aspirations of the society. It must also be kept in mind that the constitution is a framework for the democratic governance of the society. Article 368 of the Indian Constitution provides the procedure of Amendment. Making changes to the constitution, which is the governing law of the land, is known as a constitutional amendment. The constitution's amendment requires it to go through a specific procedure, which includes passing it via both legislative bodies (Lok Sabha and Rajya Sabha) before being sent to the President for final approval and signature.

Article 368: Refers to the Power of Parliament to amend the Constitution and procedure therefore

Article 368(1) Notwithstanding anything in the Constitution, Parliament may in exercise of its constituent power amend by way of addition, variation or repeal any provision of the Constitution in accordance with the procedure laid down in the Article 368.

Article 368(2) An amendment of the Constitution may be initiated only by the introduction of a Bill for the purpose in either House of Parliament, and when

the bill is passed in each House by a majority of the total membership of that House present and voting, it shall be presented to the President who shall give his assent to the bill and thereupon the Constitution shall stand amended in accordance with the terms of the bill, provided that if such amendment seeks to make any change in

- **Article 368(2) (a)** Article 54, Article 55, Article 73, Article 162 or Article 241, or
- **Article 368(2) (b)** Chapter IV of Part V, Chapter V of Part VI, or Chapter I of Part XI, or
- **Article 368(2) (c)** any of the Lists in the Seventh Schedule, or
- **Article 368(2) (d)** the representation of States in Parliament, or
- **Article 368(2) (e)** the provisions of the article, the amendment shall also require to be ratified by the Legislature of not less than one half of the States by resolution to that effect passed by those Legislatures before the bill making provision for such amendment is presented to the President for assent.

Article 368(3) Nothing in Article 13 shall apply to any amendment made under the article

Article 368(4) No amendment of the Constitution (including the provisions of Part III) made or purporting to have been made under article whether before or after the commencement of Section 55 of the Constitution (Forty second Amendment) Act, 1976 shall be called in question in any court on any ground.

Article 368(5) For the removal of doubts, it is hereby declared that there shall be no limitation whatever on the constituent power of Parliament to amend by way of addition, variation or repeal the provisions of the

Constitution under article 368 PART XXI TEMPORARY, TRANSITIONAL AND SPECIAL PROVISIONS.

Explanation:

The procedure for the amendment of the Constitution as laid down in Article 368 is as follows:

- An amendment of the Constitution can be initiated only by the introduction of a bill in either House of Parliament (Lok Sabha & Rajya Sabha) and not in the state legislatures.
- The bill can be introduced either by a Minister or by a private member and does not require prior permission of the President.
- The bill must be passed in each House by a special majority, that is, a majority (that is, more than 50 per cent) of the total membership of the House and a majority of two-thirds of the members of the House present and voting.
- Each House must pass the bill separately.
- In case of a disagreement between the two Houses, there is no provision for holding a joint sitting of the two Houses.
- If the bill intends to amend the federal provisions of the Constitution, it must also be ratified by the legislatures of half of the states by a simple majority, that is, a majority of the members of the House present and voting.
- After duly passed by both the Houses of Parliament and ratified by the State legislatures, where necessary, the bill is presented to the President for assent.
- The President must give his assent to the bill. He can neither withhold his assent to the bill nor return the bill for reconsideration of the Parliament
- After the President's assent, the bill becomes an Act (i.e., a Constitutional Amendment Act) and the Constitution stands amended in accordance with the terms of the Act.

Types Of Majorities

There are Simple Majority, Absolute Majority, Effective Majority and Special Majority.

Simple Majority

This refers to the majority of more than 50% of the members present and voting.

Eg: On a particular day, out of the total strength of 545, 45 were absent and 100 abstained from voting on an issue. So only 400 members were present and voting. Then the simple majority is 50% of 400 plus 1, ie. 201.

Effective Majority

Effective Majority of the house means more than 50% of the effective strength of the house. This implies that out of the total strength, we deduct the vacant seats.

For example, in Rajya Sabha, out of the total strength of 245 members if there are 45 vacancies, then the effective strength of the house is 200. Then the effective majority is 50% of 200 plus 1, ie 101.

Absolute Majority

It refers to a majority of more than 50% of the total membership of the house.

For example, as the total membership of Lok Sabha is 545, an Absolute majority in Lok Sabha means – 50% of 545 plus 1, ie. 273.

Special Majority

All types of majorities other than the absolute, effective or simple majority is known as the special majority. A special majority are of 4 types, with different clauses.

- **Type 1 – Special Majority as per Article 249.**
 - Special majority as per article 249 requires a majority of 2/3rd members present and voting.
 - For example, if out of the 245 members in Rajya Sabha, if only 150 are present and voting, then the special majority required as per article 249 would be 101.
 - It can be used to pass the Rajya Sabha resolution to empower the Parliament to make laws in the State list.

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| <ul style="list-style-type: none"> • Type 2 – Special Majority as per Article 368. <ul style="list-style-type: none"> ▪ Special majority as per article 368 requires a majority of 2/3rd members present and voting supported by more than 50% of the total strength of the house. ▪ To pass a Constitution Amendment bill in Rajya Sabha, in addition to getting the support of 123 members, the bill should be favoured by more than 2/3rd of the members presents and voting. |
| <ul style="list-style-type: none"> • Type 3 – Special Majority as per Article 368 + 50 percent state ratification by a simple majority. <ul style="list-style-type: none"> ▪ Special majority as per article 368 plus state ratification requires a majority of 2/3rd members present and voting supported by more than 50% of the State legislatures by a simple majority. ▪ Example: the bill which introduced the National Judicial Appointments Commission (NJAC). It required the support of at least 15 state legislatures out of the 29 states. <ul style="list-style-type: none"> ➤ The Bill provided for the procedure to be followed by the NJAC for recommending persons for appointment as Chief Justice of India and other Judges of the Supreme Court (SC), and Chief Justice and other Judges of High Courts (HC), later it got struck down by the judiciary stating the act as unconstitutional. |
| <ul style="list-style-type: none"> • Type 4 – Special Majority as per Article 61. <ul style="list-style-type: none"> ▪ Special majority as per article 61 requires a majority of 2/3rd members of the total strength of the house. In Lok Sabha, the special majority as per article 61 is 364 while in Rajya Sabha, the special majority as per Article 61 is 164 |

Types of Amendments in Indian Constitution

The list of types of amendments can be found below. There are three ways in which the Constitution can be amended:

- Amendment by simple majority of the Parliament
- Amendment by special majority of the Parliament
- Amendment by special majority of the Parliament and the ratification of at least half of the state legislatures.

1. By Simple Majority of Parliament: A number of provisions in the Constitution can be amended by a simple majority of the two houses of Parliament outside the scope of Article 368. These provisions include:

- Admission or establishment of new states. (Article 2)
- Formation of new states and alteration of areas, boundaries or names of existing states. (Article 3)
- Abolition or creation of legislative councils in states. (Article 169)
- Second Schedule-emoluments,
- Allowances, privileges and so on of the President, the Governors, the Speakers, Judges, etc.
- Quorum in Parliament.
- Salaries and allowances of the members of Parliament.

- Rules of procedure in Parliament.
- Privileges of the Parliament, its members and its committees.
- Use of the English language in Parliament.
- Number of puisne judges in the Supreme Court.
- Conferment of more jurisdictions on the Supreme Court.
- Citizenship-acquisition and termination.
- Elections to Parliament and State legislatures.
- Delimitation of constituencies.
- Union territories
- Fifth Schedule-administration of scheduled areas and scheduled tribes.
- Sixth Schedule-administration of tribal areas.

2. By Special Majority of Parliament: The majority of the provisions in the Constitution need to be amended by a special majority of the Parliament, that is, a majority (that is, more than 50 percent) of the total membership of each House and a majority of two-thirds of the members of each House present and voting. The expression 'total membership' means the total number of members comprising the House irrespective of the fact whether there are vacancies or absentees.

The special majority is required only for voting at the third reading stage of the bill but by way of abundant

caution, the requirement for the special majority has been provided for in the rules of the Houses in respect of all the effective stages of the bill.

The provisions which can be amended by this way include (i) Fundamental Rights; (ii) Directive Principles of State Policy; and (iii) All other provisions which are not covered by the first and third categories of amendment in the Constitution.

3. *By Special Majority of Parliament and Consent of States:*

Those provisions of the Constitution which are related to the federal structure of the polity can be amended by a special majority of the Parliament and also with the consent of half of the state legislatures by a simple majority. If one or some or all the remaining states take no action on the bill, it does not matter; the moment half of the states give their consent, the formality is completed. There is no time limit within which the states should give their consent to the bill. The following provisions can be amended in this way:

- Election of the President and its manner.
- Extent of the executive power of the Union and the States.
- Supreme Court and High courts.
- Distribution of legislative powers between the Union and the States.
- Any of the lists in the Seventh Schedule.
- Representation of states in Parliament.
- Power of Parliament to amend the Constitution and its procedure (Article 368 itself).

Supreme Court and the Amendment Power of Parliament

In Shankari Prasad v. Union of India

- In this case, for the very first-time question was raised on the amendment of Fundamental Rights i.e., whether the Fundamental Rights can be amended under Article 368 or not. In this case the validity of the First Amendment through which Article 31A and 31B were added in the Constitution.
- **The five judges' bench stated that Article 368 provides general and strict power to the Parliament to amend the Constitution by following proper procedure.**

In Sajjan Singh v. the State of Rajasthan

- In this case, the **validity of the Seventeenth Amendment was challenged**. The question raised was that the Seventeenth Amendment puts a limit on the jurisdiction of the High Court and therefore rectified.
- , the court disposed of the contention. But choose to deal with the 2nd contention i.e., the reconsideration of Shankari Prasad case, the court stated that, even if the Article 368 does not expressly declare the power of Parliament regarding amendment of Fundamental Rights, the Parliament could by a suitable amendment assume those powers.

In Golaknath v. the State of Punjab

- In this case, the validity of first, fourth and seventeenth amendment were challenged. This time from the eleven judges' bench, the majority of six judges decided that the Parliament has no power to amend Part III (Fundamental Rights) of the Constitution.
- the other hand, the Court considered that the Parliament has a duty to correct the errors in the law, therefore adopted the doctrine of prospective overruling through which the 3 Amendments discussed were continued to be valid but in future, the Parliament has no power to amend the Part III (Fundamental Rights) of the Constitution.

After the judgment of Supreme Court in Golaknath case the 24th Amendment was passed in 1971, and made a change in Article 13 and 368:

A new clause added in Article 13 which says; Nothing in this article apply to amendment in the Constitution under Article 368.

New clauses were added in Article 368:

- A new heading was introduced as; Parliament's power to amend the Constitution.
- Parliament may change, add and repeal any provision of this Constitution in accordance with the procedure provided.

In Keshavananda Bharati v. State of Kerala

- This case was considered as the landmark case, where for the first-time Supreme Court recognized the basic structure concept. In this case, the validity of the 25th Amendment was challenged with the 24th and 29th Amendment was also questioned.
- The court by majority overruled the judgement of Golaknath case. It was held that even before the 24th Amendment the parliament has the limited

power to amend the Constitution by following the proper procedure.

- The Supreme Court also declared that Article 368 of the Constitution does not allow the Parliament to change, damage the basic structure of the Constitution. This landmark judgement changes the history of the Constitution.

Current stance regarding Amendment Power of Parliament:

- The Amendment must not alter the basic structure of the Constitution. Some examples are Free and Fair Election, the nation's Federal nature, Judicial Review, and Power Separation. It notes that some basic legislative frameworks and founding values constitute the foundation of the Constitution. These cannot be touched by anyone.
- An Amendment relating to the federal structure of the government can be made only with a special majority and consent by half of the State legislatures.

| <i>Some Important Amendments</i> | | |
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| <i>Amendment</i> | <i>Changes</i> | <i>Objective</i> |
| 1st | 15, 19, 85, 87, 174, 176, 341, 342, 372 and 376. Insert articles 31A and 31B. Insert schedule 9. | Added special provision for the advancement of any socially and educationally backward classes or for the Scheduled Castes and Scheduled Tribes (SCs and STs). To fully secure the constitutional validity of zamindari abolition laws and to place reasonable restriction on freedom of speech. A new constitutional device, called Schedule 9 introduced to protect against laws that are contrary to the Constitutionally guaranteed Fundamental Rights. These laws encroach upon property rights, freedom of speech and equality before law. |
| 4th | Amend articles 31, 31A, and 305. Amend schedule 9. | Restrictions on property rights and inclusion of related bills in Schedule 9 of the constitution. |
| 17th | Amend article 31A. Amend schedule 9 | To secure the constitutional validity of acquisition of Estates and place land acquisition laws in Schedule 9 of the constitution. |
| 24th | Amend articles 13 and 368 | Enable parliament to dilute Fundamental Rights through amendments to the Constitution. |
| 25th | Amend article 31. Insert article 31C | Restrict property rights and compensation in case the state takes over private property. However, the Supreme Court quashed a part of Article 31C, to the extent it took away the power of judicial review. This was done in the landmark case of Keshavananda Bharati v. State of Kerala (1973) 4 SCC 225 which for the first time enunciated the Basic structure doctrine. |
| 29th | Amend schedule 9 | Place land reform acts and amendments to these acts under Schedule 9 of the constitution. |
| 42nd | Amend articles 31, 31C, 39, 55, 74, 77, 81, 82, 83, 100, 102, 103, 105, 118, 145, 150, 166, 170, 172, 189, 191, 192, 194, 208, 217, 225, 226, 227, 228, 311, 312, 330, 352, 353, 356, 357, 358, 359, 366, 368 and 371F. Insert articles 31D, 32A, 39A, 43A, 48A, 131A, 139A, 144A, 226A, 228A and 257A. Insert parts 4A and 14A. Amend schedule 7. | Amendment passed during internal emergency by Indira Gandhi. Provides for curtailment of fundamental rights, imposes fundamental duties and changes to the basic structure of the constitution by making India a "Sovereign Socialist Secular Democratic Republic". However, the Supreme Court, in Minerva Mills v. Union of India, quashed the amendments to Articles 31C and 368 as it was in contravention with the basic structure of the Constitution. |

Conclusion:

- It may be said that Amenability is an absolute necessity to make the Constitution a more relevant document in light of changing circumstances, reality and match society's evolving needs and ambitions. It guarantees that the constitutional framework and the current government's policies and programmes are in harmony.
 - Amendments should be confined to parts of the Constitution that do not comprise the core philosophy.
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