

PROCEDURE OF AMENDMENT IN OUR CONSTITUTION

(Part XX Article 368)

Introduction

- Our Constitution is the basic law of our Country. India is basically governed by our Constitutional provisions. **Our Constitution was adopted/enacted on 26th Nov, 1949 and implemented/enforced on 26th January, 1950.** More than 75 years have passed and our country has witnessed many changes in the political, economic and Social fields. **During these 75 years we have till date made 106 Amendments in our Constitution.** The Constitution of the U.S.A. which was implemented in 1789 has been amended just 27 times in the last nearly 237 years. The amendment procedure laid down for the amendment of India's Constitution is neither flexible as Britain's nor as rigid as the USA's but a synthesis of both.
- In 1960 the Supreme Court in **Berubari v Union of India** case gave the verdict that the preamble is not a part of the constitution but in **Keshvananda Bharti vs State of Kerala** case 1973, the Supreme Court changed its earlier verdict given in the **Berubari** case and ruled that the preamble is part of the Constitution and it also reflects the goal and inspirations of our Constitution.
- In the **Keshvananda Bharti vs State of Kerala** case, the Supreme Court constituted a 13 Judges bench to decide the case, the biggest Supreme Court **bench** ever formed.

Who has the power to amend the constitution

- Law cannot be static, it keeps on changing as per the needs of the time. **The power to amend the provision of our constitution vest with our Parliament as mentioned under Article 368 of our Constitution.**
- In the case of **Shankari Prasad vs Union of India, 1951** the Supreme Court ruled that fundamental rights can be amended by the parliament.
- In the case of **Sajjan Singh vs State of Rajasthan, 1965**, the decision in **Shankari Prasad** was upheld (maintained) by the court.
- But in the case of **Golak Nath vs State of Punjab, 1967** the Supreme Court overruled its earlier decisions given in **Shankari Prasad** and **Sajjan Singh** cases and held that the fundamental rights are **sacrosanct** (very sacred) and parliament has **no power to amend Part III** of the constitution relating to Fundamental Rights.

- By the **24th Constitution Amendment Act 1971**, the parliament amended our Constitution to **nullify the rulings of the Supreme Court** in the **Golak Nath** case and awarded powers to the parliament to make amendments in the fundamental rights of the citizens.
- **The 24th Constitution Amendment Act, 1971 was challenged** in the Supreme Court and the Supreme Court in the case of **Keshvanand Bharti vs State of Kerala, 1973**, reversed its ruling awarded in **Golak Nath** case and stated that the parliament can amend Fundamental Rights of the citizens **but basic structure of the Constitution cannot be amended**.
- **By the 42nd C.A.A. 1976**, parliament was given **absolute power to amend the Constitution** to any extent and any such amendment in constitution by the **Parliament cannot be challenged in any Court of Law**.
- **The Supreme Court in 1980 in the Minerva Mills case** gave the ruling that any amendment in the Constitution by Parliament **can be challenged** in Court of Law.
- **In 2015**, the Supreme Court scrapped the National Judicial Appointment Commission established through 99th C.A.A. 2014, stating establishment of NJAC as Unconstitutional as it violates Article 50 of the Constitution under the **Directive Principles of State Policy (Article 50 states separation of Judiciary from Executive)**. The Supreme Court ruled that the DPSPs do form the basic structure of the Constitution and the basic structure of the Constitution cannot be amended by the Parliament.
- The present situation is that the Parliament can amend our Constitution but the parliament does not have an unlimited power to amend the constitution. **Parliament cannot amend the basic structure of the Constitution** and any amendment in the Constitution by the Parliament can be judicially challenged.

Basic Structure of the Constitution

The Basic Structure Doctrine established by the Indian Supreme Court holds that certain fundamental features of the Indian Constitution cannot be altered or destroyed through amendments by Parliament under Article 368.

Procedure of Amendment in Constitution

- The procedure for the amendment of the constitution is mentioned under the **Article 368** of the constitution.
- First of all, a Constitution Amendment bill is introduced in **either house of the parliament**.

- The bill can be introduced either by a minister or by a private member of the parliament and it does not require prior permission of the President.
- A Joint sitting of both the houses of parliament cannot be held to pass a Constitution amendment bill. It has to be passed by both the houses of parliament separately.
- The President cannot use his Veto-Power on a Constitution Amendment Bill after it has been passed by both the houses of parliament. He/She cannot return the Constitution Amendment bill for reconsideration of the parliament. He/She has to give his/her assent
- On a Constitutional Amendment bill after it has been passed by both the houses of parliament.

There are three ways by which the parliament can pass a Constitution Amendment bill:

- (1) By simple majority of both the houses of parliament.
- (2) By special majority i.e., 2/3rd majority of both the houses of parliament.
- (3) By special majority i.e., 2/3rd majority of both the houses of parliament plus ratification by at least half of the state legislative assemblies by their simple majority.

I. Amendments in the Constitution that can be done by simple majority of both houses of Parliament.

The following provisions in our Constitution can be amended by this procedure:

- (a) Creation or abolition of a state, merger of two or more states in one, any amendment in the boundaries of a State, change of name of a state, etc.
- (b) Any amendment in the citizenship provision in our Constitution.
- (c) Any amendment in provisions of administration of the Union Territories in our Constitution.
- (d) Creation or abolition of a Legislative Council (Vidhan Parishad) in a state.

II. By special majority of both houses of parliament.

All provisions of our Constitution can be amended by our parliament through this method except provisions mentioned in the first and the third way.

III. By special majority of both houses of parliament plus ratification by at least half of the state legislative assemblies by their simple majority.

The following provisions in our Constitution can be amended by using this method:

- (a) Any amendment in the election procedure of the President.

- (b) Any amendment in the impeachment procedure of the President.
- (c) Any amendment in the three lists under **Article 246 (7th Schedule)** under the division of Powers between the centre and the states.
- (d) Any amendment in the provisions relating to the representations of states in Rajya Sabha.
- (e) Any amendment in the Judicial system of the country.
- (f) Any amendment in the revenue provisions between the Centre and States.
- (g) Any amendment in **Article 368** itself.

Note:

- **The Preamble of the Constitution has been amended only once by the 42nd Constitutional Amendment Act, 1976, through which the three words “Socialist,” “Secular,” and “Integrity” were added to the Preamble.**
- **In its original form, the Constitution contained 22 Parts, 8 Schedules and 395 Articles. At present, it contains 25 Parts, 12 Schedules and 470 Articles.**
- **India attained independence on 15 August 1947, and the Constitution came into force on 26 January 1950. During the period from 15 August 1947 to 25 January 1950, the country was governed primarily under the provisions of the Government of India Act, 1935, as adapted and modified for independent India.**