

Indian Polity Notes Part 23 in English

23. Constitutional Amendment

- **Article 368 in Part XX** of the Constitution deals with the powers of Parliament to amend the Constitution and its procedure. It is borrowed from South Africa.
- It states that the 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 for the purpose.
- However, the Parliament cannot amend those provisions which form the 'basic structure' of the Constitution.
- This was ruled by the Supreme Court in **the Kesavananda Bharati case 1 (1973)**.

Procedure for Amendment

- 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 for the purpose in either House of Parliament 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 for the purpose of deliberation and passage of the bill.
- If the bill seeks 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 Amendments

- Article 368 provides for two types of amendments, that is, by a special majority of Parliament and also through the ratification of half of the states by a simple majority

- But, some other articles provide for the amendment of certain provisions of the Constitution by a simple majority of Parliament, that is, a majority of the members of each House present and voting (similar to the ordinary legislative process).
- Notably, these amendments are not deemed to be amendments of the Constitution for the purposes of Article 368.

Therefore, the Constitution can be amended in three ways:

- (a) Amendment by simple majority of the Parliament,
- (b) Amendment by special majority of the Parliament, and
- (c) Amendment by special majority of the Parliament and the ratification of half of the state legislatures.

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.
- Formation of new states and alteration of areas, boundaries or names of existing states.
- Abolition or creation of legislative councils in states.
- 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 English language in Parliament.
- Number of puisance judges in the Supreme Court.
- Conferment of more jurisdiction on the Supreme Court.
- Use of official language.
- 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.

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 per cent) 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 fact whether there are vacancies or absentees.
- 'Strictly speaking, 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 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 includes: (i) Fundamental Rights; (ii) Directive Principles of State Policy; and (iii) All other provisions which are not covered by the first and third categories.

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).