

10 Amendment of the Constitution

Like any other written Constitution, the Constitution of India also provides for its amendment in order to adjust itself to the changing conditions and needs. However, the procedure laid down for its amendment is neither as easy as in Britain nor as difficult as in USA. In other words, the Indian Constitution is neither flexible nor rigid but a synthesis of both.

Article 368 in Part XX of the Constitution deals with the powers of Parliament to amend the Constitution and its procedure. 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* case¹ (1973).

PROCEDURE FOR AMENDMENT

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

1. 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.
2. The bill can be introduced either by a minister or by a private member and does not require prior permission of the president.
3. The bill must be passed in each House by a special majority, that is, a majority of the total membership of the House and a majority of two-thirds of the members of the House present and voting.
4. 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.
5. 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.
6. 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.
7. 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.²
8. 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:

1. Admission or establishment of new states.
2. Formation of new states and alteration of areas, boundaries or names of existing states.
3. Abolition or creation of legislative councils in states.
4. **Second Schedule**—emoluments, allowances, privileges and so on of the president, the governors, the Speakers, judges, etc.
5. Quorum in Parliament.
6. Salaries and allowances of the members of Parliament.
7. Rules of procedure in Parliament.
8. Privileges of the Parliament, its members and its committees.
9. **Use of English language** in Parliament.
10. Number of **puisne judges in the Supreme Court.**
11. Conferment of **more jurisdiction on the Supreme Court.**
12. Use of official language.

13. Citizenship—acquisition and termination.
14. Elections to Parliament and state legislatures.
15. Delimitation of constituencies.
16. Union territories.
17. Fifth Schedule—administration of scheduled areas and scheduled tribes.
18. 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 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'³.

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:

1. Election of the President and its manner.
2. Extent of the executive power of the Union and the states.
3. Supreme Court and high courts.
4. Distribution of legislative powers between the Union and the states.
5. Goods and Services Tax Council^{3a}.
6. Any of the lists in the Seventh Schedule.
7. Representation of states in Parliament.
8. Power of Parliament to amend the Constitution and its procedure (Article 368 itself).

CRITICISM OF THE AMENDMENT PROCEDURE

Critics have criticised the amendment procedure of the Constitution on the following grounds:

1. There is no provision for a special body like Constitutional Convention (as in USA) or Constitutional Assembly for amending the Constitution. The constituent power is vested in the Parliament and only in few cases, in the state legislatures.
2. The power to initiate an amendment to the Constitution lies with the Parliament. Hence, unlike in USA⁴, the state legislatures cannot initiate any bill or proposal for amending the Constitution except in one case, that is, passing a resolution requesting the Parliament for the creation or abolition of legislative councils in the states. Here also, the Parliament can either approve or disapprove such a resolution or may not take any action on it.
3. Major part of the Constitution can be amended by the Parliament alone either by a special majority or by a simple majority. Only in few cases, the consent of the state legislatures is required and that too, only half of them, while in USA, it is three-fourths of the states.
4. The Constitution does not prescribe the time frame within which the state legislatures should ratify or reject an amendment submitted to them. Also, it is silent on the issue whether the states can withdraw their approval after according the same.
5. There is no provision for holding a joint sitting of both the Houses of Parliament if there is a deadlock over the passage of a constitutional amendment bill. On the other hand, a provision for a joint sitting is made in the case of an ordinary bill.
6. The process of amendment is similar to that of a legislative process. Except for the special majority, the constitutional amendment bills are to be passed by the Parliament in the same way as ordinary bills.

7. The provisions relating to the amendment procedure are too sketchy. Hence, they leave a wide scope for taking the matters to the judiciary.

Despite these defects, it cannot be denied that the process has proved to be simple and easy and has succeeded in meeting the changed needs and conditions. The procedure is not so flexible as to allow the ruling parties to change it according to their whims. Nor is it so rigid as to be incapable of adopting itself to the changing needs. It, as rightly said by K.C. Wheare, 'strikes a good balance between flexibility and rigidity'⁵. In this context, Pandit Jawaharlal Nehru said in the Constituent Assembly, 'While we want this Constitution to be as solid and permanent as we can make it, there is no permanence in a Constitution. There should be a certain flexibility. If you make any Constitution rigid and permanent, you stop the nation's growth, the growth of a living, vital, organic people'⁶.

Similarly, Dr. B.R. Ambedkar observed in the Constituent Assembly that, 'The Assembly has not only refrained from putting a seal of finality and infallibility upon this Constitution by denying the people the right to amend the Constitution as in Canada or by making the amendment of the Constitution subject to the fulfilment of extraordinary terms and conditions as in America or Australia, but has provided for a facile procedure for amending the Constitution'⁷.

K.C. Wheare has admired the variety of amendment procedures contained in the Constitution of India. He said, 'this variety in the amending process is wise but rarely found'. According to Granville Austin, 'the amending process has proved itself one of the most ably conceived aspects of the Constitution. Although it appears complicated, it is merely diverse'.⁸

NOTES AND REFERENCES

1. *Kesavananda Bharati v. State of Kerala*, (1973).
2. The 24th Constitutional Amendment Act of 1971 made it obligatory for the President to give his assent to a constitutional Amendment Bill.

3. Subhas C. Kashyap, *Our Parliament*, National Book Trust, 1999, P. 168.
- 3a. This provision was added by the 101st Amendment Act of 2016. This is related to Article 279-A.
4. In USA, an amendment can also be proposed by a constitutional convention called by the Congress (American Legislature) on the petition of two-thirds of the state legislatures.
5. K.C. Wheare, *Modern Constitutions*, 1966, P. 43.
6. *Constituent Assembly Debates*, Vol. VII, P. 322–23.
7. *Constituent Assembly Debates*, Vol. IX, P. 976.
8. Granville Austin, *The Indian Constitution: Cornerstone of a Nation*, Oxford, 1966, P. 25.