

## General understanding

In India, Constitution is deemed to be the Supreme i.e. it prevails over any of the Governments, Legislators, Courts or any Law or Authority. Thus, any Act enacted either by the Parliament or by the State Legislature(s) needs a constitutional backing. In other words, the legislature must have been vested with the power by the Constitution to enact such law and such law shall not violate any of the Constitution's provisions, most important of which are Fundamental Rights given in Part III of the Indian Constitution.

The subjects on which Union, State and Union and State together can enact laws are well defined in Schedule VII of the Constitution i.e. the competent legislator for a particular subject has been mentioned in the Constitution.

## Types of amendments

It is imperative to mention here that it is only the Parliament which can amend the Indian Constitution. The amendment of Indian constitution is flexible for certain things and rigid for others. Such flexibility or rigidity depends on the nature of amendment needs to be made. The Constitution can be amended in three ways: -

1. Amendment by simple majority of the Parliament i.e. majority of members present and voting. E.g. admission or establishment of new States, formation of new States and alteration of areas, boundaries or names of existing States, or abolition or creation of the Legislative Councils in States etc. However, these amendments are not deemed to be an amendment of the Constitution.
2. Amendment by special majority of the Parliament i.e. majority of at least two-third members present and voting and majority of total strength of house. E.g. amendment to Fundamental Rights, Directive Principles of State Policy etc.
3. Amendment by special majority of the Parliament and ratification by half of the state legislatures. E.g. Election of the President and its manner, Goods and Services Tax Council, Any of the lists in Seventh Schedule etc.

These kinds of amendments are the most difficult ones to be made because of its rigid process. For e.g., the enactment of Goods and Services Tax Law took a long time as one of the major hindrances was the requirement to amend the Constitution to generate the power of mutual enactment, by the Union and the States, for certain taxation laws. Earlier such power was divided between the Union and the States i.e. the Union was authorised to levy certain taxes in which the States have no role to play and the States were authorised to levy certain others in which the Union has no role to play.

### **Procedure to make an amendment**

Article 368 of the Indian Constitution specifies the procedure needs to be followed while amending the Constitution. Such procedure is as follows:

- (i) An amendment required to be made in the Constitution can only be made by way of introduction of a bill for that purpose in either House of the Parliament. Such bill can be introduced either by the Government or by a private member.
- (ii) It must be noted that any constitutional amendment bill is not required to be in accordance with or comply with the Fundamental Rights as required by Article 13 for all other laws.
- (iii) Such bill shall be passed in each House of the Parliament by a majority of total membership of that House and by a majority of not less than two-thirds of the members of that House present and voting.
- (iv) If any such amendment seeks to make any change in
  - a) Article 54 Election of the President
  - b) Article 55 Manner of election of the President
  - c) Article 73 Extent of executive power of the Union
  - d) Article 162 Extent of executive power of the Union
  - e) Article 241 High Courts for Union territories
  - f) Chapter IV of Part V The Union Judiciary
  - g) Chapter V of Part VI The High Courts in the State
  - h) Chapter I of Part XI Relations between the Union and the States – Legislative relations
  - i) Any of the lists in Schedule VII Union, State and Concurrent list
  - j) Representation of States in Parliament
  - k) The Provision of Article 368 itselfthen, such amendment shall also require to be ratified by the Legislatures of not less than one-half of the States, by simple majority, by resolutions to that effect passed by those Legislatures before the Bill making provision for such amendment is presented to the President for assent.
- (v) After duly passed by both the Houses of Parliament and ratified by the State Legislatures, if required, the bill is presented to the President for his assent.
- (vi) The President shall give his assent to the bill. He can neither withhold his assent to the bill nor can he return the bill for reconsideration of the Parliament.
- (vii) After the President's assent, the bill becomes an Act (i.e. a constitutional amendment act) and the Constitution stand amended in accordance with the terms of the Act.