

Amendments of the Constitution

Introduction:

Amending the Constitution of India is the process of making changes to **the nation's fundamental law or supreme law**. The procedure of amendment in the constitution is laid down in **Part XX (Article 368) of the Constitution of India**. This procedure ensures the **sanctity of the Constitution of India and keeps a check on arbitrary power of the Parliament of India**.

Quotes

'This variety in the amending process is wise but rarely found'- KC Wheare

'The amending process has proved itself one of the most ably conceived aspects of the constitution. Although it appears complicated, it is merely diverse'- Granville Austin

Facts for prelims:

- It was **borrowed** from the **South African constitution**
- **Article 368 in Part XX of the constitution:** Powers of Parliament to amend the constitution.
- **Keshavananda Bharati judgment:** Parliament **cannot amend** those **parts** which are part of the '**Basic Structure**' of the constitution.

Article 368: *"Parliament under Article 368 can amend any part of the Constitution including the Fundamental Rights but without affecting the 'basic structure' of the Constitution".* Article 368 of Part XX of Constitution of India provides for two types of amendments.

- By a **special majority of Parliament**
- By a **special majority of the Parliament with the ratification by half of the total states**.

Types of Amendments:

Simple Majority	This refers to the majority of more than 50% of the members present and voting.
Special Majority	A bill is said to be passed, if it is supported by a majority of 2/3rd members present and voting supported by over 50% of the total strength of the House.
Special Majority of Parliament and Consent of States	<ul style="list-style-type: none"> • This type of majority is required when federal structures need to be amended • Apart from special majority by both the houses of the parliament, it requires consent of half of the state legislature by a simple majority • There is no time limit within which states should give their consent to the bill

Special majority:

In Indian constitution, the provisions related to special majority can be categorized into the following:

- **Article 249: 2/3rd members present and voting.** This is required in the case of empowering Parliament to make laws on those issues included in state list
- **Article 368:** It refers to a majority of 2/3rd members present and voting supported by over 50% of the total strength of the House.
- **Article 368+ fifty percent:** As above plus that bill should be passed by a simple majority by half of the state legislatures in India
- **Article 361: 2/3rd of the total membership of the house**

Absolute majority: A bill is said to be passed, if more than 50% of the total strength of the house pass it

Effective Majority: This refers to a majority of more than 50% of the effective strength of the House.

Procedure for amendment of constitution:

- **Amendment can be initiated only by the introduction of a bill for the purpose in either house of the Parliament**
- **The bill can be introduced either by a minister or by a private member and does not require the permission of the President**
- **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**
- **Each house must pass the bill separately. If there is any disagreement, there is no provision for joint sitting of the houses**
- **If the bill seeks to amend the provisions of the constitution, it must be ratified by the legislatures of half of the states by a simple majority**
- **After passage of the bill by both the houses, it is presented to the President for his 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**

Criticism of the amending procedure

- **An amendment can be invoked in the Parliament only**
- **The procedure is very rigid** if a private member of the parliament wants to move a constitutional amendment bill
- Vesting of even the constituent power in the Parliament gives the ruling party a greater probability to pass amendments if they have requisite numbers in both the Parliament. **This might result in bills being passed in a hasty manner**
- **The consent of the states is limited to just a few provisions**
- **No time frame has been prescribed in the constitution for states to ratify or reject the amendment bill.**

Various Provisions and Types of Majority Required

<p><u>By simple majority of the Parliament</u></p>	<ul style="list-style-type: none"> • Admission or establishment or formation of new states and alteration of areas, boundaries or names of existing states • Abolition or creation of legislative councils • Second schedule related provisions • Quorum in Parliament • Salaries and allowances related to Parliament • Rules of procedure in parliament • Privileges of the Parliament, its members and committees • Use of English language in parliament • Number of puisne judges in SC • Conferring more power to Supreme Court • Use of official language • Citizenship: acquisition and termination • Elections to Parliament and state legislatures • Delimitation of constituencies • Union territories • 5th and 6th schedule
<p><u>By special majority of Parliament</u></p>	<ul style="list-style-type: none"> • Fundamental Rights • DPSP • All other provisions which are not covered by the above categories

By special majority of Parliament and consent of states

- Election of the President
- Extent of the executive power of the Union and the states
- Supreme Court and high courts
- Distribution of legislative powers between the states and the union
- Any of the lists in seventh schedule
- Representation of states in Parliament
- Power of Parliament to amend the constitution and its procedure

Recent Important Constitutional Amendments:

The Constitution (100th Amendment) Act, 2015	Land Boundary Agreement (LBA) between India and Bangladesh.
The Constitution (101th Amendment) Act, 2017	Introduced the Goods and Services Tax
The Constitution (102th Amendment) Act, 2018	Constitutional status to National Commission for Backward Classes
The Constitution (103th Amendment) Act, 2019	10% Reservation for Economically Weaker Sections (EWSs)
The Constitution (104th Amendment) Act, 2020	It extended the reservation of seats for SCs and STs in the Lok Sabha and states assemblies.

Conclusion:

What we must realize is that the constitution is the backbone of this democracy. While it was revolutionary of the fathers of our constitution to provide provisions to amend the constitution, it is essential that such provisions are not misused. **Misuse could result in excessive power of the legislative or the executive which could tear the fabric of our democracy.**

Practice Question:

Examine the limitations in amending any part of the Indian constitution. (250 words)