



CONSTITUTION OF INDIA

PROCEDURE FOR AMENDMENT OF THE CONSTITUTION OF INDIA

Prof. (Dr.) Richa
Professor
School of Law, MAU
Baddi (HP)

CONCEPT OF AMENDMENT OF THE CONSTITUTION

To evolve and change with all changes in the society and environment is a necessity for every constitution. The makers of the Constitution of India were fully aware of this need. As such, while writing the constitution, they also provided for a method of its amendment. Further they decided, to make the constitution both rigid as well as flexible. They laid down a flexible amendment method in respect of its some parts and for several others they provided for a rigid method.

CONCEPT OF AMENDMENT OF THE CONSTITUTION

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.

TEXT OF ARTICLE 368

Power of Parliament to amend the Constitution and procedure therefor

(1) Notwithstanding anything in this Constitution, Parliament may in exercise of its constituent power amend by way of addition, variation or repeal any provision of this Constitution in accordance with the procedure laid down in this article.

Substituted and Inserted by the Constitution (Twenty-fourth Amendment) Act, 1971, s. 3, for “Procedure for amendment of the Constitution.” (w.e.f. 5-11-1971)

TEXT OF ARTICLE 368

(2) An amendment of this Constitution may be initiated only by the introduction of a Bill for the purpose in either House of Parliament, and when the Bill is passed in each House by a majority of the total membership of that House and by a majority of not less than two-thirds of the members of that House present and voting, **it shall be presented to the President who shall give his assent to the Bill and thereupon** the Constitution shall stand amended in accordance with the terms of the Bill:

Article 368 renumbered as cl. (2) thereof by the Constitution (Twenty-fourth Amendment) Act, 1971. Substituted by the Constitution (Twenty-fourth Amendment) Act, 1971, for “ it shall be presented to the President for his assent and upon such assent being given to the Bill,”.

TEXT OF ARTICLE 368

Provided that if such amendment seeks to make any change in—

- (a) article 54, article 55, article 73, [article 162, article 241 or article 279A] or
- (b) Chapter IV of Part V, Chapter V of Part VI, or Chapter I of Part XI, or
- (c) any of the Lists in the Seventh Schedule, or
- (d) the representation of States in Parliament, or (e) the provisions of this article,

TEXT OF ARTICLE 368

The amendment shall also require to be ratified by the Legislatures of not less than one-half of the States by resolutions to that effect passed by those Legislatures before the Bill making provision for such amendment is presented to the President for assent.

[Article 279A Goods and Services Tax Council]. Inserted by the Constitution (One Hundred and First Amendment) Act, 2016, s. 15, (w.e.f. 16-9-2016). GST Amendment.

TEXT OF ARTICLE 368

(3) Nothing in article 13 shall apply to any amendment made under this article.

Inserted by the Constitution (Twenty-fourth Amendment) Act, 1971, s. 3 (w.e.f. 5-11-1971).

(4) No amendment of this Constitution (including the provisions of Part III) made or purporting to have been made under this article whether before or after the commencement of section 55 of the Constitution (Forty-second Amendment) Act, 1976] shall be called in question in any court on any ground.

TEXT OF ARTICLE 368

(5) For the removal of doubts, it is hereby declared that there shall be no limitation whatever on the constituent power of Parliament to amend by way of addition, variation or repeal the provisions of this Constitution under this article.

Clauses (4) and (5) ins. by the Constitution (Forty-second Amendment) Act, 1976, s. 55 (w.e.f. 3-1-1977). This section has been declared invalid by the Supreme Court in *Minerva Mills Ltd. and Others Vs. Union of India and Others* AIR 1980 SC 1789.

TYPES OF AMENDMENTS IN INDIAN CONSTITUTION

The list of types of amendments can be found below. There are three ways in which the Constitution can be amended:

1. Amendment by simple majority of the Parliament
2. Amendment by special majority of the Parliament
3. Amendment by special majority of the Parliament and the ratification of at least half of the state legislatures.

1. 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:

- (a) Admission or establishment of new states.
- (b) Formation of new states and alteration of areas, boundaries or names of existing states.
- (c) Abolition or creation of legislative councils in states.
- (d) Second Schedule-emoluments,

1. BY SIMPLE MAJORITY OF PARLIAMENT

(e) Allowances, privileges and so on of the president the governors, the Speakers, judges, etc.

(f) Quorum in Parliament.

(g) Salaries and allowances of the members of Parliament.

(h) Rules of procedure in Parliament.

1. BY SIMPLE MAJORITY OF PARLIAMENT

(i) Privileges of the Parliament, its members and its committees.

(j) Use of the English language in Parliament.

(k) Number of puisne judges in the Supreme Court.

(l) Conferment of more jurisdiction on the Supreme Court.

1. BY SIMPLE MAJORITY OF PARLIAMENT

- (m) Conferment of more jurisdiction on the Supreme Court.
- (n) Citizenship-acquisition and termination.
- (o) Elections to Parliament and state legislatures.

1. BY SIMPLE MAJORITY OF PARLIAMENT

(p) Delimitation of constituencies.

(q) Union territories.

(r) Fifth Schedule-administration of scheduled areas and scheduled tribes.

(s) Sixth Schedule-administration of tribal areas.

2. 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.

2. BY SPECIAL MAJORITY OF PARLIAMENT

‘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 include:

2. BY SPECIAL MAJORITY OF PARLIAMENT

The provisions which can be amended by this way include:

- (a) Fundamental Rights;
- (b) Directive Principles of State Policy and
- (c) All other provisions which are not covered by the first and third categories.

3. 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.

3. BY SPECIAL MAJORITY OF PARLIAMENT AND CONSENT OF STATES

The following provisions can be amended in this way:

- (a) Election of the President and its manner.
- (b) Extent of the executive power of the Union and the states.
- (c) Supreme Court and high courts.

3. BY SPECIAL MAJORITY OF PARLIAMENT AND CONSENT OF STATES

- (d) Distribution of legislative powers between the Union and the states.
- (e) Any of the lists in the Seventh Schedule.
- (f) Representation of states in Parliament.
- (g) Power of Parliament to amend the Constitution and its procedure (Article 368 itself).

METHOD OF AMENDMENT

- ◉ An amendment of the Constitution can be initiated only by the introduction of a bill for the purpose in either House of Parliament (Lok Sabha & Rajya Sabha) 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.

METHOD OF AMENDMENT

- ◉ 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.

METHOD OF AMENDMENT

- ◉ 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.

METHOD OF AMENDMENT

- ◉ 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.

RESTRICTION ON PARLIAMENT'S AMENDMENT POWERS AND JUDICIAL REVIEW

If the Amendment was passed by the parliament and if the judiciary feels to review it, the judiciary has the power and if the judiciary thinks that Amendment is unlawful or against any provision or against public morality, they have the power to disqualify that Amendment.

RESTRICTION ON PARLIAMENT'S AMENDMENT POWERS AND JUDICIAL REVIEW

Shankari Prasad v. Union of India AIR 1951 SC 455

In this case, for the very first time question was raised on the Amendment of fundamental rights i.e. whether the FR can be amended under Article 368 or not. In this case the validity of the First Amendment through which Article 31A and 31B were added in the Constitution. The five judges bench stated that Article 368 provides general and strict power to the parliament to amend the Constitution by following proper procedure.

RESTRICTION ON PARLIAMENT'S AMENDMENT POWERS AND JUDICIAL REVIEW

*Sajjan Singh v. the State of Rajasthan AIR 1965
SC 845*

In this case, the validity of the Seventeenth Amendment was challenged. The question raised was that the seventeenth Amendment puts a limit on the jurisdiction of the High Court and therefore rectified. However, the court disposed of the contention. But choose to deal with the 2nd contention i.e. the reconsideration of Shankari Prasad case, the court stated that, even if the Article 368 does not expressly declares the power of parliament regarding Amendment of FR, the parliament could by a suitable Amendment assume those powers.

RESTRICTION ON PARLIAMENT'S AMENDMENT POWERS AND JUDICIAL REVIEW

Golaknath v. the State of Punjab AIR 1971 SC 1643

In this case, the validity of first, Seventeenth, and fourth Amendment were challenged. This time from the eleven judges bench, **the majority of six judges decided that the parliament has no power to amend part 3 of the Constitution.** On the other hand, the court considered that the parliament has a duty to correct the errors in the law, therefore adopted the doctrine of prospective overruling through which the 3 Amendments discussed were continued to be valid but in future, the parliament has no power to amend the part III of the Constitution.

RESTRICTION ON PARLIAMENT'S AMENDMENT POWERS AND JUDICIAL REVIEW

- ◉ After the judgment of Supreme Court in Golaknath case the 24th Amendment was passed in 1971, and made a change in Article 13 and 368:
- ◉ A new clause added in Article 13 which says; nothing in this Article apply to Amendment in the Constitution under Article 368.

New clauses were added in Article 368:

- ◉ A new heading was introduced as; Parliament's power to amend the Constitution.
- ◉ Parliament may change, add, repeal any provision of this Constitution in accordance with the procedure provided -368 (1)

AMENDMENT OF BASIC STRUCTURE

*Kesavananda Bharati v. State of Kerala AIR
1973 SC 1461*

This case was considered as the historical landmark case, where for the first-time Supreme Court recognized the basic structure concept. In this case, the validity of the 25th Amendment was challenged with the 24th and 29th Amendment was also questioned. The court by majority overruled the judgement of Golaknath case.

AMENDMENT OF BASIC STRUCTURE

It was held that even before the 24th Amendment the parliament has the limited power to amend the Constitution by following the proper procedure. *The Supreme Court also declared that Article 368 of the Constitution does not allow the parliament to change, damage the basic structure of the Constitution.* This landmark judgement changes the history of the Constitution.

AMENDMENT OF BASIC STRUCTURE

Indira Nehru Gandhi v. Raj Narayan AIR 1975 SC 2299

Under this case, once again the basic structure concept was reaffirmed. The Supreme Court applied the same theory and struck down the 4th clause of Article 329 A on the ground that the Amendment is beyond the power of the parliament and it destroyed the basic structure of the Constitution. The Amendment was made regarding the jurisdiction of all courts including the Supreme Court, regarding the dispute of an election of the Prime Minister of India.

THE CONSTITUTION OF INDIA 42ND AMENDMENT

Immediately after the decision of the Supreme court in Kesavananda Bharti and Indira Gandhi case, the parliament introduced the 42nd Amendment and added the word secular and socialist in the preamble and add clause 4 and 5 to the Article 368 of the Constitution. It indirectly declares that there is no limitation on the power of the parliament regarding the Amendment.

THE CONSTITUTION OF INDIA 42ND AMENDMENT

Even after the judgement of the supreme court, the parliament has the unrestricted power to change or repeal any part of the Constitution. Thus this Amendment creates a question regarding the supremacy i.e. who is supreme Parliament or Supreme Court? Through this Amendment, the parliament declared the concept of basic structure invented by the supreme court is vague and unlawful.

AMENDMENT OF BASIC STRUCTURE

Minerva Mills v. Union of India AIR 1980 SC
1789

In this case, the validity of the 42nd Amendment was challenged, as it destroyed the basic structure of the Constitution and regarding clause 4 and 5 of Article 368. The Supreme Court by majority struck down the Clauses added by the 42nd Amen

AMENDMENT OF BASIC STRUCTURE

L. Chandra Kumar v. Union of India (1997) 3 SCC 261

Under this case, the validity of the Article 323A and 323B was challenged, both deals with the exclusion of the High Court under Article 226 and 227 and the Supreme Court under Article 32 was inserted by the 42nd Amendment. The SC, in this case, declared both the provisions unconstitutional and held that the power of judicial review under Article 226, 227, and 32 were given by the basic structure and the parliament has no power to amend that.

AMENDMENT OF BASIC STRUCTURE

*Wamon Rao v. Union of India, AIR 1981 SC
271*

“Whether an Act or regulation which, or a part of which, is or has been found by the courts to be violative of one or more of the fundamental rights conferred by articles 14, 19 or 31 can be included in the ninth schedule or whether it is only a constitutional amendment amending the ninth schedule which damages or destroys the basic structure of the Constitution that can be struck down”.

AMENDMENT OF BASIC STRUCTURE

*R. Coelho v. State of Tamil Nadu, AIR 2007 SC
891*

Justification for conferring protection, not blanket protection, on the laws included in the Ninth Schedule by Constitutional Amendments shall be a matter of Constitutional adjudication by examining the nature and extent of infraction of a Fundamental Right.

AMENDMENT OF BASIC STRUCTURE

R. Coelho v. State of Tamil Nadu, AIR 2007 SC 891

A statute, sought to be Constitutionally protected, and on the touchstone of the basic structure doctrine as reflected in Article 21 read with Article 14 and Article 19 by application of the "rights test" and the "essence of the right" test taking the synoptic view of the Articles in Part III as held in Indira Gandhi's case. Applying the above tests to the Ninth Schedule laws, if the infraction affects the basic structure then such a law(s) will not get the protection of the Ninth Schedule.

EVALUATION OF THE VARIOUS JUDGEMENTS OF SUPREME COURT

The Supreme Court through Golaknath, Kesavanada Bharti, Indira Gandhi and various other cases tried to put an implied limitation on the amending powers of the parliament, if we summarize the judgements of all the cases discussed in this Article, the court always tries to pressurize on few things that are:

EVALUATION OF THE VARIOUS JUDGEMENTS OF SUPREME COURT

- ◉ Parliament has limited power to amend the Constitution.
- ◉ The parliament cannot damage the basic structure of the Constitution
- ◉ Article 368 does not provide the power to the parliament regarding the Amendment in Part III of the Constitution.
- ◉ The Parliament by amending Article 368 cannot increase its Amendment powers.

*Thank
you*

