

Procedure of Amendment of the Constitution: Method of Amendment

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.

Method of Amendment:

Part XX of The Constitution of India contains only one Article 368. It deals with the power of the Parliament to amend the constitution. It lays down two special methods for the amendment of various parts of the constitution. Along with it the Union Parliament has the power to change some specified features/parts of the Constitution by passing an ordinary law.

Two Special Methods of Amendment under Art 368

I. Amendment by 2/3rd Majority of Parliament:

Most parts of the Constitution (with exception of some specific provisions) can be amended by this method. Under this method, the Constitution can be amended by the Union Parliament alone. For this purpose an amendment bill can be passed by each of the two Houses of Union Parliament by a majority of its total membership (i.e. absolute majority) and by a two-third majority of members present and voting in each House. It is a rigid method in so far as it prescribes a special majority for amending the constitution but it is considered to be a flexible method because under it the Union Parliament alone can pass any amendment.

II. Amendment by 2/3rd Majority of the Parliament plus Ratification by at least half of the several State Legislatures:

In respect of some specified provisions of the Constitution, a very rigid method of amendment has been prescribed.

In respect of these the amendment-making involves two stages:

First, the amendment bill is to be passed by both the Houses of the Union Parliament by a majority of total membership and a 2/3rd majority of members present and voting in each House.

Secondly, after this the amendment bill has to secure ratification from at least half of the several State Legislatures (now at least 14 state legislatures). Only then it gets finally passed and incorporated as a part of the Constitution when the President puts his signatures on the bill.

The following provisions of the constitution can be amended by this rigid method:

- (i) Election of the President.
- (ii) Scope of the executive power of the Union.
- (iii) Scope of the executive power of a State.
- (iv) Provisions regarding High Courts in Union Territories.
- (v) Provisions regarding Supreme Court of India.
- (vi) Provisions regarding High Courts in States.
- vii) Legislative Relations between the Union and States.

(viii) Any of the Lists in the Seventh Schedule. (Division of Powers between the Union and States)

(ix) Representation of States in the Parliament.

(x) The Provisions of Article 368. (Method of Amendment)

III. Additional Amendment-making by A Simple Majority in the Two Houses of Parliament:

In respect of some provisions of the Constitution the Parliament has been given the power to make necessary changes by passing as a law in the normal way i.e. by simple majority of members of both of its Houses. It is, indeed, an easy method of amendment.

It applies to the following provisions of the Constitution:

(i) A Admission/ formation of new States and alteration of areas, boundaries or names of existing States.

(ii) Citizenship provision.

(iii) Provision regarding delimitation of constituencies.

(iv) Quorum of the two Houses of Parliament.

(v) Privileges and Salaries and allowances of the MPs.

(vi) Rules of procedure in each House of the Parliament.

(vii) English as a language of the Parliament.

(viii) Appointment of Judges and jurisdiction of Supreme Court.

- (xii) Official language of India.
- (xiii) Second, fifth and sixth Schedules of the Constitution.
- (ix) Creation or abolition of Upper Houses in any state.
- (x) Legislatures for Union Territories.
- (xi) Elections in the country.

These methods of amendment reflect a mixture of rigidity and flexibility in the Indian Constitution.

Main Features of the Amendment Method:

1. Part XX of the Constitution deals with Amendment of the Constitution. It has only one Article i.e. Article 368.
2. The power to amend the constitution is mainly with the Union Parliament. No amendment can be made without Parliament's action and consent. Union Parliament alone has the power to initiate bills for amending the constitution.

3. There are three basic ways in which amendments can be made:

- (i) Most provisions can be amended by the Union Parliament by passing an amending act by a majority of total membership, and a 2/3rd majority of members present and voting in each House.
- (ii) Ten provisions of the constitution can be amended,
 - (a) By passing of the amendment bill by 2/3rd majority of the members of each of the two Houses of Parliament,

(b) It becomes finally passed when approved by at least half of the state Legislatures.

(iii) Some provisions can be amended by the Parliament by a law by a simple majority of its two Houses.

4. Signature of the President is required as the final act which transforms a duly enacted amendment bill into an Amendment Act.

5. State Legislatures have been denied the power to initiate amendments.

6. All amendments are subject to the Judicial Review power of the courts. (The Supreme courts and State High Courts only) Any part of any amendment or any amendment as a whole can be declared invalid by a court in case it is found to be unconstitutional.

7. The Parliament has the power to amend every part of the Constitution. However, the Supreme Court has ruled that the Parliament has no power to change the 'Basic Structure of the Constitution'.

These are the main features of the method of Amendment of the Constitution of India.

Method of Amendment: Critical Evaluation:

Main points of criticism:

1. Undemocratic:

The critics hold that since the process of amendment does not provide for a system of getting consent or approval of the people of India, it is an undemocratic method.

2. Very Flexible:

The Parliament alone can amend most of the constitutional provisions. The flexibility of the constitution is evident from the fact that during the past 60 years 94 constitutional amendments have been made.

3. Very Rigid:

Some scholars feel that the Constitution of India is very rigid. It worked as a flexible constitution during 1950-1989 only because of the presence of single party dominance in Indian politics. In this era of coalition governments, it has become a very rigid constitution.

4. Lack of Procedure for resolving deadlocks over Amendment Bills:

The Constitution does not provide for any method of resolving deadlocks between the two Houses of parliament over an amendment bill.

5. Less Importance to States:

Except for the 'ten provisions' listed by Article 368, all parts of the Constitution can be amended by the Union Parliament alone without the consent of the State Legislatures. States do not have even the right to propose amendments.

6. The provision for Judicial Review over Amendments:

Some critics also object to the system of judicial review which permits the Supreme Court and every High Court to judge the constitutional validity of the amendments passed by the Parliament.

This makes the Supreme Court of India a super legislature with the negative power of the rejecting duly passed amendments. On all these grounds, the critics strongly criticise the method of amendment of the Constitution of India.

Justification:

In defence of the amendment method, it can be said that:

- (1) It is the best possible method of amendment. It has both the quality of being rigid as well as flexible. It strikes a good balance.
- (2) In a developing country like India, the constitution is an instrument of social change and that is why it has undergone frequent amendments.
- (3) The detailed and lengthy size of the constitution and its character as a common constitution of both the Union and States, have also been responsible for the incorporation of several and frequent amendments.
- (4) The existing method of Amendment stands justified as a natural necessity of India's pluralist society and developing polity.

The amendment method has helped the Constitution to change in response to the changes in Indian society and polity.

Important amendments in constitution

The Constitution of India is the principal document that formulates the rights, duties and powers of citizens, governments and its officials. The constitution came into force on 26 January 1950, took nearly three years to complete, and is regarded to be the world's most extensive Constitution.

1. Abolition of states according to classes and the introduction of Union Territories and reorganisation of states by language (1956):

This was one of the first significant reforms of the boundaries of Indian states and territories, organising them by the language spoken in those areas. This systematically arranged the states and lowered the complexity of state boundaries.

Apart from this, it also abolished the classification of states by progress and per-capita income of the states.

2. The mini-constitution (42nd amendment) inserted Socialism and Secularism in the preamble, a provision on fundamental (1976):

Secularism and socialism were inserted to restore the faith of the nation that minorities would be safe and not be exploited by the rich strata. Also, the rich would not be allowed to dominate the country's economy. The main reason to add socialism was to promote social as well as economic equality in the country. Similarly, the main reason to add secularism was to imply that there was no official state religion of the country.

3. Right to Property deleted from the list of fundamental rights (1978):

The fundamental right to property in India was removed to permit the reorganisation of land and to facilitate land acquisition for developmental projects. This was carried out by the Indian government at that time since it was not affluent enough to pay people whatever they demanded their land.

4. Lawmakers may be disqualified on the grounds of defection (Law of Defection) (1985):

This was quite a controversial amendment in itself since it was felt that this law would invade on the right of free speech of lawmakers. Under the amendment, a Member of Parliament or state legislature was considered to have defected if they either on their own resigned from their party or violated the directions of the party leadership on a vote. That is, they may not vote on any issue in violation to the

party's decision. Independent members would be disqualified if they joined a political party. Nominated members who were not members of a party could choose to join a party within six months; after that period, they were treated as a party member or independent member.

5. Voting age reduced from 21 to 18 (1989):

The then Prime Minister Rajiv Gandhi explained it as an expression of the government's full faith in the youth of the country. The youth are aware and informed and thus, lowering of the voting age would provide an opportunity to the unrepresented youth of the nation to vent out their feelings and motivate them to become a part of the political process eventually.

6. Introduction of Nagarpalikas and Municipalities (1993):

During the early 90s local bodies in states had become ineffective in holding regular elections or the maintenance of public infrastructure, electricity and water supply. Thus, an immediate need to introduce effective authorities to execute the numerous plans and programs was felt by the government.

7. Free and compulsory education to children between 6 to 14 years (2002):

One of the most important amendments, the government directed private schools to take 25% of their class strength from economically weaker or disadvantaged groups of society through a random selection process with the help of the government funding. This initiative was taken to try and provide elementary education to all. Moreover, the local and state governments were made to ensure its proper implementation.

8. Allowed the government to pass laws relating to reservations to socially, economically backward classes, scheduled castes and scheduled tribes in public and private higher educational institutions (2014):

Scheduled castes and scheduled tribes have been the most neglected and exploited people in India. The curse of untouchability has always been a dark spot on Indian civilisation and culture. Despite the constitutional declaration of its abolition under Article 17, it was still quite prevalent in many subtle and not so subtle ways. Therefore, for the very integrity, survival and the nation's unity the amendment to pass laws relating to such reservations were quite a need of the hour.

9. Introduction of the Goods and Services Tax (GST), to present the idea of One Nation, One Tax (2016):

The most recent important amendment came with the implementation of the GST, where consumers would not be subjected to double/ multiple taxations. All taxes that are imposed while purchasing goods will include both the central government's taxes as well as the state government's taxes. The introduction of GST has deterred the state governments from randomly increasing taxes.