



“AMENDMENT PROCEDURE OF THE CONSTITUTION OF INDIA”

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ABSTRACT:-

The Indian Constitution's Article 368 amendment procedure permits the highest law to be modified in response to changing societal demands. It outlines the processes, kinds, and importance of amendments while emphasizing their limitations in order to preserve the balance of power and safeguard core values.

MEANING:-

Constitutional amendments involve adding (addition), changing (variation), or eliminating (repeal) provisions within the document while according to established protocols. By taking into account changes in society norms, technical breakthroughs, and legal interpretations, they help to ensure the continued relevance of the Constitution. The Constitution is maintained as a dynamic and durable foundation for governance through amendments that retain fundamental values while taking into account modern needs. This procedure highlights the document's ability to change while preserving its essential principles and guaranteeing democratic integrity.

The Indian Constitution allows for change because it is a living text. Article 368 of Part XX of the Indian Constitution contains the specific provisions pertaining to the Amendment of the Indian Constitution. The scope and procedure for modifying the Constitution are outlined in these clauses. The parts that follow provide a detailed discussion of the many features of the Amendment to the Indian Constitution follow.¹

Despite anything stated in this Constitution, Parliament may use its inherent authority to add to, change, or repeal any provision of this Constitution by following the guidelines outlined in this article.²

TYPES OF AMENDMENTS:-

Article 368 of Indian Constitution provides for two types of amendments:

1. By a Special Majority of Parliament (50% of the total membership of the House + 2/3rd of the members present and voting),
2. By a Special Majority of Parliament plus ratification of 1/2 of the states by a Simple Majority,
3. By a Simple Majority of Parliament.

By Simple Majority of Parliament

The Indian Constitution allows for the amendment of several clauses with a simple majority, or 50% of the members present and voting. It should be mentioned that these changes are not covered by Article 368.

A few examples of the provisions that can be amended by simple majority are –

- Article 2, Article 3, Article 5, etc. of the Indian Constitution.

By Special Majority of Parliament

Only a Special Majority—more than 50% of the House's total membership and a majority of two-thirds of its members who are present and voting—may modify the majority of the Constitution's provisions. The provisions that can be amended by Special Majority are:

- PART III, PART IV, etc. of the Indian Constitution.

¹ <https://www.nextias.com/blog/amendment-of-the-constitution/> last seen on 24/04/2024

² Article 368(1) of the Constitution of India, 1950

By Special Majority of the Parliament and Consent of Half States

Changes concerning the federal structure of India require approval by a Simple Majority of state legislatures and a Special Majority in Parliament. Interestingly, the process ends once half the states agree; unanimous state assent is not required. States may give their consent at any moment without regard to a deadline. This adaptable system permits prompt adaptation to changing national needs and goals while ensuring federal collaboration and taking into account regional differences. A few examples of the provisions that can be amended this way are:

- Article 54, 55, 73, 279A, 368, Union or State Judiciary, etc.

PROCEDURE TO AMEND THE CONSTITUTION OF INDIA:-

Only a Bill introduced in either House of Parliament may be used to amend this Constitution. Once a Bill is approved by both houses' respective majorities, that is, by the members of each house present and voting as well as by the majority of the members of the House overall—it is sent to the President, who will then sign the Bill into law, changing the Constitution to reflect its new provisions. Provided that if such amendment seeks to make any change in-

- Articles 54, 55, 73, 162, or 241,
- Chapter IV of Part V, Chapter V of Part VI, or Chapter I of Part XI,
- any of the Lists in the Seventh Schedule,
- the representation of States in Parliament, or
- the provisions of this article

are among the lists where the amendment must be ratified. The resolutions approving the amendment must be passed by the legislatures of at least half of the States before the bill containing the amendment is presented to the legislature and then to the President for assent.³

HISTORICAL BACKGROUND BEHIND ARTICLE 368(3):-

Nothing in article 13 shall apply to any amendment made under this article.⁴

1. The Supreme Court in the case of **Shankari Prasad vs. Union of India (1951)**⁵, held that the Parliament, under Article 368, has the power to amend any part of the constitution, including fundamental rights.⁶
2. The case of **Sajjan Singh v. State of Rajasthan**⁷ has a major role in establishing the fundamental framework of the Indian Constitution. Since it forms the foundation of our constitutional structure, it sets certain fundamental principles that are considered immutable. The Fundamental Rights, which Justice Khanna highlighted are accorded to each and every member of the nation, are among these fundamental components. Article 368 of the Indian Constitution allowed the Parliament to change any part, including the Fundamental Rights, prior to establishing the idea of the basic structure. Constitution.⁸
3. In the aforementioned judgments, the Supreme Court ruled that the Parliament has the authority to change the Fundamental Rights and that the term "law" exclusively refers to ordinary legislation, not constitutional amendment laws.
4. In the case of **Golaknath v. State Of Punjab (1967)**⁹, The Supreme Court rejected the Shankari Prasad ruling, holding that Article 368 only establishes the process for amending the constitution and does not grant the Parliament complete authority to change any section of it.
5. The government passed the 24th Amendment Act, adding a clause to Article 368 of the Constitution that said the Parliament could remove any of the fundamental rights, in order to circumvent the restrictions imposed by the Golaknath ruling. Additionally, it mandated that the President ratify every bill pertaining to a constitutional amendment that was submitted to him.

HISTORY BEHIND ARTICLE 368(4) AND ARTICLE 368(5):-

No modification made to this Constitution (including Part III provisions) or alleged to have been made under this article, whether before or after the Constitution (Forty-second modification) Act, 1976's section 55 went into effect, shall be contested in any court on any ground.¹⁰

To clear up any confusion, it is now stated that Parliament's constituent right to add to, modify, or abolish the provisions of this Constitution will not be restricted in any way article.¹¹

³ Article 368(2) of the Constitution of India, 1950

⁴ Article 368(3) of the Constitution of India, 1950

⁵ Shankari Prasad vs. Union of India, AIR 1951 SC 458, 1951 SCR 89

⁶ <https://vajiramandravi.com/quest-upsc-notes/basic-structure/> last seen on 24/04/2024

⁷ Sajjan Singh vs State of Rajasthan, AIR 1965 SC 845

⁸ <https://lawbhoomi.com/sajjan-singh-vs-state-of-rajasthan/> last seen on 24/04/2024

⁹ Golaknath v. State Of Punjab 1967, AIR 1643, 1967 SCR (2) 762

¹⁰ Article 368(4) of the Constitution of India, 1950

¹¹ Article 368(5) of the Constitution of India, 1950

Kesavananda Bharati vs. State of Kerala and Union of India (1973):-

- In this case, the Supreme Court reviewed its ruling in the Golaknath case and upheld the constitutionality of the 24th Amendment Act.
- Nonetheless, the Supreme Court ruled that while the Parliament may change any clause in the constitution, the Basic Structure of the document must be upheld.
- The Court established the framework that has been referred to as the "Basic Structure of the Constitution."
- As a result of this historic ruling, any section of the Constitution may be changed, but any changes may also be subject to court scrutiny to ensure that the Basic Structure of the Constitution is preserved.
- After the Keswanand Bharti's case, the Parliament by way of 42nd constitutional amendment of 1976 inserted Article 368(4) and Article 368(5) in the Constitution of India. The Supreme Court of India in the case of *Minerva Mills v. Union of India* (1980)¹², struck down Article 368(4) and Article 368(5) on the ground that it violates the doctrine of basic structure.

IMPORTANCE OF THE AMENDMENT TO THE CONSTITUTION:

The following is a list of the many implications of the Indian Constitution's amendment provision:

1. In light of the nation's complex and dynamic social environment, the Indian Constitutional Amendment Process is essential for guiding national administration. First of all, it guarantees flexibility in governance, realizing that strict regulations are impracticable for overseeing a country as diverse and dynamic as India. Amendments make it possible to promptly modify governance structures to meet changing requirements and circumstances.
2. Secondly, new rights movements can be accommodated through constitutional revisions. Marginalized groups, including the LGBT community, are demanding acknowledgment and protection of their rights as awareness develops. The process of amendments makes it easier to incorporate these rights into the law, creating a more inclusive society.
3. Thirdly, the significance of the amendment process is highlighted by the way new rights have emerged through reinterpreting fundamental ideas. The Right to Privacy, for example, resulted from a new understanding of pre-existing fundamental rights. By formally recognizing and defending these developing rights, amendments guarantee that the Constitution is still applicable and reflects modern ideals.
4. Moreover, the amendment process makes it possible to proactively address new challenges in society like vigilantism and bans. Amendments support the upkeep of peace and order in society by offering a legislative framework to address these issues.
5. Lastly, by permitting the elimination of antiquated socio-cultural practices, constitutional amendments operate as a spur for social reform. Amendments open the door to a more just and equitable society by updating legislative structures and bringing them into line with progressive ideals. As a result, the amendment process is essential to the democratic development of India since it makes it possible for governance to be inclusive, responsive, and representative of the values and goals of the country.

CRITICISM OF THE AMENDMENT PROCEDURE:-

The procedure for amendment of the Indian constitution has been criticized on the following grounds:

- The process of amending the Indian Constitution is distinguished by a number of distinctive elements. First off, there isn't a provision for a distinct body like a Constitutional Convention, in contrast to several other nations. Rather, only the legislative bodies—the State Legislatures and Parliament—have the authority to make changes.
- Secondly, the amendment process is similar to a standard legislative procedure, save from the need for a Special Majority. This streamlines the procedure but also suggests that the political dynamics governing constitutional changes are the same as those governing ordinary legislation.
- Thirdly, states do not have the authority to propose revisions; only Parliament can, with the exception of certain situations like the creation or dissolution of state legislative bodies.
- In addition, although Parliament alone is able to change large sections of the Constitution, in some cases the approval of state legislatures is required, albeit from only half of them. But the lack of provisions for a joint session of Parliament on constitutional amendment issues might cause impasses, which makes the procedure much more difficult.
- Finally, because the amending procedure is so ambiguous, disagreements frequently arise and occasionally end up in court. This ambiguity allows for interpretation, which may have an impact on how laws are interpreted and how government is carried out. Therefore, even if the amendment process is intended to promote flexibility, efficient governance and legal certainty may be jeopardized by its inherent ambiguities and complexity.

CONCLUSION:-

Given the prevailing political and economic circumstances, which indicate that significant transformations are ahead for nations, one need not be an astrologer to foresee the need for repeated constitutional amendments. While everyone should respect and cherish the Constitution, it should be altered whenever the nation feels the need to do so. After all, the Constitution serves as a tie that keeps the entire country together as it swiftly advances toward

¹² *Minerva Mills v. Union of India*, AIR 1980 SC 1789

economic growth, intellectual achievement, and spiritual elevation rather than a rope that holds it all down. To treat the Constitution as an altar would be to destroy its value for future generations. The Constitution must be altered in order to maintain it intact, but it should only be altered in rare instances and to the greatest extent feasible in the interests of the entire globe.