

TNPSC GROUP I / II - PRELIMINARY AMENDMENT TO CONSTITUTION

BASIC CONCEPT

Is neither as easy as in Britain nor as difficult as in USA, neither flexible nor rigid but a synthesis of both.

Article 368 in Part XX of the Constitution deals with the powers of Parliament to amend the Constitution and its procedure.

The Parliament cannot amend those provisions which form the 'basic structure' of the Constitution. This was ruled by the Supreme Court in the Kesavananda Bharati case (1973).

Source of procedure to amend: South African Constitution

PROCEDURE FOR AMENDMENT

The procedure for the amendment of the Constitution as laid down in Article 368 is as follows:

1. An amendment of the Constitution can be initiated only by the introduction of a bill for the purpose in either House of Parliament and not in the state legislatures.
2. The bill can be introduced either by a minister or by a private member and does not require prior permission of the president.
3. 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.

4. 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.
5. 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.
6. 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.
7. 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. (24TH Amendment 1974)
8. 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.

TYPES OF AMENDMENTS

Article 368 provides for two types of amendments, that is, by a special majority of Parliament and also through the ratification of half of the states by a simple majority.

Some other articles provide for the amendment of certain provisions of the Constitution by a simple majority of Parliament, that is, a majority of the members of each House present and voting. Notably, these amendments are not deemed to be amendments of the Constitution for the purposes of Article 368.

Constitution can be amended in three ways:

- (1) Amendment by simple majority of the Parliament,
- (2) Amendment by special majority of the Parliament, and
- (3) Amendment by special majority of the Parliament and the ratification of 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:

1. Admission or establishment of new states.
2. Formation of new states and alteration of areas, boundaries or names of existing states.
3. Abolition or creation of legislative councils in states.
4. Second Schedule—emoluments, allowances, privileges and so on of the president, the governors, the Speakers, judges, etc.
5. Quorum in Parliament.
6. Salaries and allowances of the members of Parliament.
7. Rules of procedure in Parliament.
8. Privileges of the Parliament, its members and its committees.
9. Use of English language in Parliament.
10. Number of puisne judges in the Supreme Court.
11. Conferment of more jurisdiction on the Supreme Court.
12. Use of official language.
13. Citizenship—acquisition and termination.

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 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.

The provisions which can be amended by this way includes:

- (i) Fundamental Rights;
- (ii) Directive Principles of State Policy; and
- (iii) 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.

1. Election of the President and its manner. (Articles 54, 55 and 73)
2. Extent of the executive power of the Union and the states. (Article 162)
3. Supreme Court and high courts. (Part V and VI)
4. Distribution of legislative powers between the Union and the states. (Schedule VII)
5. Goods and Services Tax Council.

SIGNIFICANCE OF THE AMENDMENT PROCEDURE

1. It, as rightly said by K.C. Wheare, 'strikes a good balance between flexibility and rigidity'.
2. K.C. Wheare has admired the variety of amendment procedures contained in the Constitution of India. 'This variety in the amending process is wise but rarely found'.
3. According to Granville Austin, 'the amending process has proved itself one of the most ably conceived aspects of the Constitution. Although it appears complicated, it is merely diverse'.

Special Majority Under Article 61

Procedure for impeachment of the President

1. When a President is to be impeached for violation of the Constitution, the charge shall be preferred by either House of Parliament.
2. No such charge shall be preferred unless,
 - (a) the proposal to prefer such charge is contained in a resolution which has been moved after at least fourteen days' notice in writing signed by not less than one-fourth of the total number of members of the House has been given of their intention to move the resolution, and
 - (b) such resolution has been passed by a majority of not less than two-thirds of the total membership of the House.
3. When a charge has been so preferred by either House of Parliament, the other House shall investigate the charge or cause the charge to be investigated and the President shall have the right to appear and to be represented at such investigation.

4. If as a result of the investigation a resolution is passed by a majority of not less than two-thirds of the total membership of the House by which the charge was investigated or caused to be investigated, declaring that the charge preferred against the President has been sustained, such resolution shall have the effect of removing the President from his office as from the date on which the resolution is so passed.

Special Majority Under Article 249

Power of Parliament to legislate with respect to a matter in the State List in the national interest

(1) If the Council of States has declared by resolution supported by not less than two thirds of the members present and voting that it is necessary or expedient in the national interest that Parliament should make laws with respect to any matter enumerated in the State List specified in the resolution, it shall be lawful for Parliament to make laws for the whole or any part of the territory of India with respect to that matter while the resolution remains in force.

Important amendments

(i) State Reorganization

Amendment and Year	Number	Amended Provisions of the Constitution
7th Act,1956	Amendment	<ol style="list-style-type: none"> 1. Abolished the existing classification of states into four categories i.e., Part A, Part B, Part C and Part D states, and reorganized them into 14 states and 6 union territories 2. Extended the jurisdiction of high courts to union territories 3. Provided for the establishment of a common high court for two or more states.
10th Act,1961	Amendment	Incorporated Dadra and Nagar Haveli in the Indian Union.
12th Act,1962	Amendment	Incorporated Goa, Daman and Diu in the Indian Union.
13th Act,1962	Amendment	status of a state to Nagaland and made special provisions
14th Amendment Act, 1962		Incorporated Puducherry in the Indian Union. Creation of legislatures and council of ministers for the Union Territories of Himachal Pradesh, Manipur, Tripura, Goa, Daman and Diu, and Puducherry.
22nd Amendment Act,		The creation of a new autonomous State of Meghalaya

1969	within the State of Assam.
35th Amendment Act, 1974	Terminated the protectorate status of Sikkim and conferred on it the status of an associate state of the Indian Union. The Tenth Schedule was added laying down the terms and conditions of association of Sikkim with the Indian Union.
36th Amendment Act, 1975	Sikkim a full-fledged State of the Indian Union and omitted the Tenth Schedule.
69th Amendment Act, 1991	Accorded a special status to the Union Territory of Delhi by designing it as the National Capital Territory of Delhi.

(ii) Official Languages

Amendment Number and Year	Amended Provisions of the Constitution
21 st Amendment Act, 1967	Sindhi added to schedule VIII
71 st Amendment Act, 1992	Manipuri, Nepali, Konkani
92 nd Amendment Act, 2003	Bodo, Dogri, Santhali, Maithili.

(iii) Anti-defection

Amendment Number and Year	Amended Provisions of the Constitution
52 nd Amendment Act, 1985 (popularly known as Anti-Defection Law)	Provided for disqualification of members of Parliament and state legislatures on the ground of defection and added a new Tenth Schedule containing the details in this regard.
91 st Amendment Act, 2003	The total number of ministers, including the Prime Minister, in the Central Council of Ministers shall not exceed 15% of the total strength of the Lok Sabha (Article 75(1A)).

(iv) Other major amendments:

1. First Amendment Act, 1951

Empowered the state to make special provisions for the advancement of socially and economically backward classes and added Ninth Schedule.

2. Sixteenth amendment, 1963

Prevents Secession of state from the Indian Union

3. Twenty-fourth Amendment (1971)

Right of the Parliament to amend any part of the Constitution including Fundamental Rights.

4. Twenty-fifth Amendment (1971)

- Curtailed the fundamental right to property
- Provided that any law made to give effect to the Directive Principle contained in Article 39 (b) or (c) cannot be challenged on the ground of violation of the rights guaranteed under Article 14, 19 and 31.

5. Twenty-sixth Amendment (1971)

Abolished the titles and special privileges of former rulers of princely states.

6. Forty-second Amendment (1976) - "Mini Constitution"

- It added the words 'Socialist' 'Secular' and 'Integrity' in the Preamble.
- It added a set of 10 Fundamental Duties to the Constitution. (Part IV A)
- It froze the seats in the Lok Sabha and State assemblies on the basis of the 1971 census till 2001 AD.
- Provided for administrative tribunals and other tribunals Shifted five subjects from the state list to the concurrent list

7. Forty-Fourth Amendment Act, 1978

Enacted by the Janata Government mainly to nullify some of the other distortions introduced by the 42nd Amendment Act, 1976

8. Sixty-first Amendment (1989)

Reduced the voting age from 21 years to 18 years for the Lok Sabha as well as assembly elections.

9. Seventy-Third and Seventy-Fourth Amendment Act, 1992

It granted constitutional status to the panchayat raj institutions and the urban local bodies.

10. Seventy-sixth Amendment (1994)

It seeks to bring the **Tamil Nadu Reservation Act** (which provides for 69 percent reservation in jobs and educational institutions in the state) under the Ninth Schedule of the Constitution.

11. Eighty Sixth constitutional amendment (2002)

Free and compulsory education, a right of all children from 6 to 14 years of age, has given thrust to the goal of Universalization of Elementary Education.

12. Ninety - Third Amendment Act, 2005

Empowered the state to make special provisions for the socially and educationally backward classes or the Scheduled Castes or the Scheduled Tribes in educational institutions including private educational institutions.

13. Ninety-Nineth Amendment act, 2014

Formation of a NJAC-National Judicial Appointment Commission. It was nullified by the Supreme Court

(v) Recent Amendments

Ame ndme nt	Description	Bill for Amendme nt	Enforced on	
101 st	Introduced the Goods and Services Tax	122 nd Amendme nt Bill	1 July 2017	Addition of articles 246A, 269A, 279A. Deletion of Article 268A. Amendment of Articles 248, 249, 250, 268, 269, 270, 271, 286, 366, 368, Sixth Schedule, Seventh Schedule.
102 nd	Constitutional status to National Commission for Backward Classes	123 rd Amendme nt Bill	11 August 2018	Addition of articles 338B, 342A and Added Clause 26C. Omitted Article 340. Modification of articles 338, 366
103 rd	A maximum of 10% Reservation for Economically Weaker Sections	124 th Amendme nt Bill, 2019	12 January 2019	Amendment to Article 15, added Clause [6], Amendment to Article 16, added Clause [6]
104 th	To extend the reservation of seats for SCs and STs in the Lok Sabha and states assemblies from Seventy years to Eighty years.	126 th Amendme nt Bill	25 January 2020	Amended article 334
105 th	To restore the power of the	127 th Amendme	10 August	Amended Article 338B, 342A and 366

	<p>state governments to identify Other Backward Classes (OBCs) that are socially and educationally backward. This amendment annulled the Supreme Court judgement of 11 May 2021, which had empowered only the Central government for such identification</p>	<p>nt Bill</p>	<p>2021</p>	
<p>106th</p>	<p>It reserves one-third of all seats for women in Lok Sabha, State Legislative Assemblies, and the Legislative Assembly of the National Capital Territory of Delhi, including those reserved for SCs and STs.</p>	<p>128th Amendment bill</p>	<p>2023</p>	<p>Article 330A: This article, inserted by the 106th amendment, mandates that one-third of the seats in the Lok Sabha, including those reserved for Scheduled Castes (SCs) and Scheduled Tribes (STs), be reserved for women.</p> <p>Article 239AA: This article, also inserted by the 106th amendment, mandates that one-third of the seats in the Legislative Assembly of the National Capital Territory of Delhi be reserved for women.</p>