

Procedure of Amendment of Indian Constitution



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Part XX of the Constitution of India has only one article that is Article 368 that deals with the amendment of the Constitution. As per this article, Parliament may add, amend or repeal any provision of the constitution as per the procedure laid down for this purpose. However, in the Kesavanand Bharati Case 1973, the Supreme Court has ruled that the Parliament cannot amend those provisions which constitute the Basic Structure of the Constitution.

Procedure for Amendment

- A constitution amendment bill can be introduced in any house of the parliament. A bill for the purpose of amendment of constitution can NOT be introduced in any state legislature.
- The Ordinance making power of the President can NOT be used to amend the Constitution.
- A constitution amendment bill can be introduced both as a government bill or a private member bill. However, if it's a Private Member, then it has to be examined in the first instance and recommended for introduction by the Committee on Private Members' Bills and Resolutions before it is included for introduction in the List of Business.
- Prior recommendation of President is NOT needed in introducing the constitution amendment bills.
- Constitution Amendment Bills are not treated as Money Bills or Financial Bills even if they have some provisions related to them.
- A constitution amendment bill must pass in both the houses separately by absolute + special majority {absolute \square more than 50% of strength; special \square 2/3 of present and voting}.
- If there is a disagreement between the two houses on a constitution amendment bill, there is NO provision of joint sitting to resolve the deadlock.
- The bills which result in some changes in the constitution but passed by simple majority are not deemed to be Constitution Amendments.
- If a 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.
- Once the bill is passed in both houses, the bill is sent to president for approval. The 24th Amendment Act of 1971 had made it obligatory for the President to give his assent to a constitutional Amendment Bill. Thus, for a Constitution amendment bill, a President can neither withhold his assent nor return the bill for reconsideration.

Bills which result in changes but not deemed to be Constitution Amendment Bills

There are several amendments which result into some changes in the constitution but can be passed in the houses by simple majorities. Such bills are NOT considered to be Constitution Amendment Bills for the purpose of Article 368. These include the following:

- Admission or establishment of new states.
- Formation of new states and alteration of areas, boundaries or names of existing



states.

- Abolition or creation of legislative councils in states.
- Changes in the Second Schedule-emoluments, allowances, privileges and so on of the president, the governors, the Speakers, judges, etc.
- Changes in the requirements of quorum in Parliament.
- Salaries and allowances of the members of Parliament.
- Changes in the Rules of procedure in Parliament.
- Changes in the Privileges of the Parliament, its members and its committees.
- Use of English language in Parliament or changes in use of official languages {Please note that insertion of a language in 8th schedule or removal from it would need an amendment bill to be passed as per article 268}
- Changes that need to redefine number of the judges of Supreme Court.
- Changes that extend the jurisdiction of Supreme Court {Parliament can extend but cannot curtail jurisdiction of Supreme Court}.
- Changes in elections to parliament and state legislatures; delimitation.
- Changes in scheduled areas (5th schedule) and Tribal Areas (6th schedule)

Bills seeking to amend all other provisions can be introduced in either House of Parliament.

Amendments that seek to change federal provisions of the Constitution

A Constitution Amendment Bill which seeks to make any change in articles relating to:—

- the election of the President, or
- the extent of the executive power of the Union and the States, or
- the Supreme Court and the High Courts, or
- distribution of legislative powers between the Union and States, or representation of States in Parliament, or the very procedure for amendment as laid down in article 368 of the Constitution

The above bills will be first passed in the two houses separately by absolute and special majority and then also need to be ratified by legislatures of at least half of the states *by resolutions*. Only after this, the bill will be sent for presidential assent.

Presidential Assent to Constitution Amendment Bills

Constitution Amendment Bills passed by Parliament by the prescribed special majority and, where necessary, ratified by the requisite number of State Legislatures are presented to the President under article 368 of the Constitution under which the President is bound to give his assent to such Bills.