

12

Powers and Procedure of Amendment In Indian Constitutional

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12.1 Introduction

- ▶ To evolve and change with all changes in society and the 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.

12.2 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.
- ▶ The Union Parliament has the power to change some specified features of the Constitution by passing an ordinary law. There are two special methods of amendment under Article 368:
- ▶ Amendment by 2/3rd majority of Parliament (First Method)
- ▶ Amendment by 2/3rd majority of the Parliament plus ratification by at least half of the several State Legislatures (Second Method)

12.3 Amendment by 2/3rd Majority of Parliament- First Method

- ▶ 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. the 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

12.4 Amendment by 2/3rd Majority Ratification by at least half Legislatures - Second Method

- ▶ In respect of some specified provisions of the Constitution, a very rigid method of the 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 :
 - Election of the president.
 - Scope of the executive power of the Union.
 - Scope of the executive power of a State.
 - Provisions regarding High Courts in Union Territories.
 - Provisions regarding the Supreme Court of India.
 - Provisions regarding High Courts in States.
 - Legislative Relations between the Union and States.
 - Any of the Lists in the Seventh Schedule. (Division of powers between the Union and States)
 - Representation of States in the
 - The provisions of Article 368. (Method of Amendment)

12.5 Additional Amendment-making the Two Houses of Parliament

- ▶ There are several amendments that result in 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:
 - An admission or formation of new States and alteration of areas, boundaries or names of existing States.
 - Citizenship provision.
 - Provision regarding delimitation of constituencies.
 - A quorum of the two Houses of Parliament.
 - Privileges and Salaries and allowances of the Members of Parliament.
 - Rules of procedure in each House of the parliament.
 - English as a language of the Parliament.
 - Appointment of Judges and jurisdiction of the Supreme Court.
 - Creation or abolition of Upper Houses in any State.
 - Legislatures for Union Territories.
 - Elections in the country.
 - The official language of India.
 - Second, fifth and Sixth Schedules of the Constitution.
- ▶ These methods of amendment reflect a mixture of rigidity and flexibility in the Indian Constitution.

12.6 Main Features of the Amendment Method

- ▶ Part XX of the Constitution deals with the Amendment of the Constitution. It has only one Article i.e' Article 368.
- ▶ The provider 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.
- ▶ There are three basic ways in which amendments can be made:
- ▶ Most provisions can be amended by the Union Parliament by passing an amending act by a majority of the total membership, and a 2/3rd majority of members present and voting in each House.
- ▶ Ten provisions of the constitution can be amended, Bypassing of the amendment bill by 2/3rd majority of the members of each of the two Houses of Parliament, It becomes finally passed when approved by at least half of the State Legislatures.
- ▶ Some provisions can be amended by the Parliament by making law by a simple majority of its two Houses.
- ▶ Signature of the President is required as the final act which transforms a duly enacted amendment bill into an Amendment Act.
- ▶ State Legislatures have been denied the power to initiate amendments.
- ▶ 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 the Court in case it is found to be unconstitutional.
- ▶ 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.

12.7 References

M Laxminath "Indian Polity" 4th Edition 2013 Tata McGraw Hill Publication.

Durga Das Basu" Introduction to Constitution of India"

Tejpal Sheth" Indian Constitution" 1st Edition 2018 Mahajan Publication.