

Constitutional Amendment Bill

[UPSC Notes]

What is the Constitutional Amendment Bill?

Compared to other countries constitutions, India's Constitution provides a unique amendment procedure of the Indian constitution. This is partially flexible and partially rigid. The Constitution allows for flexibility in the amendment process. Sir Kenneth Wheare, an Australian academic, praised this feature, believing that uniformity in the amending process imposed "quite unnecessary restrictions" on the amendment of parts of a Constitution.

A Constitutional Amendment can only be undertaken by the emergence of a Bill in either House of Parliament. The Bill must then be cleared by a majority of the total members of that House as well as a majority of not under two-thirds of the sitting members of that House present and voting.

Bills seeking to amend the Constitution fall into three categories:

- bills passed by Parliament by simple majority;
- bills passed by Parliament by the special majority prescribed in article 368(2) of the Constitution; and
- bills passed by Parliament by the special majority as previously mentioned and approved by not less than one-half of the State Legislatures.

Bills that are not considered Constitutional Amendments Bills

1. Bills including provisions attempting to amend the Constitution or possessing the effect of amending the Constitution for the following purposes are passed by a Simple Majority, i.e., by a majority of votes cast by Members present and voting:
 - A. admittance or establishment of new states, formation of new states, and changes to existing states' areas, boundaries, or titles (articles 2, 3, and 4);
 - B. establishment or abolition of Legislative Councils in the States (article 169);
 - C. establishment of a Legislature or a Council of Ministers for the Union territory of Puducherry (article 239A);
 - D. special provisions relating to Delhi (article 239AA);
 - E. extension of Part IX provisions to Scheduled Areas and tribal areas referred to in Article 244 (article 243M);
 - F. extension of Part IX-A provisions to Scheduled Areas and tribal areas referred in article 244 (article 243 ZC);

- G. establishment of an autonomous State constituting certain tribal areas in Assam, as well as the establishment of a local Legislature or Council of Ministers or both (article 244A);
- H. establishment of an all-India level judicial service (article 312);
- I. administration and control of Scheduled Areas and Scheduled Tribes (para 7 of the Fifth Schedule); and
- J. administration of Tribal Regions in the States of Assam, Meghalaya, Tripura, and Mizoram (para 21- Sixth Schedule).
2. Because these Bills are not deemed Constitution Amendment Bills under Article 368 of the Constitution, they are not referred to as 'Constitution Amendment Bills.'
3. While normal legislative procedure applies to these Bills, Bills providing for the aforementioned matters in sub-paragraphs (a) and (b) require the President's recommendation for introduction and the prior adoption of a necessary resolution by the State Legislative Assembly concerned.
4. Under Article 111 of the Constitution, such Bills are presented to the President for acceptance.
5. Constitution Amendment Bills seek to modify all other provisions of the Constitution, including those listed in the provision to article 368(2). These Bills can be presented in either House of Parliament. If introduced by a Private Member, the Bill must first be investigated and suggested for introduction by the Committee on Bills of Private Members and Resolutions before being included in the List of businesses. A simple majority concludes Bill's introduction motions.
6. Amendment to the Constitution Bills is not classified as money or financial bills. As a result, the President's recommendation on these Bills is not requested under Articles 117 and 274 of the Constitution. If the Minister communicates the recommendation, it is published in the Bill or, in the Bulletin, for the members' information.

Types of Amendments

There are three types of the majority that can be considered for the Constitutional Amendment Bill:

Simple Majority

Several articles in the constitution are only temporary. They can, however, be modified by Parliament with a simple majority. A simple majority of the members present and voting, i.e., more than 50%, is meant a simple majority. The following constitutional provisions are also included in this category:

- The establishment of new states, changes in state names and boundaries
- Parliament's quorum for the transaction of business.
- Admission or formation of new states
- Constituency delimitation
- The legislative council in the states is established or outlawed by the Parliament.

- Incomes and allowances of the President, Vice-President, Supreme Court, and High Court Judges
- Members of Parliament have power, privileges, and immunities.
- Citizenship acquisition and suspension.

Special Majority

Only the introduction of a bill for the objective of either House of Parliament can initiate a constitutional amendment. Whenever a bill is passed in each House by a vote of at least two-thirds of the members present and voting. The following constitutional provisions are also included in this category:

- Fundamental Rights
- Directive Fundamentals or Principles of State Policy
- This method can be used to amend all parts of the Constitution, except the specific provisions specified in Article 368.

Special Majority of Parliament and Consent of States

A majority of more than 50% of the states are considered here. An Amendment bill must be allowed to pass by each house of Parliament by a majority of the members of that House and by a majority of not less than two-thirds of the house members and voting; the state legislatures must then approve the amendment of not below one-half of the states by simple majority.

Article 368 of the Constitution contains a list of articles that can only be amended in a specific way. They are as follows:

- Concerning the election of the President (Articles 54 & 55).
- Degree of the Union's and States' executive power (Articles 73 and 162).
- seventh schedule.
- Provisions relating to India's Supreme Court (Part V- Chapter 4).
- Provisions concerning the High Court of India (Part VI- Chapter 5).
- High Court for Union Territories (Article 241).
- State Representation in Parliament (Article 80 & 81)
- Article 368 deals with the amendment of the Constitution itself.

Article 368

Article 368 talks about the power of Parliament to amend the Constitution and the procedure. It states that-

- Notwithstanding anything in this Constitution, Parliament may in the exercise of its constituent power, amend by way of addition, variation, or repeal any provision of this Constitution following the procedure laid down in this article.
- An amendment of this Constitution may be initiated only by the introduction of a Bill for the purpose in either House of Parliament, and when the Bill is passed in each House by a majority of the total membership of that House and by a majority of not less than two-thirds of the members of that House present and voting, [it shall be presented to the President who shall give his assent to the Bill and thereupon] the Constitution shall stand amended by the terms of the Bill: Provided that if such amendment seeks to make any change in:
 - A. Article 54, Article 55, Article 73, Article 162 or Article 241, or
 - B. Chapter IV of Part V, Chapter V of Part VI, Chapter I of Part XI, or
 - C. any of the Lists in the Seventh Schedule, or
 - D. the representation of States in Parliament, or
 - E. The provisions of this article, the amendment shall also require to be ratified by the Legislatures of not less than one-half of the States by resolutions to that effect passed by those Legislatures before the Bill making provision for such amendment is presented to the President for assent.
 - Nothing in article 13 shall apply to any amendment made under this article.
 - No amendment of this Constitution (including the provisions of Part III) made or purporting to have been made under this article [whether before or after the commencement of section 55 of the Constitution (Forty-second Amendment) Act, 1976] shall be called in question in any court on any ground.
- For the removal of doubts, it is hereby declared that there shall be no limitation whatsoever on the constituent power of Parliament to amend by way of addition, variation, or repeal the provisions of this Constitution under this article.