

## Chapter – 12

### History of amendments in Indian Constitutional

#### 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 2/3'd majority of Parliament (First Method)
- Amendment by 2/3'd 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 2/3'd 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 signature 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 2/3'd majority of members present and voting in each House.
- Ten provisions of the constitution can be amended, bypassing of the amendment bill by 2/3'd 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.
- Main Amendments in Constitution
  - As our society and its needs are ever-evolving, if the constitution does not keep pace, it will become redundant or lead to a breakdown of Law and order.
  - First Amendment did in 1951.
  - So, as an advancing and subsisting document, numerous amendments have been made to it till 2019.
  - Amendments to the Constitution require a special majority of 'two-third, members present and voting to be passed in Parliament.
  - We would like to discuss a few important amendments hereinafter
- Abolition of states according to classes and the introduction of Union Territories and reorganization of states by language (7th Amendment Act, 1956)
  - 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.
  - Extended the jurisdiction of high courts to union territories.
  - Provided for the establishment of a common high court for two or more states.
- Thirteenth Amendment inserted socialism and Secularism in the preamble, a provision on fundamental (42nd Amendment 1976)
  - Secularism and socialism were inserted to restore the faith of the nation that minorities would be safe and not be exploited by the rich.
  - Also, the rich would not be allowed to dominate, the country's economy.
  - The main reason to add socialism was to promote social as well as economic equality in the country.
  - Similarly, the main reason to add secularism was to imply that there was no official state religion of the country.
- Right to Property deleted from the list of Fundamental Rights (44th Amendment 1978)
  - The Fundamental Right to property in India was removed to permit the reorganization of land and to facilitate land acquisition for developmental projects.
  - This was carried out by the Indian Government at that time since it was not affluent enough to pay people whatever they demanded their land.
- Voting age reduced from 21 to 18 (61st Amendment 1989)
  - Prime Minister Rajiv Gandhi explained it as an expression of the government's full faith in the youth of the country
  - The youth are aware and informed and thus, lowering the voting age would provide an opportunity for the unrepresented youth of the nation to vent out their feelings and motivate them to become a part of the political process eventually.
- Introduction of Panchayati raj (73rd Amendment 1992)
  - Granted constitutional status and protection to the Panchayati raj institutions. For this purpose, the Amendment has added a new Part-IX entitled as 'the panchayats' and a new Eleventh Schedule containing 29 functional items of the panchayats.

- Introduction of Nagarpalika and Municipality (74th Amendment 1992)
  - During the early 90s local bodies in states had become ineffective in holding regular elections or the maintenance of public infrastructure, electricity and water supply.
  - Thus, an immediate need to introduce effective authorities to execute the numerous plans and programs was felt by the government.
  - Granted constitutional status and protection to the urban local bodies. For this purpose, the Amendment has added a new Part IX-A entitled as 'the municipalities' and a new Twelfth Schedule containing 18 functional items of the municipalities
- Free and compulsory education to children between 6 to 14 years (86th Amendment 2002)
  - One of the most important amendments, the government directed the private school to take 25% of their class strength from economically weaker or disadvantaged groups of society through a random selection process with the help of the government funding'
  - This initiative was taken to try and provide elementary education to all.
  - Moreover, the local and state governments were made to ensure its proper implementation.