



Debate on the Procedure of Amendment

Why in News?

- Both houses of the parliament have passed the [Constitution \(124th\) Amendment Bill 2019](#).
- The Bill was passed by the special majority in both the houses i.e. a majority (that is, more than 50%) of the total membership of each House and a majority of two-thirds of the members of each House present and voting.
- Debate on the 10% 'forward quota' Bill saw arguments on the amendment procedure, including whether the Bill should be ratified by state Assemblies, and questions related to aided and unaided institutions.
- The government has said that to amend part 3 of Article 368 of the Constitution which concerns the Fundamental Rights, there is no need for the amendment to be ratified by the state legislatures.
- The 93rd Amendment Act, 2006 that added Article 15(5) to the Constitution was approved only by both houses of Parliament.
- The Constitution (124th Amendment) Bill, 2019 was not required to be ratified by half the state assemblies.

Procedure for Amendment of Constitution

- Article 368 in Part XX of the Constitution deals with the power of parliament to amend the constitution and its procedures.
- Article 368 provides for two types of amendments, that is, by a special majority of Parliament and the special majority of parliament along with the ratification of half of the states legislatures by a simple majority.
- Amendment of certain provisions of the constitution requires amendment by a simple majority of each house present and voting. These amendments are not deemed to be amendments under Article 368.

Simple Majority

- 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
 - formation of new states and alteration of areas, boundaries or names of existing states,
 - abolition or creation of legislative councils in states,
 - use of official language,
 - citizenship - acquisition, and termination,
 - elections to Parliament and state legislatures,
 - fifth Schedule - administration of scheduled areas and scheduled tribes,
 - sixth Schedule - administration of tribal areas.

Special Majority

- Under **Article 368(2)**, Parliament can amend the Constitution by passing a Bill with a special majority.
- Fundamental Rights and Directive Principles are the two most important provisions that can be

amended by the special majority. All provisions that do not require ratification by states, and those that come directly under the purview of Article 368, can be amended by the special majority.

Special Majority with the consent of half 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.
- Provisions related to the federal structure enshrined in the Constitution can be amended only by a special majority and with the consent of the states.
- Other important provisions that require ratification by the states include the election of President; Supreme Court and High Courts; representation of states in Parliament; distribution of legislative powers between the Union and the states; and the extent of executive power of the Union and the states.
- Most importantly, an amendment to Article 368 itself, requires ratification by the states.

Basic Structure Doctrine

- In Kesavananda Bharati case 1973, the supreme court has ruled that parliament has the power to amend any part of the constitution but it cannot alter the “basic structure of the constitution”.
- The constituents of basic structure are not clearly defined by the court. However, it has been interpreted to provisions like values enshrined in preamble like secularism, equality etc., federalism, separation of power, independence judiciary, rule of law etc.

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