

Amendment of Constitution

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What's in today's article?

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Why in news?

- Recently, the Centre set up a committee to examine various aspects, both legal and logistical, for implementing the “one nation, one election” idea.
- The Law Ministry has outlined seven terms of reference for the eight-member panel headed by former [President](#) Ram Nath Kovind and including Union Home Minister Amit Shah.
- One of the terms of reference is to examine if a constitutional amendment to facilitate simultaneous polls would have to be ratified by the states.

Amending the Constitution

- **Constitutional Provision**

- In India, Article 368 of the Constitution deals with the power and process of amending the Constitution.
- The interpretation of this provision has been fraught, leading to tensions between Parliament and the judiciary since 1951.

- **Mix of flexibility and rigidity**

- The Constituent Assembly debated extensively on whether the Constitution should be flexible or rigid.
- The **British constitution** is considered flexible, as it can be amended by Parliament passing a law in the same manner in which it would pass any ordinary legislation.
- On the other hand, the **United States Constitution** cannot be amended without the ratification of at least three fourths of the individual states.
- The Indian Constitution adopted a combination of both flexibility and rigidity.

- **Constitution is also amended through judicial interpretation and conventions**

- Informally, the Constitution is amended through judicial interpretation and conventions established through usage.
- For example, the **process of appointment of judges** to the higher judiciary.
- While the Constitution refers to a consultation between the President and the Chief Justice of India for appointment of judges, the Supreme Court has interpreted this to the effect that consultation means “concurrence.”
- This interpretation led to the evolution of the collegium system of appointment of judges, and virtually a change in the letter of the Constitution.

Process of amendment

- **Simple majority**

- Several provisions of the Constitution can be amended by the simple legislative process adopted in passing any ordinary legislation in Parliament.
- This is done through a majority of those present and voting and does not require a quorum.
- Article 368 does not directly make a list of such ‘less significant’ provisions.
- However, throughout the Constitution, such provisions are excluded from the purview of Article 368, creating a separate category.
- E.g., Changing of names of states, admitting new states to the Union, and re-drawing the boundaries of states etc.

- **Special majority**

- For amending provisions that do not fall under the first category, Article 368 requires that the amendment Bill is passed in both Houses of Parliament by a majority of not less than two thirds of the members present and voting.
- **Under Rule 158** of the Lok Sabha Rules, total membership means the total number of members of the House, irrespective of any vacancies or absentees at the moment.

- **Ratification by states**

- A **third category** of provisions need not just a special majority to be amended, but also require ratification by the legislatures of at least half of the states.
- Only after the states' ratification can such an amendment be presented to the President for assent.
- While the first two categories are not specifically listed under Article 368, the provisions that require ratification are listed out.
- These involve the **federal character of the Constitution** and are referred to as entrenched provisions.
 - E.g., The 99th Constitutional amendment in 2014, establishing the national judicial accountability commission, was ratified by 16 state legislatures before receiving the President's assent.
 - Similarly, in 2016, the 122nd Constitutional Amendment Bill, which introduced the Goods and Services Tax regime, was ratified by 23 states.

Entrenched provisions

- Article 368 lists six parts of the Constitution that have an additional safeguard for amending them. These are:
 - Article 54 and 55, dealing with the election of the President of India.
 - Article 73 and 162, dealing with the extent of executive power of the Union and states.
 - Articles 124–147 and 214–231, which deal with powers of the Supreme Court and the High Courts.
 - Article 245 to 255, dealing with the scheme of distribution of legislative, taxing, and administrative powers between the Union and the states.
 - Article 82–82, dealing with the representation of states in Parliament.
 - Article 368 itself.

Ratification by states: From the perspective of Supreme Court

- In **Kihoto Hollohan v Zachillu**, a 1992 decision of the Supreme Court, the question of ratification emerged as important.
- One of the grounds on which the constitutionality of the **Tenth Schedule** was challenged was that the amendment was not ratified by the states.
 - Tenth Schedule deals with disqualification of elected representatives.
- The amendment, among other things, sought to bar jurisdiction of courts in any matter connected with the disqualification process.
- This tinkered with one of the six aspects that require ratification by half the states — jurisdiction of the Supreme Court and the High Courts.
- The Supreme Court struck down this part of the amendment while upholding the validity of the Tenth Schedule.

Q1) What is tenth schedule of Indian Constitution?

The Tenth Schedule of the Indian Constitution is commonly known as the “Anti-Defection Law.” It was added to the Constitution by the 52nd Amendment Act of 1985 to address the problem of political defections by elected members of legislative bodies. The primary purpose of the Tenth Schedule is to prevent elected representatives from switching political parties or betraying the party on whose symbol they were elected. This law aims to promote stability and discipline within the political system by curbing the practice of “floor-crossing.”

Q2) Why is the British constitution considered flexible?

The United Kingdom’s constitution is flexible, because any of its constitutional institutions and rules can be abrogated or modified by an act of Parliament.

Source: [One nation, one election plan: How the Constitution is amended, when do states get a say](#)

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