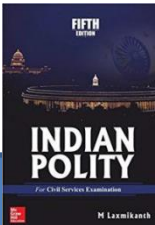


# **AMENDMENT TO CONSTITUTION – Part XX, Art. 368**

- **To adjust to changing conditions & needs – add, variation or repeal**
- **Neither easy (UK) nor difficult (US)**

## **PROCEDURE**

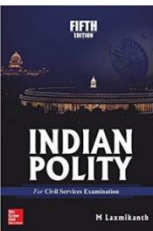
1. **Bill initiation ONLY by either house of Parliament**
2. **Introduced either by minister or a private member [a Member, other than a Minister]**
3. **NOT require prior permission of the President**
4. **Each house must pass bill by a special majority**
5. **No joint sitting**
6. **If federal procedures, ratification by legislatures of half of the states (simple majority)**
7. **President must sign [24<sup>th</sup> Amendment] – NO withhold & NO reconsideration**
8. **Bill to Act**



# TYPES OF AMENDMENTS → 3

**Art. 368 : two types**

**Some other articles : another type**



## **Simple majority of Parliament – Outside the scope of Art. 368. These provisions**

- 1. Use of official language**
  - 2. Citizenship – acquisition & termination**
- 

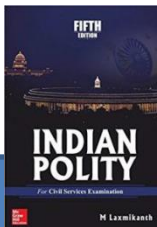
- 1. Number of puisne judges [a judge of a superior court inferior in rank to chief justices] in the SC**
  - 2. Conferment of more jurisdiction on the S.C**
- 

- 1. Elections to parliament & state legislatures**
  - 2. Delimitation of constituencies**
- 

- 1. 2<sup>nd</sup> Schedule – Emoluments Allowances Privileges - EAP**
  - 2. 5<sup>th</sup> schedule**
  - 3. 6<sup>th</sup> schedule**
- 

- 1. Admission or establishment of new states**
  - 2. Formation of new states and alteration of areas, boundaries or names of existing states**
  - 3. Abolition or creation of legislative councils in states**
  - 4. Union Territories**
- 

- 1. Quorum in Parliament**
- 2. Salaries and allowances MPs**
- 3. Rules of Procedure in Parliament**
- 4. Privileges of Parliament, its members & its committees**
- 5. Use of English language in Parliament**



# **Special majority of Parliament – Majority Provisions amended including FRs, DPSP & residual**

**Note: Total = total number**

**IRRESPECTIVE of fact whether there are VACANCIES OR ABSENTEES**

- 1. Majority of  $2/3^{\text{rd}}$  of the members of each house present and voting**
- 2. Majority of the total membership of each house**

**Strictly required in the  $3^{\text{rd}}$  stage of bill passing but, followed before that also**

### **Amendment by a simple majority**

There are certain provisions in the Constitution like qualifications for citizenship, creation of new states, power to determine the limits of territorial waters, etc., that can be amended by the Parliament through a simple majority. This implies that when one more than half of those voting accept the amendment, then the Constitution stands altered.

### **Amendment by two-thirds majority**

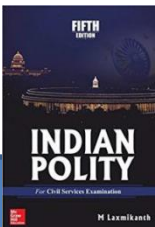
There are certain clauses which can be amended by a special majority. This is a partly rigid procedure. The Bill has to be passed by each House by a majority of more than 50 per cent of the total membership of the House and not less than two-thirds of the members present and voting.

# **Special majority of Parliament + CONSENT OF STATES**

- Federal Provisions**
- In state legislatures simple majority required**
- NO time limit for states consent**
- Half of the states give consent → formality completed...No issue with other states**

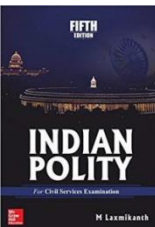
## **Provisions**

- 1. Presidential Election**
- 2. Executive power of Union & states**
- 3. SC & H. Courts**
- 4. Legislative power distribution between Union & states**
- 5. 7<sup>th</sup> Schedule**
- 6. Representation of states in Parliament**
- 7. Art. 368**



## ➤ **Criticism**

- **No special body like constitutional convention as in USA – largely process is like legislative**
- **Except formation of legislative council states cannot initiate amendment**
- **Major amendments by parliament, states role minimum, that also half of the states but, in US 3/4<sup>th</sup>**
- **NO time limit for states consent**
- **Whether states can withdraw consent – constitution silent**
- **Deadlock-no joint sitting**
- **Procedures too sketchy – scope for matters to judiciary**



# **Appreciation**

**Strikes a good balance between flexibility & rigidity**

**-K.C. Wheare**

**...No solid...flexible...nation's growth**

**-Nehru**

**...Assembly ...refrained from...finality...provided facile procedure for amendment**

**-B.R. Amedkar**

**...most ably conceived aspects of the constitution**

**-Granville Austin**



## **Important Amendments**

**1<sup>st</sup> – 1950 – restrictions in Art 19, inserted new articles 31A, 31B & 9<sup>th</sup> schedule**

**7<sup>th</sup> – 1956 – states reorganisation**

**9<sup>th</sup> – 1960 – this was because of Re Berubari Union case – SC amendment needed to cede territory**

**10<sup>th</sup> – 1961 - Dadra & Nagar Haveli as UT**

**15<sup>th</sup> – 1963 - Art 226 was enlarged**

**21<sup>st</sup> – 1967 - Sindhi in 8<sup>th</sup> schedule**

**24<sup>th</sup> – 1971 – After Golaknath case**

**25<sup>th</sup> – 1971 – After Bank Nationalisation case**

**31<sup>st</sup> – 1973 – Lok Sabha seats: states → 520 to 525 & UTs → 25 to 20**

**36<sup>th</sup> – 1975 – Sikkim full fledged state**

**40<sup>th</sup> – 1976 – Union has rights in TW, CS or EEZ**

**42<sup>nd</sup> – 1976 –**

- ✓ **expressed the ideals socialism, secularism and integrity of the nation**
- ✓ **Precedence for DPSP over FRs**
- ✓ **Inserted FDs- S.Singh recommendation**
- ✓ **Created administrative tribunals**
- ✓ **Amended judiciary**

**43<sup>rd</sup> – 1977 – restoration of judiciary**

**44<sup>th</sup> – 1978 –**

- ✓ **for emergency ‘armed rebellion’ in the place of internal disturbance**
- ✓ **Advisory board for preventive detention**

- 52<sup>nd</sup> – 1985 - MP/MLA defection**
- 53<sup>rd</sup> – 1986 – Mizoram**
- 55<sup>th</sup> – 1986 – Arunachal Pradesh**
- 56<sup>th</sup> – 1987 – Goa**
- 58<sup>th</sup> – 1987 – authoritative text of constitution in Hindi**
- 61<sup>st</sup> – 1989 – Age 21 to 18 in Art. 326 for voting**
- 69<sup>th</sup> – Assembly for Delhi**
- 70<sup>th</sup> – 1992 – Assembly of UTs in the part of electoral college for Presidential election**
- 71<sup>st</sup> – 1992 – Konkani, Manipuri & Nepali in 8<sup>th</sup> schedule**
- 73<sup>rd</sup> – 1993 – Panchayat, PART IX**
- 74<sup>th</sup> – 1993 – Urban Local Bodies, PART IX-A**

- 76<sup>th</sup> - 1994 - 69% reservation in TN, 1992 S.Court in Indira Sawhney Case no more than 50% under Art. 16(4)**
- 77<sup>th</sup> – 1995 – Art. 16(4A) reservation in promotion for SCs & STs**
- 80<sup>th</sup> – 2000 – New scheme of devolution of revenue between Centre & states**
- 81<sup>st</sup> – 2000 – SCs & STs’s Backlog vacancies as separate vacancies**
- 82<sup>nd</sup> – 2000 – Art 335 provisions shall not prevent relaxation in qualifying marks/ lowering standards for promotion to SCs & STs**
- 86<sup>th</sup> – 2002 – Inserted Art 21A, Substituted Art.45 & Art. 51A (j) added – education**
- 88<sup>th</sup> – 2003 – Inserted Art. 268 A : Taxes on services, in Union list 92C Taxes on services inserted**
- 89<sup>th</sup> – 2003 – 338 A NCSTs**
- 91<sup>st</sup> – 2003 – Art 75/164 (1A) Council of ministers not exceed 15% of the total member of the house of people/Assembly, but in state not less than 12, Art 75/164 (1B) disqualified under 10<sup>th</sup> schedule member not to be minister, inserted 316B disqualified under 10<sup>th</sup> schedule member not to hold remunerative political post**
- 92<sup>nd</sup> – 2003 – 8<sup>th</sup> Schedule Bodo, Dogri, Maithili & Santhali**
- 93<sup>rd</sup> – 2006 – Art. 15(5) reservation of seats in private unaided institutions except minority institutions**
- 95<sup>th</sup> – 2006 - SCs & STs Lok Sabha & Assemblies seats reservation extension**
- 97<sup>th</sup> – 2011 – Added co-operative societies in 19(i)C and inserted 43 B, Part IXB**