

Procedure for Amending the Constitution

1. The alteration of certain provisions of the Constitution are not considered amendment of the constitution. Such provisions can be altered by the Parliament by a simple majority.
2. Other provisions of the Constitution can be changed only by the process of 'amendment' prescribed in Art. 368.
3. In the case of provisions which affect the federal structure, a ratification by the Legislatures of at least half of the states, is required before the Bill is presented to the President for his assent. Such provisions are : ? The manner of election of the President {Ref: Arts. 54,55} ? Extent of the executive power of the Union and the States {Ref: Arts. 73, 162}; ? The Supreme Court and the High Courts {Art 241, Chap IV of part V, Chap. V of part VI} ; ? Distribution of legislative power between the Union and the States [Chap.I of Part XI]; ? Any of the Lists in the 7th Schedule; ? Representation of the States in Parliament {Arts. 80-81,4th Schedule}; ? Provisions of Art. 68 itself,
4. There is no separate Constituent body provided for our constitution for the amending process.
5. An amendment of the Constitution can be initiated only by the introduction of a Bill for the purpose in either House of Parliament.
6. The Amendment Bill should be passed by each House by a special majority i.e., more than 50% 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.
7. Constitution stands amended in accordance with the terms of the Amendment Bill after President's assent is accorded to it.

Characteristics of rigidity and flexibility in the procedure for amendment

1. The procedure for amendment is 'rigid' in so far as it requires a special majority and a special procedure.
2. There is no separate body for amending the Constitution, as exists in some other countries (e.g., a constitutional convention)
3. The State Legislatures cannot initiate any Bill or proposal for amendment of the Constitution.

4. Subject to the provisions of Art. 368, Constitution Amendment Bills are to be passed by the Parliament in the same way as Ordinary Bills.
5. The procedure for joint session is not applicable to Bills for amendment of the Constitution.
6. The previous sanction of the President is not required for introducing any Bill for amendment of the Constitution.
7. The requirement relating to ratification by which the state Legislature is more liberal than the corresponding provisions in the American constitution. The latter requires ratification by three fourths of the states.
8. The amendment of Art. 368 in 1971 has made it obligatory for the President to give his assent to a Bill for amendment of the Constitution, when it is presented to him after its passage by the Legislature {Ref.: 24th Amendment 1971}

Whether Fundamental Rights are Amendable

1. Until the case of Golak Nath, Supreme Court held that no part of our Constitution was unamendable.
2. In Golak Nath's case(1967) a majority of six judges, in a special bench of eleven, overruled the previous decisions and held that if any of such rights is to be amended, a new Constituent Assembly must be convened for making a new Constitution or radically changing it.
3. Constitution (24th Amendment) Act, 1971, held that an amendment of the Constitution passed in accordance with Art. 368, will not be law within the meaning of Art. 13 and the validity of a Constitution Amendment Act shall not be questioned on the ground that it takes away or affects a fundamental right {Ref.: Art. 368(3)}
4. Validity of the 24th Constitution Amendment Act itself was challenged in the case of Kesha nanda Bharati.
5. In the case of Keshvananda Bharati the Supreme court overruled its own decision given in the case of Golak Nath and held that the Parliament could amend any provision of the constitution including fundamental rights in accordance with.

The Doctrine of Basic Features

1. The Supreme court held in the case of Keshavananda Bharati that there are certain basic features of the Constitution of India, which cannot be altered by an amendment under Art. 368.
2. Article 31C, introduced by 25th Amendment Act provided that if any law seeks to implement the directive principles contained in Art. 39(b)-(c) i.e. regarding socialistic control and distribution of the material resources of the country, such law shall not be void on the ground of contravention of Art. 14 or 19. The Supreme Court later held that Art. 368 did not empower the Parliament to take away judicial review, in the name of 'amending' the Constitution.
3. The 42nd Amendment 1976 inserted two clauses in Art. 368 to the effect that Constitution Amendment Act "shall be called in Question in any court on any ground". These clauses were nullified by the Supreme Court in the *Mine va Mill* case.
4. There are three implications of the decision in Keshavanand Bharati's case. ? Any part of the Constitution may be amended as per the procedure laid down in Art. 368. ? No referendum or reference to Constituent Assembly is required to amend any provision of the Constitution. ? Basic features of the Constitution cannot be amended.
5. There is no limited list of basic features. In so many decisions the Supreme Court has declared different things as basic features. Prominent among them are the following :
 ? Supremacy of the Constitution. ? Rule of law. ? The principle of separation of powers. ? The objectives specified in the Preamble to the
6. Judicial review; Art. 32.
7. Federalism. ? Secularism. ? The Sovereign, Democratic, Republican structure. Freedom and dignity of the individual
8. Unity and integrity of the Nation.
9. The Principle of equality, not every feature of equality, but the quintessence of equal justice
10. The 'essence' of fundamental rights in Part III.
11. The concept of social and economic justice to build a Welfare State.
12. The balance between fundamental rights and directive principles.
13. The Parliamentary system of Government.
14. The principle of free and fair elections.

15. Limitations upon the amending power conferred by Art. 368.
16. Independence of the Judiciary.
17. Effective access to justice.
18. Powers of the Supreme Court under Arts. 32,136,141,142.

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