

# Procedure of Amendment | 11 Jan 2019

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**For Prelims:** Parliament, Article 368, Amending Powers of Parliament, Basic Structure Doctrine, Kesavananda Bharati Case, Simple Majority, Special Majority

For Mains: Amending powers of Parliament and Basic Structure Doctrine

## Why in News?

- In 2019, the <u>Parliament</u> passed the <u>Constitution (124<sup>th</sup>) Amendment Bill 2019</u> by a special majority.
  - The bill, however, saw arguments on the amendment procedure, including whether the Bill should be ratified by state Assemblies, and questions related to aided and unaided institutions.

# What is the Procedure for Amending the Indian Constitution?

- Article 368 in Part XX of the Constitution deals with the power of parliament to amend the constitution and its procedures.
  - It states that the Parliament may amend the Constitution by way of **addition**, **variation or repeal of any provision** in accordance with the procedure laid down for the purpose.
  - However, the Parliament cannot amend those provisions which form the 'basic structure' of the Constitution. This was ruled by the Supreme Court in the Kesavananda Bharati case (1973).
- It 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.

### What is a Simple Majority?

A number of provisions in the Constitution can be amended by a simple majority of the two <u>Houses of Parliament</u> 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,
- <u>Citizenship</u> acquisition, and termination,
- Elections to **Parliament** and state legislatures,
- Fifth Schedule administration of scheduled areas and scheduled tribes,
- Sixth Schedule administration of tribal areas.

# What is a Special Majority?

#### About:

- Under Article 368(2), <u>Parliament</u> can amend the Constitution by passing a Bill with a special majority.
- <u>Fundamental Rights</u> and <u>Directive Principles of State Policy (DPSP)</u> are the two most important provisions that can be amended by the special majority, but the amendments should be within **Basic structure of the constitution.**
- 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 Consent of Half of States:

- Those provisions of the Constitution which are **related to the federal structure of the polity** can only be amended by a special majority of the Parliament and also with the consent of half of the state legislatures by a simple majority.
- Important provisions that require ratification by the states include the <u>election of President</u>,
   <u>Supreme Court and High Courts</u>, representation of states in Parliament, <u>distribution of legislative powers</u> 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.

# What are the Restrictions to Parliament's Amending Power?

- In the landmark <u>Kesavananda Bharati case 1973</u>, 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.

# Doctrine of Basic Structure

#### Original Idea:

· German Constitution

#### Landmark Judgement:

 Kesavananda Bharati case 1973 (the phrase 'basic structure of the Constitution' was used for the first time)

#### **Constituents of Basic Structure:**

Supremacy of the Constitution, Parliamentary system, Free and fair elections, Independence of Judiciary, Limited power of Parliament to amend the Constitution, Powers of the Supreme Court under Articles 32, 136, 141 and 142, Powers of the High Courts under Articles 226 and 227...

# **Evolution**

Shankari Prasad case and Sajjan Singh case



The SC held that Parliament has the absolute power to amend the Constitution under Article 368.

Parliament cannot amend Fundamental Rights, and this power rests only with a Constituent Assembly; 24th Amendment Act, 1971 was



Golak Nath v/s State of Punjab

Kesavananda Bharti v/s State of Kerala



Parliament could amend any part of the Constitution, but it cannot not alter the basic structure or essential features of the Constitution.

The Doctrine of Basic Structure reaffirmed and a provision of the 39th Amendment Act (1975) (keeping election disputes involving the PM and the Speaker outside the jurisdiction of all courts)was invalidated.



Indira Nehru Gandhi v/s Raj Narain

Minerva Mills v/s Union of India



Judicial review and harmony between Fundamental Rights and DPSP were added to the basic structure.

The SC held that the doctrine would apply to constitutional amendments enacted after the date of the judgement in the KB case.

1981

Waman Rao v/s Union of India

Indira Sawhney Vs. Union of India

1992

Rule of law declared as a part of the basic structure.

Federalism, Secularism, Democracy, Unity and integrity of the nation and Social justice were iterated as basic structure of the Constitution.

1994

S.R Bommai vs Union of India

# 3

# Significance:

• Limits the power of a majoritarian government to undermine the Constitution's central ideals.