



The Indian Constitution Amendments and Its Features (with special reference to Article 368)

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ABSTRACT

*A Constitution consists of a set of rules, regulations and principles to govern the country/state. The Indian Constitution was drafted by the Constituent Assembly which was formed in 1946 December. The Constituent Assembly consisted of 300 members in 1946. It was headed by Dr. Rajendra Prasad. The Constituent Assembly completed the work in 2 years, 11 months and 18 days. The Constitution of India was adopted on 26th November 1949 and came into force on 26th January 1950. The main features of the Indian Constitution are Federalism, parliamentary form of government, separation of powers, fundamental rights, an independent judiciary, and secularism. Six fundamental rights have been granted to the citizens of India. A secular state is that which does not officially promote any particular religion as the state religion. Society is bound to a certain set of rules which makes it what it is and differentiates it from other kinds of society. These rules, in large societies in which different communities of people live together, are formulated through consensus. In modern countries, this consensus is usually available in written form. A written document in which we find such rules is known as a Constitution. Article 368 has been amended by the 24th and 42nd Amendments in 1971 and 1976 respectively. The following is the full text of Article 368 of the Constitution, which governs constitutional amendments. New clauses 368 (1) and 368 (3) were added by the 24th Amendment in 1971, which also added a new clause (4) in article 13 which reads, "Nothing in this article shall apply to any amendment of this Constitution made under article 368." The provisions in italics were inserted by the 42nd Amendment but were later declared unconstitutional by the Supreme Court in *Minerva Mills v. Union of India* in 1980. The research article explains the constitutional amendments and its features.*

Key Words: The Amendments under Article 368, Indian Constitution and its formation, parliament

INTRODUCTION

Constitution lays certain ideals that form the basis of the kind of country that we as citizens aspire to live in. A Constitution helps serve as a set of rules and principles that all persons in a country can agree upon as the basis of the way in which they want the country to be governed. This includes the type of government and also an agreement on certain ideals that they all believe the

country should uphold. Principles and ideals of a monarchy are quite different from those of a democracy. Therefore soon after the transition in the governing system in Nepal, the government started the process of making a new Constitution of Nepal because the earlier one did not suit their new setup. The country of Nepal needs to change all its constitutive rules in order to usher

in a new democratic society for which people had struggled for a long period.

Article 368, Power of the Parliament to amend the Constitution and Procedure therefore:

- Notwithstanding anything in this Constitution, Parliament may in exercise of its constituent power amend by way of addition, variation or repeal any provision of this Constitution in accordance with the procedure laid down in this article.
- An amendment of this Constitution may be initiated only by the introduction of a Bill for the purpose in either House of Parliament, and when the Bill is passed in each House by a majority 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, it shall be presented to the President who shall give his assent to the Bill and thereupon the Constitution shall stand amended in accordance with the terms of the Bill:

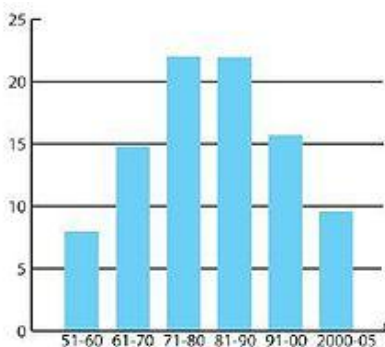
Provided that if such amendment seeks to make any change in –

- Article 54, article 55, article 73, article 162, article 241 or article 279A or
- Chapter IV of Part V, Chapter V of Part VI, or Chapter I of Part XI, or
- Any of the Lists in the Seventh Schedule, or
- The representation of States in Parliament, or
- The provisions of this article,

REVIEW OF LITERATURE

Ambedkar: speaking in the Constituent Assembly on 17 September 1949, pointed out that there were "innumerable articles in the Constitution" which left matters subject to laws made by Parliament.

Types of amendments



Amendments in the Indian Constitution

The original constitution provided for three categories of amendments. The first category of amendments are those contemplated in articles 4 (2), 169, 239A (2), 239AA (7b), 243M (4b), 243ZC (3), 244A (4), 312(4), para 7(2) of Schedule V and para 21(2) of Schedule VI. These amendments can be effected by Parliament by a simple majority such as that required for the passing of any ordinary law. The amendments under this category are specifically excluded from the purview of article 368 which is the specific provision in the Constitution dealing with the power and the procedure for the amendment of the Constitution. Article 4 provides that laws made by Parliament under article 2 (relating to admission or establishment of new States) and article 3 (relating to formation of new States and alteration of areas, boundaries or names of existing States) effecting amendments in the First Schedule or the Fourth Schedule and supplemental, incidental and consequential matters, shall not be deemed to be amendments of the Constitution for the purposes of article 368. For example, the States Reorganisation Act, 1956, which brought about the reorganization of the States in India, was passed by Parliament as an ordinary piece of legislation. In *Mangal Singh v. Union of India* (A.I.R. 1967 S.C. 944), the Supreme Court held that power to reduce the total number of members of Legislative Assembly below the minimum prescribed under article 170 (1) is implicit in the authority to make laws under article 4. Article 169 empowers Parliament to provide by law for the abolition or creation of the Legislative Councils in States and specifies that though such law shall contain such provisions for the amendment of the Constitution as may be necessary, it shall not be deemed to be an amendment of the Constitution for the purposes of article 368.

The Legislative Councils Act, 1957, which provided for the creation of a Legislative Council in Andhra Pradesh and for increasing the strength of the Legislative Councils in certain other States, is an example of a law passed by Parliament in an exercise of its powers under article 169. The Fifth Schedule contains provisions as to the administration and control of the Schedule Areas and Scheduled Tribes. Para 7 of the Schedule vests Parliament with plenary powers to enact laws amending the Schedule and lays down that no such law shall be deemed to be an amendment of the Constitution for the purposes of article 368. Under Para 21 of the Sixth

Schedule, Parliament has full power to enact laws amending the Sixth Schedule which contains provisions for the administration of Tribal Areas in the States of Assam, Meghalaya, Tripura and Mizoram. No such law will be deemed to be an amendment of the Constitution for the purposes of article 368.

The second category includes amendments that can be effected by Parliament by a prescribed 'special majority'; and the third category of amendments includes those that require, in addition to such "special majority", ratification by at least one-half of the State Legislatures. The last two categories are governed by article 368.

Amendments under article 368

Part-xx Article 368 (1) of the Constitution of India grants constituent power to make formal amendments and empowers Parliament to amend the Constitution by way of addition, variation or repeal of any provision according to the procedure laid down therein, which is different from the procedure for ordinary legislation.

* The amendment shall also require to be ratified by the Legislatures of not less than one-half of the States by resolutions to that effect passed by those Legislatures before the Bill making provision for such amendment is presented to the President for assent.

- Nothing in article 13 shall apply to any amendment made under this article.
- No amendment of this Constitution (including the provisions of Part III) made or purporting to have been made under this article whether before or after the commencement of section 55 of the Constitution (Forty second Amendment) Act, 1976 shall be called in question in any court on any ground.
- For the removal of doubts, it is hereby declared that there shall be no limitation whatever on the constituent power of Parliament to amend by way of addition, variation or repeal the provisions of this Constitution under this article.

SCOPE

Under article 11, Parliament may make any provision relating to citizenship notwithstanding anything in article 5 to 10. Thus, by passing ordinary laws,

Parliament may, in effect, provide, modify or annul the operation of certain provisions of the Constitution without actually amending them within the meaning of article 368. Since such laws do not, in fact, make any change whatsoever in the letter of the Constitution, they cannot be regarded as amendments of the Constitution nor categorized as such. Other examples include Part XXI of the Constitution—"Temporary, Transitional and Special Provisions" whereby "Notwithstanding anything in this Constitution" power is given to Parliament to make laws with respect to certain matters included in the State List (article 369); article 370 (1) (d) which empowers the President to modify, by order, provisions of the Constitution in their application to the State of Jammu and Kashmir; provisos to articles 83 (2) and 172 (1) empower Parliament to extend the lives of the House of the People and the Legislative Assembly of every State beyond a period of five years during the operation of a Proclamation of Emergency; and articles 83(1) and 172 (2) provide that the Council of States/Legislative Council of a State shall not be subject to dissolution but as nearly as possible one-t

Conflict of interest statement

Authors declare that they do not have any conflict of interest.

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