

TEACHERS' VISION

WAY TO GOVERNMENT JOBS

STUDY MATERIAL

INDIAN POLITY

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INDIAN POLITY PART - II

I. AMENDMENT OF THE CONSTITUTION AND THE DOCTRINE OF BASIC STRUCTURE

Article 368 in Part XX of the Constitution deals with the powers of the Parliament to amend the constitution and its procedures.

Types of Amendments in Indian Constitution

The list of types of amendments can be found below. There are three ways in which the Constitution can be amended:

1. Amendment by simple majority of the Parliament
2. Amendment by special majority of the Parliament
3. Amendment by special majority of the Parliament and the ratification of at least half of the state legislatures.

A brief description of the above types of amendments of the Indian Constitution has been laid down below.

1. By Simple Majority of Parliament

A number of provisions in the Constitution can be amended by a simple majority of the two houses of Parliament outside the scope of Article 368. These provisions include:

- Admission or establishment of new states.
- Formation of new states and alteration of areas, boundaries or names of existing states.
- Abolition or creation of legislative councils in states.
- Second Schedule-emoluments,
- Allowances, privileges and so on of the president, the governors, the Speakers, judges, etc.
- Quorum in Parliament.
- Salaries and allowances of the members of Parliament.
- Rules of procedure in Parliament.
- Privileges of the Parliament, its members and its committees.
- Use of the English language in Parliament.
- Number of puisne judges in the Supreme Court.
- Conferment of more jurisdiction on the Supreme Court.
- Conferment of more jurisdiction on the Supreme Court.
- Citizenship-acquisition and termination.
- Elections to Parliament and state legislatures.
- Delimitation of constituencies.
- Union territories
- Fifth Schedule-administration of scheduled areas and scheduled tribes.

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- Sixth Schedule-administration of tribal areas.

2. By Special Majority of Parliament

- The majority of the provisions in the Constitution need to be amended by a special majority of the Parliament, that is, a majority (that is, more than 50 percent) of the total membership of each House and a majority of two-thirds of the members of each House present and voting. The expression 'total membership' means the total number of members comprising the House irrespective of the fact whether there are vacancies or absentees.
- The special majority is required only for voting at the third reading stage of the bill but by way of abundant caution, the requirement for the special majority has been provided for in the rules of the Houses in respect of all the effective stages of the bill.
- The provisions which can be amended by this way include:
 - (i) Fundamental Rights;
 - (ii) Directive Principles of State Policy; and
 - (iii) All other provisions which are not covered by the first and third categories.

3. By Special Majority of Parliament and Consent of States

Those provisions of the Constitution which are related to the federal structure of the polity can be amended by a special majority of the Parliament and also with the consent of half of the state legislatures by a simple majority. If one or some or all the remaining states take no action on the bill, it does not matter; the moment half of the states give their consent, the formality is completed. There is no time limit within which the states should give their consent to the bill. The following provisions can be amended in this way:

- Election of the President and its manner.
- Extent of the executive power of the Union and the states.
- Supreme Court and high courts.
- Distribution of legislative powers between the Union and the states.
- Any of the lists in the Seventh Schedule.
- Representation of states in Parliament.
- Power of Parliament to amend the Constitution and its procedure (Article 368 itself).

Types of Amendments – Constitutional Amendment Process

The procedure for the amendment of the Constitution as laid down in Article 368 is as follows:

- An amendment of the Constitution can be initiated only by the introduction of a bill for the purpose in either House of Parliament (Lok Sabha & Rajya Sabha) and not in the state legislatures.
- The bill can be introduced either by a minister or by a private member and does not require prior permission of the president.

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- The bill must be passed in each House by a special majority, that is, a majority (that is, more than 50 per cent) of the total membership of the House and a majority of two-thirds of the members of the House present and voting.
- Each House must pass the bill separately.
- In case of a disagreement between the two Houses, there is no provision for holding a joint sitting of the two Houses for the purpose of deliberation and passage of the bill.
- If the bill seeks to amend the federal provisions of the Constitution, it must also be ratified by the legislatures of half of the states by a simple majority, that is, a majority of the members of the House present and voting.
- After duly passed by both the Houses of Parliament and ratified by the state legislatures, where necessary, the bill is presented to the president for assent.
- The president must give his assent to the bill. He can neither withhold his assent to the bill nor return the bill for reconsideration of the Parliament.
- After the president's assent, the bill becomes an Act (i.e., a constitutional amendment act) and the Constitution stands amended in accordance with the terms of the Act.

Basic structure of Constitution:

The concept of 'basic structure' came into existence in the landmark judgment in Kesavananda Bharati vs State of Kerala case (1973).

The judgement listed some basic structures of the constitution as:

1. Supremacy of the Constitution
2. Unity and sovereignty of India
3. Democratic and republican form of government
4. Federal character of the Constitution
5. Secular character of the Constitution
6. Separation of power
7. Individual freedom

Over time, many other features have also been added to this list of basic structure features. Some of them are:

- Rule of law
- Judicial review
- Parliamentary system
- Rule of equality
- Harmony and balance between the Fundamental Rights and DPSP
- Free and fair elections
- Limited power of the parliament to amend the Constitution
- Power of the Supreme Court under Articles 32, 136, 142 and 147

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- Power of the High Court under Articles 226 and 227

Any law or amendment that violates these principles can be struck down by the SC on the grounds that they distort the basic structure of the Constitution.

J. THE PRESIDENT

The Constitution of India provides for a Parliamentary form of government, both at the centre and states.

Article

74 and 75 deals with parliamentary system at the centre and Articles 163 and 164 in the states.

Articles 52 to 78 in Part V of the Constitution deal with the Union executive.

The Union executive consists of the President, the Vice-President, the Prime Minister, the council of ministers and the attorney general of India.

Article 53: Executive powers of the union shall be vested in president & shall be exercised by him either directly or indirectly or through officers subordinate to him, But always in accordance with the constitution

Executive powers → Powers to carry out administration of affairs of the state, except functions of legislature & judiciary

The President of India, is the ceremonial head of state of India and the commander-in-chief of the Indian Armed

Forces, the constitution of India says.

1. Article 52 said that there shall be a President of India and he will be the first citizen of India.
2. Article 53 said that all the executive power of the Union shall be vested in the President and he is the supreme power of all the defense services in India. He can declare the war and peace.

Powers of The President

A. Executive powers

- i. The executive power of the Union is vested in the President. The executive power does not only mean the execution of laws passed by the legislative but also the powers to carry out the business of the Government.
- ii. However, it is evident that President is not free to use his powers; rather he acts on the advice of the Council of Ministers.
- iii. The executive powers of the President include administrative powers and military powers.
- iv. The administrative power also includes the power to appoint and remove the high dignitaries of the State.
- v. The President shall have the power to appoint:
 - The Prime Minister of India.
 - Other Ministers of the Union.
 - The Attorney-General for India.
 - The Comptroller and Auditor General of India.
 - The judges of the Supreme Court.

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- The judges of the High Courts of the States.
 - The Governor of a State
 - A commission to investigate interference with water-supplies.
 - The Finance Commission.
 - The Union Public Service Commission and joint Commissions for a group of States.
 - The Chief Election Commissioner and other members of the Election Commission
 - A Special Officer for the Schedule Castes and Tribes.
 - A Commission to report on the administration of Scheduled Areas.
 - A Commission to investigate into the condition of backward classes.
 - A Commission on Official Language.
 - Special Officer for linguistic minorities.
- vii. The President shall have the power to remove:
- The Attorney-General of India;
 - The Governor of a State;
 - The Chairman or a member of the Public Service Commission of the Union or of a State, on thereport of the Supreme Court;
 - A Judge of the Supreme Court or of a High Court or the Election Commissioner, on an address ofParliament.

B. Legislative Powers

- i. Summoning, Prorogation, Dissolution: Indian President shall have the power to summon or prorogue the Houses of Parliament and to dissolve the lower House. He shall also have the power to summon a joint sitting of both Houses of Parliament in case of a deadlock between them. [Arts. 85, 108]
- ii. The Opening Address: The President shall address both Houses of Parliament assembled together, at the first session after each general election to the House of the People and at the commencement of the first session of each year, and —inform Parliament of the causes of its summons|| [Art. 87].
- iii. The Right to send Messages: Apart from the right to address, the Indian President shall have the right to send messages to either House of Parliament either in regard to any pending Bill or to any other matter, and the House must then consider the message —with all convenient dispatch|| [Art. 86(2)].
- iv. Nominating Members to the Houses: President has been given the power to nominate certain members to both the Houses upon the supposition that adequate representation of certain interests will not be possible through the competitive system of election. Thus, (I) In the Council of States, 12 members are to be nominated by the President from persons having special knowledge or practical experience of literature, science, art and social service [Art. 80(1)]. (II) The President is also empowered to nominate not more than two members to the House of the People from the Anglo-Indian community, if he is of opinion that the Anglo-Indian community is not adequately represented in that House [Art. 331].

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- v. Laying Reports before Parliament: The President is brought into contact with Parliament also through his power and study to cause certain reports and statements to be laid before Parliament, so that Parliament may have the opportunity of taking action upon them.
- vi. Previous sanction to legislation: The Constitution requires the previous sanction or recommendation of the President for introducing legislation on certain matters.
- vii. Assent to legislation and Veto: A Bill will not be an Act of the Indian Parliament unless and until it receives the assent of the President. When a Bill is presented to the President, after its passage in both Houses of Parliament, the President shall be entitled to take any of the following three steps:
- His assent to the Bill;
 - He withholds his assent to the Bill; or
 - He may, in the case of Bills other than Money Bills, return the Bill for reconsideration of the Houses, with or without a message suggesting amendments. A Money Bill cannot be returned for reconsideration. In case of (c), if the Bill is passed again by both Houses of Parliament with or without amendment and again presented to the President, it would be obligatory upon him to declare his assent to it (Art. 111).

C. Ordinance Issuing Power (ART- 123)

- i. The President has a very strong position in the sense that he has the power of issuing ordinance. In case there is a matter of urgency and a law is needed for a particular situation, the President can issue ordinance.
- ii. The 38th Amendment in this regard is a mile stone in the sense that his assent is important.
- iii. The ordinance can be promulgated by the President when the Houses of Parliament are not in session. The ordinance will have the same effect as of the law of the land.

D. Pardoning Power

- i. Article 72 of the Constitution empowers the President to grant pardons to persons who have been tried and convicted of any offence.
- ii. The pardoning power of the President includes the following: –
- Pardon- It removes both the sentence and the conviction and completely absolves the convict from all sentences, punishments and disqualifications.
 - Commutation- It denotes the substitution of one form of punishment for a lighter form. For example, a death sentence may be commuted to rigorous imprisonment, which in turn may be commuted to a simple imprisonment.
 - Remission- It implies reducing the period of sentence without changing its character. For example, a sentence of rigorous imprisonment for two years may be remitted to rigorous imprisonment for one year.
 - Respite- It denotes awarding a lesser sentence in place of one originally awarded due to some special fact, such as the physical disability of a convict or the pregnancy of a woman offender.

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- Reprieve- It implies a stay of the execution of a sentence (especially that of death) for a temporary period. Its purpose is to enable the convict to have time to seek pardon or commutation from the President.

E. Military powers

The president is the Supreme Commander of the Indian Armed Forces. The president can declare war or conclude peace, on the advice of the Union Council of Ministers headed by the prime minister. All important treaties and contracts are made in the president's name

F. Emergency powers

The president can declare three types of emergencies: national, state and financial, under articles 352, 356 & 360 in addition to promulgating ordinances under article 123.

The President of India is elected indirectly by the Electoral College according to secret ballot by the system of proportional representation through single transferable vote. The President of India is elected by an electoral college consisting of:

- Elected members of the two Houses of Parliament and Legislative Assemblies of the States
- States includes national capital territory of Delhi and the Union territory of Pondicherry

Do Not Participate

- Nominated members of both the houses of the parliament & of state legislative assemblies
- All the members of legislative council of states

There shall be uniformity in the scale of representation of the different states at the election of the President as follows:

- Value of vote of an MLA of a state: $(\text{Population of state} / \text{Total number of elected members of state legislative assembly}) * 100$
- Value of vote of an MP: $(\text{Total value of votes of MLA's of all states} / \text{Total number of elected members parliament}) * 100$
- Hence, value of vote of MLA of UP is highest & value of vote of MLA of Sikkim is lowest
- By 42nd amendment, census of 1971 was to be followed till 1st census after 2000, but in 2000, Union cabinet extended the same till 1st census after 2026 by 81st amendment 2001

Article 58 → Qualification for election of President

- Must be citizen of India
- Must be of 35 years of age
- Must be qualified for election for member of house of the people (LS)
- Must not hold any office of profit under Gov. of India or Gov. of any state or any local or other authority

Conditions to Presidential Office

- Shall not be member of any house of the parliament or state legislature & if he is, then must vacate the seat

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- Shall not hold any other office of profit
- Pay of Rs. 500,000 monthly & official residence without pay
- Pension of half the salary

Immunities to the President

- Personal immunity from legal liabilities for his official acts
- Immune from any criminal proceeding during his terms of office means cannot be imprisoned or arrested, However, civil proceedings can be instituted in his term of office w.r.t his personal acts, giving 2 months of notice prior to the proceedings

Oath by President (Article 60)

- President takes oath in presence of chief justice of Supreme Court —To preserve, protect & defend the constitution & law

Terms of office of President (Article 56)

- President shall hold the office for terms of 5 years from the date he enters upon his office. Even after expiry of his terms, he shall continue in office until his successor enters upon his office
- May resign his office before the expiry of his normal terms of 5 years by writing to the vice president

Article 61 (Impeachment of the President)

Power of impeachment of president lies in parliament only for violation of the constitution & can be removed from his office before the period of 5 years (**Quasi-judicial process**)

- Impeachment resolution can be initiated in any house of the parliament
- Resolution initiated must be signed by 1/4th of the members of the initiating house
- Before the resolution is passed, a 14 days' notice must be given to the president
- Such a resolution must be passed by majority of not less than 2/3rd of total membership of the initiating house
- Then the other house of the parliament also called investigating house investigates the charges by itself
- President has the right to appear & to be represented at such investigation to defend himself
- If as a result of investigation, other house also passes a resolution supported by not less than 2/3rd of total membership of the house, President stands removed from his office, from the date investigating house passed the resolution
- Other than impeachment, no other penalty can be imposed on the president for violation of the constitution

The President: Facts to be remembered

- Dr. Rajendra Prasad was the First President of India. He is the only President who enjoyed two terms of office continuously. The first election of President was held only in 1952.
- Between 1950-52, also Dr. Rajendra Prasad was the President of India but was elected by the constituent Assembly.

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- Dr. S. Radhakrishnan was the second President, who also had been in the office of Vice-President for two terms.
- The Second round of counting resorted to only in the election of V.V. Giri, V.V. Giri is the only President so far who won the election as an independent candidate in 1969.
- Neelam Sanjeev Reddy is the only President who was elected unopposed in 1977, as the main opposition party, Congress, did not field any candidate in this election.
- Except Dr. Rajendra Prasad, Fakhruddin Ali Ahmed, Neelam Sanjeev Reddy and Gyani Zail Singh, all the Presidents of India also occupied the office of the Vice-President before their election as the President.
- K.R. Narayanan is the only President so far who belongs to the Scheduled Castes. His qualifications and integrity is otherwise also beyond doubt.

RASHTRAPATI BHAWAN



K. VICE PRESIDENT

VICE-PRESIDENT

- The Vice-President occupies the second highest office in the country.
- This office is modelled on the lines of the American Vice-President.
- The Vice-President holds office for a **term of five years** from the date on which he enters upon his office.
- However, he can resign from his office at any time by addressing the resignation letter to the President.
- A **formal impeachment is not required** for his removal.
- He can be removed by a resolution of the **Rajya Sabha** passed by an **absolute majority** (i.e., a majority of the total members of the house) and agreed to by the Lok Sabha.
- He is also **eligible for re-election** to that office. He may be **elected for any number of terms**.

Election

- The Vice-President, like the president, is elected not directly by the people but by the method of indirect election.

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- Thus, this electoral college is different from the electoral college for the election of the President in the following two respects:
- ✓ It consists of both elected and nominated members of the Parliament (in the case of President, only elected members).
- ✓ It does not include the members of the state legislative assemblies (in the case of President, the elected members of the state legislative assemblies are included).

Qualifications

To be eligible for election as Vice-President, a person should fulfill the following qualifications:

- I. He should be a citizen of India.
- II. He should have **completed 35 years of age**.
- III. He should **be qualified for election as a member of the Rajya Sabha**.
- IV. He should not hold any office of profit under the Union government or any state government or any local authority or any other public authority.

Conditions of Office

The Constitution lays down the following two conditions of the Vice-President's office:

- I. He should not be a member of either House of Parliament or a House of the state legislature. If any such person is elected Vice-President, he is deemed to have vacated his seat in that House on the date on which he enters upon his office as Vice-President.
- II. He should not hold any other office of profit.

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