



The Amendment Procedure

This article is related to General Studies-
Paper II (Governance).

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"Debate on the 10% 'forward quota' Bill saw arguments on the amendment procedure, including whether the Bill should be ratified by state Assemblies, and questions related to aided and unaided institutions."

During the Lok Sabha debate on the Constitution amendment Bill to provide a quota in jobs and education for the "economically weaker sections", Congress's K V Thomas said "this Bill has to be passed by a two-thirds majority, and then, 50 per cent of the states have to approve it".

Intervening in the debate, Finance Minister Arun Jaitley said that to amend part 3 of Article 368 of the Constitution (which describes the "Power of Parliament to amend the Constitution and procedure therefor"), which concerns the Fundamental Rights, there is no need to go to the state legislatures. Even the amendment that added Article 15(5) to the Constitution had been approved only by the two Houses of Parliament.

Former Lok Sabha Secretary-General PDT Achary, when reached for a comment, told The Indian Express: "The Constitution (124th Amendment) Bill, 2019 is not required to be ratified by half the state assemblies. The Bill will be through once both Lok Sabha and Rajya Sabha pass it in accordance with the laid-down procedure."

How and why do procedures for the passage of Constitution amendment Bills vary?

Amendment of Constitution

Part XX of the Constitution deals with its amendment. Under Article 368(2), Parliament can amend the Constitution by passing a Bill 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". Thereafter, the Bill "shall be presented to the President who shall give his assent... and thereupon the Constitution shall stand amended".

However, if the amendment seeks to make a change in certain specific provisions, including Articles 54, 55, 73, "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," etc., "the amendment shall also require to be ratified by the Legislatures of not less than one-half of the States...".

Parliament cannot amend those provisions which form the "basic structure of the Constitution", according to the Supreme Court ruling in the landmark 1973 Kesavananda Bharati case.

Fundamental Rights and Directive Principles are the two most important provisions that can be amended by the special majority. All provisions that do not require ratification by states, and those that come directly under the purview of Article 368, have to be amended by the special majority.

Any of the amendments proposed in Articles 4, 169, and 239-A, and paras 7 and 21 of the Fifth and Sixth Schedules respectively, are excluded from the purview of Article 368. The Bill is passed with a majority required for the passage of an ordinary Bill.

Provisions related to the federal structure enshrined in the Constitution can be amended only by a special majority and with the consent of the states. The important provisions that require ratification by the states include the election of President; Supreme Court and High Courts; representation of states in Parliament; distribution of legislative powers between the Union and the states; and the extent of executive power of the Union and the states.

Most importantly, any amendment to Article 368 itself, requires ratification by the states.

Article 15(5) of Constitution

Article 15 guarantees the Fundamental Right of prohibition of discrimination on grounds of religion, race, caste, sex, or place of birth. Articles 15(1) and (2) broadly state that the "State" shall not discriminate "any citizen" on grounds only of religion, race, caste, sex, place of birth or any of them; and there shall be no restriction on any person to access and use the public places and places of public resort maintained wholly or partly by the state or dedicated to the use of the general public.

Article 15(3) onward, the Constitution lays down provisions relating to protective discrimination — the policy of granting special privileges to underprivileged sections. Articles 15(3) and 15(4) are the foundation for reservations in education and employment in the country. Article 15(3) empowers the state to make special provisions for women and children; Article 15(4) empowers the state to make special provisions for advancement of socially and educationally backwards, and SC/STs.

Article 15(5) was introduced by The Constitution (Ninety-Third Amendment) Act, 2005. It is an enabling clause that empowers the state to make such provision for the advancement of SC, ST and Socially and Educationally Backward Classes (SEBC) of citizens in relation to a specific subject, namely, admission to educational institutions including private educational institutions whether aided or unaided by the State notwithstanding the provisions of Article 19(1)(g).



After the Constitution was amended, Parliament passed The Central Educational Institutions (Reservation in Admission) Act. It is to be noted that these provisions are not applicable to minority institutions.

The Ninety Third Amendment

The amendment was challenged on two major issues: whether it violated the “basic structure”, and whether Articles 15(4) and 15(5) were mutually contradictory — and hence, Article 15(5) was ultra vires of the Constitution.

In March 2008, a five-judge Constitution Bench headed by the then CJI K G Balakrishnan upheld the law providing 27 per cent quota for OBCs in IITs, IIMs and other central educational institutions, but said it would not apply to the “creamy layer”. The court, in Ashoka Kumar Thakur versus Union of India, held that the “creamy layer” must be excluded from the SEBCs and continuance of quota under the Central Educational Institutions (Reservation in Admission) Act, 2006, should be periodically reviewed after five years. The Bench upheld the validity of the Constitution (93rd Amendment) Act, 2005, empowering the Centre to come out with the special law for OBC quota in higher educational institutions. It also held that the amendment does not violate the “basic structure” of the Constitution in so far as it relates to state-maintained institutions and aided educational institutions. It rejected the contention that Article 15(5) was contradictory to Article 15(4), and upheld the exclusion of minority educational institutions from the purview of Article 15(5).

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Reservation

Why in the discussion?

- Recently, the Central Government has announced the decision for giving 10% reservation to the financially backward classes (general category) in government jobs and educational institutions on January 07, 2019.
- The Central Government will soon introduce the Constitution Amendment Bill in Lok Sabha for this.

Amendment in constitution

- The Union Cabinet under the chairmanship of Prime Minister Narendra Modi has approved the constitutional amendment in this regard.
- The government will bring the constitutional amendment bill 2018 (Constitution Amendment Bill -2018) for the economically weaker sections in this regard. Through this Bill, amendment will be done in Article 15 and 16 of the Constitution.
- Reservation given to upper castes will be different from the existing 50 percent reservation.
- People of general category eligible for reservation will be-
 - Whose annual income is less than Rs. 8 lakhs
 - Those with less than 5 hectares of farming land
 - Who have house of less than 1000 square feet.
 - Those with less than 109 yards of corporation notified land.
 - Who has less than 209 yards of non-notified land of the corporation
 - Who had not yet come under any kind of reservation

Provision of Article 15

- Article 15 gives equal citizenship rights to all citizens. According to Article 15 (1), the state will not make any discrimination against any citizen only on the basis of religion, ethnicity, caste, gender, birthplace or any of them.
- Under Article 15, Article 15 (4) and 15 (5) have

provided special provisions for social and educationally backward classes or Scheduled Castes and Scheduled Tribes. There is no use of economic terms anywhere here.

In such a situation, the government will need to add economically weaker words in this article to give reservation to the upper castes.

Provision of Article-16

- Article -16 guarantees the equality of opportunity in relation to public employment and prevents the state from discriminating against anyone, only on the basis of religion, race, caste, sex, race, place of birth or any of these.
- To ensure adequate representation in the public services of any backward class, exceptions are made for the implementation of measures for their beneficial action, as well as a post of a religious institution for the person pursuing that religion is reserved.

Purpose and current status of reservation in India

- The reservation system was done to ensure the participation of every section of the society in the field and government jobs, welfare schemes, elections and education in the state so that every section of the society has the opportunity to come forward.
- For this, the backward classes were divided into three categories - Scheduled Caste (SC), Scheduled Tribe (ST) and OBC (OBC).
- At present 49.5% of the total reservation is being given in India, which is as follows:
 - Scheduled Caste (SC): 15%
 - Scheduled Tribes (ST): 7.5%
 - Other Backward Classes (OBC): 27%
 - Total Reservations: 49.5%

Who will get benefit?

- The 10% reservation given to the upper castes by the central government will not be available only to the Hindus but to those people of the general category of all religions or sects who have the criteria of the eligibility conditions of this category.



- This reservation has not been given on the basis of religion, caste, color or any other kind of discrimination.

Indira Sahni Vs Union of India 1992 case

- In Indira Sahni and the other Vs. Union of India, the Supreme Court upheld the implementation of separate reservation for other backward classes in central government jobs.
- In the case of Indira Sahni, for the first time in 1992, it was said that reservations for the Scheduled Castes, Scheduled Tribes officers and employees in the promotion are not correct.
- The Parliament considered this and the 77th constitutional amendment was brought. In this amendment it was said that the State Government

and the Central Government have also the right to give reservations in the promotion. This case went to the Supreme Court again and it was verdicted that reservation can be given but seniority will not be given.

- After this 85th constitutional amendment was passed from the same parliament and it was said that consequential seniority will also be given.
- In the Indira Sahni case, the constitutional bench comprising the Supreme Court Judges, on 16.11.1992, did not consider reservation in promotion for the Scheduled Caste and Scheduled Tribe in the public services under Article 16 (4) of the Constitution, and ordered that reservation these sections will be kept in the promotion for the next 5 years only.

Expected Questions (Prelims Exams)

1. **In which of the following constitutional provisions the ratification of the states are required for its amendment?**

1. The election of the President.
2. Executive power of the union and states.
3. Supreme Court and High Court.
4. Distribution of legislative power between center and the states.

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| (a) 1 and 2 | (b) 2, 3 and 4 |
| (c) 2 and 3 | (d) All of the above |

Expected Questions (Mains Exams)

- Q. **Discuss the provisions related to the reservations inherent in the constitution. Are the provisions made for the reservations of economically weaker general category are accordant with the rules provided in the constitution? Analyse the views of the Supreme Court in this context.**

(250 Words)

Note: Answer of Prelims Expected Question given on 09 Jan. is 1(a) and 2(a).