



Mains Practice Question

Q. Describe the procedure of amendment of the Constitution of India under Article 368. Why this amendment procedure has been often criticized? (150 words)

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Approach

- Briefly mention the Constitutional provisions regarding amendment of the Constitution
- Explain the procedure of amendment of the Constitution of India under Article 368
- Give reasons as to why this procedure has been criticized often.

Introduction

The Constitution of India provides for its amendment in order to adjust itself to the changing conditions and needs. **Article 368 in Part XX of the Constitution** deals with the powers of Parliament to amend the Constitution and its procedure.

Body

The **procedure for the amendment** of the Constitution as laid down under 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** 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.
- The bill **must be passed in each House by a special majority**, that is, a majority 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**.
- 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 to the Parliament for reconsideration.
- 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.

Criticism of the Amendment Procedure

Critics have criticised the amendment procedure of the Constitution on the following grounds:

- There is **no provision for a special body** like Constitutional Convention (as in the USA) or Constitutional Assembly for amending the Constitution.

- The power to initiate an amendment to the Constitution lies with the Parliament. The **state legislatures cannot initiate any bill** or proposal for amending the Constitution except in one case, that is, passing a resolution requesting the Parliament for the creation or abolition of legislative councils in the states.
- The **major part of the Constitution can be amended by the Parliament alone** either by a special majority or by a simple majority. Only in a few cases, the consent of the state legislatures is required and that too, only half of them.
- The Constitution **does not prescribe the time frame** within which the state legislatures should ratify or reject an amendment submitted to them. It is also silent on the issue, whether the states can withdraw their approval after according the same.
- There is **no provision for holding a joint sitting** of both the Houses of Parliament if there is a deadlock over the passage of a constitutional amendment bill.
- The process of amendment is similar to that of a legislative process. Except for the special majority, the constitutional amendment bills are to be passed by the Parliament in the same way as ordinary bills.

Conclusion

- The provisions relating to the amendment procedure are too sketchy. Hence, they leave a wide scope for taking matters to the judiciary. Despite these defects, it cannot be denied that the process has proved to be simple and easy and has succeeded in meeting the changing needs and conditions of society. The procedure is neither highly flexible as to allow the ruling parties to change it according to their whims nor is it very rigid as to be incapable of adapting itself to the changing needs.

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