

Session 9: Amendments to the Constitution and Election Commission of India

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Amendments to the Constitution

- **Article 368** 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)**

Types of majorities

1. **Simple Majority: 50%** of the members **present and voting** (Used for passing of regular bills)
2. **Absolute Majority: More than 50% of Total membership** of the house. When the total membership of the Lok Sabha is **545**, the Absolute majority is **273** (Used for the formation of Government after General Election)
3. **Effective majority: More than 50% of the effective strength** of the house. If the total strength of house is **245** and **45 vacancies**. The effective strength is **200**. The effective majority is **101** (Used for removal of Vice President in Rajya Sabha, removal of speaker and deputy speaker in Lok Sabha)
4. **Special Majority (Article 249): 2/3rd** of the members present and voting (To pass Rajya Sabha resolution to empower parliament to make laws in state list)
5. **Special Majority (Article 368): 2/3rd** Members present and voting supported by more than 50% of total strength of the house (To make constitutional amendments and impeachment)

Amendments

Types of Amendments

There are two types of amendments.

1. Amendment is by a **special majority** of the Parliament (Lok Sabha & Rajya Sabha)
2. Amendment by a **special majority** of the Parliament with the **ratification by half of the total states** (Involving Federal structure)

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, federalism, separation of power, independence judiciary, rule of law etc.**

Procedure of Amendment

- An amendment of the Constitution may be **initiated by the introduction of a Bill** for the purpose.
- The initiation can be in **either house** of the Parliament.
- The amendment has to be passed by each house with a **special majority** as per Article 368.
- If changes to the **Federal structure** is involved, it is to be **Ratified by** NOT less than half the number of **states**.
- Then, it is presented to the **President** for his **assent** an upon such assent being given to the bill, the Constitution shall stand amended.

Amendments by simple majority

- There are some other amendments which are NOT considered amendments under article 368 like
 - Establishment of new states
 - Abolition and creation of Legislative councils in the states
 - Allowances and privileges of President, Governors, Judges, Speaker etc.
 - Quorum in parliament
 - Citizenship and acquisition and termination
- These amendments can be done with Simple Majority in the parliament.

7th Amendment 1956

- **The constitution provides for a high court for each state.**
- But the, Seventh Amendment Act of 1956 authorized the Parliament to establish a common High Court for two or more states and/or union territory.
- Extended the jurisdiction of High courts to Union Territories
- E.g.: States of Punjab and Haryana have a common High court in Chandigarh

9th Amendment 1960

- For solving certain **boundary disputes** between India and Pakistan as per agreement signed by **Jawaharlal Nehru and Mr. Feroze Khan Noon**, Prime Minister of Pakistan
- Facilitated the **cession of Indian territory of Berubari Union** (located in West Bengal) to Pakistan as provided in the Indo-Pakistan Agreement (1958).

10th Amendment 1961

- 10th amendment of the Indian Constitution
- **Incorporated Dadra and Nagar Haveli as the seventh Union territory of India, by amending the First Schedule to the Constitution.**

12th Amendment 1962

- The Twelfth Amendment Act, 1962 **incorporated Goa, Daman and Diu** in the **Indian Union**.
- India acquired the three territories such as Goa, Daman and Diu from the **Portuguese**
- Later, in **1987, Goa was conferred a statehood**. Consequently, Daman and Diu were made a separate union territory.

42nd amendment 1976

- This amendment is also famous as the **mini-Constitution**.
- This amendment brought a big change in the [Constitution's preamble](#) by adding the words 'SOCIALIST', 'SECULAR', and 'INTEGRITY' in the preamble.
- This amendment made it mandatory for the President to work with the aid and advice of the council of ministers.

This amendment also added a vital [Part IVA in the Constitution as Fundamental duties](#)

44th Amendment 1978

- After this amendment, the right to **property no more remained a Fundamental right** in Part III of the Constitution.
- Now the right to property is **only a legal and right** under [Article 300A](#).

61st Amendment 1989

- This amendment brought a change in the pattern of the election in India.
- It reduced the voting age from 21 to 18 years.

73rd Amendment 1992

- Granted **constitutional status** and protection to the **panchayat raj** institutions.
- For this purpose, the Amendment has added a new **Part-IX** entitled as 'the Panchayats' and a new **Schedule XI** containing 29 functional items of the panchayats.

74th Amendment 1992

- Granted **constitutional status** and protection to the urban **local bodies**.
- For this purpose, the Amendment has added a new Part **IX-A** entitled as 'the municipalities and a new Schedule XII containing 18 functional items of the municipalities.

75th Amendment 1994

- Provided for the establishment of **rent tribunals** for the **adjudication of disputes with respect to rent**, its regulation and control and tenancy issues including the rights, title and interest of landlords and tenants.

86th Amendment – 2002

- Made elementary **education a fundamental right**.
- The newly added **Article 21-A** declares that “**the State shall provide free and compulsory education to all children of the age of six to fourteen years in such manner as the State may determine**”.
- **Changed** the subject matter of **Article 45 in Directive Principles**. It now reads—“**The State shall endeavor to provide early childhood care and education for all children until they complete the age of 14 years**”.
- Added a new **fundamental duty under Article 51-A** which reads— “It shall be the duty of every citizen of India who is a parent or guardian to provide opportunities for education to his child or ward between the age of six and fourteen years”

91st Amendment 2003

- The **total number of ministers, including the Prime Minister**, in the Central Council of Ministers shall not exceed **15% of the total strength of the Lok Sabha** (Article 75(1A)).
- The total number of **ministers, including the Chief Minister**, in the Council of Ministers in a state shall not exceed **15% of the total strength of the legislative Assembly of that state**. But, the number of ministers, including the Chief Minister, in a state **shall not be less than 12** (Article 164(1A)).
- The provision of the Tenth Schedule (**anti-defection law**) pertaining to exemption from disqualification in case of **split by one-third members** of legislature party has been **deleted**.
- It means that the **defectors have no more protection** on grounds of splits.

94th Amendment 2006

- **Freed Bihar** from the obligation of **having a tribal welfare minister** and extended the same provision to Jharkhand and Chhattisgarh.
- This provision will now be applicable to the two newly formed states and Madhya Pradesh and Orissa, where it has already been in force (Article 164(1))

95th Amendment 2009

- **Extended the reservation** of seats for the **SCs and STs** and special representation for the Anglo-Indians in the Lok Sabha and the state legislative assemblies for a further period of ten years i.e., **up to 2020** (Article 334).

100th Amendment 2015

- This amendment is **Land Boundary Agreement (LBA)** between India and Bangladesh

101st Amendment 2016

- **Goods and Services Tax (GST)** commenced with the enactment of the 101st Constitution Amendment Act, 2016 on **8th September 2016** and the subsequent notifications.
- Articles 246A, 269A and 279A were added to the constitution. The amendment made changes in the 7th schedule of the constitution.

118th Amendment 2012

- Lok Sabha approved the **Constitution (118th Amendment) Bill, 2012** which seeks to provide special status to six backward districts in the Hyderabad Karnataka region, with provision for reservation in education and jobs for local people.
- The Bill introduces a new **Article 371-J** to provide special recognition for the six backward districts in **north Karnataka: Gulbarga, Yadgir, Raichur, Bidar, Koppal and Bellary**.
- The Bill provides for **the creation of a separate development board** and equitable allocation of funds for the development of the region.
- In addition to this, it will provide **quota in public employment** through establishment of local cadres and reservation in **education and vocational training institutions** for those who belong to the region by birth or domicile.

126th Amendment

- The Bill extended the reservation for SCs and STs in the Lok Sabha and State assemblies,
- It was due to end on January 25, 2020, **now extended for a period of 10 years**, the seventh such 10-year extension given since the Constitution was enacted in 1950.
- However, the Bill also **ended** the provision for **nomination of Anglo-Indians** to the **Lok Sabha and Assemblies** “seventy years from the commencement of this Constitution”, that is January 2020

Election commission of India

- India is a **democratic country**. Elections are part of the democratic process. In order to conduct free and fair elections, an independent body named the **Election Commission** has been constituted.
- It is headed by **the chief election commissioner** and consists of **two election commissioners**. The election commissioners are **appointed by the president** and can be removed by the same procedure as that in case of supreme court judges.

Election Commissioners

- **Up to 1989**, Election commission was a **single member body**. (Only Chief Election Commissioner)
- In 1989, **two more election commissioners were appointed** and ECI became a **multi member body** (Consisting of 3 election commissioners including Chief Election Commissioner)
- The **chief and the two other election commissioners** have the same emoluments including salaries, which are the same as a Supreme Court judge.
- In case of a difference of opinion amongst the Chief Election Commissioner and/or two other election commissioners, the matter is decided by the Commission by a majority.
- The office is held by them for a term of 6 years or until they attain 65 years, whichever happens first.
- They can also be removed or can resign at any time before the expiry of their term.

Independence of Election Commission

- The chief election commissioner is provided with **security of tenure**.
- He **cannot be removed** from his office **except in the same manner and on the same grounds as a judge of the Supreme Court**. (Impeachment for proven misbehavior)
- **Does NOT hold his office until the pleasure of the president**, though he is appointed by him.
- The **service conditions** of the chief election commissioner **cannot be varied to his disadvantage** after his appointment.
- Any **other election commissioner** or a regional commissioner **cannot be removed** from office except on the recommendation of the chief election commissioner.

Powers and Functions of Election commission

- Preparation of electoral rolls
- Revision of electoral rolls
- Determination of population for the purpose of elections
- Election of the president and vice-president

- Superintendence, direction and conduct of all elections to Parliament and state legislatures.
- Deciding the qualifications for the members of Parliament
- Deciding on the composition of the state legislatures
- Deciding the matters relating to reservation of seats to Scheduled Castes (SCs) and STs
- Ensure an equal chance in participating in the election process to all political parties.
- Enforce strict observation of model code of conduct during elections.
- Advising the President on matters concerning the disqualification of MPs.
- Registering political parties and granting them the status of national or state parties (depending on their poll performance).
- Granting recognition to the various political parties and allocating them election symbols
- Cancelling polls in case of booth capturing, rigging, violence and other irregularities
- Appointing officers for inquiring into disputes concerning electoral arrangements.
- Notifying the schedules and dates of elections and scrutinizing nomination papers
- Determining the model code of conduct to be followed by the political parties and candidates during elections.

Session 8: State Legislature and Executive

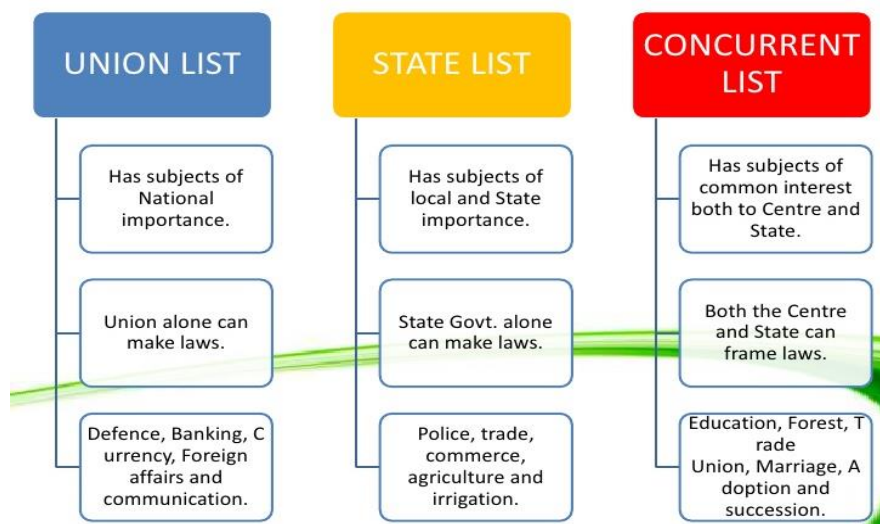
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Federal system

- A federal system of government is **one in which the different states or provinces of the country have important powers to make their own laws and decisions.**
- the Indian Constitution in **Article 1** describes the country as ‘**Union of States**’ although its Constitution is federal in nature.
- According to Dr B R Ambedkar, **the phrase ‘Union of States’ has been preferred to ‘Federation of States’** for two following reasons:
- The Indian federation is not the result of an agreement among the states, like the American Federation.
- The states have no right to secede from the federation.
- **Federalism is part of the basic structure of the Indian constitution** which cannot be altered or destroyed through constitutional amendments.

Three lists under Schedule VII – Article 246



Examples of important subjects in 3 lists

Union List	State List	Concurrent List
<ul style="list-style-type: none"> • Defense • Army • International Relations • Ports • Railways • Highways • Communication 	<ul style="list-style-type: none"> • Public order • Police • Public health and sanitation • Hospitals and dispensaries • Betting and gambling 	<ul style="list-style-type: none"> • Education • Forest • Trade unions • Marriage • Adoption • Succession
<p style="text-align: center;">Total Originally – 9 subjects Now – 100 subjects</p>	<p style="text-align: center;">Total Originally – 66 subjects Now – 61 subjects</p>	<p style="text-align: center;">Total Originally – 47 items Now – 52 items</p>

42nd Amendment 1976

42nd amendment Act 1976 shifted below mentioned five subjects from State list to Concurrent List:

1. Education
2. Forests
3. Protection of wild animals and birds
4. Weights and measures and
5. Administration of justice, constitution and organization of all courts except the Supreme Court and the High Courts

69th Amendment 1991

The **69th** Constitutional Amendment Act of 1991 made special provision in relation to National Capital.

Laws cannot be made by Delhi government on three subjects under State List named as

1. Public Order,
2. Police &
3. Land

State Legislature

- The state legislature consists of the **governor, chief minister and council of ministers.**
- A state can either have a **unicameral or a bicameral legislature.**
- In a **bicameral legislature**, there are two Houses known as the **Legislative Assembly** (Vidhan Sabha) and **Legislative Council** (Vidhan Parishad)
- Andhra Pradesh, **Karnataka**, (Jammu and Kashmir – before conversion to UT), **Uttar Pradesh, Telangana, Bihar** and **Maharashtra** have bicameral legislatures while the rest of the states have unicameral legislature.

Legislative Assembly or Vidhana Sabha

- **Members:** Members of the legislative assembly (MLAs) are **elected** through a system of **universal adult franchise**.
- All citizens of India who has attained the **age of 25** and **does not hold an office of profit** are eligible to contest an election.
- Usually, the number of members in an assembly should **not exceed 600**.
- The size of an assembly is **determined** by the **population** of the state.
- Members are elected for a term of **5 years**.

Presiding officer of Vidhana Sabha – Speaker

- The **speaker** of the assembly is the **presiding officer** of the house.
- S/he is **elected by the members** of the **assembly** for a period of five years.
- The speaker of a legislative assembly plays a **role that is similar to the Speaker of the Lok Sabha**.
- The **deputy speaker is also elected by members** of the assembly. S/he conducts the sittings in the absence of the speaker.

Powers and functions of Legislative Assembly

Legislative Function:

- The assembly has the power to make laws on state subjects, like police, health, local governance etc.
- The assembly can pass the bill and send it to governor for his consent.
- The Governor can reserve the bill for the consideration of the president

Financial function

- The state **budget is introduced in the legislative assembly**.
- When compared with the legislative council, the **assembly has far greater authority** over money Bills.
- The Legislative **council cannot reject any finance Bill**, but can postpone it for a maximum period of 14 days.

Administrative Function

- The state legislature **controls the administration** of the state.
- The **executive body** of the state functions as long as it enjoys the **confidence of the assembly**.
- The **council of ministers** is **responsible** to the **assembly**.

Electoral function

The legislative assembly takes part in **electing the following**.

1. The members of the legislative council,
2. The Rajya Sabha and also
3. The president of India

Legislative Council or Vidhana Parishad

- **Members:** The legislative council is **partly elected** and **partly nominated** body.
- **One-third** of the members of the legislative council are elected from the legislative assembly.
- **one-third** from local bodies such as municipalities and district boards
- **one-twelfth** from the graduate constituency,
- **one-twelfth** teacher's constituency and
- **one-sixth** are nominated by the governor from the fields of literature, sports, science, arts, social service, etc.
- The minimum eligible age for becoming a member of the council is 30 years.
- Nominated members do not have voting rights.
- The total membership of the House should not be more than one-third of the total membership of the legislative assembly and should not be less than 40 members.

Presiding officer of Vidhana Parishad

- The **chairperson presides** over the meetings of the council.
- S/he is **elected by the members**. In the absence of the chairperson, the deputy chairperson conducts the sittings of the House.

State Executive

The Governor

- The governor of a state is **appointed by the president of India** on the recommendation of the union council of ministers.
- S/he enjoys a **similar position** in the state assembly **as does the president** with respect to the parliament.
- S/he is the **constitutional head** of the state.
- S/he **exercises power on the advice of the council of ministers** of the state.

Eligibility to become a Governor.

- To be appointed as the governor of a state,
- one must be a citizen of India and
- not less than 35 years of age.
- The person must not be a member of the Union Parliament or any state legislature.
- The governor of a state can only be removed by the president of India.

Powers and functions of a Governor

Executive Powers

- As an **executive head**, the governor appoints the chief minister and council of ministers.
- He **appoints** members of the state public service commission members and other high-ranking officials on the advice of the council of ministers.

Legislative powers

- **The governor has the powers to summon, prorogue and dissolve the House.**
- **S/he enjoys the power to nominate members to the council and the legislative assembly.**
- **A Bill cannot become a law without his consent.**
- **He can issue ordinances.**
- **Budget cannot be presented without his consent.**

Financial powers

- The state budget is presented with the Governor's consent.
- The governor appoints members of the state planning and finance commissions.

Judicial Powers

- **Appointments, postings and transfers of district judges are made by the governor.**
- **He has the power to pardon and reduce punishment sentences.**

Discretionary Powers

- This power allows the governor the **freedom to decide** what should be done in a particular situation without following the advice of his ministers.
- The governor can **recommend** to the president to **dissolve the assembly, proclaim an emergency**, and introduce **president's rule** in his/her state.

The Chief Minister

- The chief minister is the **real head of the state**.
- S/he is the head of the council of ministers.
- The chief minister is the **leader of the majority** party of the legislative assembly.
- The state ministers are appointed by the governor on the **advice of the chief minister**.
- The chief minister **forms the government** with the support of the ministers.
- The term of office of the chief minister is **five years or till the dissolution of the assembly**.
- The chief minister remains in office as **long as s/he enjoys the confidence of the House** and has to resign if his/her party loses its majority on the floor of the House.
- The resignation of the chief minister **results in the resignation of the entire council of ministers**

Powers and functions of the Chief Minister

- S/he forms the ministry with the support of the ministers and **allots portfolios** to ministers.
- S/he can **reshuffle** his ministry as and when s/he likes and may ask anyone of his colleagues to resign, can request the governor to dismiss him.
- S/he presides over the Cabinet and takes decisions in formulating **policies** and programs.
- S/he **supervises and coordinates policies** of several ministers and departments.
- The **sessions of the House are summoned** and **prorogued** by the governor on the advice of the chief minister.
- **S/he keeps** the legislature and **the governor informed** of all the decisions, policies and programs of the government.

The Council of Ministers

- S/he forms the ministry with the support of the ministers and **allots portfolios** to ministers.
- S/he can **reshuffle** his ministry as and when s/he likes and may ask anyone of his colleagues to resign, can request the governor to dismiss him.
- S/he presides over the Cabinet and takes decisions in formulating **policies** and programs.
- S/he **supervises and coordinates policies** of several ministers and departments.
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Local Self Government

Need for local self-government.

1. India is a vast country with many villages. It is difficult for a central authority to reach out to villages.
2. India is a democracy too and it seeks to **involve the people at the grassroots level** in decision-making.
3. Local governments provide opportunities for people to express their **problems** and get those **solved** at the **local level**.

Functions of local self-governments

- To plan and undertake the **developmental works** like providing drinking water, healthcare facilities, housing, education, electricity and sanitation.
- To provide facilities for the distribution of essential commodities like food grains, kerosene, etc. (**PDS**)
- To **implement the programs** of the Central and the state governments in an effective manner
- To maintain and protect **panchayat property**.
- To identify the **beneficiaries** for the **welfare schemes**
- To plan and undertake **welfare schemes** for the benefit of SCs, STs, women, children and other weaker sections.
- To **collect taxes** and penalties

Financial Sources of local self-governments

- **Rent:** Local self-governments require huge amounts of money to carry out welfare programs and projects. They raise funds through taxes on property, buildings, vacant sites, shops, markets, to name a few.
- **Cess:** Local governing bodies collect education cess, health cess, water cess and reading room cess from local people.
- **Grant:** Financial grants provided by the state and Central governments add to their source of revenue.