

CONSTITUTION AMENDMENT BILLS

Bills seeking to amend the Constitution are of three types:—

- (1) Bills that are passed by Parliament by simple majority;
- (2) Bills that have to be passed by Parliament by the special majority prescribed in article 368(2) of the Constitution; and
- (3) Bills that have to be passed by Parliament by the special majority as aforesaid and also to be ratified by not less than one-half of the State Legislatures.

Bills that are not deemed as Constitution Amendment Bills

2. Bills containing provisions seeking to amend the Constitution or having the effect of amending the Constitution for the following purposes are passed by both Houses of Parliament by a Simple Majority, i.e., by a majority of votes of the Members present and voting:

- (a) admission or establishment of new States, formation of new States, and alteration of areas, boundaries or names of existing States (articles 2,3 and 4);

- (b) creation or abolition of Legislative Councils in the States (article 169);
- (c) creation of a Legislature or a Council of Ministers for the Union territory of Puducherry (article 239A);
- (d) special provisions with respect to Delhi (article 239AA);
- (e) extension of provisions of Part IX to Scheduled Areas and tribal areas referred to in article 244 (article 243M);
- (f) extension of provisions of Part IX-A to Scheduled Areas and tribal areas referred to in article 244 (article 243ZC);
- (g) formation of an autonomous State comprising certain tribal areas in Assam and creation of local Legislature or Council of Ministers or both therefor (article 244A);
- (h) creation of all-India judicial service (article 312);
- (i) administration and control of Scheduled Areas and Scheduled Tribes (para 7 of the Fifth Schedule); and
- (j) administration of Tribal Areas in the States of Assam, Meghalaya, Tripura and Mizoram (para 21 of the Sixth Schedule).

3. These Bills are not deemed as Constitution Amendment Bills under article 368 of the Constitution and, therefore, these are not called by the title 'Constitution Amendment Bills'.

4. Though normal legislative procedure holds good in respect of these Bills, Bills providing for aforesaid matters in sub-paras (a) and (b), in addition, require respectively the recommendation of the President for introduction and the prior adoption of necessary resolution by the State Legislative Assembly concerned.

5. Such Bills are presented to the President for assent under article 111 of the Constitution.

Constitution Amendment Bills

6. Bills seeking to amend all other provisions of the Constitution including those enumerated in the proviso to article 368(2) are called by the title 'Constitution Amendment Bills'. These Bills can be introduced in either House of Parliament. If sponsored by a Private Member, the Bill has to be examined in the first instance and recommended for introduction by the Committee on Private Members' Bills and Resolutions before it is included for introduction in the List of Business. Motions for introduction of the Bills are decided by simple majority.

7. Constitution Amendment Bills are not treated as Money Bills or Financial Bills. Accordingly, President's recommendation under articles 117 and 274 of the Constitution with regard to these Bills is not asked for. However, if the recommendation is communicated by the Minister, it is published in the Bill or in the Bulletin, as the case may be, for information of members.

Special Majority

8. Constitution Amendment Bills have to be passed in each House of Parliament by a special majority *i.e.* by a majority of the total membership of that House and by a majority of not less than two-thirds of the members of the House "present and voting". The expression "total membership" means the total number of members comprising the House irrespective of whether there are vacancies or absentees on any account. The expression "present and voting", means members who vote for "ayes" or for "noes". Members who are present in the House and vote "abstention" either through the electronic vote recorder or on a voting slip or in any other manner, are not treated as "present and voting".

9. Taking a strict interpretation of the Constitutional provision, the special majority prescribed may be required only for voting at the third reading stage, but by way of caution, the requirement of special majority has been provided for in the Rules of Procedure and Conduct of Business in Lok Sabha in respect of all the effective stages of the Bill *i.e.* motion that the Bill be taken into consideration, motion that the Bill, as reported by the Select or Joint Committee, be taken into consideration, motion that the Bill, as passed by Rajya Sabha, be taken into consideration, motion for adoption of clauses and schedules to the Bill and finally for the adoption of the motion that the Bill be passed. Motions that the Bill be circulated for eliciting opinion thereon or that the Bill be

referred to a Select or Joint Committee are passed by simple majority.

10. Whenever a motion has to be carried by a special majority, voting is always by a division. The Speaker, while announcing the result of the voting, makes a special mention of the fact that motion has been carried by the special majority.

11. Each clause or schedule is put to the vote of the House separately and carried by the special majority. The Speaker may, however, with the concurrence of the House, put any group of clauses or schedules together to the vote of the House in which case the result of the voting shall be taken as applicable to each clause or schedule separately and so indicated in the proceedings. However, if any member requests that any of the clauses or schedules be put separately, the Speaker complies with such a request. The Short Title (clause 1), the Enacting Formula and the Long Title of the Bill are adopted by simple majority. Where clause 1 (Short Title) contains provision regarding commencement of the Act, it is also adopted by the special majority.

12. Amendments to clauses or schedules are decided by simple majority as in the case of any other Bill.

Ratification by the State Legislatures

13. A Constitution Amendment Bill which seeks to make any change in articles relating to:—

the election of the President, or

the extent of the executive power of the Union and the States, or

the Supreme Court and the High Courts, or

distribution of legislative powers between the Union and States, or representation of States in Parliament, or

the very procedure for amendment as laid down in article 368 of the Constitution,

after it is passed by the Houses of Parliament by the special majority, has also to be ratified by Legislatures of not less than one-half of the States by resolutions to that effect passed by them before the Bill making provision for such an amendment is presented to the President for assent.

Joint Sitting

14. In case of any disagreement between the two Houses of Parliament on a Constitution Amendment Bill, there cannot be a joint sitting of the Houses of Parliament on the Bill as article 368 of the Constitution requires each House to pass the Bill by the prescribed special majority.

Assent to Constitution Amendment Bills

15. Constitution Amendment Bills passed by Parliament by the prescribed special majority and, where necessary, ratified by the requisite number of State

Legislatures are presented to the President under article 368 of the Constitution under which the President is bound to give assent to such Bills.

[Constitution Amendment Bills are governed by article 368 of the Constitution and Rules 155—159 of Rules of Procedure and Conduct of Business in Lok Sabha.]

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PREFACE

This Abstract is part of the Parliamentary Procedure Abstracts Series and describes the procedure regarding Constitution Amendment Bills. It is based on the Rules of Procedure and Conduct of Business in Lok Sabha, the Directions issued by the Speaker under the Rules of Procedure and the decisions/rulings given by the Chair from time-to-time. It is intended to serve as a handy guide for ready reference.

The information contained in this Abstract is, however, not exhaustive. It will, therefore, be prudent to refer to and rely on the original sources for full information.

NEW DELHI

Secretary General