

CHAPTER - IX

CONSTITUTION AS A LIVING DOCUMENT

Is our constitution as a living document?

Our constitution came to exist on 26th January 1950. More than 60 years after that the same constitution exist and function in India. These document may require modification according to socio-economic change therefore amendment are used. By this we can say that our constitution is a living document.

What is Amendment?

Amendment means to remove or include a new law in the constitution or to modify the existing laws. Parliament have the power to amend this constitution. Article 368 deals with constitutional amendment.

Contents of Amendment made so far

1. Amendment of administrative or technical
2. Amendment through political consensus
3. Amendment of differing interpretation

Amendment of Administrative or Technical

- It means to include a new law by removing the existing laws.
E.g. Changed the retirement age of High Court judges as 60 - 62.
- The original provision for SC/ST was only for 10 years, it revised every year.

Amendment of differing interpretation

- The parliament may look at the provisions in the constitution from one angle and interpret them, according to judiciary may have a different view.
- When there is clash of views, the parliament being in the amendment to support their view.

Amendment through Political Consensus

- A number of amendment results from the consensus among political parties. Some changes have taken place in the political philosophy and aspirations of the people.
- 52nd amendment is an example. This was for anti-defection.

Controversial Amendment

Some amendment generates a lot of controversy. The opposition parties during 1971-76 period criticised these amendment (38, 39, 42, 44) as an attempt by the ruling party to subvert to constitution. These amendment came during the internal emergency in the country.

Methods to Amend the Constitution

1. Simple majority of parliament
2. Special majority of parliament
3. Special majority and ratification by half of the state legislature

Simple Majority

- Simple majority system is the most easiest way to amend the constitution.
- It needs the majority of parliament members which are presented and president consent is essential for the approval of amendment.

E.g. To form new state

- To change the names and boundaries of state
- Problem related to citizenship
- It can make changes in the 1, 4, 5, 6 schedule of constitution

Special Majority

- It is a way amending the constitution. Here $\frac{2}{3}$ majority is needed to amend the constitution.

- The consent of both houses is essential to amend the bill.

E.g. 3rd part (Fundamental right)

4th part (DPSP)

Special Majority and Ratification by Half of the State Legislature

- It is the most complicated amendment in the parliament.
- $\frac{2}{3}$ majority from the parliament and consent of half of state legislature is needed for this amendment.

E.g. To remove president and vice president

To remove the judges of Supreme Court and High Court.

Problem related to central and state conflict.

Problem related to election of president.

Problem related to 3rd list.

Basic Nature and Function of Constitution

- Secularism
- Independent judiciary
- Parliament system
- Fundamental rights
- Socio-economic justice
- Rule of law
- Federal system
- Judiciary review

Controversial Amendment

Here some members demanded for the amendment of constitution and some oppose it. It is called controversial amendment.