

UNIT 2 – UPSC - Necessity of amending provision in the Constitution

It is made with a view to overcome the difficulties which may be encountered in the future in the working of the constitution.

The nature of amending "amending process" envisaged by the framers of our constitution can best be understood by referring the following observation of the late prime minister pt. Nehru, "while we want this constitution be as solid and permanent as we can make it, there is no permanence in the constitution. There should be certain flexibility. If you make anything rigid and permanent you stop the nation's growth, of a living vital, organic people..... In any event, we could not make this constitution so rigid that it cannot be adopted to changing conditions. When the world is in a period of transition what we may do today may not be wholly applicable tomorrow" practically every constitution has some formal provisions for amendment of the constitution. In a rigid constitution amendment is more elaborate and difficult than enactment of ordinary legislation. In a flexible constitution, amendment can be effected rather easily, as easily as enacting an ordinary law. The former procedure to amend some foreign federal constitutions as follows:



1. **U.S.A.:** In U.S.A., amendment of the constitution may be proposed only by congress, with the approval of 2/3 of majority of both houses (congress and senate), or a convention summoned on an application from 2/3 of the members of both houses. The proposed amendments must be ratified by at least $\frac{3}{4}$ of the total number of the state legislatures or by conventions in $\frac{3}{4}$ of the total numbers of the states.
2. **SWITZERLAND:** In Switzerland, no alteration of the constitution can be effected without resorting to a referendum.
3. **AUSTRALIA:** In Australia, the constitution can be altered only by an Act passed by an absolute majority in both houses, or in case one house refuses to pass it, by an Act

passed by an absolute majority in either house, for the second time, after an interval of 3 months. But in either house the Act must be subjected to a referendum in each state. If in a majority of the states, a majority of the voters approve the amendment, it shall be presented to the governor general for the Royal assent. In INDIA the framers of the constitution devoted a separate chapter (20th) towards the process and provisions of amendment of the provision of the constitution fall under 3 categories:

- (a) Those provisions of the constitution which can be effected by a simple majority required for the passing of an ordinary law:-the amendment contemplated in Articles 4,169,239(A) fall within this category. These articles are specially excluded from the area of Art. 368.
- (b) Those provision of the constitution that can be effected by a special majority as laid down in Art. 368: under this category the amendments are effected by a majority of total membership of either of each house of parliament as well as by a majority of not less than 2/3 of the members of that house present and voting.
- (c) Those provision of the constitution which require in addition to the special majority as described in 368(2), ratification by a resolution passed by not less than one half of the state legislature, before the bill is presented to president for his assent:-some of these provisions in which amendment can be made by aforesaid procedures are (1) the election and manner of election of the president(art. 54& 55), (2) extent of executive power of the state(art. 73), (3) provision dealing with high court for union territories (art. 241), (4) seventh schedule of the constitution. (5) Art. 368 itself.

The power to amend the constitution conferred on parliament includes the power to amend art. 1 and logically would include the power to cede national territory in favour of a foreign state. (In re berubari union)