

## **Indian Polity – Part 23, 24, 25**

### **23] Constitutional Amendment**

#### **Notes**

#### **Constitutional Amendment – Part XX Notes**

#### **Article 368 {Power of Parliament to amend the Constitution and procedure therefore}**

- Constitutional amendment is the protector of the constitution. The article 368 of the constitutional amendment is borrowed from South Africa. There are three types of amendment in the Indian Constitution. The power extension of the center and State administration. Articles related to Supreme court and High Courts. Article related to the Legislative power distribution between Center and States.
- Notwithstanding anything in this Constitution, Parliament may in exercise of its constituent power amend by way of addition, variation or repeal any provision of this Constitution in accordance with the procedure laid down in this article. Parliament has the power to amend the constitution.
- An amendment of this Constitution may be initiated only by the introduction of a Bill for the purpose in either House of Parliament, and when the Bill is passed in each House by a majority of the total membership of that House and by a majority of not less than two-thirds of the members of that House present and voting, it shall be presented to the President who shall give his assent to the Bill and thereupon the Constitution shall stand amended in accordance with the terms of the Bill: Provided that if such amendment seeks to make any change in -
  - ✓ Article 54, article 55, article 73, article 162 or article 241, or

- ✓ Chapter IV of Part V, Chapter V of Part VI, or Chapter I of Part XI, or
  - ✓ Any of the Lists in the Seventh Schedule, or
  - ✓ The representation of States in Parliament, or
  - ✓ The provisions of this article, the amendment shall also require to be ratified by the Legislatures of not less than one-half of the States by resolutions to that effect passed by those Legislatures before the Bill making provision for such amendment is presented to the President for assent.
  - ✓ In Rajya Sabha the amendment bill is introduced.
  - ✓ Individual Majority and acceptance of state constitution is required for the processed for the changes of Presidential election and amendment for the seventh schedule.
  - ✓ Simple majority is required to pass the Constitutional amendment for about Citizenship act.
  - ✓ In the Indian Constitutional Amendment the Individual majority is Not less than three of two part members.
  - ✓ Simple majority is required for the articles 4 , 5 , 6.
- Nothing in article 13 shall apply to any amendment made under this article.
  - {No amendment of this Constitution (including the provisions of Part III) made or purporting to have been made under this article whether before or after the commencement of section 55 of the Constitution (Forty-second Amendment) Act, 1976 shall be called in question in any court on any ground.} Invalidated by the Sup. Court ruling on Minerva Mills Ltd. and Others Vs. Union of India.
  - {For the removal of doubts, it is hereby declared that there shall be no limitation whatever on the constituent power of Parliament to amend by way

of addition, variation or repeal the provisions of this Constitution under this article.} Invalidated by the Sup. Court ruling on Minerva Mills Ltd. and Others Vs. Union of India. Article 368 {Power of Parliament to amend the Constitution and procedure therefore}

## **24] Temporary, Transitional and Special Provisions**

### **Temporary, Transitional and Special Provisions - Part XXI Notes**

#### **Article 369 {Temporary power to Parliament to make laws with respect to certain matters in the State List as if they were matters in the Concurrent List}**

- Notwithstanding anything in this Constitution, Parliament shall, during a period of five years from the commencement of this Constitution, have power to make laws with respect to the following matters as if they were enumerated in the Concurrent List, namely: -
  - ✓ Trade and commerce within a State in, and the production, supply and distribution of, cotton and woollen textiles, raw cotton (including ginned cotton and unginned cotton or kapas), cotton seed, paper (including newsprint), food-stuffs (including edible oilseeds and oil), cattle fodder (including oil-cakes and other concentrates), coal (including coke and derivatives of coal), iron, steel and mica;
  - ✓ Offences against laws with respect to any of the matters mentioned in clause (a), jurisdiction and powers of all courts except the Supreme Court with respect to any of those matters, and fees in respect of any of those matters but not including fees taken in any court, but any law made by Parliament, which Parliament would not but for the provisions of this article have been competent to make, shall, to the extent of the incompetency, cease to have effect on the expiration of the said period, except as respects things done or omitted to be done before the expiration therefore.

#### **Article 370 {Temporary provisions with respect to the State of Jammu and Kashmir}**

- Notwithstanding anything contained in this Constitution,—

- ✓ The provisions of article 238 shall not apply in relation to the state of Jammu and Kashmir;
- ✓ The power of Parliament to make laws for the said state shall be limited to—
  - (i) Those matters in the Union List and the Concurrent List which, in consultation with the Government of the State, are declared by the President to correspond to matters specified in the Instrument of Accession governing the accession of the State to the Dominion of India as the matters with respect to which the Dominion Legislature may make laws for that State; and
  - (ii) Such other matters in the said Lists as, with the concurrence of the Government of the State, the President may by order specify.

**Article 371 {Special provision with respect to the States of Maharashtra and Gujarat}**

- Notwithstanding anything in this Constitution, the President may by order made with respect to the State of Maharashtra or Gujarat, provided for any special responsibility of the Governor for -
  - ✓ The establishment of separate development boards for Vidarbha, Marathwada, and the rest of Maharashtra or, as the case may be, Saurashtra, Kutch and the rest of Gujarat with the provision that a report on the working of each of these boards will be placed each year before the State Legislative Assembly;
  - ✓ The equitable allocation of funds for developmental expenditure over the said areas, subject to the requirements of the State as a whole; and
  - ✓ An equitable arrangement providing adequate facilities for technical education and vocational training, and adequate opportunities for employment in services under the control of the State Government, in respect of all the said areas, subject to the requirements of the State as a whole.

**Article 371A {Special provision with respect to the State of Nagaland}**

- Notwithstanding anything in this Constitution, -

✓ No Act of Parliament in respect of -

- (i) Religious or social practices of the Nagas,
- (ii) Naga customary law and procedure,
- (iii) Administration of civil and criminal justice involving decisions according to Naga customary law,
- (iv) Ownership and transfer of land and its resources, shall apply to the State of Nagaland unless the Legislative Assembly of Nagaland by a resolution so decides;

**Article 371B {Special provision with respect to the State of Assam}**

Notwithstanding anything in this Constitution, the President may, by order made with respect to the State of Assam, provide for the constitution and functions of a committee of the Legislative Assembly of the State consisting of members of that Assembly elected from the tribal areas specified in Part I of the table appended to paragraph 20 of the Sixth Schedule and such number of other members of that Assembly as may be specified in the order and for the modifications to be made in the rules of procedure of that Assembly for the constitution and proper functioning of such committee.

**Article 371C {Special provision with respect to the State of Manipur}**

- Notwithstanding anything in this Constitution, the President may, by order made with respect to the State of Manipur, provide for the constitution and functions of a committee of the Legislative Assembly of the State consisting of members of that Assembly elected from the Hill Areas of that State, for the modifications to be made in the rules of business of the Government and in the rules of procedure of the Legislative Assembly of the State and for any special responsibility of the Governor in order to secure the proper functioning of such committee.

**Article 371D {Special provisions with respect to the State of Andhra Pradesh}**

- The President may by order made with respect to the State of Andhra Pradesh provide, having regard to the requirements of the State as a whole,

for equitable opportunities and facilities for the people belonging to different parts of the State, in the matter of public employment and in the matter of education, and different provisions may be made for various parts of the State.

- The President may, by order, provide for the constitution of an Administrative Tribunal for the State of Andhra Pradesh to exercise such jurisdiction, powers and authority including any jurisdiction, power and authority which immediately before the commencement of the Constitution (Thirty-second Amendment) Act, 1973, was exercisable by any court (other than the Supreme Court) or by any tribunal or other authority as may be specified in the order with respect to the following matters, namely: -
  - ✓ Appointment, allotment or promotion to such class or classes of posts in any civil service of the State, or to such class or classes of civil posts under the State, or to such class or classes of posts under the control of any local authority within the State, as may be specified in the order;
- Notwithstanding any judgment, decree or order of any court, tribunal or other authority, -
  - ✓ No appointment, posting, promotion or transfer of any person -
    - (i) Made before the 1st day of November, 1956, to any post under the Government of, or any local authority within, the State of Hyderabad as it existed before that date; or
    - (ii) Made before the commencement of the Constitution (Thirty-second Amendment) Act, 1973, to any post under the Government of, or any local or other authority within, the State of Andhra Pradesh; and
- The provisions of this article and of any order made by the President there under shall have effect notwithstanding anything in any other provision of this Constitution or in any other law for the time being in force.

### **Article 371E {Establishment of Central University in Andhra Pradesh}**

Parliament may by law provide for the establishment of a University in the State of Andhra Pradesh.

**Article 371F {Special provisions with respect to the State of Sikkim}**

- Notwithstanding anything in this Constitution, -
  - ✓ The Legislative Assembly of the State of Sikkim shall consist of not less than thirty members;
  - ✓ As from the date of commencement of the Constitution (Thirty-sixth Amendment) Act, 1975 (hereafter in this article referred to as the appointed day) -
    - (i) The Assembly for Sikkim formed as a result of the elections held in Sikkim in April, 1974 with thirty-two members elected in the said elections (hereinafter referred to as the sitting members) shall be deemed to be the Legislative Assembly of the State of Sikkim duly constituted under this Constitution;
    - (ii) The sitting members shall be deemed to be the members of the Legislative Assembly of the State of Sikkim duly elected under this Constitution; and
    - (iii) The said Legislative Assembly of the State of Sikkim shall exercise the powers and perform the functions of the Legislative Assembly of a State under this Constitution;

**Article 371G {Special provision with respect to the State of Mizoram}**

- Notwithstanding anything in this Constitution, -
  - ✓ No Act of Parliament in respect of -
    - (i) Religious or social practices of the Mizos.
    - (ii) Mizo customary law and procedure,
    - (iii) Administration of civil and criminal justice involving decisions according to Mizo customary law, Provided that nothing in this clause shall apply to any Central Act in force in the Union territory of Mizoram immediately before the commencement of the Constitution (Fifty-third Amendment) Act, 1986;

**Article 371H {Special provision with respect to the State of Arunachal Pradesh}**

- Notwithstanding anything in this Constitution, -



- ✓ The governor of Arunachal Pradesh shall have special responsibility with respect to law and order in the state of Arunachal Pradesh and in the discharge of his functions in relation thereto, the Governor shall, after consulting the Council of Ministers, exercise his individual judgment as to the action to be taken: Provided that if any question arises whether any matter is or is not a matter as respects which the Governor is under this clause required to act in the exercise of his individual judgment, the decision of the Governor in his discretion shall be final, and the validity of anything done by the Governor shall not be called in question on the ground that he ought or ought not to have acted in the exercise of his individual judgment.
- ✓ The Legislative Assembly of the State of Arunachal Pradesh shall consist of not less than thirty members.

#### **Article 371I {Special provision with respect to the State of Goa}**

Notwithstanding anything in this Constitution, the Legislative Assembly of the State of Goa shall consist of not less than thirty members.

98th Constitutional Amendment 2012 Constitutional Amendment added the Article – 371 –J.

#### **Article 372 {Continuance in force of existing laws and their adaptation}**

- Notwithstanding the repeal by this Constitution of the enactments referred to in article 395 but subject to the other provisions of this Constitution, all the law in force in the territory of India immediately before the commencement of this Constitution shall continue in force therein until altered or repealed or amended by a competent Legislature or other competent authority.

#### **Article 372A {Power of the President to adapt laws}**

- For the purposes of bringing the provisions of any law in force in India or in any part thereof, immediately before the commencement of the Constitution (Seventh Amendment) Act, 1956, into accord with the provisions of this Constitution as amended by that Act, the President may by order made before the first day of November, 1957, make such adaptations and modifications of the law, whether by way of repeal or amendment, as may



be necessary or expedient, and provide that the law shall, as from such date as may be specified in the order, have effect subject to the adaptations and modifications so made, and any such adaptation or modification shall not be questioned in any court of law.

**Article 373 {Power of President to make order in respect of persons under preventive detention in certain cases}**

Until provision is made by Parliament under clause (7) of article 22, or until the expiration of one year from the commencement of this Constitution, whichever is earlier, the said article shall have effect as if for any reference to Parliament in clauses (4) and (7), thereof there were substituted a reference to the President and for any reference to any law made by Parliament in those clauses there were substituted a reference to an order made by the President.

**Article 374 {Provisions as to Judges of the Federal Court and proceedings pending in the Federal Court or before His Majesty in Council}**

- The Judges of the Federal Court holding office immediately before the commencement of this Constitution shall, unless they have elected otherwise, become on such commencement the Judges of the Supreme Court and shall thereupon be entitled to such salaries and allowances and to such rights in respect of leave of absence and pension as are provided for under article 125 in respect of the Judges of the Supreme Court.

**Article 375 {Courts, authorities and officers to continue to function subject to the provisions of the Constitution}**

All courts of civil, criminal and revenue jurisdiction, all authorities and all officers, judicial, executive and ministerial, throughout the territory of India, shall continue to exercise their respective functions subject to the provisions of this Constitution.

**Article 376 {Provisions as to Judges of High Courts}**

- Notwithstanding anything in clause (2) of article 217, the Judges of a High Court in any Province holding office immediately before the commencement of this Constitution shall, unless they have elected otherwise, become on such commencement the Judges of the High Court in the corresponding

State, and shall thereupon be entitled to such salaries and allowances and to such rights in respect of leave of absence and pension as are provided for under article 221 in respect of the Judges of such High Court. Any such Judge shall, notwithstanding that he is not a citizen of India, be eligible for appointment as Chief Justice of such High Court, or as Chief Justice or other Judge of any other High Court.

**Article 377 {Provisions as to Comptroller and Auditor-General of India}**

The Auditor-General of India holding office immediately before the commencement of this Constitution shall, unless he has elected otherwise, become on such commencement the Comptroller and Auditor-General of India and shall thereupon be entitled to such salaries and to such rights in respect of leave of absence and pension as are provided for under clause (3) of article 148 in respect of the Comptroller and Auditor-General of India and be entitled to continue to hold office until the expiration of his term of office as determined under the provisions which were applicable to him immediately before such commencement.

**Article 378 {Provisions as to Public Commissions}**

- The members of the Public Service Commission for the Dominion of India holding office immediately before the commencement of this Constitution shall, unless they have elected otherwise, become on such commencement the members of the Public Service Commission for the Union and shall, notwithstanding anything in clause (1) and (2) of article 316 but subject to the proviso to clause (2) of that article, continue to hold office until the expiration of their term of office as determined under the rules which were applicable immediately before such commencement to such members.

**Article 378A {Special provisions as to duration of Andhra Pradesh Legislative Assembly}**

Notwithstanding anything contained in article 172, the Legislative Assembly of the State of Andhra Pradesh as constituted under the provisions of sections 28 and 29 of the States Reorganization Act, 1956, shall, unless sooner dissolved, continue for a period of five years from the date referred to in the said section 29 and no longer

and the expiration of the said period shall operate as a dissolution of that Legislative Assembly.

### **Article 379 — Article 391**

{ Articles 379 to 391 have been repealed in 1956. }

### **Article 392 {Power of the President to remove difficulties}**

- The President may, for the purpose of removing any difficulties, particularly in relation to the transition from the provisions of the Government of India Act, 1935, to the provisions of this Constitution, by order direct that this Constitution shall, during such period as may be specified in the order, have effect subject to such adaptations, whether by way of modification, addition or omission, as he may deem to be necessary or expedient:
- Every order made under clause (1) shall be laid before Parliament.
- The powers conferred on the President by this article, by article 324, by clause (3) of article 367 and by article 391 shall, before the commencement of this Constitution, be exercisable by the Governor-General of the Dominion of India.

Part XXII Short Title, Commencement, Authoritative Text in Hindi and Repeals

**25] Short title, commencement, authoritative text in Hindi and repeals**

**Part XXII Short title, commencement, authoritative text in Hindi and repeals**

### **Notes**

### **Article 393**

Short title.

### **Article 394**

Commencement.

### **Article 394A**

Authoritative text in the Hindi language.

### **Article 395**

Repeals.

- Part 5, 6, 7 of the Indian Constitution is come into existence immediately.
- On 26.01.1950 the Indian Constitution came into force.
- Indian Independent act 1947 and were cancelled while Indian Constitution came into force Indian Government Act 1935.

