INTERNATIONAL JOURNAL FOR LEGAL RESEARCH AND ANALYSIS

Open Access, Refereed JournalMulti Disciplinary
Peer Reviewed Edition :

www.ijlra.com

 ISSN: 2582-6433

DISCLAIMER

ISSN: 2582-6433

EDITORIAL TEAM

EDITORS

Megha Middha

Megha Middha, Assistant Professor of Law in Mody University of Science and Technology, Lakshmangarh, Sikar

Megha Middha, is working as an Assistant Professor of Law in Mody University of Science and Technology, Lakshmangarh, Sikar (Rajasthan). She has an experience in the teaching of almost 3 years. She has completed her graduation in BBA LL.B (H) from Amity University, Rajasthan (Gold Medalist) and did her post-graduation (LL.M in Business Laws) from NLSIU, Bengaluru. Currently, she is enrolled in a Ph.D. course in the Department of Law at Mohanlal Sukhadia University, Udaipur (Rajasthan). She wishes to excel in academics and research and contribute as much as she can to society. Through her interactions with the students, she tries to inculcate a sense of deep thinking power in her students and enlighten and guide them to the fact how they can bring a change to the society

Dr. Samrat Datta

Dr. Samrat Datta Seedling School of Law and Governance, Jaipur National University, Jaipur. Dr. Samrat Datta is currently associated with Seedling School of Law and Governance, Jaipur National University, Jaipur. Dr. Datta has completed his graduation i.e., B.A.LL.B. from Law College Dehradun, Hemvati Nandan Bahuguna Garhwal University, Srinagar, Uttarakhand. He is an alumnus of KIIT University, Bhubaneswar where he pursued his post-graduation (LL.M.) in Criminal Law and subsequently completed his Ph.D. in Police Law and Information Technology from the Pacific Academy of Higher Education and Research University, Udaipur in 2020. His area of interest and research is Criminal and Police Law. Dr. Datta has a teaching experience of 7 years in various law schools across North India and has held administrative positions like Academic Coordinator, Centre Superintendent for Examinations, Deputy Controller of Examinations, Member of the Proctorial Board

ISSN: 2582-6433

Dr. Namita Jain

Head & Associate Professor

School of Law, JECRC University, Jaipur Ph.D. (Commercial Law) LL.M., UGC -NET Post Graduation Diploma in Taxation law and Practice, Bachelor of Commerce.

Teaching Experience: 12 years, AWARDS AND RECOGNITION of Dr. Namita Jain are - ICF Global Excellence Award 2020 in the category of educationalist by I Can Foundation, India.India Women Empowerment Award in the category of "Emerging Excellence in Academics by Prime Time & Utkrisht Bharat Foundation, New Delhi.(2020). Conferred in FL Book of Top 21 Record Holders in the category of education by Fashion Lifestyle Magazine, New Delhi. (2020).Certificate of Appreciation for organizing and managing the Professional Development Training Program on IPR in Collaboration with Trade Innovations Services, Jaipur on March 14th, 2019

Mrs.S.Kalpana

Assistant professor of Law

Mrs.S.Kalpana, presently Assistant professor of Law, VelTech Rangarajan Dr. Sagunthala R & D Institute of Science and Technology, Avadi.Formerly Assistant professor of Law,Vels University in the year 2019 to 2020, Worked as Guest Faculty, Chennai Dr.Ambedkar Law College, Pudupakkam. Published one book. Published 8Articles in various reputed Law Journals. Conducted 1Moot court competition and participated in nearly 80 National and International seminars and webinars conducted on various subjects of Law. Did ML in Criminal Law and Criminal Justice Administration.10 paper presentations in various National and International seminars. Attended more than 10 FDP programs. Ph.D. in Law pursuing.

Avinash Kumar

Avinash Kumar has completed his Ph.D. in International Investment Law from the Dept. of Law & Governance, Central University of South Bihar. His research work is on "International Investment Agreement and State's right to regulate Foreign Investment." He qualified UGC-NET and has been selected for the prestigious ICSSR Doctoral Fellowship.He is an alumnus of the Faculty of Law, University of Delhi. Formerly he has been elected as Students Union President of Law Centre-1, University of Delhi.Moreover, he completed his LL.M. from the University of Delhi (2014-16), dissertation on "Cross-border Merger & Acquisition"; LL.B. from the University of Delhi (2011-14), and B.A. (Hons.) from Maharaja Agrasen College, University of Delhi. He has also obtained P.G. Diploma in IPR from the Indian Society of International Law, New Delhi.He has qualified UGC – NET examination and has been awarded ICSSR – Doctoral Fellowship. He has published six-plus articles and presented 9 plus papers in national and international seminars/conferences. He participated in several workshops on research methodology and teaching and learning.

ISSN: 2582-6433

ABOUT US

INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANLAYSIS ISSN

2582-6433 is an Online Journal is Monthly, Peer Review, Academic Journal, Published online, that seeks to provide an interactive platform for the publication of Short Articles, Long Articles, Book Review, Case Comments, Research Papers, Essay in the field of Law & Multidisciplinary issue. Our aim is to upgrade the level of interaction and discourse about contemporary issues of law. We are eager to become a highly cited academic publication, through quality contributions from students, academics, professionals from the industry, the bar and the bench. INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS ISSN 2582-6433 welcomes contributions from all legal branches, as long as the work is original, unpublished and is in consonance with the submission guidelines.

www.ijlra.com
Volume 2 Issue 7 | March 2024
ISSN: 2582-6433

A COMPARATIVE ANALYSIS OF CONSTITUTIONAL AMENDMENT PROCESSES: A STUDY OF THE INDIAN CONSTITUTION AND GLOBAL PERSPECTIVES

AUTHORED BY - PRATIKSHA PRAVIN BARVE
ROLL NO: 23
LL.M (1st Year Sem. 2)
PROGRESSIVE EDUCATION SOCIETY'S
MODERN LAW COLLEGE, PUNE
SAVITRIBAI PHULE PUNE UNIVERSITY, PUNE
(2023-2024)

ABSTRACT

The constitution of a country serves as the bedrock of its legal and political framework, embodying the collective will and aspirations of its citizens. It is often described as the "supreme law of the land," reflecting the general will of the people. However, for a constitution to truly reflect the will of the people, it cannot remain static; rather, it must be responsive to changing conditions and societal needs. This research article undertakes a comprehensive comparative analysis of constitutional amendment processes, focusing primarily on the Indian Constitution while drawing insights from global perspectives.

The study delves into the mechanisms through which constitutional amendments are initiated, debated, and enacted in India, the United Kingdom, the United States, France, Switzerland, Canada, and Germany. Each country's approach to constitutional amendments reflects a unique blend of historical context, political culture, and legal tradition, showcasing the diverse paths to constitutional evolution.

The analysis explores the procedural intricacies of each country's amendment process, examining the roles played by legislative bodies, executive authorities, and judicial oversight. It also investigates the constraints and safeguards imposed on the amending power to preserve constitutional stability and protect fundamental principles. Through a nuanced examination of constitutional frameworks, the article sheds light on the complex interplay between constitutional

ISSN: 2582-6433

design and the democratic process.

By synthesizing diverse case studies and drawing parallels across different jurisdictions, this article offers valuable insights into the dynamic relationship between constitutional evolution and democratic governance. It highlights the challenges and opportunities inherent in constitutional reform, providing a comprehensive understanding of the mechanisms through which societies adapt their foundational legal frameworks to meet the evolving needs of their citizens.

KEY WORDS

Constitutional Amendment, Comparative Analysis, Indian Constitution, Global Perspectives, Legislative Process, Constitutional Framework, Judicial Oversight, Constitutional Stability, Fundamental Principles, Democratic Process, Constitutional Reform, etc.

INTRODUCTION

A constitution is a fundamental document that sets a framework of basic norms to facilitate coordination among members of a community. The Indian Constitution is the supreme law of the land, outlining the main political concepts, structures, procedures, and powers of government institutions, as well as an exhaustive list of fundamental rights and directive principles for its citizens.

A country's constitution is defined as the "supreme law of the land reflecting the general will of the people." To reflect the will of the people, the constitution cannot be a static document. It needs to be adaptable to changing conditions. The Indian Constitution's authors established Article 368 as a legal means of amending the constitution if necessary.

As we all know, the Constitution is regarded a living document rather than a static one. It's a document with extraordinary legal standing. It is the most sacred legal instrument in the country, the foundational law of the land from which all other laws spring, and the supreme law that all other laws must obey. The constitution of a country represents its residents' goals and aspirations.[1]

According to Oxford's Dictionary of Law – "Amendment means changes made to legislation for the purpose of adding to, correcting, or modifying the operation of the legislation." On a glance, the modification mechanism for the Constitution appears to be both flexible and rigid." The amendment method for the Indian constitution reflects the Constituent Legislative Assembly's goal to establish a dynamic document.

In the words of Jawaharlal Nehru "While we want this Constitution to be as solid and as

[1]Shubhangi Baranwal, Amendment of the Constitution- A Comparative Study between South Africa, UK, India & USA, Legal Desire International Journal on Law Vol. 8 Edition 25.

ISSN: 2582-6433

permanent structure as we can make it, nevertheless there is no permanence in Constitutions. There should be certain flexibility. If you make anything rigid and permanent, you stop a nation's growth, the growth of a living, vital, organic people. Therefore, it has to be flexible."

In any case, it will be required to alter the Constitution in many areas for the foreseeable future; as society changes, so must the law. Despite the fact that the Constituent Assembly spent many months creating the Constitution, there are certain to be flaws. Without adjustments, the administration will suffer.

If amendments are not provided, Parliament will resort to far harsher and dramatic measures. If there is no provision in the Constitution that permits them to shape the country's future, they will be forced to reject the entire Constitution. In such a case, the State will suffer.

Indian Constitution understands the necessity for adjustments in response to evolving societal demands. Second, the Constitution has been applied with appropriate flexibility in practice. Both political practice and judicial rulings have exhibited maturity and flexibility in their implementation of the Constitution. Because of these characteristics, the Indian Constitution is a living text as opposed to fixed rules.[2]

MEANING OF AMENDMENT –

In common parlance, "amendment" may convey the sense of "improvement" or a minor change in the main instrument, but when used in relation to a constitution, the word "amendment" carries all shades of meaning, including alteration, revision, repeal, addition, variation, or deletion of any provision of the constitution.

By usage, it has come to indicate any form of change brought about by the process of amendment in the constitution; it is used in the broadest conceivable sense. Herman Finer states that "to amend is to deconstitute and reconstitute."[3]

SIGNIFICANCE OF AMENDMENT –

To put it simply, an amendment is the revision, modification, or removal of a specific phrase or provision. An amendment to the law is a formal or official declaration of changes made to legal laws. Why do we need such a concept when many jurists, famous lawyers, and other notable individuals give their thoughts to establishing the fundamental law of the land? The solution to

[2] Shiv N.S., All you need to know about amenability of the Indian Constitution, https://blog.ipleaders.in/all-you-need-to-know-about-amenability-of-the-indian constitution/#Indispensability of amending provision in the Constitution, (last accessed on 22/03/2024)

[3] Hari Chand, The Amending Process in The Indian Constitution, Proquest Publication, 51-52

ISSN: 2582-6433

this can also be found in the articles of our constitution. We have other examples, such as the right to education, freedom of the press, reservation, provisions for Panchayats, Municipalities, GST, and so on, which were included in our original constitution. They were added over time.

Now, the goal of this modification approach is simply to improve things. It can take the form of adding, removing, or altering any provision of the law in order to improve or benefit society. Amendments are frequently utilised when it is preferable to amend an existing legislation rather than create a new one[4] and this authority to change is limited to the legislative branch.

The framers of the constitution made provisions for amendment in order to address any challenges that may arise in the future. The law, like time, is dynamic and ever-changing. People's social, economic, and political conditions are constantly changing, thus the country's constitutional law must adapt to meet their changing demands and lives. If no provisions for amendment were made to the constitution, the people would have to resort to extra-constitutional methods such as revolt to modify it.

The Indian constitution's founders wanted a charter that could develop with a rising nation and adapt to changing conditions. The Constitution must be updated on a regular basis. Nobody can claim this is the end. A stagnant constitution eventually becomes a major impediment to the nation's progress.[5]

NATURE AND SCOPE OF PROCEDURE OF AMENDMENT OF CONSTITUTION -

A country's constitution, like any other pragmatic instrument, must evolve to reflect societal developments. Constitutional amendments are brought about through two processes:

There are two types of constitutional amendments: de jure (formal) and de facto (informal), which can be accomplished by judicial interpretation.

Changes to the Constitution can be made by interpretation by courts, legislation to fill gaps, or changes in conventions and use.

Flexible and Rigid Constitutions - The amending methods are divided into two categories: Rigid and flexible.

1. Rigid methods, such as those in the United States, Australia, Canada, and Switzerland, make

[4] Jain, M.P., Indian Constitutional Law, LexisNexis Butterworths Wadhwa, Nagpur, 2012.
[5] Shubhangi Baranwal, Amendment of the Constitution- A Comparative Study between South Africa, UK, India & USA, Legal Desire International Journal on Law Vol. 8 Edition 25.

ISSN: 2582-6433

it difficult to alter the constitution.

2. Flexible procedures, such as those in the United Kingdom, make amending the constitution simple and can be done through normal legislation.

However, while being classed as rigid in the Indian constitution, the method has shown to be flexible in practice.

In India, Article 368 grants the power of modification. The procedure to be followed in India is neither strictly rigid nor flexible, and there is also a difference in procedure when it comes to the federal character of the Union. An amendment can be introduced in either House. In India, all constitutional amendments can be carried out with a Special Majority, which means that they must be passed by both houses with more than half of the total number of members present and voting.

PROCESS OF AMENABILITY OF CONSTITUTION OF INDIA –

Article 368 of Part XX of the Constitution addresses the competence of parliament to modify the constitution and its procedures. Parliament has the authority to alter the Constitution by adding, modifying, or repealing provisions, following a specific procedure. Parliament cannot change provisions in the Constitution's 'basic structure'. This was decided by the Supreme Court in the Kesavananda Bharati case (1973).

- The Constitution allows for two types of amendments: special majority of Parliament and ratification by half of state legislatures with a simple majority.
- Certain provisions of the Constitution can only be amended by a simple majority of each house present and voting. These amendments are not considered amendments under Article 368.

The following provisions pertain to amendments in the constitution:

1) Many articles that can be altered by the Parliament by a simple majority include Article 4, Article 189, and Article 243, which are not subject to the method outlined in Article 368 of the Constitution.
2) Articles of the constitution that can be altered by special majority, such as FRs and DPSPs.
3) Articles requiring approval by at least ½ of state legislatures, in addition to the aforementioned special majority, include: -

ISSN: 2582-6433

i. Presidential election (Articles 54 and 55).
ii. Executive authority of the Union and states (Articles 73 and 162)
iii. Articles 214-231 and 133-147 pertain to the judiciary in the union and state high courts.
iv. Legislative link between authority and state (Articles 245-255)
v. State representation in Parliament (IV Schedule)
vi. Article 368 itself.

The procedure for amendment under Article 368 is as follows: a bill to amend the constitution may be introduced in each house of Parliament, and it must be passed by a majority of the total membership of the at house, as well as a majority of not less than two-thirds of the members present and voting. When a measure is enacted by both chambers, it is brought to the president for his assent, who will grant access to the law and alter the constitution.[6]

STEPS OF AMENDING PROCEDURE OF CONSTITUTION OF INDIA -

The procedure for amending the Constitution, as provided down in Article 368, is as follows:

- To initiate an amendment to the Constitution, a bill must be introduced in either House of Parliament (Lok Sabha & Rajya Sabha), not in the state legislatures.
- The bill can be introduced by either a minister or a private member and does not need prior approval from the president.
- For the bill to pass, it requires a special majority in each House, meaning more than 50% of the total membership of the House and two-thirds of the members present and voting.
- Both Houses must individually pass the bill.
- If there's a disagreement between the two Houses, there's no provision for a joint sitting to resolve it.
- If the bill aims to amend federal provisions of the Constitution, it must also be ratified by half of the states' legislatures with a simple majority.
- Once passed by both Houses of Parliament and ratified by the necessary state legislatures, the bill is presented to the president for assent.
- The president must give assent to the bill; he cannot withhold it or return it for reconsideration by Parliament.

[6] Shubhangi Baranwal, Amendment of the Constitution- A Comparative Study between South Africa, UK, India & USA, Legal Desire International Journal on Law Vol. 8 Edition 25.

ISSN: 2582-6433

- Upon receiving the president's assent, the bill becomes an Act, known as a constitutional amendment act, and the Constitution is amended accordingly.[7]

THREE TYPES OF AMENDMENTS UNDER THE INDIAN CONSTITUTION

1. Amendment by Simple Majority

This amendment is not covered by Article 3684 of the Indian constitution. An amendment can be made when fifty percent of the members are present on a given day and vote on any issue. There are numerous laws and motions that can be carried by a simple majority of the two houses of parliament. Article 3 of the Indian constitution allows for a simple majority to change a state's boundary, establish a new state, or admit a new state. Article 11 of the constitution grants the parliament the power to introduce citizenship laws. Article 3 also allows for the abolition or formation of new legislative bodies.

2. Amendment by Special Majority

Most provisions of the constitution can only be modified with a special majority in both chambers. In layman's words, it means that more than half and two-thirds of the members of both chambers of Parliament must be present and vote. Some of which are –

- According to Article 61 of the Indian constitution, impeachment of a president requires a special majority.
- It is also necessary for declaring a national emergency.
- Fundamental rights can also be changed through special majority.

3. Amendment by Special Majority and Ratification by States

Certain articles of the Indian constitution can only be altered with a special majority and acceptance by half of the state legislatures. This is done because states play a significant influence in certain changes. Some of the scenarios when a special majority combined with ratification is required are listed below.

- Articles 54 and 555 govern presidential elections, whereas Articles 124-147, 214-231, and 241 govern the authority of Supreme Courts, High Courts, and Union Territories, which require special majorities and ratification by states.
- In Article 368, both requirements are necessary.

[7] Types of Amendments & Constitutional Amendment Process in India, https://byjus.com/free-ias-prep/types-of-amendment/#:~:text=There%20are%20three%20ways%20in,half%20of%20the%20state%20legislatures, (last accessed on 20/03/2024)

ISSN: 2582-6433

- States' representation in Parliament.

RESTRICTIONS TO PARLIAMENT'S AMENDING POWER -

In the landmark 1973 Kesavananda Bharati case, the Supreme Court of India pronounced that while Parliament possesses the authority to amend various parts of the constitution, it is barred from altering the "basic structure of the constitution". The exact delineation of what constitutes the basic framework has not been explicitly outlined by the court.

However, it encompasses principles such as those enshrined in the preamble, including secularism and equality, along with concepts like federalism, the separation of powers, an independent judiciary, and the rule of law. Through various judicial pronouncements, certain elements have emerged as fundamental aspects of the Constitution, including the supremacy of the Constitution, the establishment of a welfare state promoting socio-economic justice, the principle of equality, and the sovereign, democratic, and republican nature of the Indian polity.

Other critical features encompass judicial review, ensuring free and fair elections, maintaining the secular character of the Constitution, safeguarding the freedom and dignity of the individual, upholding the independence of the Judiciary, and delineating the separation of powers between the legislature, the executive, and the judiciary. Additionally, the parliamentary system, the limited power of Parliament to amend the Constitution, and the federal character of the Constitution are integral components.

Moreover, principles such as the rule of law, ensuring effective access to justice, preserving the unity and integrity of the nation, fostering harmony and balance between Fundamental Rights and Directive Principles, and upholding reasonableness are deemed essential pillars of the Indian constitutional framework.

ANALYSIS OF AMENDMENT PROCEDURE IN INDIA -

1) Unlike in the United States, there is no specific body designated to amend the Constitution in India, such as a Constitutional Convention or Assembly.
2) The power to amend the Constitution is primarily vested in Parliament, although state legislatures have limited authority in certain cases.
3) Parliament holds the authority to propose constitutional amendments, while state legislatures cannot initiate changes to the Constitution except in rare instances, such as urging Parliament to create or abolish legislative councils.

ISSN: 2582-6433

4) There is no prescribed time limit for state legislatures to approve or reject proposed amendments, and it remains unclear whether states can retract their approval once granted.
5) In the event of deadlock between both Houses of Parliament over a Constitutional Amendment Bill, there is no provision for a joint session to resolve the impasse.
6) The provisions governing the amendment procedure are often ambiguous, leading to legal challenges and court intervention.

JUDICIAL SCRUTINY OF THE AMENDMENTS TO THE CONSTITUTION

1. Shankari Prasad V. Union of India 1951[8]

This case was a challenge to the First Amendment Act of the Constitution. It was about completing the Zamindari programme. This move was condemned because it violated property rights. It progressed from a basic right to a constitutional right6 over time. This article resulted in the addition of articles 31A and 31B. This issue first arose in this case, when it was established that the term "law" in Article 13 refers to ideas enshrined in common law. It excludes constitutional modifications made under the unique procedure of Article 368. As a result, by altering the constitution, parliament may strip them of their fundamental rights.

2. Sajjan Singh V. State of Rajasthan 1965 [9]

The 17th CAA, which included the ninth edition, was challenged in this instance. Anything in Schedule 9 will be subject to legal examination. The Supreme Court found in Shankari Prasad's favour with a 3:2 majority, saying that parliament had the authority to modify basic rights. According to J. Gajendragadkar, constitutions lack an explicit phrase indicating that parliament cannot amend basic rights. However, this choice did not please J. Hidayatullah and J. Mudholkar.

3. Golak Nath V. State of Punjab1967[10]

The Supreme Court overruled prior decisions, holding that fundamental rights are sacred and have "superior and immutable" status, and that parliament has no authority to change Part III of the constitution to remove or restrict essential rights. In Article 13, the term 'law' includes the word 'amendment.' If the writers of the Constitution meant to preclude modifications to Article 13, they would have stated so clearly. Furthermore, Section 13 (3) uses fairly broad phrases. It is

[8] 1951 SCR 89: AIR 1951 SC 458
[9] 1965 AIR 845, 1965 SCR (1) 933
[10] 1967 AIR 1643; 1967 SCR (2) 762

ISSN: 2582-6433

stated in Article 13 that if there is no alternative to change, a constitutional amendment will not violate fundamental human rights. It is employed to produce a future effect.

4. 24th Amendment Act 1971

In response to the Supreme Court's verdict in the Golak Nath case, Parliament passed the 24th amendment, overturning it. The amendment adds Article (4) of Section 13 to clarify that the term "law" in Article 13 does not cover constitutional modifications, and Article (3) of Section 368 explicitly indicates that parliament may change any aspect of the constitution, including Fundamental Rights.

5. Keshavanand Bharti V. State of Kerala 1973[11]

In this case, the constitutionality of the 24th Amendment was challenged. The Supreme Court reversed its decision in the Golak Nath case, upholding the constitutionality of the 24th Amendment and declaring that parliament has the authority to limit or eliminate any basic rights. At the same time, the Supreme Court performed its function as the custodian of people' fundamental rights by developing the traditional 'Doctrine of Basic Structure' of the Constitution. According to it, the parliament has the authority to change fundamental rights, but not those that are part of the constitution's 'basic framework'. The term "basic structure" refers to the fundamental pillars that support the Constitution. This notion was adapted from the Wilmer Constitution (Germany) to provide basic rights for all individuals while preventing the state from infringing on them. In conclusion, Keshavanand Bharti's decision overruled the Golaknath Case while upholding Shankari Prasad on the idea of basic structure. The theory of the basic structure of the Constitution was reaffirmed and applied by the Supreme Court in Smt. Indira Nehru Gandhi vs. Raj Narain case11 and certain amendments to the Constitution were held void.

The impact of various Supreme Court decisions can be summarized as follows:[12]

1. Parliament's authority to amend the constitution is limited.
2. Parliament is prohibited from undermining or abolishing the fundamental features of the Constitution.
3. Compliance with the prescribed amendment procedure is obligatory, and failure to adhere

[11] (Writ Petition (Civil) 135 of 1970)
[12]Chirag Patel RS, Amendment of The Constitution In India And US: A Comparative Study, Indian Journal of Integrated Research In Law, Volume II Issue II | ISSN: 2583-0538

ISSN: 2582-6433

to it renders the amendment invalid.

4. Clauses (4) and (5) added to Art. 368 by the 42nd Amendment Act are deemed invalid as they infringe upon the right of judicial review.
5. Parliament cannot expand its amending authority by modifying Art. 368.

CRITICISM OF AMENDMENT PROCEDURE IN INDIA

The amendment procedure in India has faced criticism due to several shortcomings. While the objective of empowering the people and ensuring governmental accountability was noble, the procedure predominantly vests amending authority in Parliament. This concentration of power limits the role of state legislatures in decision-making processes, as certain provisions can be amended without their input. Unlike the United States, India lacks a specialized body like a constitutional convention or assembly dedicated to constitutional amendments.

Moreover, the absence of a mechanism for resolving disputes through joint sessions between the houses poses a significant flaw. If an amendment is rejected by either house, the entire process must be restarted from the bill's introduction stage. Additionally, the lack of a specified timeframe for houses to approve or reject a bill adds uncertainty to the process, resembling the legislative process rather than a unique constitutional amendment process. Furthermore, the Constitution is silent on whether states can retract their approval once granted.

These procedural ambiguities provide ample room for legal challenges, ultimately leading to judicial intervention. Despite these criticisms, it cannot be overlooked that the current amendment procedure has benefitted society in many ways. Its balance between flexibility and rigidity prevents easy manipulation by ruling parties while still allowing necessary changes to be made. Overall, while improvements could be made to address the identified flaws, the existing procedure has contributed positively to the functioning of India's constitutional democracy.[13]

UNITED KINGDOM –

The United Kingdom does not have a codified constitution, but many of its resources are written and published. It also lacks the government framework that the United States possesses. The UK Parliament has the right to modify the Constitution via standard legislative procedures. According to the UK Constitution, the right to create or unmake any law exists; additionally, English law recognises no individual or body as having the authority to overturn or set aside Parliamentary

[13] Mohanty, Deba Prasad. "The Procedure for Constitutional Amendments in The Commonwealth." Journal of The Indian Law Institute, Vol. 11, No. 1, 1969, Pp. 87–99. JSTOR, WWW.JSTOR.ORG/Stable/43950011. (last accessed 15/03/2024).

ISSN: 2582-6433

legislation. The United States, India, and the United Kingdom all have elected heads of state (presidents), though in Britain, the role is held by a monarch.

There is no specific legal method for modifying (amending) the constitution, which means that, for example, Parliament may change the composition of the House of Lords by passing the 1999 Act, and the Judiciary would have no way to challenge that decision. As a result, the UK government may be updated to match the demands of today's society, if necessary. Similarly, the British constitution is unitary. This means that the central government can transfer powers to local councils, but it can remove such powers at any time because they are not guaranteed by the constitution. Stormont's government was suspended because Nationalists and Unionists could not reach an agreement on power-sharing. A federal system (shared sovereignty) divides authority between a central (federal) government and multiple state governments, similar to the United States and Germany.

In comparison to the United States and India, the United Kingdom has a clear amendment procedure. The United Kingdom Constitution establishes a framework for political governance in the United Kingdom of Great Britain and Northern Ireland. Most countries' constitutions have been combined into a single document, but not the United Kingdom's. The UK Supreme Court recognises constitutional notions such as the rule of law, parliamentary sovereignty, democracy, and respect for international law, but does not define them.[14]

The Parliament, Judiciary, Executive, and Regional/Local Governments. Certain parliamentary acts have a special constitutional character, which is recognised by the UK Supreme Court. In 1215, the King was obligated to convene a 'common council,' today known as Parliament, to represent the people, assure fair trials, keep courts in a fixed site, ensure free movement of people, and safeguard 'common' people's land rights. Magna Carta also emancipated the church from the state. The Act of 1689 established Parliament's jurisdiction over the monarchy, churches, and other institutions. Following the English Civil War and the Glorious Revolution, the courts declared that "the election of members of parliament ought to be free."

The Representation of the People (Equal Franchise) Act of 1928 in the United Kingdom assures that every adult gets the right to vote following a lengthy political reform process. The United Kingdom's constitution includes four important institutions which are Parliament, Judiciary, Executive and the Regional or the Local Government.

"Adult voters are represented in Parliament, the country's supreme legislative assembly. It consists of two residences, which are mentioned as follows:

[14] Eesha Sharma and Asmit Chitransh, Amending Constitution Comparative Study of India, United Kingdom and The United States of America, International Journal of Legal Science and Innovation, [VOL. 3 ISS 4; 745]

ISSN: 2582-6433

• The House of Commons is elected democratically in 650 seats.

• The House of Lords is generally appointed by cross-political parties from the House of Commons. [15]

A new Act of Parliament, which is considered the greatest form of law, must be read, amended, or approved three times by both Houses.

To create a new Act of Parliament, which is considered the highest form of law, both Houses must read, alter, or adopt proposed legislation three times each. After parliament's actions are passed, the judiciary interprets and develops the law. Above all, the highest court is the twelve-member UK Supreme Court, which hears appeals from the courts of Appeal in England, Wales, and Northern Ireland, as well as the Court of Session in Scotland.

AMENDMENT IN UK CONSTITUTION

Because the United Kingdom lacks a written constitution, parliament (the legislature) has the last word on all quasi-constitutional issues through a simple majority vote. There cannot be an entrenchment clause or special mechanism that prohibits the legislature from making constitutional amendments, such as changes to the government's apparatus. Although Parliament is the only and final authority on all quasi-constitutional subjects, the Human Rights Act is given priority over all legislation; the act itself can be repealed or altered by a simple majority of Parliament.

The Scotland Act of 2016 has stipulations that state that Scotland's developed government cannot be abolished without a referendum; however, the Parliament of the United Kingdom may waive the referendum requirement with a simple majority. Thus, such phrases, or entrenchment clauses to be specific, are a little more than expressions of hope and sentiment on the part of a Parliament. "Similarly, the Fixed-term Parliaments Act of 2011 prohibits a Prime Minister from dissolving Parliament and calling general elections, as was the case previously. The Early Parliamentary General Election Act of 2019 lifted the restriction on the Prime Minister's ability to call a general election. Some individuals regard this authority granted to the UK parliament as a weak loophole in the constitution or the British system, while others see it as a symbol of the electorate's unconstrained democratic power to effect swift and dramatic change. As a result of such clauses in the British legal system, no parliament may bind its successor. Apart from not being able to bind a successor, parliament in the British system is also unable to establish any meaningful entrenchment clauses that could limit future governments."

[15] Eesha Sharma and Asmit Chitransh, Amending Constitution Comparative Study of India, United Kingdom and The United States of America, International Journal of Legal Science and Innovation, [VOL. 3 ISS 4; 745]

ISSN: 2582-6433

CRITICISM OF THE UK AMENDMENT PROCEDURE

Uncertainty - The UK constitution is uncertain because it can be difficult to comprehend. It is particularly applicable to unwritten elements. For example, according to the convention of individual ministerial responsibility, ministers are responsible for errors made by their own departments; however, does this imply or mean that they should resign when a civil servant makes a mistake, or only when the minister makes the mistake? Furthermore, what is the scope of this situation? Is it necessary for the minister or anyone else to resign, or does the minister alone need to provide answers and correct the mistake? This type of misinterpretation is possible because the constitution is inherently unclear.

Elective Dictatorship - Once elected, the government can essentially do whatever it wants until it seeks re-election. The parliament possesses sovereign powers. The current government consistently controls and even dominates the parliament. Anything in the constitution that gives the idea that the United Kingdom lacks a constitution, the government may amend it.

Centralization - In the United Kingdom, the prime minister often holds the majority of cabinet positions. Typically, the executive oversees the powers and operations of parliament. Furthermore, the national government controls local administration, and the House of Commons wields more influence than the House of Lords.[16]

UNITED STATES -

The United States Constitution, like India's, is the supreme law. Originally, it just had seven articles. It entered into force in 1789 and has been revised nearly 27 times since then. The first set of amendments, a collection of ten amendments, became known as the Bill of Rights; following these ten amendments, another 17 amendments were introduced, with the goal of expanding civil rights safeguards. The United States Constitution begins with "We the people," emphasising that the government exists to serve the country's citizens. Article V provides for amendments to the United States Constitution. Amendments under this Article can be made by:

i Amendments proposed by Congress.

ii Amendments proposed by Convention.

AMENDMENTS PROPOSED BY CONGRESS

[16] Eesha Sharma and Asmit Chitransh, Amending Constitution Comparative Study of India, United Kingdom and The United States of America, International Journal of Legal Science and Innovation, [VOL. 3 ISS 4; 745]

ISSN: 2582-6433

When proposed by Congress, the process begins with the introduction of a joint resolution, requiring approval by a two-thirds majority in both the House of Representatives and the Senate. The resolution must be passed by a majority of members present and voting. Following congressional approval, the proposed amendment is then sent to the states for ratification. Ratification requires approval by three-fourths of the state legislatures or by ratification conventions convened in each state, as outlined in Article V of the US Constitution. Once ratified, the proposed amendment becomes a valid and enforceable part of the Constitution.

AMENDMENTS PROPOSED BY CONVENTION

Alternatively, amendments can be proposed through a National Constitution Convention initiated by a petition from two-thirds of the states. However, the rules governing the proceedings of such a convention are not clearly defined. Despite its potential, this method has seen limited success, with only one amendment being successfully ratified through a convention.

Compared to other countries like India and the UK, the US Constitution is often viewed as rigid due to its stringent amendment process. The requirement for a two-thirds majority in both houses of Congress and subsequent approval by three-fourths of the states reflects the deliberate and cautious approach to amending the foundational document of the nation.

CRITICISM OF US CONSTITUTION AMENDMENT PROCEDURE

The amendment process in the United States is rigid. The method for amendment is more stringent. For example, around 10,000 revisions were suggested to the constitution, but both houses only accepted 33. When these 33 amendments were sent to the states, only 27 were eventually confirmed and accepted. Given this, amending the United States Constitution is extremely tough. Furthermore, if we look at the division of power, states have been given a lot of freedom to modify the constitution.[17]

SWITZERLAND -

The Swiss Constitution can be modified in two ways: total revision and partial revision or amendment.

PROCESS OF TOTAL CONSTITUTIONAL REVISION

[17]Eesha Sharma and Asmit Chitransh, Amending Constitution Comparative Study of India, United Kingdom and The United States of America, International Journal of Legal Science and Innovation, [VOL. 3 ISS 4; 745]

ISSN: 2582-6433

A full constitutional revision is the adoption of a new or substantially revised constitution. Total revision could be affected in any of the three ways described below:

I. In Switzerland, the process for amending the constitution involves a referendum if both houses of the Federal Parliament approve the proposed changes. If the majority of voters and all Cantons support the proposed amendments, they are enacted. However, if either the voters or the Cantons, or both, reject the changes in the referendum, the proposed amendments are rejected, and the existing constitution remains unchanged.

II. Alternatively, if one house of the Federal Parliament approves a complete change to the constitution but the other house does not, the matter is decided by a referendum. If the majority of Swiss voters support the proposed changes, new elections are held for the Federal Parliament. The newly elected Parliament then drafts a revised constitution, which is again put to a vote. If the majority of voters and Cantons approve the revised constitution, it replaces the existing one.

III. Furthermore, a complete change to the constitution can be proposed through an Initiative, initiated by one hundred thousand Swiss voters. In this case, if the majority of voters support the proposal in a referendum, the Federal Parliament drafts a new constitution, which is then voted on. If the majority of voters and Cantons approve the new constitution, it becomes law.

Historical examples include the complete overhaul of the Swiss Constitution in 1998–1999, where the Federal Parliament passed a revised constitution, which was subsequently approved by the people and Cantons in a referendum. The new constitution came into effect on January 1, 2000, following the passage of a law by the Federal Parliament.

PROCESS OF PARTIAL REVISION OR AMENDMENT OF THE CONSTITUTION

The process of partially revising or amending the Swiss Constitution involves two main avenues:

1. **Initiated by Federal Parliament:** Both houses of the Federal Parliament can propose changes to specific parts of the constitution. This proposal then undergoes a referendum where the Swiss people vote on it. If the majority of the people and Cantons support the proposal, the amendments are incorporated into the Constitution.

2. **Through Popular Initiative:** Alternatively, a proposed partial amendment can be initiated by one million Swiss citizens submitting a broad petition. If this initiative garners enough support, a referendum is held. The Federal Parliament then drafts the specific modifications based on the general request made by the people. If the initiative receives majority support in the referendum, the proposed amendments become part of the Constitution.If the initiative

ISSN: 2582-6433

for a partial change is presented as a complete draft, the Federal Parliament deliberates on the text. The proposed amendment is either approved or rejected by the Parliament, following which it is put to a referendum. If the majority of both the people and the Cantons approve the amendment, it is integrated into the constitution. This process is characterized by its complexity, involving two distinct stages: the Proposal Stage and the Approval Stage. Proposals may originate from either the Federal Parliament or through a popular initiative supported by one million Swiss voters.[18]

At the approval stage, the proposed amendment must garner the support of a majority of both Swiss voters and Swiss cantons. However, in practice, the process has proven to be neither overly stringent nor excessively difficult. Between 1874 and 1999, the Swiss Constitution underwent approximately 80 partial amendments. In 1999, a significant milestone was reached when the Swiss Constitution was completely rewritten and consolidated. This overhaul incorporated all changes made between 1874 and 1999, along with the addition of a bill of rights, social objectives, a more detailed delineation of federal powers, and regulations governing federal-cantonal relations. Prior to this comprehensive revision, the Swiss Constitution comprised 123 articles; post-revision, it expanded to encompass 196 articles.

The legal process of amending the Swiss Constitution has, in practice, become less arduous, largely owing to the maturity of Swiss voters and the tradition of consensus-building. A defining feature of the amendment process is the requirement for the consent of both the populace and the cantons. If a majority of the populace in a canton approves the proposed amendment, it is deemed to have received their endorsement. In essence, the Swiss Constitution amendment procedure embodies the principle of popular sovereignty in action.

CANADA -

A new federal-provincial meeting was requested. Prime Minister Trudeau argued for a procedure similar to that articulated in the Victoria Charter. The "Vancouver formula," which permitted the Constitution to be amended with the permission of two-thirds of the provinces representing at least 50% of the population, was supported by all bar Ontario and New Brunswick. This plan also provided a means to cancel and get full payment. During the final talks, compensation for everyone but culture and language was dropped. Quebec refused to participate in this accord, which eventually became the Constitution Act of 1982 with a few minor revisions. The

[18] Navisha Uzaira Khan, Kohelica Nag, Comparative Study of The Amendment Procedure in India, Switzerland, Canada, USA, France And Germany, 2023 Ijrar October 2023, Volume 10, Issue 4

ISSN: 2582-6433

Constitution Act of 1982 made the following constitutional amendment process official.

THE GENERAL AMENDING FORMULA (SECTIONS 38, 39, 40 AND 42)

According to Section 38 of the Act, the Canadian Constitution may be amended by resolutions of the Senate, House of Commons, and two-thirds (seven) of the provinces (with at least 50% of the population of all provinces combined), unless a specific provision states otherwise. The territories have no say in the process of change. A province that opposes an amendment affecting provincial legislative powers, property rights, or other privileges may voice its opposition with a resolution. In such a case, the amendment has no impact in that province. After the final requisite resolution has been passed, the Governor General may make a proclamation to execute the amendment.

Section 39 sets the timelines for modifying the Constitution. Within three years of the adoption of the resolution that kicks off the amendment process, all essential resolutions must be passed and a proclamation issued. In contrast, an amendment cannot be declared until one year after the initial resolution has been passed, unless all provinces have either agreed to or disagreed with the amendment.

Section 40 requires any province that objects with an amendment transferring provincial legislative authority over education or culture to Parliament to be adequately compensated.

Section 42 stipulates that the general amending formula must be employed to enact changes to specific aspects, including:

a) The principle of equal representation for provinces in the House of Commons;
b) The powers of the Senate and the procedure for appointing senators;
c) The allocation of senators from each province and the residency criteria for senators;
d) The structure of the Supreme Court of Canada, excluding its composition;
e) The inclusion of territories into existing provinces;
f) The creation of new provinces.

Amendments requiring unanimity, as outlined in Section 41

It necessitates the passage of a resolution by all legislatures, including Parliament, signifying unanimous agreement. These cases include:

i. Changes related to the offices of the Queen, Governor General, and Lieutenant Governor;
ii. Ensuring that a province's entitlement to representation in the House of Commons is no less than the number of senators representing it;

ISSN: 2582-6433

iii. Amendments concerning the use of French and English languages, contingent upon the provisions regarding the involved parties;
iv. Alterations to the composition of the Supreme Court;
v. Modifications to the process for amending the Constitution.

Amendment of provisions relating to some but not all provinces, as detailed in Section 43, entails changes applicable only to specific provinces, which can be amended if both Parliament and the legislatures of those provinces agree. This procedure proves particularly relevant for:

I. Modifications to the boundaries between provinces;
II. Amendments to regulations governing the use of English and French languages within a province.

Furthermore, under Section 44, Parliament holds exclusive authority to amend the Canadian Constitution concerning matters pertaining to the executive government or the Senate and House of Commons.

In addition, Section 45 specifies that each province retains the authority to amend its own constitution, with the exception of provisions requiring unanimous consent.

FRANCE -

Article 89 of the Constitution provides an amending formula. A constitutional bill must first win approval from both houses of Parliament. The measure must then be passed by Congress, a special joint session of the two chambers, or placed to a vote. Furthermore, the Constitution stipulates two ways it can be amended: through a referendum (Article 11) or a parliamentary procedure with presidential consent. Constitutional revisions usually require unanimous approval from both houses of Parliament, followed by a simple majority vote in a referendum or a three-fifths supermajority in the French Congress, which is a combined session of both chambers (article 89). Article 89 of the French Constitution outlines the procedures for amending the Constitution, encompassing the following key provisions:

a. Both the President of the Republic and members of Parliament, upon the proposal of the Prime Minister, possess the authority to propose amendments to the Constitution.
b. For an amendment to be enacted, both chambers of Parliament must pass a Government or Private Member's Bill in precisely the same wording, adhering to the time frames specified in Article 42's third paragraph.
c. Following parliamentary approval, the proposed amendment is subject to a referendum vote before coming into effect.

ISSN: 2582-6433

d. In the event that a Government Bill to amend the Constitution is referred to Congress by the President of the Republic, it must secure a three-fifths majority vote in Congress for approval.
e. The National Assembly assumes responsibility for conducting the Congress proceedings.
f. No amendment procedure can be initiated or maintained if the territorial integrity of the country is jeopardized.
g. It is stipulated that no amendment shall alter the republican form of government entrenched in the Constitution. [19]

GERMANY -

The history of Germany, whether through the Kaiserreich, the Grossdeutsches Reich, or the Bundesrepublik, has proved the importance of a powerful source of law to control a government that has oscillated between supremacy and horror more frequently than can be imagined. The German Republic's Basic Measure contains the forceful statement: "The Basic Law may only be modified by a law that expressly alters or supplements its wording." An amendment, like Article V of the United States Constitution, requires approval by a two-thirds majority of both the Bundestag and the Bundesrat.

The history of the Federal Republic of Germany's Basic Law (hereinafter "Basic Law") demonstrates a more changeable model than that of the United States, but not one that allows for anarchy. The history of the Basic Law is divided into three separate periods: one of frequent modification, one of near-complete stability, and one of great activity around Germany's reunification following the fall of the German Democratic Republic. The first was an attempt to address some of the Basic Law's initial inadequacies. Once this level of stability was achieved, there was a long period of peace during which the Basic Law was rarely violated. However, the German constitutional amendment strategy was put to the test in the early 1990s.

Germany has a stringent amendment process, yet it allows for required revisions to address both domestic and global challenges. The quick demise of the Soviet Union, as well as the emancipation of its vassals in Eastern Europe, produced a surge in pro-reunification sentiment within Germany, if not necessarily outside of it. It was not enough to merely include new territory in the Basic Law. This posed a challenge for those in the German administration who wanted to

[19] Navisha Uzaira Khan, Kohelica Nag, Comparative Study of The Amendment Procedure in India, Switzerland, Canada, USA, France And Germany, 2023 Ijrar October 2023, Volume 10, Issue 4

ISSN: 2582-6433

reunite the country as soon as possible without invoking the Basic Law provisions that appeared to demand the formation of a new constitution upon reunification. However, Article 23 appears to give room for the constitution to be expanded to "other areas of Germany after their accession."[20] To accomplish this, the German government responded quickly and firmly, changing article 146 of the Unification Treaty on August 31, 1990, and a federal regulation on September 23, 1990, allowing for the straightforward entrance of the states of the former German Democratic Republic into the nation.[21] As a result, Article 146 was altered to read, "This Basic Law, which applies to the whole German people now that Germany is united and free, will stop being in effect on the day that a constitution decided on by a free vote of the German people goes into effect."[22] This article was originally intended to state that anytime there was a chance for the country to come together, a fresh election for a new constitution should be held. The swift and decisive revision procedure could take into account the people's yearning for reunification, France's opposition, and the demise of the East German State.[23]

COMPARATIVE ANALYSIS OF AMENDING PROCEDURES OF DIFFERENT COUNTRIES

The amending procedures for the constitutions of India, the United Kingdom (UK), the United States of America (USA), France, Switzerland, Canada, and Germany display a rich tapestry of approaches, each tailored to the unique constitutional framework and historical context of its respective nation. In India, amendments are initiated by Parliament and typically require a special majority, with certain amendments also necessitating ratification by state legislatures, ensuring a balance between federal and central authority. The UK, anchored in the principle of parliamentary sovereignty, allows constitutional amendments through regular legislative processes, underscoring the primacy of Parliament in the governance structure.

In stark contrast, the USA's constitutional amendment process is notably stringent, demanding a two-thirds majority in both houses of Congress and subsequent ratification by state legislatures or conventions, reflecting the framers' intent to safeguard the Constitution's integrity while accommodating evolving societal norms. France's procedure combines parliamentary approval with elements of direct democracy, enabling significant amendments to be ratified through national referendums, thereby ensuring that constitutional changes reflect the will of the

[20] Section 23 of the Basic Law for the Federal Republic of Germany
[21] Amended Section 146 of the Basic Law for the Federal Republic of Germany
[22] Article 146 of the Basic Law for the Federal Republic of Germany
[23] Navisha Uzaira Khan, Kohelica Nag, Comparative Study of The Amendment Procedure in India, Switzerland, Canada, USA, France And Germany, 2023 Ijrar October 2023, Volume 10, Issue 4

ISSN: 2582-6433

populace.

Switzerland's approach underscores the nation's commitment to direct democracy, with citizens empowered to propose and approve constitutional amendments through referendums, fostering a deeply participatory democratic ethos. In Canada, a general amending procedure involving federal and provincial approval prevails, with unanimity required for certain constitutional matters, reflecting the nation's federal structure and commitment to intergovernmental cooperation.

Germany's Basic Law mandates a rigorous amendment process, with amendments necessitating two-thirds approval in the Federal Parliament, or Bundestag, and sometimes requiring consent from affected states, known as Länder, highlighting the country's commitment to stability and consensus-building in its federal system.

In essence, each country's amending procedure is a reflection of its constitutional principles and democratic values, striving to strike a delicate balance between the need for stability and the imperative to adapt to evolving societal needs and aspirations.

CONCLUSION

A comparative analysis of constitutional amendment processes offers valuable insights into the diverse approaches adopted by different nations, shedding light on the intricacies of democratic governance and legal frameworks. The constitution of a country is described as the “supreme law of the land reflecting the general will of the people.” To be reflective of the will of the people, a constitution cannot remain a static document; it has to be responsive to changing conditions. Examining the amending procedures of various countries, including India, the United Kingdom, the United States, France, Switzerland, Canada, and Germany, reveals both commonalities and distinctions. While some nations prioritize parliamentary supremacy with relatively flexible procedures, others safeguard foundational principles through rigid amendment mechanisms. The Indian Constitution, with its elaborate procedure outlined in Article 368, strikes a balance between parliamentary sovereignty and the protection of fundamental principles, as evidenced by judicial scrutiny and the doctrine of basic structure. Comparing these processes underscores the importance of adaptability to societal needs while upholding constitutional integrity, emphasizing the dynamic nature of constitutional governance and the imperative of safeguarding democratic principles across diverse contexts. Through such comparative studies, scholars and policymakers

ISSN: 2582-6433

can glean valuable insights to inform constitutional reform initiatives and strengthen democratic institutions worldwide.