



# **COMPARATIVE STUDY OF THE AMENDMENT PROCEDURE IN INDIA, SWITZERLAND, CANADA, USA, FRANCE AND GERMANY**

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## **ABSTRACT**

Amendments to the Constitution are deeds or other activities that will enable such changes. More specifically, these deeds and activities will remove all or parts of the rules and substitute new legislation. These adjustments are necessary in order to breathe new life into the texts and strengthen democracy. Constitutions need to amend over time to fix parts that don't work or aren't good enough, to meet new needs or changing public demands, and to reflect how people think about their rights. A living constitution would often change on its own, as new political norms emerge or as the courts interpret it. But there is also a need for constitutional amendments, which are formal ways to change the words in a constitutional text. So, almost all modern constitutions have rules about how and when formal changes to the constitution can be made. Most constitutions say that amendments can't be made unless they go through a special process that is stricter than what is needed for regular laws. Special procedures include things like requiring a supermajority in the legislature or direct approval from the voters in a referendum, or even a mix of two or more different special procedures. In some places, the people themselves can start a process that leads to a referendum on changing the constitution. Constitutional amendment brings up a lot of complicated legal questions about how it can help protect constitutional democracy. Those questions will be answered differently depending on whatever interpretation of the Constitution you use.

Keywords: Amendment, Constitution, Provisions, Democracy and Legislature.

## CHAPTER-1

### 1.1 INTRODUCTION

A "correction or improvement" is what a "amendment" means. A constitutional amendment is a formal way to change the words in a constitutional text. Over time, constitutions should be changed to fix parts that aren't working or to meet new needs, like adding to rights, etc. If that doesn't happen, the text of a constitution can't change over time to reflect changes in society and changes in political needs. But the constitution also needs to be kept safe from changes that are made for short-term or partisan reasons. Nearly all modern constitutions have some kind of formal procedure for making changes. So, for people who write constitutions, the important question is not so much whether there should be a clause about formal changes, but what needs to be thought about when writing it.

The Indian constitution is one of the most interesting pieces of writing in the world. Our constitution is the longest and most detailed of any in the world. But even though this document is very detailed, what helps make it so interesting is how flexible it is. The people who wrote our constitution meant for it to be this way. They would want the document to grow and change with the country. As a result, the government has the authority to alter the constitution in response to diverse concerns. This authority is granted by Article 368. The founders of our constitution intentionally left room for interpretation for a reason. This is to make sure that the document grows and changes as the country does. So, Article 368 says that the Parliament can change any part of the constitution it wants. But it is dangerous for Parliament to have the sole power to change the constitution. Instead of being the foundation of our democracy, the constitution will be used to make Parliament a totalitarian government. The government will change a number of laws to make sure it has full power. It's scary to think this, but it's not too far from the truth. In many amendments, such as the 39th Amendment and the second clause of the 25th Amendment, the government has tried to make a state where the legislature is the highest authority. Because of this, the Indian Constitution's Basic Structure Doctrine was set up by the courts in several important cases.

Following are the four methods for amending the Indian Constitution:

1. Certain rules of the Constitution might be amended by a simple majority of the House of Representatives, in the same way that ordinary statutes are adopted. These modifications are transferable in the situation of either a government of the European Union or a government of a member.
2. Specific provisions of the state's Constitution might be amended by a simple majority of the state legislature in the same manner as an ordinary act.
3. Only a special majority of Parliament has the power to amend some clauses, often known as entrenched provisions. Upon the affirmative vote of not less than two-thirds of the members present and voting in

each House, and by a majority of the entire membership of each House. No joint session of both houses of the legislature may be called for the purpose of changing the Constitution.

4. In addition to a special parliamentary majority, amendments to such statutes require approval from at least fifty percent of the states.

### **Simple majority**

The Constitution's rules can be changed with a simple vote, as this is how common law is made. The Parliament or the state legislatures can change these rules with a simple majority, since they don't affect or change the balance of power among the the states and Union. Since adding and making new states might change the federal nature of the Constitution. Some of the things that can be changed are the following:

1. “Admission of a new state as provided under- Article 2”
2. “Provisions concerning Indian Citizenship- Article 11”
3. “Provisions governing the exercise of the executive authority or its agents on issues relating to which the Parliament authorized to legislate- Article 73(2)”
4. “Provisions concerning the membership of Legislative Councils- Article 172”
5. “The provision relating to the High Court judge’s wages and allowances (power applies to the raise and not to the decrease in wages, etc.)- Article 221(2) and subsequent changes to Schedule II;”
6. “English-language provisions- Article 343(3)”

### **Special majority**

The mechanism for amending the Constitution that is outlined in Article 368 can be used to change any of the sections of the Constitution that are not already covered above. The following is going to be the procedure:

1. In order to introduce a Bill, an amendment to the Constitution may be proposed only in either House of the Union Parliament.
2. After the Bill has been passed by a majority of that House's total members and by a majority of at least two-thirds of the members who were present and voted, it will be sent to the President for his approval. It's important to remember that if either House of Parliament passes an Amendment Bill, the President is required to sign it.
3. After receiving the President's approval, the Constitution has been amended in accordance with the provisions of the Legislation.

## Ratification by State

Some parts of the Constitution can't be changed with the special majority. When an amendment tries to change an article about how powers are divided between the states and the Central Government or an article about how people are represented, it is right to talk to the states and get their approval. The Constitution makes sure of this by requiring that half of the state legislatures pass the bill to change the provision before it goes into effect. Even though this process is more rigid, care is taken to keep it somewhat flexible. Only half of the states have to agree, and a simple majority of the state legislature is enough. So, the process of making changes is not impossible, even when this stricter condition is taken into account. In short, India's Constitution can be amend if a lot of people agree and the government doesn't get too involved.

Only by introducing a Bill in either House of the Parliament may an amendment to the Constitution be started. Once the Bill has been passed by both Houses with a majority of the total membership of each House and with a majority of at least two-thirds of the members present and voting, the Bill is then presented to the President, who must give the Bill his assent. Only one of the two Houses of Parliament—the Lok Sabha or Rajya Sabha—has been granted the authority to start the amending process. In addition to the procedure outlined in Article 368, each House shall establish norms to govern its practise and conduct of business. The people of India have not been given a chance to have their voices heard on the matter of the new constitution, unlike the people of the United States, Switzerland, and Australia, who all had such a chance during the ratification process. They have to put faith in Parliament and, in some situations, individual state legislatures to make decisions about the Constitution's future.

### **1.2 RESEARCH QUESTIONS**

The present research attempts to throw light on the following questions-

- A) What is an Amendment Procedure?
- B) What amendment process do other countries follow?
- C) How the amendment process helps in functioning of the organs of government?

### **1.3 OBJECTIVES OF THE STUDY**

The objectives of the present paper are as follows:

1. Defining the process of amendment
2. Evaluating the amendment procedures in other countries.

## 1.4 STATEMENT OF RESEARCH PROBLEM

How the procedure of amendment in India different from other countries?

## 1.5 SIGNIFICANCE OF THE STUDY

Constitutional amendment rules are now almost always included in national constitutions, but little is known about how they work. So, this chapter uses a comparative approach to look at some of the different benefits and risks of formal procedures for changing the Constitution. It talks about the role that constitutional amendment procedures play in India, Switzerland, Canada, the US, France, and Germany in: making major constitutional changes official or legal; allowing a polity to "update" specific constitutional structures or procedures; and allowing legislatures to have better "dialogue" with courts by starting new judicial interpretations of a constitution and overruling old ones.

## 1.6 SCOPE AND LIMITATION OF THE STUDY

This research work aims to understand in entirety the procedures of amendment of the constitution in countries like India, Switzerland, Canada, US, France and Germany. The researcher will also focus upon the critical comparison of the amendment procedures.

## 1.7 RESEARCH METHODOLOGY

The methodology used in this research article is doctrinal (non-empirical). The research conducted is inclusive of research tools and has followed a descriptive and analytical mode of research.

## 1.8 SOURCES OF DATA

Data sources are further divided into primary and secondary sources. As previously stated, the researcher in this work concentrated on the examination of available primary and secondary data. For primary data sources, the researcher focuses on legislations, reports, court precedents, and notifications. Furthermore, secondary material is based on commentary, research papers, journals, case laws, and books.

## 1.9 REVIEW OF LITERATURE

In a legal context, the Constitution is "the rule that governs how laws are written and the general rules that govern how state bodies do their jobs." This rule about how the most important laws of the state are made and how laws are made is the Constitution in the original, strict sense of the word (Kelsen, 1928). Formal rules for changing the constitution are the guardians of the text of the constitution. They explain how the written constitution can be changed, what can or can't be changed through formal amendment, encourage discussion about what the constitution means, set the constitutional text other than ordinary law, and may also be made to express constitutional values. Proper amendment rules are especially helpful for channelling the will of the people into institutional dialogue and trying to check on informal constitutional amendments. (Rosalind Dixon 2011) The main problem with this process is that there is no way to settle a disagreement by getting everyone together.

Because of this, a proposed change is turned down. Once either house says no to the change, it can't be made, and the whole process has to start over from the beginning with the bill being introduced. Another difference is that the houses don't have a set amount of time to decide whether they agree with the bill or not. It can be changed in a way that is similar to how laws are made. The Indian Constitution doesn't say anything about whether the state can take back its approval after giving it. The rules about how changes can be made are not clear enough. Because of this, they leave a lot of room for going to court. Even though it has been criticised, no one can deny that the current way of changing the constitution has been good for society. The process is not too loose, which would make it easy for the party in power to change it, nor is it too tight, which would make it hard to change. (Mohanty, Deba Prasad., 1969)

## **CHAPTER 2**

### **INDIA**

Only the introduction of a Bill in either House of Parliament is capable of starting a constitutional amendment. The Bill must then be approved by both a majority of the members present and voting in each House and a majority of at least two-thirds of the members present and voting.

#### **2.1 PROCEDURE**

When compared to the Constitutions of other countries, India's Constitution has a unique way of making changes. This is a little bit flexible and a little bit hard. The Constitution gives the process for making changes a lot of flexibility. Sir Kenneth Wheare, an Australian academic, liked this feature. He thought that making the process for changing parts of a Constitution uniform put "quite unnecessary restrictions" on changing parts of a Constitution. A change to the Constitution can only happen if a Bill is put forward in either House of Parliament. The Bill must then be approved by both a majority of the members present and voting in each House and a majority of at least two-thirds of the members present and voting.<sup>1</sup> It's called "special majority." There is no plan for the two Houses to meet together if they don't agree on something. After the required number of votes have been cast in favour of the Bill, it is sent to the President, who must sign it into law. If the amendment wants to change any of the things listed in the provision to article 368, it must be approved by the legislatures of at least half of the states. Even though there is no set time limit for ratification, it must be done before the Amending Bill is given to the President for his signature.

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<sup>1</sup> The Wayback Machine <http://parliamentofindia.nic.in/ls/intro/p5.htm> Archived from 8 November 2012

Every change to the Constitution is written as a law. The "Constitution (First Amendment) Act" is what the first change is called. The "Constitution (Second Amendment) Act" is what the second change is called, and so on. Most of the time, each one is called "An Act further to amend the Constitution of India."

### 2.1.1 Amendments under article 368

*Part-xx Article 368 (1)* of the Constitution of India allows constituents the authority to make formal modifications and gives Parliament the authority to amend the Constitution by adding, modifying, or removing any provision, so long as they adhere to the special rules outlined in that article.<sup>2</sup> *The 24th and 42nd Amendments, which were passed in 1971 and 1976, made changes to Article 368.* Here is the full text of *Article 368* of the Constitution, which talks about changes to the Constitution. The 24th Amendment, which was passed in 1971, added new clauses *368 (1) and 368 (3)*. It also added a new *clause (4)* to *article 13* that says, "Nothing in this article applies to any change to the Constitution made under article 368." The 42nd Amendment added the parts in italics, but the Supreme Court ruled in the 1980 case *Minerva Mills v. Union of India*<sup>3</sup> that they were unconstitutional.

Article 368 says that the only way to amend the Constitution is for a Bill to be presented either in House of Parliament. The Bill must be passed in every House by a majority of the total members of that House and by a majority of at least two-thirds of the members of that House who are present and voting. There is no plan for the two Houses to meet together if they don't agree on something. In this case, the *Explanation to Rule 159 of the Rules of Procedure and Conduct of Business in Lok Sabha* defines "total membership" as the total number of members in the House, no matter how many seats are empty or who isn't there.

After the required number of votes have been cast in favour of the Bill, it is sent to the President, who should sign it into law. If the amendment wants to alter any of the things listed in the provisions to *article 368*, it should be approved by the legislatures of at least half of the states. The President's election (*Articles 54 and 55*), the scope of the the States' and Union's executive authority (*Articles 73 and 162*), *the High Courts for Union territories (Art. 241)*, *the Union Judiciary and the High Courts in the States (Chapters IV of Part V and Chapter V of Part VI)*, and the division of legislative authority between the Union and the States are all covered by these provisions. The State Legislatures pass a resolution to ratify the Constitution. There is no set time limit on how long it takes for the State Legislatures to pass an amending bill. But the resolutions that approve the proposed change must be passed before the Bill to make the change can be sent to the President for his signature.

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<sup>2</sup> Yadau, Brody. "Constituent Power vs Legislative Power". Archived from 26 August 2015.

<sup>3</sup> AIR 1980 SC 1789

### 2.1.2 Rules of Procedure

Article 368 does not specify the legislative method to be followed at different phases of amending the Constitution. There are gaps in the protocol as to how and after what notice a Bill is to be introduced, how it is to be passed by each House and how the President's assent is to be gained. This issue was decided in *Shankari Prasad Singh Deo v. Union of India* by the Supreme Court of India. Patanjali Sastri J. stated, "Having provided for the constitution of a Parliament and prescribed a certain procedure for the conduct of its ordinary legislative business to be supplemented by rules made by each House (article 118), it must be presumed that the framers of the Constitution intended Parliament to follow that procedure, so far as it may be applicable consistently with the express provisions of article 368, when they vested it with legislative authority." Therefore, A Bill to change the Constitution goes through the same legislative process as any other bill, except that it needs a special majority, in some cases ratification by the State Legislatures, and the President's approval. Article 368 says that the Rules of the House in the Rajya Sabha don't have any special rules for Bills to change the Constitution. Instead, the same rules that apply to regular Bills apply.<sup>4</sup>

Certain rules about amendment bills in the Lok Sabha are written in the Rules of Procedure and Conduct of Business. They have to do with how the House votes on these bills at different stages, based on what Article 368 says, and how these bills are introduced if they are sponsored by private members. Article 368 says that a "special majority" is needed to pass a bill, but it seems like this only applies to the final vote. However, the Lok Sabha Rules say that this constitutional requirement must be met at all the important stages of a bill, such as when adopting the motion that the bill be taken into consideration, when adopting the bill as reported by a Select/Joint Committee, and when adopting each clause. After extensive deliberations in the Rules Committee and discussions with the Attorney-General, this provision was decided. The Latin word "evidently ex abundanti cautela," which in law refers to someone taking preparations against a very remote contingency, has been used to characterise it. The provision's strict adherence to article 368 is meant to safeguard against any potential violations of the spirit and purpose of that article 29 by considering a Bill that seeks to amend the Constitution, including having that clause-by-clause consideration concluded in the House with only the bare quorum present. In each of the aforementioned steps, division voting is used. However, the Speaker may submit any set of clauses or schedules to the House for a vote with the support of the House, provided that the Speaker will allow any clause or schedule to be submitted independently upon the request of any member. By a simple majority, the Short Title, Enacting Formula, and Long Title are approved. Amendments to the Bill's sections or schedules must be approved by a majority of the members present and voting, just like with any other Bill.

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<sup>4</sup> "Rules 155 and 157", Rules of Procedure and Conduct of Business in Lok Sabha, 11<sup>th</sup> Ed., New Delhi: Lok Sabha Secretariat. 2004. p. 67.

### 2.1.3 Private Members' Bills

A Private Member's Bill to change the Constitution must follow the same rules as all other Private Members' Bills. This Bill is also subject to the one-month notice rule. Also, before a bill like this can be put on the List of Business in Lok Sabha, it has to be looked at by the Committee on Private Members' Bills and given its blessing. As guidelines for making their recommendations about these Bills, the Committee has set up the following rules:

- i. "The Constitution is a sacred document that shouldn't be changed unless it's absolutely necessary. Most of the time, these kinds of changes can be made when it turns out that the way the Constitution's different articles and parts have been interpreted hasn't been in line with what the parts were meant to do, or when gaps or obvious problems have been found. Such changes should, however, usually be made by the government after they have thought about the whole situation, talked to experts, and gotten any other advice they think is necessary.
- ii. Some time should pass before a proper evaluation of how the Constitution works and how it affects the country as a whole can be done. This will give people enough experience to suggest any changes that may be needed.
- iii. In general, notice of Bills from Private Members should be looked at in the context of any proposal or measures that the Government may be thinking about at the time. This is so that the Government can bring consolidated proposals to the House after gathering enough information and getting advice from experts.
- iv. When a Private Member's Bill raises issues that are important to the public and have far-reaching effects, the Bill might be allowed to be introduced so that the House can find out what the public thinks about the issue and decide how to proceed. In order to decide if an issue is important enough to the public, we should look at whether the Constitution has enough provisions to meet the ideas and needs of the public at the time. In other words, the Constitution should be changed to fit the needs and wants of a society that is moving forward, and it should avoid being too rigid, which could slow down progress."

### 2.1.4 Role of state legislatures

States don't have much power when it comes to changing the Constitution. The Constitution can't be changed by a bill or proposal from a state legislature. They are only involved If the amendment seeks to alter any of the requirements specified in the proviso to article 368, it must undergo the ratification process outlined in article 368. The only other way for state legislatures to change the constitution is to start the process of making or getting rid of Legislative Councils in their own legislatures and to give their opinion on a proposed Parliamentary bill that wants to change the area, borders, or name of any State or States and has been sent to them under the proviso to Article 3. But this does not change the fact that Parliament can still change the Bill in the future.

According to Article 169 (1), "Notwithstanding anything in Article 168, Parliament may by law provide for the creation of a Legislative Council in a State without a Legislative Council, or for the abolition of a State's Legislative Council, if the State's Legislative Assembly passes a resolution to that effect by a majority of the Assembly's total membership and by a majority of not less than two-thirds of the Assembly's members present and voting". *Article 3* says that no bill for this purpose can be presented in either House of Parliament unless it has been recommended by the President and, if the proposal in the bill affects the area, boundaries, or name of any of the States, unless the President has sent the bill to the legislature of that State so that it can give its opinion on it within a certain amount of time or within a longer amount of time that the President may set.

## 2.2. LIMITATIONS

The Parliament can amend the Constitution as many times as it wants, but only in the ways that are set out. There is nothing in India's constitution that says the country can only make a certain number of changes each year. In other words, Parliament can change the constitution as many times as it wants in any given year. Even though Parliament has to keep the Constitution's basic structure, there are no other limits on its power to change it. This means that there is no part of the Constitution that can't be changed. *In Abdul Rahiman Jamaluddin v. Vithal Arjun (AIR 1958 Bombay, 94, 1957)*, the Bombay High Court said "that any attempt to change the Constitution by a legislature other than Parliament and in a way that is not allowed will be invalid and have no effect".

*In 1967, in the case of "I.C. Golak Nath and Others vs. State of Punjab and Others"<sup>5</sup>*, the Supreme Court ruled against a proposed change to the Constitution. An amendment was thrown out because it went against Article 13, which says, "The State shall not make any law that takes away or limits the rights granted by [the charter of Fundamental Rights]." In this article, the word "law" was taken to include a change to the Constitution. In response, Parliament passed the twenty-fourth amendment to the Constitution of India, which said that "nothing in Article 13 shall apply to any amendment to this Constitution."

In the case "*Kesavananda Bharati vs. The State of Kerala*"<sup>6</sup>, the Supreme Court said that any changes to the constitution must not change its "basic structure." This means that some of the most important parts of the constitution cannot be changed by amendment. Parliament tried to get rid of this restriction by passing the Forty-second Amendment, which said, among other things, "there shall be no limitation on the constituent power of Parliament to amend this Constitution." But the Supreme Court later ruled that this change was also wrong in *Minerva Mills v. Union of India*<sup>7</sup>.

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<sup>5</sup> 1967 AIR 1643

<sup>6</sup> AIR 1973 SC 1461

<sup>7</sup> AIR 1980 SC 1789

In “*Kihota Hollohon v. Zachilhu*”<sup>8</sup>, in which the constitutionality of the Tenth Schedule of the Constitution, which was added by the 52nd Amendment in 1985, was questioned, the Supreme Court talked about whether or not an entire constitutional amendment is void for lack of ratification, or if only an amended provision needs to be ratified. The decisions of the Speakers/Chairmen about disqualification were looked at by a five person Constitution Bench of the Supreme Court. These judgements were challenged in various High Courts via separate petitions. The case was decided in 1992. It is now known as the “Anti-Defection” case. In its majority decision, the Constitution Bench upheld the validity of the X Schedule. However, it ruled that Paragraph 7 of the Tenth Schedule was invalid because it had not been approved by the required number of State Legislatures, even though it changed *Articles 136, 226, and 227* of the Constitution. While doing this, most of them thought of Paragraph 7 as a separate piece from the rest of the Schedule. In the dissenting opinion, however, some of the Judges said that the whole Amendment is invalid because it hasn't been ratified.

### 2.3 Parts frequently amended

Even though the Constitution has a "super majority" rule, it gets two changes a year on average. This makes it the most changed national constitution in the world and one of the most changed legal documents. This is partially because amendments are frequently needed to deal with issues that could be dealt with by standard statutes in other democracies since the Constitution is so detailed in defining government authorities. Consequently, it has the world's longest constitution of any sovereign country. It contains currently about 117,000 words (450 articles plus 104 amendments). Another reason is that the Indian Parliament is chosen using the single-member districts and plurality voting system used in the UK and the US, respectively. This means that a party can win two-thirds of the seats in the House of Representatives without receiving two-thirds of the vote. For instance, the Indian National Congress party won over two-thirds of the seats in the house in the first two Lok Sabha elections conducted in accordance with the Constitution but got less than half of the national vote.

#### 2.3.1 Fundamental Rights

The maximum common and significant basis for constitutional amendments is the restriction of the Bill of Fundamental Rights. This is accomplished by placing legislation that violate the provisions of the Bill of Rights into Schedule 9 of the Constitution. Such statutes are shielded from judicial review by Schedule 9. Laws pertaining to property rights and affirmative action in favour of minority groups, such as "scheduled castes," "scheduled tribes," and other "backward classes" and lower-class individuals, are typical areas of limitation.

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<sup>8</sup> AIR 1993 SC 412

In a major decision issued under January 2007, a nine-judge panel of the *Supreme Court of India* confirmed that all laws (including Schedule 9) are subject to judicial review if they violate the "basic structure" of the constitution. *Chief Justice Yogesh Kumar Sabharwal* stated, "If provisions under the Ninth Schedule restrict or abrogate fundamental rights, thereby violating the fundamental framework of the constitution, then such laws must be annulled."

### 2.3.2 Territorial changes

As a result of the inclusion of the former Pondicherry's French colony, a modest exchange of territory with Pakistan and the former Portuguese colony of Goa, the territorial extent of the Republic of India has been altered, necessitating constitutional adjustments. Also requiring amendments are littoral rights over the 200-mile exclusive economic zone and the establishment of new states and union territories through the reorganisation of existing states.

Article 368 of the amended constitution permits the peaceful separation of the country, so long as fundamental rights (Article 13) are protected in all resulting nations. The Constitution (Ninth Amendment) Act, 1960, for instance, gave land to old Pakistan.<sup>9</sup>

### 2.3.3 Transitional provisions

There are parts of the constitution that are only meant to be in effect for a short time. These have to be renewed every so often. For example, every ten years, the constitution is changed so that seats in parliament are still reserved for people from "scheduled castes" and "scheduled tribes."

### 2.3.4 Democratic reform

Changes have been made to the Constitution in order to change the way the government works and add new "checks and balances." Among them are the following:

- The establishment of a National Commission for Scheduled Castes.
- The National Commission for Scheduled Tribes was established.
- Establishment of frameworks for the Panchayati Raj system (local self governance).
- Members are prohibited from transferring their party affiliation.
- There are size restrictions on the cabinet.
- Limitations on the declaration of an internal emergency

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<sup>9</sup> "The constitution (ninth amendment) act, 1960". Retrieved 23 March 2014

## **CHAPTER 3**

### **SWITZERLAND**

The Swiss Constitution can be changed in two ways: through the Process of Total Revision and through the Process of Partial Revision or Amendment.

#### **3.1 Process of Total Revision of the Constitution**

A whole constitutional revision is the adoption of a new or completely altered constitution. Total revision may be impacted in any of the three ways listed below:

- i. If both of the Federal Parliament's Houses vote in favour of a new plan to change the Constitution as a whole, a referendum is held. If the majority of voters and all of the Cantons agree with the new draught, it goes into effect. If the voters or the Cantons or both say "no" in the referendum, the new draught is finally shot down, and the old constitution stays in place.
- ii. If one House of the Federal Parliament agrees with a plan to change the constitution completely but the other House doesn't, the issue is put to the people in a referendum. If most Swiss voters agree with the idea, the Federal Parliament is thrown out. There are new elections. After that, a new Federal Parliament is put into place. It makes a draught of a revised (new) constitution and gets approval for it. The same thing is then put to a vote. If the majority of Swiss voters and the Cantons vote in favour of the new constitution in this second vote, the old constitution will be thrown out and the new one will take its place.
- iii. A full change to the constitution can also be proposed through an Initiative. If one hundred thousand Swiss voters ask for a complete change to the constitution, the idea is put to the people in a referendum. If most voters agree with the idea, the Federal Parliament makes a new constitution and puts it to a vote. If the majority of voters and the Cantons both agree with the new constitution, it takes the place of the old one and becomes law.

After the Constitution of 1848 was completely changed in 1874, there were three failed attempts to change it completely in 1880, 1935, and 1975. But the attempt made in 1998–1999 was successful. On December 18, 1998, the Federal Parliament passed a draught of a totally revised constitution. On April 18, 1999, the people and cantons voted for it in a referendum. On September 28, 1999, the Federal Parliament passed a law to make it official, and the New Constitution (Totally revised Constitution) went into effect on January 1, 2000.

### 3.2 Process of Partial Revision or Amendment of the Constitution

There are two ways to start and pass a partial revision or amend the Constitution:

1. The two Houses of the Federal Parliament can put forward a plan to change parts of the constitution. The proposal is then put to the people in a vote called a referendum. If most of the people and most of the Cantons agree with the idea, the change is made to the Constitution.
2. A proposed partial amendment to the constitution is another option. If one million Swiss citizens submit a broad petition for a partial constitutional amendment, a referendum is convened. The Federal Parliament drafts the modification based on the general request created by people if the initiative is supported by a majority of voters. The entire populace is then asked to vote on this plan. A reform to the constitution will be enacted if it is supported by the majority of Swiss voters and Cantons. However, if the initiative for a partial change, as made by one million Swiss voters, is presented as a complete draft, the Federal Parliament discusses the text. The proposed partial modification is either approved or rejected by the Federal Parliament; in any event, the proposal is put to the people in a referendum. The amendment is included into the constitution if it is adopted by a majority of both the people and the cantons. It is evident from the preceding explanation that the process of amending the Swiss constitution is arduous, cumbersome, and convoluted. It consists of two stages: the Proposal Stage and the Approval Stage. The proposal may originate from either the Federal Parliament or a popular initiative by one million Swiss voters.

At the stage of approval, the amendment proposal needs to be backed by a majority of both Swiss voters and Swiss cantons. In reality, though, the process has turned out to be neither very strict nor very hard. Between 1874 and 1999, the constitution was changed with about 80 partial amendments. In 1999, the Swiss Constitution was completely rewritten and consolidated. All of the changes made between 1874 and 1999 were added, as well as a bill of rights, social goals, a more detailed description of the Federation's powers, and the rules that govern how the Federation and the Cantons work together. Before this major change, the Swiss Constitution only had 123 articles. Now, it has 196. The legal process of amending the Constitution has become less rigorous in actuality thanks to the maturity of Swiss voters and the tradition of reaching a compromise. The most prominent aspect that distinguishes the amendment process is the fact that no alteration to the constitution, whether entire or partial, can be adopted without the consent of a majority of the populace as well as of the Cantons. If the majority of the populace in a Canton adopts the change, it is said to have received their approval. In other words, the Swiss Constitution amendment procedure actually involves the application of popular sovereignty.

## **CHAPTER 4**

### **CANADA**

A fresh federal-provincial meeting was requested. A procedure like the one described in the Victoria Charter was once more advocated by Prime Minister Trudeau. The "Vancouver formula," which allowed the Constitution to be altered with the consent of two-thirds of the provinces representing at least 50% of the population, was backed by all but Ontario and New Brunswick. This proposal also included a way to back out and get full payment. During the final talks, however, compensation was dropped for everything except culture and language. Quebec didn't want to be a part of this agreement, which became the Constitution Act of 1982 after a few small changes. The following process for changing the Constitution was made official by the Constitution Act of 1982.

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

- In accordance with Section 38 of the Act, the Constitution of Canada may be altered by resolutions of the Senate, House of Commons, and two-thirds (seven) of the provinces (having at least 50% of the population of all the provinces combined), unless there is a particular provision to the contrary. The territories play no involvement in the process of amendment. A province that disagrees with an amendment impacting provincial legislative powers, propriety rights, or other privileges may also express its disagreement by a resolution. In such a circumstance, the amendment is without effect in that province. After the last required resolution has been enacted, the Governor General can issue a proclamation to implement the amendment.
- Section 39 specifies the timeframes for amending the Constitution. Within three years following the adoption of the resolution that commences the amendment process, all necessary resolutions must be passed and a proclamation must be issued. In contrast, an amendment cannot be declared until one year after the initial resolution has been enacted, unless all provinces have either assented to or dissented from the amendment.
- According to Section 40, any province that disagrees with an amendment that transfers provincial legislative authority over education or culture to Parliament must be compensated fairly.
- Section 42 says that the general amending formula must be used to make changes to the following things in particular:
  - A) the idea that the provinces should have the same number of seats in the House of Commons;
  - B) the Senate's powers and the procedure for appointing senators;
  - C) the number of senators from each province and the requirements for senators' places of residence
  - D) except for how it is made up, the Supreme Court of Canada;

E) the addition of the territories to the provinces that are already there; and

F) the formation of new provinces.

#### **4.1.2 Amendment requiring unanimity (Section 41)**

In the following cases, all the legislatures, including Parliament, must pass a resolution that says they all agree:

A) the offices of the Queen, Governor General and Lieutenant Governor;

B) a province's right to at least as many representatives in the House of Commons as senators with which it is authorised to be represented;

C) the use of French and English (depending on what the clause says about the parties involved);

D) Supreme Court composition; and

E) modification to the Constitution's amendment process.

#### **4.1.3 Amendment of provisions relating to some but not all provinces (Section 43)**

The rules that only apply to some provinces can be changed if Parliament and the legislatures of those provinces agree to do so. This procedure is especially useful for:

A) alterations to the province-to-province boundaries;

B) amendments to the rules about how English and French are used in a province.

#### **4.1.4 Amendment by Parliament (Section 44)**

Parliament is the only group that can change the Canadian Constitution when it comes to the executive government or the Senate and House of Commons.

#### **4.1.5 Amendment by provincial legislatures (Section 45)**

Each province can only change its own constitution, except for the parts that require everyone to agree.

## **CHAPTER 5**

### **UNITED STATES OF AMERICA**

#### **5.1 CONSTITUTIONAL AMENDMENT PROCESS: ARTICLE V**

The process for amending the U.S. Constitution is established by Article V: *“The Congress, whenever two thirds of both houses shall deem it necessary, shall propose amendments to this Constitution, or, on the application of the legislatures of two thirds of the several states, shall call a convention for proposing amendments, which, in either case, shall be valid to all intents and purposes, as part of this Constitution, when ratified by the legislatures of three fourths of the several states, or by conventions in three fourths thereof, as the one or the other mode of ratification may be proposed by the Congress; provided that no amendment which may be made prior to the year one thousand eight hundred and eight shall in any manner affect the first and fourth clauses in the ninth section of the first article; and that no state, without its consent, shall be deprived of its equal suffrage in the Senate.”*

“The U.S. Supreme Court has declared that the Article V amendment process is the only method of adding or removing language from the constitution”.<sup>10</sup>

##### **5.1.1 Proposal of Amendments by Congress or Convention.**

There are two options for submitting an amendment proposal in Article V:

- (1) Congress may offer an amendment to the states if two-thirds of both chambers vote in favour.
- (2) A convention may offer to the states an amendment. Congress convenes a convention at the request of two-thirds of the states.

##### **5.1.2 Ratification of an Amendment by the States**

Once an amendment has been formally offered, it may be ratified via one of two methods, as decided by Congress:

- (1) three-fourths of state legislatures must ratify; or
- (2) Ratification by three-quarters of state conventions.

There are no restrictions on the proposed amendments' content, with the exception that they cannot change the balance of power between the states in the Senate without the approval of each state that will be impacted. A now-outdated clause in Article V forbids the adoption of certain kinds of changes before the year 1808.

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<sup>10</sup> Ullman v. United States, 350 U.S. 422, 428 (1956)

## 5.2 SUMMARY OF PROCEDURE: AMENDMENTS PROPOSED BY CONGRESS

The process for proposing amendments, sending them to the states, and ratifying them in the end is based on Article V, federal law, and the habits and customs that have grown up over time to guide the process. Usually, this is how an amendment goes:

- (1) Proposal by Congress
- (2) Submission to States
- (3) Ratification

### 5.2.1 Proposal by Congress

Congress can send a proposed amendment to the states if both the House of Representatives and the Senate vote in favour of it by two-thirds. Congress has a rule that amendment proposals should be written as a joint resolution. In the joint resolution, you can find the text of the proposed change and how states can sign on to it (by legislatures or by state conventions). Since the beginning of the 20th century, almost all resolutions have also had a deadline for states to sign on.

### 5.2.3 Submission to States

The Office of the Federal Register at the National Archives and Records Administration receives the proposed amendment once it has been approved by Congress (it is not presented to the president for approval). The proposed amendment is made public by the Office of the Federal Register, which also puts together a packet of information on the ratification procedure for distribution to each state.

The proposed amendment and educational materials are sent to the governors of each state by the United States Archivist. The idea is then put out for consideration by the state legislature by the governor of the state.

### 5.2.4 Ratification

A state must submit documents to the National Archives and Records Administration once it has ratified an amendment. The Office of the Federal Register verifies and recognises receipt of documents that appear to be in correct order. The National Archives and Records Administration also receives records of other legislative actions, such as the rejection of an amendment or the rescinding of a ratification, but does not make any determinations regarding the legality of these actions. The Archivist of the United States issues a proclamation certifying the ratification of a proposed amendment when it appears that a sufficient number of states have done so. The certification is made public and serves as a formal declaration of approval. Not on the day the certification is proclaimed, but rather on the day that a sufficient number of state ratifications are obtained, an approved amendment becomes operative.

### 5.3 SUMMARY OF PROCEDURE: AMENDMENTS PROPOSED BY CONVENTION

Aside from the requirements of Article V, there are no federal laws or established customs and practises that say how to call or run a convention. Since 1787, when the first one was held to write the Constitution, there has not been a federal convention. The ways that different states have changed their constitutions through conventions, which has happened fairly often over time, may help us think about the problems that might come up in a federal convention and how they might be solved. Over time, state legislatures have made up their own rules about how to apply to Congress for a convention. Congress has never done anything about these applications or the customs and practises that were used to send them in.

## CHAPTER 6

### FRANCE

An amending formula is provided in Article 89 of the Constitution. A constitutional bill must first receive consent from both chambers of Parliament. The legislation must then either pass through the Congress, a special joint session of the two chambers, or be put to a vote. In addition, the Constitution specifies two ways it might be amended: either through a referendum (article 11) or a parliamentary procedure with presidential approval. Constitutional amendments typically 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 joint session of both houses of Parliament (article 89).

Article 89 states the following:

- A) On the proposal of the Prime Minister, both the President of the Republic and members of Parliament have the power to propose amendments to the Constitution.
- B) The two Houses must pass a Government or Private Member's Bill to amend the Constitution in exactly the same words within the time frames outlined in article 42's third paragraph.
- C) The amendment will go into effect after a vote in a referendum.
- D) But a Government Bill to amend the Constitution won't be put to a vote if the President of the Republic decides to send it to Congress instead. If that happens, the Government Bill to amend the Rules will only be approved if it gets three-fifths of the votes.
- E) The National Assembly will be in charge of running the Congress.

F) No procedure for making amendment can be started or kept going if the integrity of a country's territory is at risk.

G) No amendment shall change the republican form of government.

## **CHAPTER 7**

### **GERMANY**

The history of the German country, whether it be the Kaiserreich, the Grossdeutsches Reich, or the Bundesrepublik, has demonstrated the need for a strong source of law to restrain a government that has oscillated between supremacy and horror more frequently than can be believed<sup>11</sup>. The German Republic's Basic Measure has the powerful statement, "The Basic Law may only be modified by a law that expressly alters or supplements its wording."<sup>12</sup> Similar to Article V of the United States Constitution, an amendment must be approved by a two-thirds majority of both the Bundestag and the Bundesrat.

The history of the Basic Law of the Federal Republic of Germany (hereafter "Basic Law") reveals a model that is more malleable than that of the United States, but not so permissive as to permit anarchy. In the history of the Basic Law, there are three distinct periods: one of regular change, one of near-complete stability, and one of high activity around the Reunification of Germany following the fall of the German Democratic Republic. The first was an attempt to rectify some of the initial shortcomings in the Basic Law. Once this plateau of stability was attained, there was a lengthy era of peace during which the Basic Law was hardly encroached upon. However, the German constitutional amendment approach was put to the test in the early 1990s.

Germany has a strict amendment process, yet it nevertheless permits the necessary adjustments to respond to both domestic and global issues. The Soviet Union's rapid demise and the liberation of its vassals in Eastern Europe sparked a wave of pro-reunification sentiment within Germany, though not necessarily outside of it. It was not enough to simply add new territory to the Basic Law<sup>13</sup>. This presented a problem for those in the German administration who wanted to reunite the nation as soon as possible without triggering the provisions of the Basic Law that appeared to require the creation of a new constitution after reunification. Article 23 did, however, appear

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<sup>11</sup> Encyclopedia Britannica, Germany, <http://www.britannica.com/EBchecked/topic/231186/Germany>

<sup>12</sup> Section 79 of the Basic Law for the Federal Republic of Germany

<sup>13</sup> Mathias Reimann, Takeover: German Reunification Under A Magnifying Glass the Imperfect Union: Constitutional Structures of German Unification. by Peter E. Quint. Princeton: Princeton University Press. 1997. Pp. Xi, 482. \$75., 96 Mich. L. Rev. 1988, 1995-96 (1998)

to leave room for the constitution to be extended to "other areas of Germany after their accession."<sup>14</sup> To achieve this, the German government acted rapidly and forcefully to change article 146 of the Unification Treaty on August 31, 1990, and a federal statute on September 23, 1990, allowing for the simple admission of the states of the former German Democratic Republic into the nation<sup>15</sup>. So, Article 146 was amended to say, "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."<sup>16</sup> At first, this article was thought to say that a new election should be called for a new constitution whenever there was a chance that the country could come together<sup>17</sup>. People's desire for reunification, France's opposition, and the fall of the East German State could all be quickly taken into account by the quick and decisive amendment process.

## CHAPTER-8

### COMPARATIVE ANALYSIS<sup>18</sup>

India vs.	<b>Similarities</b>	<b>Differences</b>
France	<p><b>Written Constitution:</b></p> <p>India and France both have written constitutions, but France's has been changed a lot because of political instability. At the moment, it is France's 5th constitution in its long history.</p> <p>Type of Government: The leaders of both countries are selected by the people for their own terms.</p>	<p><b>Political Model:</b></p> <ul style="list-style-type: none"> <li>• France has a semi-presidential system, in which the President has more authority than the Prime Minister. India, on the other hand, has a parliamentary system, in which the Prime Minister has more power.</li> <li>• French president has a tenure of 7 years whereas Indian PM has the</li> </ul>

<sup>14</sup> Section 23 of the Basic Law for the Federal Republic of Germany

<sup>15</sup> Amended Section 146 of the Basic Law for the Federal Republic of Germany

<sup>16</sup> Article 146 of the Basic Law for the Federal Republic of Germany

<sup>17</sup> The original text of Article 146 read that "This Basic Law, which since the achievement of the unity and freedom of Germany applies to the entire German people, shall cease to apply on the day on which a constitution freely adopted by the German people takes effect.

<sup>18</sup> M.V. Pylee, Select constitutions of the world, Universal law publishing, 2016

	<p><b>Amendments Process:</b></p> <p>Similar to how amendments are made in India, the French Constitution can be changed with a 60% majority..</p> <p><b>Republic:</b></p> <p>Both countries are Republics, which means that the leader is chosen by the people.</p> <p><b>Ideals:</b></p> <p>In the Preamble, India borrows ideals from the French Constitution about equality, liberty, and fraternity.</p> <p><b>Emergency Provisions:</b></p> <p>Both the nations have a power for emergency provision</p>	<p>tenure of 5 years only.</p> <p><b>Philosophical aspects:</b></p> <ul style="list-style-type: none"> <li>• The French Constitution makes no mention of legal due process or procedure established by legislation.</li> <li>• In France, the government and religion are completely separate, but in India, the government and religion are not completely separate.</li> <li>• India, on the other hand, has a federal system, while France has a unitary system.</li> </ul> <p><b>Judiciary setup:</b></p> <ul style="list-style-type: none"> <li>• In India, the courts have nothing to do with how elections are run, but in France, the courts are very important.</li> <li>• The French court is separated into two halves, namely the Judicial Courts and the Administrative Courts, however there is no such division in India.</li> </ul>
Canada	<p><b>Unitary/Federal:</b></p> <p>Both are run by the federal government. Canada's remaining power, like India's, lies with the centre. Governors are chosen by the central government, which is in charge of the States and Provinces.</p>	<p><b>Written/Unwritten Constitution:</b></p> <p>India is governed by the written Constitution, whereas Canada is governed by both written and unwritten law.</p> <p><b>Political setup:</b></p> <p>In Canada, the Queen is the head of state,</p>

	<p><b>Executive setup:</b></p> <ul style="list-style-type: none"> <li>Members are selected by a system called "first past the post."</li> <li>Both have responsible governments that answer to the lower house as a whole.</li> </ul> <p><b>Judiciary setup:</b></p> <p>The Supreme Court's appointment and advisory jurisdiction is identical to that of India.</p> <p><b>Legislative setup:</b></p> <ul style="list-style-type: none"> <li>All of the country has to follow the laws that the Parliament makes.</li> </ul>	<p>but in India, the President is.</p> <p><b>Executive setup:</b></p> <p>The monarch selects the Governor-General based on the advice of the Prime Minister. In India, the President is chosen through an indirect election.</p> <p><b>Citizenship:</b></p> <ul style="list-style-type: none"> <li>There is a provision of dual citizenship in Canada whereas India does not give dual citizenship.</li> </ul> <p><b>Judicial setup:</b></p> <ul style="list-style-type: none"> <li>In contrast to India, it has many legal systems.</li> </ul>
Germany	<p><b>Republic:</b></p> <p>Both countries are Republics, which means that the leader is elected by the people.</p> <p><b>Political setup:</b></p> <ul style="list-style-type: none"> <li>Both countries are run by a Parliament. The Chancellor/PM is in charge of the government, and the President mostly does things like give speeches and keep an eye on things.</li> <li>India borrowed emergency provisions from Germany.</li> <li>Both have a federal system.</li> <li>Both share characteristics with fundamental rights.</li> </ul>	<ul style="list-style-type: none"> <li>India has rigid and flexible constitution but Germany has only rigid constitution.</li> </ul> <p><b>Citizenship:</b></p> <ul style="list-style-type: none"> <li>Dual citizenship is permissible under specific conditions.</li> </ul>

USA	<ul style="list-style-type: none"> <li>Both countries India and USA have written a Constitution.</li> <li>Both the countries have the concept of Fundamental Rights in their constitution.</li> <li>Both the countries have Preamble as their introduction in their constitution.</li> <li>Both countries have the office of their Vice-President.</li> </ul> <p><b>Legislative setup:</b></p> <ul style="list-style-type: none"> <li>Both nations have legislative representation from their respective states.</li> <li>Both countries have a way to get rid of the president, called the impeachment process.</li> </ul> <p><b>Philosophical aspects:</b></p> <ul style="list-style-type: none"> <li>India got the idea of judicial review from the United States..</li> <li>India got the idea of "Procedure Established by Law" from the United States.</li> <li>The various government organs are separated in terms of authority.</li> <li>The United States has a federal structure comparable to that of India.</li> <li>India and the USA both have a system called "Supremacy of Constitution."</li> </ul>	<ul style="list-style-type: none"> <li>India has rigid as well as flexible constitution but USA has only rigid constitution.</li> </ul> <p><b>Political setup:</b></p> <p>The United States is run by the president, while India is run by the parliament.</p> <p><b>Executive setup:</b></p> <ul style="list-style-type: none"> <li>In india president is indirectly elected whereas in USA President is directly elected by the people of USA</li> </ul> <p><b>Amendability:</b></p> <ul style="list-style-type: none"> <li>In the United States, residual power is held by the states, but in India, it is held by the Union.</li> <li>In the past two centuries, there have been just 27 amendments made to the Constitution of the United States.</li> </ul> <p><b>Judiciary setup:</b></p> <ul style="list-style-type: none"> <li>In India, judges have to leave their jobs when they reach a certain age, but in the US, they can stay in their jobs as long as they are healthy.</li> <li>Every State has a unique Constitution and Supreme Court, which India lacks.</li> <li>The United States offers dual citizenship, whereas India does</li> </ul>
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## **CHAPTER-9**

### **CONCLUSION**

An unamendable constitution is not an option for democratic constitutional construction. It would not be supported by the will of the people, it would show how confident the people who make constitutions are in themselves and how suspicious they are of others, and its rigidity could lead to a revolution. But too much flexibility is just as bad as too much rigidity because it makes it harder to tell the difference between a constitution and a law. So, people who make constitutions must make them changeable but stable and set rules for how they can be changed. Nothing works in a vacuum, and politics is no exception. The Constitution is just words on a piece of paper that sets the rules for the country. To really protect liberty, something must protect the spirit of those words. I think that the best way to keep a constitution safe is to have a process for amending it that lets it grow and change over time but makes it hard to change. A constitution shouldn't be changed on a whim or to meet the needs of the moment. As the most complete expression of a country's sense of itself, a constitution should be the rock on which the country's laws are built.

### **SUGGESTIONS**

- There are two ways to suggest changes to the constitution.
- Changes to the Constitution can be made either by a joint resolution passed by two-thirds of parties or by a convention called by parties when two-thirds of the state legislatures ask for one.
- Putting in place a way for a constitution to be amend is a balancing act.
- Importantly, a constitution must be amendable to enable effective democracy.
- But it shouldn't be so simple that it can be amended for silly reasons or to get more power, nor should it be so hard that the government can't work in a world that is changing.

### **FINDINGS**

- A country's constitution is at its core. It writes down the most important ideas and laws that a country has accepted as the most important part of its identity.
- Since a constitution is unique and has full and overriding power, it makes sense that it shouldn't be easy to change.

<sup>19</sup> Vishnoo Bhagwan, Vidya Bhushan and Vandana Mohla, World constitution a comparative study, Sterling, 2017

- If the constitution is the heart of a country, then the process of making amendments to it should be like a triple bypass.
- There are times when a country needs to go through the steps to amend its constitution.
- A stable process for amending the constitution does not always mean that the government is stable.
- At different points in time, different countries need different things to keep or make stability.
- In the United States, which is a well-known and long-standing democracy, keeping order requires a complicated process for making changes.
- In a country that is changing, like Germany after World War II, the process for making amendment needs to be more flexible so that it can keep up with the fast-paced changes in national and international politics.

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