In the preceding pages an attempt has been made to analyse various aspects of the constitutional amendments and amending procedure under the different Federal constitution. On this basis it may be stated that provision of amendment is absolutely essential for the every constitution, whether it may be unitary or federal. For avoiding the revolution and making constitution workable in existing society, amending provision is essential. An unamendable constitution is the worst tyranny of time or rather a very tyranny of time.¹

A more fundamental need for an amending clause is for Federal constitution wherein there is distribution of powers between the centre and the constituent units. It also requires amending clause in the constitution to maintain constant adjustment been the Federal Government and Federating units.²

1. See Mulbord: Political Science and Government P. 536
2. See Wheare, K.C.: Federal Government, P.64.
In human societies there has been a constant tussle between stability and change whenever stability has resulted in stagnation there have been upheavals and revolutions. If changes can not be effected peacefully, they are effected by violence. Therefore to avoid this situation in Federal constitution provision of amendment has been given in the constitution itself.

It submitted that, the amendable constitution is now an accepted norm and there is no doubt in it. Only debate that still survives is around the notion as to how easy or how difficult this amending provision should be. A Rigid constitution is the one which enjoys an authority superior to that of the other laws of the state and can be changed only by a method different from that whereby other laws are enacted or repealed, while the flexible constitution is that which has no supreme authority over it, it stands upon an equal footing with other laws and which can be changed by the same process as other laws. Both systems have merits and demerits of their own. While flexible constitution is criticised for its frequency and uncertainty, the rigid constitution on the other hand, is criticised for its conservatism and unadoptibility.
Indian constitution has adopted a machinery of amendment which is neither too flexible nor too rigid. It is a sort of compromise to work out balance between two divergent views prevalent amongst the numbers of constituent assembly. One emphasising the adopting the U.S.A. federal pattern with a certain amount of rigidity and the other laying stress on a simple majority of Parliament. It strikes a balance between the 'British flexibility' and 'American Rigidity' in terms of its amendability.

To follow a mid-way amending process, Framers of the Indian Constitution avoided two extremes of excessive rigidity and excessive flexibility and adopted the simple amending process of U.K. with the rigidity of U.S.A. constitution. Similarly they did not follow the rigidity of Switzerland and Australian constitution and avoided the provision of Referendum. Therefore amending process of Indian Constitution becomes more simple among the other rigid federal constitutions.

For the reason stated above the Indian constitution has varieties in the amending process. When

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it has simple amending process.\textsuperscript{3} at the same time it has also rigid amending process. The rigid amending process is also divided in two part, first with special majority amending bill is passed by the central legislature exclusively,\textsuperscript{4} secondly with special majority amending bill is passed, but in it, consent of State legislatures is associated with the Central Legislature.\textsuperscript{5}

Simple amending process is not bad in itself and it should be to overcome emergency and for adaptability, But in a federal constitution it is not diserable where it affects to federal structure of the constitution. In the Indian constitution power of creating new states and altering the boundaries is given in the hands of central legislature\textsuperscript{6} is not good and not tolerable in the federal constitution. So it should be avoided and it should be put in Article 368.

It is essential in Federal Government that there should be power of amending the constitution but it should not be confined exclusively either to general

\begin{itemize}
\item[3.] See Articles - 2, Sch. I, IV, 73(2), 75(6) Sch.II, 97 Sch. II, 106, 124(1), 125(2), 133(3), 137, 148(3), 172(2), 221(2), 243(3), 348(1), 239(A), Para 7 of Sch.V. Para 21 of Sch. VI.
\item[4.] See Article 368(1)
\item[5.] See Article 368(2).
\item[6.] See Article 2 and 4.
\end{itemize}
government or to regional government. It may be observed that though Indian constitution is federal in nature but it has given to state legislatures very limited power in relation to amending process. In few matters, given in Article 368(2), assent of State Legislatures is necessary and except these state legislatures have no voice in amending process. Therefore it may be submitted that in each and every provision of the constitutional amendment assent of state legislature should be essential.

Similarly, power of initiating an amending bill is exclusively confined in the union legislatures and state legislatures have no power to initiate an amending bill. State can move a bill of amendment through their elected representatives who represent the state in central government indirectly. It is suggested that there is no harm if direct voice of State in Amending process is given.

Amending process of Indian constitution is also criticised on the ground that people have no voice in amending process though they are creature of the constitution and sovereign according the wording of preamble of the constitution. Such criticism has no weight because sovereignty of people in relation to amending process has been protected through their elected representatives who represent them, the Parliament is merely a mouth-piece of the sovereign
people and not a sovereign itself. It holds force from the support of the people and its existence depends on the will of the people. Direct voice in the amending process through provision of Referendum is not desirable in India because it is a vastly populated country in which varieties of communities, religion, caste and race live and where there are problems of literacy and minority clause. The process of Referendum is very slow and expensive which is not suitable for a poor country like India.7

Indian amending process is also criticised for its frequency. Since 1950 there have been more than 67 amendments upto October 5, 1990. It is humbly submitted that it would not be in the fitness of things to criticise amending process merely because of large number of amendments frequently taken place. The frequency of constitutional amendments depends on the nature of the constitution and attitude of the people. If the list of amendments is observed, it may be seen that mostly of amendments in the Indian constitution are merely clarificatory and not a basic alteration. They clarify the wording of the constitution and nothing else.8


8. See Fundamental Rights and directive Principle in reference to Article 31 and 19.
Further, Indian constitution is a single constitutional document for the federal part as well as for the components of a federal scheme of Government than the tendency of the constitutional amendment increases not only because of the enlargement of the scope of the constitutional document but for the purposes of facilitating harmonious relationship between the two parts.

The rate of frequency also depends on the attitudes of the people and not the result of amending process. While amending process of Australia and Switzerland are too rigid but number of amendments vary in both countries, what is the reason behind it. It is only attitude of the people which increases and decreases the number of amendments.

An amendment to the constitution can not be anticipated in advance as it depends on the imperative need for it and imperative need may arise any movement in quick succession or after a long gap. The Swiss constitution for example was amended only 11 times during the first 28 years but during the next 78 years it was amended as many as 98 times. In U.S.A., for
instance, the first 10 amendments were initiated and adopted all at once time but later on constitutional amendments became less frequent. Similarly Indian constitution was amended only 23 times during the first 20 years but during the next 20 years it was amended as many as 44 times upto October, 5, 1990.

Thus, it may be submitted that frequency is not the result of amending process and is a symbol of defect in amending process. Frequency depends on the nature of the constitution, attitude of the people and need of society.

In India, on the point of amending power, a legal battle between judiciary and Parliament is going on, which has been extensively dealt with in chapter IV and VIII of this study. It reveals that judiciary imposed change on amending power through extra-legal method rather than legal interpretation. Similarly Parliament is using amending process for the purpose of overriding judicial pronouncement.

In Kesavananda Bharti, the judiciary clearly held that parliament has to amend each and every provision of the

9. AIR 1976, S.C. 1461
constitution but it can not abridge or take away the basic structure of the constitution. It is a very strange thing that though Parliament has unlimited amending power under Article 368, it can not alter the basic structure of the constitution. Power of Judiciary is to interpret a law not to creat a law. The Supreme Court through its pronouncement can not create one more clause below the Article 368: "Parliament can not change or alter the basic structure of the constitution" although there is no clear provision in the Article 368 in the Indian constitution to this effect.

In relation to conflict between Judiciary and Parliament it may be submitted that the check on the power of Parliament lies in healthy political growth rather than the doubtful legal restraints imposed by the Judiciary through the mechanism of basic structure doctrine. Similarly, the process of amendment should not be resorted by the Parliament for the purpose of overriding unwelcome judicial verdicts.

Thus, it may be submitted that provision of mixed nature of amending process of Indian constitution is working more satisfactory rather than those constitutions which are purely flexible or purely rigid.
It may be stated that every power may be misused therefore it does not mean there should be no power. Mischief of Parliament can be removed by the awareness of the people and there is no necessity of judicial control over the parliament in form of doctrine of Basic structure. For reducing the frequency of amendment, voice of states in each and every provision of the constitutional amendment should be associated rather than in few matters only and percentage of state consent should be increased from one-half to three fourth of the states.

This shall control the rate of amendment and at the same time preserve the characteristics of federal constitution. Besides, it shall also act as an effective check on the parliament and restrain it from misusing its authority.