CHAPTER - III

AMENDING PROCESS VIS-A-VIS FEDERAL CONSTITUTION

Rigid amending process is one of the essential characteristics of a federal constitution, which differentiates it from the flexible constitution. Under a Federal Constitution, the law of the constitution constitutes the fundamental law of the land which stands above the ordinary law. It is called 'Fundamental Law' or 'Supreme law', because it sets up the very organs of government which are invested with the power to make ordinary laws and to administer them; and also because the law embodied in federal constitution cannot be changed by the ordinary legislature in the manner of ordinary legislation. On the other side an ordinary law which is in consistent with the 'Fundamental law' is liable to be declared by the courts as unconstitutional.

RIGID AMENDING PROCESS AND FEDERAL CONSTITUTION:

On the basis of amending process political scientists classify constitution into two classes, flexible constitution and Rigid Constitution. Lord Bryce 1

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classified constitution as 'Flexible' and 'Rigid', depending on whether they can or cannot be changed by the same process by which ordinary laws are made. Lord Birkenhead in McClawley Vs. R, classified constitutions as 'controlled' and 'uncontrolled' depending upon the presence or absence of some extraordinary procedure to be adopted for amendment of the constitution. Lord Birkenhead observed:

"Many different terms have been employed in the text-books to distinguish these two contracted forms of constitution. Their special qualities may perhaps be exhibited as clearly by calling the one a controlled and the other an uncontrolled constitution as by any other nomenclature. Nor is a constitution debarred from being reckoned as uncontrolled constitution because it is not, like the British Constitution, constituted by historic development but finds its genesis in an originating document which may contain some condition which can not be altered except by the power which gave it birth. It is of the greatest importance to notice that where the constitution is uncontrolled the consequences of its freedom admit of no qualification whatever. The doctrine is carried to every proper consequence with logical and inexorable precision. Thus when one of the learned Judges in the court below said that according to the appellant, the constitution could be ignored as if it were a Dog Act, he was

in effect merely expressing his opinion that the constitution was, in fact, controlled. If it were uncontrolled, it would be an elementary common place that in the eye of the law the legislative document or documents which defined it occupied precisely the same position as a Dog Act or any other Act however humble its subject-matter." 3

According to A.V. Dicey:

"A Flexible constitution, is one under which every law of every description can legally be altered with the same ease and in the same manner by one and the same body, while a rigid constitution is one under which certain laws generally known as constitution or Fundamental laws can not be altered in the same manner as ordinary may be. ........

........... The 'Flexibility' of our constitution consists in the right of the crown and the two Houses to modify or repeal any law whatever, they can alter the succession to the crown or repeal the Acts of union in the same manner in which they can pass an Act enabling a company to make a new railway from Oxford to London." 4

On the other hand Lord Bryce about the Rigid Constitution expressed his view :-

3. Ibid. Lord Birkenhead at P. 704
"A 'Rigid Constitution' is one which enjoys an authority superior to that of the other laws of the state and can be changed only by method different from that whereby those other laws are enacted, or repealed. 'Flexible Constitution' on the other hand, are those which stand upon an equal, footing with other laws and which can be changed by the same process as other laws." 5

The 'Flexible Constitution' is one under which every law of every description can be legally changed with the same ease and in the same manner one and in the same body as the ordinary law is passed by it. On the other hand in 'Rigid Constitution' term 'Constitution' means a particular enactment belonging to the Articles of the constitution which can not be legally changed with the same ease and in the same manner.

In 'The Rigid Constitution' there is fixed and special procedure which have to be followed strictly, when a legislative body wanted change a constitution. But in 'Flexible Constitution' there is no special procedure has to be followed. In it there is only one procedure for the both purpose though it is constitutional amendment or ordinary amendment.

The special machinery for constitutional amendment is the limitation upon the power of the legislature by greater law than by the law of the ordinary legislation in the field of rigid constitution but there is no such limitation in case of flexible constitution.

Procedural limitation and substantial limitation are essential parts of the Rigid constitution. In a Rigid constitution there is division of powers between Central and States Government and Central Parliament can only legislate or amend in those matters which are given to it under the provision of the constitution and for doing so it has to follow a special procedure of amendment, which has been given under the provision of constitution.

In the 'Rigid Constitution', there is a distinction between 'Constitutional law' and 'ordinary law'. Constitutional laws can not be changed in the same ease and in the same manner as ordinary laws may be changed. On the other hand in 'Flexible Constitution there is no distinction between constitutional law and ordinary law in reference to amending process and every law may be constitutional law or ordinary law, can be changed in a same manner as ordinary law can be changed.

In a Flexible constitution, there is supremacy of Parliament and Parliament can do each and every thing in
a legal way though it does not do so in practice. As rightly observed by the A.V. Dicey:

"Under the English Constitution, Parliament has right to make or unmake any law whatever." 6

On the other hand in the 'Rigid Constitution' there is supremacy of constitution and Parliament cannot make any law which is against the will or provision of the constitution.

In Rigid constitution, Judiciary is a guardian of the constitution whether all functions of states are carried according to provisions of constitution or not? Court has power to declare a law unconstitutional or void if it is not enacted in the conscience or will of the constitutional provision. But in unwritten British constitution judiciary has no such power due to supremacy of Parliament. so A.V. Dicey rightly said:

"... And further that no person or body is recognised by the law of England as having a right to override or set-aside the legislation of Parliament".7


The classical writers of the constitutional law maintain that a federal constitution has to be rigid. Writer like Lord Bryce said:

"A swift and easy method would not only weaken the sense of security which the rigid constitution now gives, but would increase the trouble of current politics, by stimulating a majority in congress to frequently submit amendments to the states. The habit of mending would turn into the habit of thinking. There would be too little distinction between changes in the ordinary statute law, which require the agreement of majorities in the two Houses and the President and changes in the more solemnly enacted fundamental law. And the rights of the states, upon which congressional legislation can not now directly encroach, would be endangered. ....... the idea reigns that solidity and security are the most vital attributes of a fundamental law."  

From the above discussion, it may be submitted that in the Federal constitution, Parliament can not amend the constitution in an ordinary manner as it does in flexible constitution. But there is, however, one exception to this general rule in case of constitution of U.S.S.R. The amending process of U.S.S.R. is called a simplest amending process of the rigid federal constitution.  

Similarly in the constitution of India, there are few Articles that can be amended by the Parliament by the simple majority as required for passing of


any ordinary law. These Articles \textsuperscript{10} are specifically excluded from the purview of the procedure prescribed in Article 368.

Baring the above few exceptions there must be a special procedure for the amendment in the constitution other than an ordinary procedure.

\textbf{NECESSITY OF RIGID AMENDING PROCESS IN THE FEDERAL CONSTITUTION:}

A Federal constitution is an association or union of so many sovereign and independent states. Where a federation is constituted by a written constitution; it follows that it cannot be dissolved without amending that constitution. On the other side where it is the result of some agreement to the component units, it cannot be dissolved by the unilateral action of units by way of secession or federation by expelling any of the units. Any right of a state to unilaterally withdraw from the union is opposed to the principle of the federation, legally it is not possible. Politically, it is possible to break up a federation and to revert to a unitary state or separate independent state by revolution or by the

\textsuperscript{10} See Articles 2, 3, 4, 5, 6 and 239-A etc. of Indian Constitution.
undaminoe consent of all the parties to the federation, with which a lawyer is not concerned. In a law this can be affected only by an amendment of federal constitution.

Since a federation is not altered or changed or dissolved without the amendment of the federal constitution, then importance of amending process is increase in the federal constitution. Amending process has a very vital part for the existence of federal government. Therefore in the federal constitution rigid amending process has been adopted instead of flexible amending process.

The American constitution of 1787 did not contain an express provision relating to secession nor did it declare that the union was 'indissoluble'. Hence, it would follow that secession might be allowed by an amendment of the constitution in the manner laid down in Article V., but not by unilateral action of the states or any of them, short of constitutional amendment.

Similarly, federal units of Australia, Switzerland, Canada, Nigeria and India etc. can not secede from the federation except through the process of amending the constitution itself.
A notable exception seen in the case of the constitution of U.S.S.R. which expressly declares in Article 72 that each union republic shall retain the right freely to secede from the U.S.S.R.

Thus, in order to maintain certainty and stability in federation and for avoiding the hasty, easy and frequent changes in federation, there must be a rigid amending process in federal constitution. The illustration of secession is to be found in the constitution of Malaysia. Though there is no provision relating to secession in the constitution of Malaysia, but the general federal principle of amendment is adopted for the secession. By virtue of the constitution of Malaysia (Singapore Amendment) Act 1965, Singapore has ceased to be a member of the Malaysian federation.

Secondly, in order to maintain the division of powers and co-existence of the General Government and Regional governments, it becomes necessary to adopt rigid amending process.

A federal constitution is an agreement between a number of states that combine together to establish over themselves a new government in which, they, by mutual agreement and of their free will, assign a certain part
of their authority. The federal constitution, which thus comes into existence by this deliberate resignation of some of the powers by the component states, contains the terms and the conditions of the contract between those states on the one hand and the newly established Central Government on the other. It would, therefore, be sheer folly to expose it to easy and frequent changes.

The states in federation practically surrender their individual sovereignty on certain conditions mutually agreed upon after very great sacrifices on their part and naturally they do so under specific guarantee for the maintenance and observance of those conditions by all the parties concerned, in the discussion of which each state individually and all states collectively take their part and contribute their share. Hence the constitution which is the result of such prolonged discussion can not be kept flexible as the constitution of any unitary state can easily be.

On the above opinion K.C. Wheare correctly says:

"It is essential in an federal government that if there is a power of amending the constitution, that power, so far at least as concerns those provisions of the constitution which regulate the states and powers of the
general and regional governments should not be confined exclusively either to the general government or to the regional governments. After from this, it does not matter logically where the power is placed, but there can be no doubt that practically it is wise to associate both the general government and the regions, either government or their people, in the process.\textsuperscript{11}

The same view is expressed by D.D. Basu

"A federal constitution is in the nature of an agreement between the parties to be federation, giving since to new state, namely, the federation. If this agreement is to continue, the process of changing the constitution should be rigid and should require consent of all the federating parties. For, if either the federal legislature or the legislature of a state were competent to unilaterally amend the constitution, there would be an end to the federation."\textsuperscript{12}

The constitutions of United States, Switzerland, Canada, Australia, West Germany, India, Nigeria and Malaysia etc. would be classed as rigid constitutions because they are intended to be supreme over the legislatures, general and regional - which they create or recognize, they can not be altered by these legislatures acting through the ordinary process of legislation and regional- Government with the General Government take part in process of amendment.


Due to division of powers in federal constitution, the authority to amend a federal constitution can not be vested in a body in which each state and all states have not an effective voice. So there is difference between ordinary legislative body and constitutional body and made of amending process is also differ to each other.

This is done in the united state of America which is a best example of federal constitution, where amendments to the constitution may be proposed either by two-thirds of both houses of congress or by a convention called together by congress on application of the legislatures of two thirds of the states. These proposed amendments are valid when ratified by the legislatures of three quarters of the states or by convention in three-quarters of the states, accordingly as one or other method of ratification may be proposed by congress. Seeing this nature A.V. Dicey rightly says:

"Therefore the ordinary legislature in federation can not be the amending body." 13

Same view is expressed by D.D. Basu in the following way:

"Where, the constituent power is vested in legislative body itself, the nature of the act done by the legislature in exercise of its constituent power, would patently different in kind from a statute made by the legislature in its legislative capacity, subject to the ordinary process of legislation." 14

So, in order to maintain the distribution of powers between general and regional governments, a special constitutional body of amendment is created which is a different in nature to ordinary legislative body and this is a special rigid feature of amending process in the federal constitution.

About the legislative and constitutional body, there was too much confusion among the Indian judges. Justice Mudholkar said:

"It is patently wrong to suppose that even though the constitution required a special majority for passing a constitution Amending bill, it would still be a legislative act like one in exercise of its normal legislative power." 15

But Justice Hidayatulla did not consider to this view and said:

"Parliament today is a constituent body with powers of legislation which include amendments of the constitution by a special majority but only so far as Article 13(2) allows..... The state does not lose its sovereignty but as it has chosen to create self imposed restrictions through one constituent body, those restrictions cannot be ignored by a constituted body which makes laws. Laws so made can affect those parts of the constitution which are outside the restriction in Article 13(2) but any law (legislative or amendatory) passed by such a body must conform to that article. To be able to abridge or take away the fundamental Rights which give so many assurances and guarantees, a fresh constituent Assembly must be convoked." 16

Thus, deeper fallacy of Justice Hidayatulla is that he considered to Parliament as a 'Constituted body' rather than 'a constituent body.'

But this erroneous opinion was not accepted in the majority opinion of Kesavanand Bharti17 case and Justice Ray Said:

"The distinction between constituent and legislative power is brought out by the feature in a rigid constitution that the amendment is by different procedure than that by which ordinary laws may be altered. The amending power is, therefore, said to be a recreation of the constituent Assembly every time Parliament amends the constitution in accordance with Article 368."

Similarly Justice Dwivedi said:

".......The amendment is the result of the exercise of the constituent power. The amending power conferred by article 368 is a constituent power and not legislative power."

Thus it may be submitted that in uncontrollable flexible constitution the distinction between constituent power and legislative power disappears, because the legislative can amended by the law-making procedure any part of the constitution as if it were a statute. On the other side, in controlled rigid constitution the procedure for making laws and for amending the constitution are distinct and discrete. No part of the constitution can be amended by the law-making procedure. This rigid amending process has been followed in constitution of U.S.A., Australia, Canada and

Switzerland, West Germany, Nigeria and Malaysia etc.

The Indian Constitution is hybrid pattern in relation to amending process. The amending process of Indian constitution is partly controlled and partly uncontrolled. It is uncontrolled with respect to those provisions of the constitution which may be amended by an ordinary law through the legislative procedure, it is controlled with respect to the remaining provisions which may be amended only by following the procedure prescribed in Article 368. When any part of the constitution is amended by following the legislative procedure, the amendment is the result of the exercise of the legislative power, when it is amended through the procedure prescribed by Article 368, the amendment is the result of the exercise of constituent power. Thus Indian constitution has both ordinary as well as special procedure of amendment.

Subject to the procedure laid down in article 368 our constitution vests constituent power upon the ordinary legislature of the union that is called Parliament and there is no separate body for amending the constitution as exists in constitution of U.S.A. and Switzerland.
There is, thus, no separate constituent body provided for by our constitution for the amending process. Even though Federal structure of our constitution have been protected through providing special amending process under Article 368. In the case of certain provisions 19 which affect the federal structure, then a ratification of at least half of the states is required with the two-third majority of the parliament.

So far protection of federal structure of the constitution, special procedure of amendment has been adopted in Federal constitution of U.S.A., Switzerland, Canada, Australia, West Germany, Malaysia, Nigeria and India and voice of states also added with the voice of Federal Government.

Thirdly, in order to protect and maintain the sovereignty of people and their fundamental rights it becomes necessary to protect rigid amending process.

Constitution is the will of the people and Federal constitution is result of agreement between the parties to the federation; giving rise to a new state, namely, the federation. People prepare their

19. See Articles 54, 55, 73, 162, 241, Ch. IV of Part V, Ch. V of Part VI, Ch. I of Part XI, Arts. 80-81, 7th Schedule and 4th Schedule and Article 368, itself.
constitution through their representatives assembled in a sovereign constituent Assembly which is competent to determine the political, social and economical future of the country in a manner as they like.

Of course, the picture would be different where the people, in making a constitution, reserve for themselves a power to participate in the procedure for amending the constitution. In that case, the constitution can not be amended without resorting to the referendum, and there is a view that in that case, this limitation can not be taken away without amending it in accordance with the procedure prescribed by the constitution.

In few federal constitutions, as Swiss, and Australian constitutions, people are directly associated in amending process, but on the other hand in few federal constitutions, as constitution of U.S.A. and India, there is no direct participation of the people in the form of Referendum.

In the constitution of Switzerland, provision of Referendum is adopted and maintain the sovereignty of people directly. Swiss constitution provides for
participation in a complicated manner in comparison to American constitution. Apart from a bill in Federal Assembly, a proposal for amendment may be made by the people themselves through the popular initiative, which is unknown to U.S.A., which is later embodied in the form of a bill by the Federal Assembly. The bill will not come into force unless it is accepted by the majority of the people, voting through the process of Referendum, not known to American constitution. This majority must be a double majority that is majority of Swiss citizens as a whole and majority of people as divided into States. In short, an amendment ultimately require the consent of the people of the majority of states, apart from the majority of all people voting, even though it has been approved by Federal legislature.

The process of amendment of the Australian constitution is a combination of American and Swiss precedents. In the Australian constitution, after an amendment bill is passed by an absolute majority, the bill is submitted to referendum of the electors of the House of Representatives voting in the States. The Bill will be

20. See Articles 118,119,120,121,122 and 123 of Swiss Constitution.
deemed to be passed a presented to the Governor General for this assent only if the voters at the Referendum approve it by a special majority as follows:

A) Majority of total member of electors voting at the Referendum.

B) Majority of the electors voting in each state.

C) Majority of the States voting in favour of bill.

Certain matters which affect a state particularly, require an additional condition for amending any provision relating to these matters, namely, that the amendment must be approved by the majority of electors voting in a particular state which is affected.

In short, Australian constitution, the amendment must be proposed by an absolute majority of both houses of the Parliament. It must be submitted to the electors for approval within six months and must be approved by a majority of electors with a majority of the state.

21. See Article 128 of Australian Constitution.
Thus, in Swiss and Australian constitutions, People are directly associated in amending process. They can initial a constitutional bill and they can take part in voting in form of Referendum. The popular initiative gives the voters the right to propose measures to passed by their representatives and referendum allows the electorate to review the acts of the legislature before they actually pass into law, which is a perpetual popular check upon the political machine.

On the other side, in constitution of United States the provision of Referendum is not used for any purpose in federal matters, but in many of the individual states provision of Referendum is used.

In constitution of U.S.A., sovereignty of the people is protected through representative of the people. They take part in rebuilding of constitution through their elected representatives. On this point Supreme Court of U.S.A. said

"The word legislature of state in Article V of the federal constitution, meant the Representative Legislative body which made laws for the state and did not the electors even though the authority of the representatives came from the electors. Article V did not envisage direct action by the people".

In reference to U.S.A. it would be observed to suppose that the people at large still retain their initial constituent power ever through the constitution has placed the constituent power in the hands of special machinery set-up by the constitution. On this point Supreme Court of U.S.A. clearly said

"In the United States sovereignty resides in the people who act through the organs established by the constitution...... the congress as the instrumentality of sovereignty is endowed with certain powers to be exercised on behalf of the people in the manner and with the effect the constitution ordains. The congress can not invoke the sovereign power to the people to override their will as thus declared."

The similar view expressed by the U.S.A. Supreme Court in the case of Dread Scott Vs. Sanford:


"The words people of the united states..... describe the political body, who according to our republican institutions, from the sovereignty and who hold the power and conduct the government through their representative"

The same approach is adopted by the Supreme Court in Sujjan Singh Vs. State of Rajasthan 25:

"Sovereignty of people is protected indirectly through their representatives ....... because they have excluded themselves from any direct or immediate agency in making amendments to it and have directed that amendments should be made representatively from."

Similarly Justice Hidayatulla expressed his view about the sovereignty of the people in the following way:

"A constitution can be changed by consent or revolution....The sovereignty of the people is either electoral or constituent. When the people elect the Parliament and the legislatures they exercise their electoral sovereignty. It includes some constituent sovereignty also but only in so far as conceded. The remaining constituent sovereignty which is contained in the preamble and Part III is in abeyance because of the curb placed by the people on the state under Article 13(2)." 26
The sovereignty of people through their representative is also accepted in the Kesavanand Bharti case, but they did not accept the majority opinion of Golak Nath case. This view may be submitted in the words of Justice Palekar in the following way:

"In our constitution the people having entrusted the power to the Parliament to amend the whole of the constitution have withdrawn themselves from the process of amendment and hence clearly indicated that there was no reservation. What the constitution conferred was made revocable, if necessary by the amendatory process. In my view, therefore, Article 13(2) does not control the amendment of the constitution. On that conclusion, it must follow that the majority decision in Golak Nath's case is not correct." 27

Thus, it may be submitted that sovereignty of people has been protected in constitution of Switzerland and Australia through Referendum and on the other side in constitution like U.S.A. and India where there are no provision of referendum sovereignty of people is maintained through their electorate representatives.

Therefore, in the Federal constitution, for maintaining the supremacy of the Constitution, division of powers between the Regional and Federal government, Co-existence of the Regional and Federal government and for safe guarding the sovereignty of the people, special rigid amending process is very necessary. So Parliament can not make frequent changes in the constitution and constitution can not become a play thing in the hands of Parliament.

**VARIETY OF AMENDING PROCESS IN FEDERAL CONSTITUTION:**

There is no doubt that for the maintaining the supremacy of constitution, division of powers, co-existence of Regional and General Government and for safe guarding the sovereignty of the people, there must be a rigid amending process in the Federal constitution. Federal constitution always consists a fixed and prescribed rigid amending process with itself. A Federal constitution can be changed only by a method different from that where by those other laws are enacted or repeal.

It is correct to say that there is a special procedure for amendment in the Federal constitution, but it is not same in the all Federal constitutions. It varies country to country. Though amending process vary
country to country but basic nature of the Federal Amending Process is that it has special procedure for the amendment other than ordinary process of law.

Constitution of U.S.A., Switzerland, Australia, Canada, West Germany, South Africa, India, Malaysia and Nigeria all are federal constitution in nature and they have special procedure of amendment for their constitutions; but they are not same.

In the constitution of United States of America, there are two methods of proposing amendments and two methods of ratification. The amendment can be proposed in either of the two ways - First by 2/3 majority of both the Houses of congress or second - by a convention called on the application of the legislatures of 2/3 of the States. An amendment proposed in either of the above two ways can be ratified in either two ways, First - by the legislatures of 3/4 of the States or Second - by Convention in 3/4 of the States.28

28. See Article V of the Constitution of U.S.A.
In Australia, the constitutional amendment must be approved by an absolute majority of both the Houses Parliament. Then it must be submitted to the electors for approval within 6 months, with the majority of the States. Thus, Australian Amending process requires absolute majority of the both the Houses of Parliament and approval of the majority of the electors, with the majority of the States.29

In the constitution of Switzerland, there are two kinds of amendments, 'Total Revision' and 'Partial Revision', while Article 119-120 prescribe the procedure for 'Total Revision', the, Article 121-123 speaks about the 'Partial Revision'. In both the Revision, though it may be Total Revision or Partial Revision, it is necessary that an amending bill must be passed by the both the Houses of the federal assembly and then it must be approved by a majority of the Cantons (States) and a majority of the citizens of Switzerland through the referendum. Thus, in Switzerland, an amendment ultimately requires the consent of the majority of the states apart from the majority of all the people voting, even though it may have been approved by the Federal Legislature.

29. See Section 128 of Australian Constitution.
original constitution of Canada, did not contain any provision for its amendment, but by enacting the Canada Act 1982, the British Parliament has now abjured all its authority over Canada and has made elaborate provisions for amending the constitution of Canada. The Amending Procedure established by Part V of the constitution Act 1982, in which 5 types of procedure have been given:

1. The General Procedure (S. 38 with S. 42)
2. Unanimous Consent Procedure (S. 41)
3. Special arrangements procedure (S. 43).
4. Unilateral federal procedure (S. 44)
5. The unilateral provincial procedure (S. 45)

In simple procedure, amending bill is passed by simple majority of both the House of Canadian Parliament, which applies in particular to the provisions mentioned in Section 42.

The Federal Parliament shall be exclusively competent to make amendments of the provisions of the constitution which relate to the executive government or the Houses of the Canadian Parliament Under Section 44.

Correspondingly, the legislature of each Province shall be competent to make laws amending the constitution of that Parliament.
Unanimous consent of the legislatures of the Federation and Provinces shall be required for making amendments to the matters specified in section 41, which are of concern to both the Federation and provinces, such as the offices of the Queen, the Governor General and the Provincial lieutenant - Governor, the Supreme Court of Canada.

In respect of amendments of provisions applying to one or more, but not all the Provinces, such as alteration of their foundaries, the Governor - General shall issue a proclamation for amendment only when so authorised by resolutions of both houses of the legislative Assembly of each of the provinces to which the amendment shall be applied.

Thus it may be submitted, in New Canadian Constitutional Act of 1982, there are various modes of amending process but it may be admitted that federal element of rigid constitution has been protected in this constitution.

Similarly, in Indian constitution there are three types of amending process. First - some Articles\textsuperscript{30} can be amended by Parliament by simple majority of Parliament.

\textsuperscript{30} See Article 2,3,4,5,6 and 239-A etc. of Indian Constitution
Secondly, other than those referred to above, amendment may be taken place by a majority of the total membership of each House of Parliament as well as by a majority of not less than 2/3 of the members of that House present and voting.\textsuperscript{31}

Thirdly, in matter of election of the President, Extension of Executive powers of the Union and States, Articles dealing with the Judiciary, Distribution of legislative powers between the centre and state, any list of VII\textsuperscript{a} scheduled, representation of States in Parliament IV schedule and Article 368 itself, in addition to special majority as referred above, ratification by not less than 1/2 of the State Legislatures is required.\textsuperscript{32}

Thus, in Indian Constitution there are three types of amending process simple amending process, amending process with special majority, and amending process by special majority with ratification of 1/2 of the States.

In Malaysia constitution 1963, a constitution may be amended by Federal Legislature with the special majority not less than 2/3 of the total number of members

\begin{itemize}
  \item \textsuperscript{31} See Article 368 (1) Indian constitution
  \item \textsuperscript{32} See Article 368 (2) Indian constitution
\end{itemize}
of each house of the legislature under Article 38 the amendment of special provisions can not be made without the consent of the conference of Rulers. Similarly no amendment of the provisions relating to the Eastern States of Sabah and Sarawak can be made without the consent of the Governor of State concerned.33

The New Federal Constitution, known as constitution of Nigeria 1979, may be altered by federal legislature by a special majority of 2/3 of majority of Parliament, with the consent of 2/3 of the States. A matter relating to creation of states or alteration of their boundaries requires a higher majority, not less then 4/5 of the total membership of each house of the federal legislature by a resolution in the legislatures of not less than 2/3 of the states. For the creation of a New State, there is a further requirement, namely that it must be approved by a referendum of 2/3 majority of the people of the area concerned, followed by a referendum of a majority of the people of all the State.34

33. See Article 159 of constitution of Malaysia.
34. See Section 9 Constitution of Nigeria
There are few exceptions to this rule that in a federal constitution there must be a rigid amending process and there must be voice of states in amending process.

Though, West Germany Constitution 1949, is Federal Constitution, but it is comparatively flexible. It can be amended by the Federal Legislature, without ratification of the states and Referendum of the People. A special majority is required in Federal Legislature for an amendment of the constitution that is a 2/3 majority of members of either House. Certain matters which affect the States particularly the division of the Federation into states, the participation of the states in the Federal Legislature have been made unamendable.35

Constitution of U.S.S.R. is more flexible than other rigid constitutions; it is a purely federal constitution in nature. Though U.S.S.R. constitution is called a federal constitution, but state (Republic) has no special voice in amending process. The constitution of U.S.S.R. may be amended by a decision of the Supreme Soviet of U.S.S.R., adopted by a majority of not less than two-thirds of the total number of the Deputies of each of its chambers.36

35. See Article 51 and 79 of the Constitution of West Germany.
36. See Article 174 and 74 of Constitution of U.S.S.R.
From the above discussion it may be submitted that there are various modes of amending process in the federal constitution. Some constitutions require only simple majority, then some require special majority. Some have simple majority with special majority. Some require absolute majority. In some constitutions there is only one procedure for the amendment then in other constitution there are so many procedures for the amendment in a single constitution. In some constitutions states take part in amending process but in some constitution states are totally neglected.  

Though, there is variety of amending process in federal constitution but there is one thing common that is, there must be a special procedure for amendment other than ordinary law. There must be maintained distinction between ordinary law and constitutional law and protected the powers of Regional and General Governments.

37. For detail, see chapter v of this work, in which detail comparative study of Amending Process has been given.