Available online at http://www.journalijdr.com

IJDR

International Journal of
DEVELOPMENT RESEARCH

ISSN: 2230-9926

International Journal of Development Research
Vol. 06, Issue, 04, pp. 7610-7616, April, 2016

Full Length Research Article

THE SCOPE AND AMBIT OF AMENDMENT OF THE CONSTITUTION; A COMPARITIVE STUDY OF THE CONSTITUTIONS OF INDIA, U.S.A AND ETHIOPIA

***Raveendran Nair and Legesse Tigabu Mengie**

School of Law, Jimma University, Ethiopia

ARTICLE INFO

Article History:

Received 28th January, 2016
Received in revised form
19th February, 2016
Accepted 21st March, 2016
Published online 27th April, 2016

Key Words:

Constitution,
Amedment,
India.

ABSTRACT

Constitution of a country is the basic law of the land which provides the rights and duties of citizen along with organization of government, its powers. All the constitutions are equipped with provision for amendment to cope with future needs of the people. This study deals with what extent and range of amendment can be permitted in case of the constitutions of USA, India and Ethiopia. The three constitutions are amendable according their amending provisions and that of India is more flexible to amendments when compared with other two constitutions. As per Article V of US constitution, amendment can be made by 2/3 majority of both senate and congress with ratification of ¾ of the state legislatures or amendments can be ratified by the convention of legislatures by ¾ majority whichever is decided by the congress. But Ethiopian constitution, Article 104, provides that when the parliament has an opinion to amend constitution, it must prepare a draft and cause it for public debate and decision and thereafter it can be amended accordingly subject to the ratification by more than one- half of state legislatures and if the amendment relates to fundamental rights or with respect to the amending provision it should be ratified by all state legislatures. But Indian constitution can be amended by the parliament with majority and with 2/3 majority of the members present and voting. A few articles which require ratification of the State legislatures. Interestingly it can be seen that fundamental rights enshrined in the constitution which is kept under the guardianship of the Supreme Court of India, can be easily amended without the ratification by the state legislatures. From 1951 to 1967 different amendments were made to the Indian constitution encroaching fundamental rights and 42 nd amendment assumes unlimited power to parliament to make any amendment. But Supreme Court ruled in 1967 that parliament has no power to amend fundamental rights and later in 1973, it held parliament is a creature of the constitution cannot assume unlimited power and cannot amend the basic features such as independent judiciary, parliamentary form of government, federal system of government etc, and also determined by the court from time to time. As per this ruling 42 nd amendment was declared null and void. Thus the Supreme Court decision brought some rigidity for amending India constitution. But US constitution and Ethiopian constitution explicitly limit the powers of the congress and parliament respectively to make amendments in their constitutions. But Indian constitution has not expressly limited the power of Indian parliament to make amendment but Supreme Court drew implicit limitations of power of parliament to make amendment from the constitution itself. This decision of the Supreme Court saved the Indian democracy as well as the fundamental rights of the people. Constitutions must be amended with the needs and development of the country and needs, but with abundant caution for salvaging the basic rights of people. Amendment is a safety valve provided to the constitution and if it is not provided, it may cause to the blasting of the entire structure and if any political party commands thumping majority in the parliament, they can amend the constitution even denying the basic rights. Hence there should be protection of fundamental rights from encroachment.

INTRODUCTION

Constitution of a country is the basic document which embodies citizen`s rights, duties, organization of government and powers and duties etc. It is necessary to make amendments to constitution according to the changing needs and circumstances of the people and countries. Amendments to the constitution is a safety valve for the constitution and if it is not provided it will cause to the blasting up of the entire structure. (Kamath, 1949) said in the Constituent Assembly of India ``If do not provide the necessary outlet or safety-valves for the air or storm to pass through, it is likely that the whole ship may be blown up.'' Amendments to constitution make it to cope with developments of the people and country and hence provision for amendment here becomes a matter for discussion. The rights of the people should be protected along with fulfillment of needs of the changing society. Here we are examining the provisions for amendments and its practical applications. India, USA and Ethiopia are democratic republics, enshrined rights of people in their constitutions and also retaining amendment provisions. Hence a comparative study can bring out the prons and corns of amendment and its impact in the society. Amendment function- when legislature functions for amendment it is not acting as a law making

****Corresponding author: Raveendran Nair***
School of Law, Jimma University, Ethiopia.

function but it functions as in the process of constitutional enactment. Constitutional changes cannot be achieved formal legal means (Rosalind Dixon, 2011). The scope and ambit of amendment of a written Constitution is always a matter of discussion in the legal parlance in the democratic world elsewhere. All written Constitutions of democratic Countries provide provision for making changes in the respective constitutions in accordance with the changing needs of the society. The courts in different countries on various occasions considered the matter of Parliament`s power to make amendment of the respective Constitutions. In India and U.S.A the matter became a subject for deep discussions on many occasions. Article 368 (Constitution of India, 1949) of Indian Constitution empowers the Indian Parliament to make amendments to its Constitution. Article V (Constitution of U.S.A, 1787) of the American Constitution provides for the amendment of Constitution of U.S.A. Article 104 and 105 (Constitution of the Federal Democratic Republic of Ethiopia, 1994) of Ethiopian Constitution empower Parliament to make amendment. All these three Countries accepted democratic and Federal form of Governments. Their Constitutions provide power to their respective Parliament to amend their Constitutions to cope with changes and needs of their society in the future. Here we focused the study on how far their respective Parliaments of three countries can wield its web in making the amendments. We are searching for the powers of the Parliaments whether they have unlimited or any limitation of powers in amending their respective Constitutions. The Indian Constitution is more flexible comparing with other two Constitutions. Article 368 provides for the amendment of Indian Constitution in three categories.

- Amendment by simple majority,
- Amendment by special majority
- by special majority and ratification by State.

More than hundred and twenty amendments were made to the Indian Constitution till now and it caught controversy on many occasions when the validity is questioned in the Courts. The first amendment was questioned in 1951 in the Supreme Court of India in Sri Sankiri Prasad Deo v Union of India (AIR, 1951). This case was brought before the Supreme Court of India, challenging the first amendment introducing new Articles 31 A, and 31B in the Constitution which are violative of the Fundamental right guaranteed under Article 19. The Supreme Court held that the said amendment was valid and the Parliament is justified in making reasonable abridgement of Fundamental right enshrined in the Constitution. The court further held that Parliament had power and authority to amend all the Articles of the Constitution of India including Fundamental rights. But in 1973 the Supreme Court ruled changed its earlier stand ruled that Parliament had no power to make amendments destroying the basic features of Indian Constitution in the Kesavanada Bharathi v State of Kerala (AIR, 1973). The ruling in this case is still followed and which is considered as the landmark case saved the democracy of India. But U.S.A. Parliament is explicitly limited from making any law curtailing the rights guaranteed by the Constitution. As per the X^{th} amendment of the U.S. Constitution the powers which are neither delegated to U.S, nor prohibited by it to the States are reserved for the States or to the people (Constitution of U.S.A, ?). Article V of the Constitution of U.S.A. empowers the Legislature to make amendments. It requires special majority in the Congress with ratification by three by fourth majority of the State Legislature. The U.S Constitution explicitly limits passage of any law which affects freedom of speech, right to assemble peaceably or right to petition to Government and the Congress can legislate any law only in the area delegated to it. It cannot assume more power than delegated to it or make any law abridging the rights guaranteed by the Bills of rights. In order to make any law affecting the rights guaranteed by the Constitution, Congress should get the delegation of power from the people.

Ethiopian Constitution is also amendable but it is very rigid for amendment than Indian and U.S.Constitutions. Article 105 of Ethiopian Constitution empowers the Legislature to amend the Constitution. It require special majority of the Parliament with ratification of all State Legislatures. Article 105, sub article 1provides that Chapter III of it containing the fundamental rights and the amending provision can be amended only with the ratification by all State Legislatures. In Ethiopia Supreme Court has no jurisdiction to review any question of Constitutional matters and it is left with the upper house viz, the Council of States. So far no amendment to the Ethiopian Constitution is made since its inception. Of the three Constitutions, Indian Constitution is more flexible to amendments than the others. In Indian Constitution no explicit limitation is provided for the amendment and the Supreme Court in early stage of its inception had taken the view that the Indian Parliament had power and authority to amend any article including the fundamental rights guaranteed by the Constitution but after several years it decided that fundamental rights are not amendable but this view was overruled and held that the all articles can be amended except the changing the basic features of the Constitution. American Constitution can be amended only through the procedure provided in article V of that Constitution and it is not easy like in India. In U.S.A. for all Constitutional amendments a special majority, that is two- third of both houses are necessary and should also ratified by three- fourth of the State Legislatures. Any proposal for amendments can be made only when it is supported by two- third majority or majority of two- third of the State legislatures. Amendments in Indian Constitution can be made with majority of the members of each house and two-third majority of the members present and voting and ratification is provided only for few articles which doesn`t include fundamental rights guaranteed in it.

Indian Constitution

Indian Constitution came into force in the year 1950 January 26 and since then more than hundred and twenty amendments were made. The Indian Supreme Court has power to review all acts of the Legislature and the executive when it is dealing with cases and this power of the Supreme Court has been made use to challenge the amendments brought to the Constitution since 1950. The first amendment was made in the year 1951 by the provisional Parliament which was assailed in the Supreme Court in Sri Sankari Prasad`s case on the ground that it violates Article 19(f) Part III of Indian Constitution, which is guaranteed as fundamental right to the citizens of India. The Supreme Court decided upholding the validity of the amendment with observation that the Parliament can

amend any Article of the Constitution including fundamental rights (Sri Sankari Prasad Singh Deo V Union of India, 1951). After independence many states in India for introducing agrarian revolution made several enactments which faced serious challenges in the courts. In order to assist the States the first amendment to the Constitution was made by introducing Article 31A and 31B into the Constitution in 1951. The newly added provision article 31B is made to provide protection to the enactments included in the 9th schedule of the Constitution from the challenges of the Courts. In 1955 article 31A was again amended by fourth Constitutional amendment. Notwithstanding this amended provision some of the statutes for agricultural reforms were successfully challenged in the Courts. In order to save the validity of those Acts the Parliament again amended article 31A by seventeenth amendment 1n 1964 and 44 statutes were included in the 9th schedule of the Constitution for its protection from challenging in courts.

But the very action of the Parliament was challenged in the Supreme Court in Sajjan Singh case. In this case it was contented by the petitioners that fundamental rights contained in Part III of the Constitution cannot be amended if the amendment abridges or takes away the rights guaranteed under article 19(f), comes under Part III (Constitution of India, 1949). So Parliament has no power to make any law which takes away or abridges any right covered by Part III. The petitioner therein advanced further contention that by the amendment in question affected the right under article 226, right to approach the High Court, a remedial measure. The Supreme Court held that the impugned amendment does not purport any change in the provision of article 226 or it has any direct effect, it only reduced sphere of operation and not the power of High Court. The Supreme Court followed the decision of Sankari Prasad case and held that Parliament has power to amend all the provisions of the Constitution under article 368 including fundamental rights (Sajjan Singh, 1965). Again different States made several new legislations and amendments were made in the existing legislations so as to make the law more suitably enforceable for the agrarian reforms that were ignited in the country. This invoked many challenges to the constitutionality of the laws and the amendments which were made to protect the State Laws. The Punjab Security of Land tenures Act, 1953, and Mysore Land Reforms Act, 1962, amended by act 16 of 1965 were challenged. These Acts were included in the 9th Schedule to make them free from challenges. The Parliament made seventeenth amendment to include those State laws in the 9th schedule and hence the said amendment was also challenged in 1967 in I.C.Golaknath case.

The issue in this case was whether the Parliament has power under article 368 to amend the Constitution including fundamental rights guaranteed in part III of the Constitution. Whether article 13(2) exercises any bar against the power under article 368.

Article 13 (1) says that ``All Laws in force in the territory of India immediately before the commencement of this Constitution, in so far as they are inconsistent with the provisions of this part, shall, to the extent of such inconsistency, be void.

2) The State shall not make any Law which takes away or abridges the rights conferred in this Part and any law made in contravention of this clause shall, to the extent of contravention, be void (Constitution of India).

The Supreme considered provision of this article when dealing with amendment. In Part XX which contain only one chapter and only one article under the heading,`` AMENDMENT OF THE CONSTITUTION.” (Constitution of India, ?) and in the marginal notes says ``procedure for amendment”. It was contented in that case that article 368 prescribes only the procedure and no power to amend the Constitution rests in article 368 and an amendment to the Constitution is a legislative act and is violative of clause 2 of article 13 and hence the laws are to be struck down. The Supreme Court held that the Parliament has no power under article 368 to amend the Constitution and the power of legislation is with articles 245 and 248 and with entry 18, scheduleVII. It further ruled that an amendment to the Constitution also comes within the definition in ``Law” in article 13(2).The majority of the bench ruled that the decision in Sajjan Singh`s case was wrong and it was overruled. But the first and fourth amendment of the Constitution though it inroad into the fundamental rights is held to be valid because of its long acquiescence and the court observed that it declined to consider the validity of the amendment after a considerable lapse of time in good sense and of sound policy. It reached the conclusion that the amendments to the laws are valid because of the existence article 31, A, 1, but it struck down section 3 of the amendment act which includes 44 Acts into the 9th Schedule and adopted prospective overruling for the first time in its history. The Supreme Court held that Parliament has no power to make any amendment to the Constitution in the future, curtailing fundamental rights as it is transcendental in nature and highly necessary for the personal development of citizens and the word ``law” covered by clause 2 of article 13 is also applicable to article 368 (Golaknath, 1967).

In pursuance of the ruling of the Supreme Court in the I.C.Golaknath`s case the Parliament made 24th amendment to the Constitution to overcome the said decision. An amendment is also brought to the marginal note, instead of `procedure for amendment”, it is changed as power and procedure. Clause 4, is added to article13, making it explicit that the term ``law” in article 13 does not include any constitutional amendment (Constitution of India, 1971). Twenty-fifth amendment added 31C to the Constitution to protect State laws purported to be made to give effect to directive principles enshrined in the Constitution. It says as ``Notwithstanding anything contained in article 13, no law giving effect to the policy of the States towards securing all or any of the principles laid down in part IV shall be deemed to be void on the ground that it is inconsistent with or it takes away or abridges any right conferred by article 14 or 19,and no law containing a declaration that it is for giving effect to such policy shall be called into question in any court on the ground that it does not give effect to such policy” (Constitution of Indiam, 1971). Twenty-ninth amendment brought some statutes in the ninth schedule. The Kerala Land Reforms Act 1963 as amended by Kerala Land Reforms (amendment) Act 1969(Act 35 of 1969) was challenged along with the Constitutional amendments (supra) by His Holiness Sri Kesavananda Bharathi in the

Supreme Court of India. In that case the extent of power conferred on the Parliament to make amendment under article 368 was also examined by the Supreme Court. Article 368 reads as under

1. Notwithstanding anything contained in this Constitution, Parliament may in exercise of its constituent power amend by way of addition, variation or repeal any provision of this Constitution in accordance with the procedure laid down in this article
2. Amendment of this Constitution may only be initiated by introduction of a bill for the purpose in either House of Parliament, and when the Bill is passed in each house by a majority of the total membership of that House and majority of not less than two-thirds of the members of that House present and voting,[it shall be presented to the President, who shall give his assent to the Bill and thereupon] the Constitution shall stand amended in accordance with the terms of the Bill

Provided that if such amendment seeks to make any change in

- Article 54, article 55, article73, article 162 or article 241 or
- Chapter IV of Part V, Chapter V of Part VI or Chapter I of Part XI or © Any of the lists in the seventh schedule or
- The representation of States in Parliament or
- The provision of this article

The amendment shall also require to be ratified by Legislatures not of less than one- half of the States by the resolutions to that effect passed by those Legislatures before the Bill making provision for such amendment is presented to the President for his assent.

3) Nothing in article 13 shall apply to any amendment made under this article
4) No amendment of this Constitution (including the provisions of Part III) made or purporting to have been made under this article [whether before or after the commencement of section 55 of the Constitution(forty-second amendment) Act 1976 shall be called in question in any court on any ground
5) For removal of doubts, it is hereby declared that there shall be no limitation whatever on the constituent power of Parliament to amend by way of addition, variation or repeal the provisions of this Constitution under this article (Constitution of India). Clause 4&5 are inserted by 42th amendment of the constitution (Constitution of India, 1976).

The petitioner`s counsels argued that the Constitution gave freedom which subsist forever and this Constitution was made to free the nation from future tyranny from people`s representatives and hence the Parliament has only limited power to amend the Constitution. The counsel appearing for the Union and States argued that the Parliament has enormous power for amendment and even it can amend all the articles and substitute fresh provisions waiving fundamental rights or replace new form of Government in the present system. But the Supreme Court did not accept the contention of the State side and arrived at a conclusion that the expression`` amendment to the constitution" in article 368 means any addition or change in the provision of the constitution guided by the Preamble and Directive Principles. It was further argued that there was no explicit provision to limit the power of the Parliament to make amendment and hence the Parliament has enough power to amend any of the article including fundamental rights. The Supreme Court negatived this argument by deriving implied limitation on the amending power of Parliament from Constitution and by formulation of basic features theory. It ruled that every provision of the Constitution can be amended by keeping the basic structure. The basic features pin-pointed by the Supreme Court are the following:

- The Supremacy of the Constitution
- Republican and Democratic form of Government
- Secular character of the Constitution
- Separation of powers between Legislature, executive and judiciary
- Federal character of the Constitution

And the above structure is built on the basic foundation of dignity and freedom of individual (Kesavananda Bharathi). The Supreme Court decided the case as that Parliament has no power to take away or abridge the fundamental rights or completely change the fundamental features of the Constitution so as to destroy its identity by way of amendment under article 368 and section 3 of the constitution amendment was declared void as it delegate power to amend Constitution to State Legislature. That is when a State Legislature enacts a statute and if it contains a declaration to the effect that is enacted for the implementation of the State Policy; its validity must not be called in question in any court even though it violates the provisions of fundamental rights. The rule laid in Kesavanada Bharathi`s case is still following by the Supreme Court. The decision in this case saved the Indian democracy and freedom of People. Even though there is no express limitation of power on parliament on amendment under article 368,the Court invoked implied limitation from the Constitution on constituent power of Parliament to amend the Constitution and declared that Parliament has no power to distort or emasculate the basic features of the Constitution.

In the year 1975 the Parliament made the 39th amendment which was in the wake of the setting aside the election of the then Prime Minister, Indira Gandhi, to Parliament by Allahabad High Court. The amendment was brought to nullify the judgment of Allahabad High Court. A new article, 329(A) was introduced in the Constitution by that amendment. The amended clause prohibits challenging the election of any person to the House of People who holds the office of the prime minister at the time of election or is appointed as the prime minister after such election; and to the election of a person to the House of People who holds the office of the Speaker or is appointed as the Speaker after such election. Their election shall only be challenged before authority appointed by Parliament only. The other clause of amendment is that no such decision of the authority shall be called in question in any court. The petition pending before any court immediately before commencement of the amendment shall stand abate and a clause is made to neutralize the Allahabad High Court judgment and mandated the Supreme Court to decide the pending cases accordingly with amended provision. But the Supreme Court ruled that clause 4 of the 39th amendment act is void on the ground that it destroys the basic

features of the Constitution (Indira Nehru Gandhi, 1975). Separation of Legislative, Judicial and Executive powers is recognized in the Constitution and the amendment is an intrusion into the judicial power and hence violated the basic principles of the Constitution and upheld the decision in Kesavananda Bharathi`s case (supra). During the period of emergency the 42nd amendment was made to the Constitution by adding two clause to Article 368 as 368(4) and (5). Article 4 says that no amendment made under this article shall be called in question in any court on any ground and 5 provide unlimited constituent power to the Parliament to make amendment by way of addition, variation or repeal the provisions of the Constitution. By this amendment Parliament claims unlimited and unquestionable power to amend the constitution under Article 368.This amendment was brought to challenge before the Supreme Court of India in 1980 in Minerva Mills case and the Supreme Court ruled that the 42nd amendment was void as it violates the basic principles of the Constitution as held in the Kesavananda Bharathi`s case (Minerva mills, 1980). Even though no express limitation is provided in the article 368 for amending the provisions of the Constitution, the Supreme Court invoked implied limitations for amendment. Hence the Indian Constitution can be amended, subject to the principles of basic features of Indian Constitution, drawn by the Supreme Court. The Supreme Court held that Parliament, Judiciary and Executive are the creatures of the Constitution and none of it can override the Constitution.

Constitution of U.S.A.

Article V of the U.S. Constitution provides for the amendment of the Constitution. It says that

``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-third 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 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 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" (U.S.Constitution).

The Article V is very rigid for making any amendments. Amendment is possible only in two ways 1) A proposal for Amendment is made by the Congress with a two- third majority of both houses, when ratified by three- fourths of the State Legislatures of several States, it become an amendment.2) On the application of two-third legislatures of several States a convention is called for proposing amendments which when ratified by three- fourth of the Legislatures of several States become amended provision of the Constitution. The Congress is at liberty to adopt which mode of ratification. The U.S Constitution is rigid to amendment and procedure is very tedious, tiresome and lengthy exercise. A specific majority of the State Legislatures support is made mandatory, and if it is not secured no amendments can be possible and regarding representation of a State in the Senate, the ratification of the concerned State is also a must, if not, no amendment. United States Constitution made express provision that the powers not delegated specifically by the Constitution rest with state or people (U.S. Constitution). The Constitution forbade the Congress from making any law against freedom of speech or peaceable assembling or for respecting an establishment of any religion or restricting its free exercise. The U.S. Constitution guaranteeing more personal liberty to its citizens and the power of the Congress is limited expressly.

Ethiopian Constitution

Ethiopian Constitution is also very rigid to amendment. It says that Constitution can be amended and under the provisions of articles 104 and 105. Article 104; Initiation of amendments

Any proposal for constitutional amendment, if supported by two-third majority vote in the House of Representatives, or by a two- third majority in the House of Federation or when one-third of the State Councils of the member States of the Federation by a majority in each Council have supported it, shall be submitted for discussion and decision to the general public and to those whom the amendment of the constitution concerns. Article 105; Amendment of the Constitution.

1. All rights and freedoms specified in Chapter III of this Constitution, this very Article, and Article 104 can be amended only in the following manner:

a) When all State Councils, by a majority vote, approve the proposed amendment;
b) When the House of People`s Representatives, by a two-third majority vote approves the proposed amendment; and
c) When the House of the Federation, by a two- third majority vote, approves the proposed amendment.

2. All provisions of this constitution other than those specified in sub-Article 1 of this Article can be amended only in the following manner:

a) When the House of Peoples` Representatives and the House of the Federation in a joint session, approve a propose amendment by a two- third majority vote; and
b) When two- third of the Councils of the member States of the Federation approve the proposed amendment by majority votes (Constitution of the Federal Democratic Republic of Ethiopia,1994).

Amending the Ethiopian constitution is very tedious task and is very rigid. The procedure for amendment is provided in Article 104.Any proposal for amendment shall only be made, if such proposal is supported by two- third majority vote in either House of the Peoples` Representative or Federation or one- third of the State Councils each with majority vote. Then such proposal must be given for public discussion and decision and when the general public supported for amendment, it shall be made as per the provisions of Article 105. Amendments shall be made in two manner, viz for amending Chapter III

namely fundamental rights and freedom, Article 104&105 can be amended only when the proposed amendment is approved by two- third majority in the House of Peoples` Representatives and two- third majority in the Federation and approved by all State Councils by majority and other Articles can be amended by when the House of Peoples` Representative and House of Federation in a joint session approve the proposal for amendment by two- third majority and two third of the State Councils approve the proposal for amendment by majority vote. It is seen that no amendment is made by Ethiopia so far since its inception in 1994.

DISCUSSION

Among the three Constitutions, Indian Constitution is more flexible to amendments. The Constitutions of U.S.A and Ethiopia laid limitations over their respective Legislatures to make amendments, but no such express limitations are laid up by Indian Constitution on its Parliament. Some scholars believe that Constitutional stability must be highly necessary to promote the process of democratic self-government and also for keeping certain pre-constitutional commitments such as minority rights (see Holmes, 1995, Elster, 2003, Sager,2001) (Rosalind Dixon, 2011). Some US States constitutions have no provisions for amendments and when Federal Constitutional convention was held in1787, it became necessary to include a provision for amendment. When doubts were raised about the inclusion of amendment provision, George Mason replied 'amendments therefore will be necessary, it will be better to provide for them in an easy, regular and constitutional way than to trust to chance and violence'' (Yaniv Roznai, 2014). When the Constitutions of US, Ethiopia laid some rigidity in amending their constitution, but Indian constitution is less stable and easiest one for amendment and it amended many times. Those who argue for the stability of the constitution fears that important right such as fundamental rights and minority rights could be protected only if the constitution is stable.

In India, most of the constitutional amendments abridged the fundamental rights guaranteed by the constitution. Till 1967, the Supreme Court was of the view that Parliament has power to amend each and every provisions of the Constitution, but it changed the earlier view in I.C. Golaknath`s case and held the Parliament cannot make amendments on fundamental rights based on Article 13(2) of the Constitution. Article 13(2) makes express prohibition to make any law which violates or in contravention of any rights provided in part III, Fundamental rights and any law which contravenes or violates any rights provided in part III will be null and void to the extent which it contravenes. American Constitution says whatever not mentioned in the Constitution is vest with people or State and Congress has power to act only in the area mentioned in the Constitution. It has no power to reduce or take away the basic rights of its citizens, but Indian Parliament, on many occasions assumed unlimited power and altered, modified or contravened the fundamental rights guaranteed by the Constitution which warranted the interference by the Supreme Court. The United States made limited number of amendments when compared with India. In Ethiopia, no amendment is made since its inception and very tedious and lengthy process is to be followed for amendment and not easy. For all the amendments, the proposal shall be submitted for public discussion or referendum and then passed by legislature as provided by article 105. The fundamental rights enshrined in Ethiopian Constitution can be amended only by two-third majority in both houses of Parliament and concurred by all State councils with majority votes after following the procedure laid down in article 104, public discussion and referendum. In Ethiopia Court is barred from considering Constitutional questions and it is decided by the upper house of the Parliament (Constitution of Federal Democratic Republic of Ethiopia, 1994).

Indian Parliament made various amendment in the guise of promoting developments in various areas curtailing the fundamental rights which were agitated in the Supreme Court by way of writs and in 1973 the Supreme Court rendered the landmark decision in Kesavananda Bharathi`s case that the Parliament has no power to alter the basic nature of the Constitution which saved the democratic system in India. But during emergency period the Parliament made amendment by assuming uncontrolled power to itself, that it had power to make any amendment to the constitution, was stuck down by Supreme Court in Minerva mills case in 1980, relying on the decision in Kesavananda Bharathi`s case. In rendering such decision the Supreme Court invoked implied limitations in the Constitution. The U.S and Ethiopian Constitutions provided express limitations to amendment and in India implied limitation is invoked by the Supreme Court in the way of amendment and hence the these Constitutions cannot be amended by an ordinary resolution of the Legislatures, but by constituent legislative power without altering the basic structure of the constitution. All the three Constitutions provide for constituent power to amend Constitution which should be followed otherwise such amendment becomes null and void. On the perusal of the three constitutions, India`s Constitution is more flexible to amendment.

Conclusion

Among the Constitutions, of U.S.A, Ethiopia and India, Ethiopian Constitution is more rigid to amendment. All constitutions imposed limitations on the legislature in making laws curtailing or abrogating or taking away certain rights, which is considered to be basic for the people. The first amendment of U.S. Constitution expressly prohibits congress from making any law for establishment of any religion or prohibiting its free exercise or freedom of expression and IXth amendment prohibits in construing rights not enumerated in the constitution as denied and cannot be taken away.Xth amendment made it clear that the powers not delegated to Congress is reserved by the people and Congress is not competent to make any law over any subject matter not delegated to it by the constitution and its power is limited. The U.S constitution gives rights of the people as paramount than anything else and express prohibition made to avoid any chance of playing with rights of people. Ethiopian constitution allows amendment only after public discussion and decision taken by the people. Indian constitution on other hand is easier for amendment compared to other two constitutions. Article 13(2) restricts the power of Parliament in making any law which abridges or takes away the rights conferred by part III of Indian Constitution but there arose so many occasions of

infringement of these fundamental rights by constitutional amendments which were brought to the scrutiny by courts occasioned confronting views. It was only in 1967, in I.C.Golaknath`s case, the Supreme Court took a different view that fundamental rights shall not be abrogated or taken away by constitutional amendments and this decision was overruled in 1973, in Kesavananda Bharathi`s case, *supra,* and held that an amendment is not law as provided under article 13(2), but Indian Constitution has some basic features, such as democratic republican form of Government, independent judiciary, federal system, fundamental rights etc, which is to be determined by courts when it is necessary, and Parliament being a creature of the constitution is not empowered to alter or destroy the very nature of the constitution by way of amendment provided under article 368 and thus limited the power of Parliament in making amendment.

REFERENCES

AIR, 1951. Sri Sankari PrasadV Union of India& State of Bihar and others; SC 455.

AIR, 1973. Kesavananda BharathiV State of Kerala, SC 1461.

Constitution of Federal Democratic Republic of Ethiopia, 1994, Articles 83&84.

Constitution of India 25th amendment, 1971.

Constitution of India, 24th amendment, 1971.

Constitution of India, 42nd amendment Act, section 55, 1976.

Constitution of India, Article 13(2).

Constitution of India, Article 368, 1949.

Constitution of India, Article 368, supra.

Constitution of India; Article 19; 1949.

Constitution of India; Article 368, supra.

Constitution of the Federal Democratic Republic of Ethiopia, 1994.

Constitution of the Federal Democratic Republic of Ethiopia, Article 104& 105; 1994.

Constitution of U.S.A. Article V, 1787.

Constitution of U.S.A; Article X; 10thAmendment.

I.C. Golaknath and another V State of Punjab & another, A.I.R SC 1967, 1643.

Indira Nehru Gandhi v Rajnarain and another; 1975, SC AIR 2299.

Kamath, H.V. 1949. Speech in the constituent Assembly of India, Saturday, September 17; Volume IX.

Kesavananda Bharathi V State of Kerala, judgment, para316.

Minerva mills Ltd and other v Union of India, 1980; 2SCC, 591.

Rosalind Dixon, 2011. Constitutional Amendment Rules, A Comparative perspective; Public Law and Legal Theory Working Papers, University of Chicago Law School.

Rosalind Dixon, 2011; Constitutional Amendment Rules, A Comparative perspective; Public Law and Legal Theory Working Papers, University of Chicago Law School.

Sajjan Singh V State of Rajastan; A.I.R. SC, 1965, 845.

Sri Sankari Prasad Singh Deo V Union of India & State of Bihar and others; 1951, SC 163.

U.S.Constitution, Article I, 1st amendment.

U.S.Constitution, Article v, 1787.

U.S.Constitution, Article x, 10th amendment, supra.

Yaniv Roznai, 2014. "Unconstitutional constitutional amendments; A study of the Nature and Limits of Constitutional Amendment Powers''; London School of Economics and Political Science.

****