



FACULTY OF JURIDICAL SCIENCES

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Lecture-9



Comparative Study of Judiciary:- India, U.S.A and U.K

- India, UK and USA are liberal democratic states. The judiciary in each of these enjoys a very important and powerful position. They have an independent, impartial, honest and efficient Judiciary. Principle of Separation of power is followed in these countries and Judiciary is independent of other two organs interference. In USA there is two tier judicial systems.
- In India there is single integrated judicial system where both state and center laws are administered under supervision of Supreme Court. UK is a unitary state where single integ...
- One unique feature of United Kingdom and US Judiciary is its Jury system. In India and USA judiciary has acquired the power of judicial Review. UK Judiciary does not enjoy the power of judicial review.
- Principle of Rule of law is adopted by United Kingdom; there is no formal bill of fundamental rights and people's rights stand guaranteed under ordinary laws.
- In India and US, the constitution is the supreme law of the land and judiciary acts as the interpreter and protector of the constitution. In UK the judicial system has been the result of slow and gradual evolution.
- In the UK, the judicial system has been the result of slow and gradual evolution. In India, the Judiciary has been organised and its powers have been defined by the constitution of India.
- In the USA, the Judiciary stands organised under the provisions of the US constitution. However it has evolved into a fully developed judicial system during the past 220 years of its working.

Amending Procedure under Indian Constitution

. The makers of the Indian Constitution were neither in favour of the traditional theory of Federalism, which entrusts the task of constitutional amendment to a body other than the Legislature, nor in prescribing a rigid special procedure for such amendments. Similarly, they never wanted to have an arrangement like the British set-up where the Parliament is supreme and

can do everything that is humanly possible. Adopting the combination of the 'theory of fundamental law', which underlies the written Constitution of the United States with the 'theory of parliamentary sovereignty' as existing in the United Kingdom, the Constitution of India vests

constituent power upon the Parliament subject to the special procedure laid down therein. The Constitution of India provides for a distinctive amending process as compared to the leading Constitutions of the world. It may be described as partly flexible and partly rigid. It is Article 368 of the Indian Constitution which provides the procedure through which amendment can be brought in Indian Constitution. Article 368: Power of Parliament to amend the Constitution and Procedure therefor: (1) Notwithstanding anything 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) An amendment of this Constitution may be initiated only by the 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 by a 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: (a) article 54, article 55, article 73, article 162 or article 241, or (b) Chapter IV of Part V, Chapter V of Part VI, or Chapter I of Part XI, or (c) any of the lists in the Seventh Schedule, or (d) The representation of States in Parliament, or (e) the provisions of this article, the amendment shall also require to be ratified by the Legislatures of not less than one-

half of the States¹⁷... by resolutions to that effect passed by

those Legislatures before the Bill making provision for such amendment is presented to the President for assent.

(3) Nothing in article 13¹⁸ shall apply to 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 the 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. As per the provisions of Article 368, the Constitution of India provides for three categories of amendments. Firstly, those that can be effected by Parliament by a simple majority such as that required for the passing of any ordinary law

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the amendments contemplated in articles 4, 169, para 7(2) of Schedule V and para 21(2)¹³ of Schedule VI fall within this category and are specifically excluded from the

purview of article 368 which is the specific provision in the Constitution dealing with the power and the procedure for the amendment of the Constitution;

Secondly, those amendments that can be effected by Parliament by a prescribed special majority'; and Thirdly, those that require, in addition to such special majority', ratification by at

least one half of the State Legislatures. The last two categories being governed by article 368. Hence, barring the requirements of special majority, ratification by the State Legislatures in certain cases, and the mandatory assent by the President, a Bill for amending the Constitution is dealt with the Parliament following the same legislative process as applicable to an ordinary piece of legislation. This procedure of amending the constitution is different as well similar some manners to the US and UK amending procedure. In India also state ratification is required but not in all matters of amendment as the US Constitution requires. In some matters as specified in Article 368 Indian Parliament has power to amend the constitution and the same amendment .

MCQ

1. Which feature of Indian Constitution is not taken from American Constitution?

- A. Preamble
- B. Single citizenship
- C. Judicial Review
- D. Fundamental Rights

2. Procedure for the amendment of the Constitution is taken form:

- A. USA
- B. Russia
- C. South Africa

D. Canada

3.The concept of Federal System in Indian Constitution is taken from:

A. Ireland

B. Australia

C. Germany

D. Canada

4.From which country the concept Fundamental Duties in Indian Constitution is taken?

A. USA

B. Russia

C. South Africa

D. Canada

5.Emergency provisions in Indian Constitution is taken from:

A. Australia

B. Japan

C. Canada

D. Germany