

## **EXPLORING THE POWERS OF CONSTITUTIONAL AMENDMENT: A COMPARATIVE STUDY OF INDIAN AND BRITISH PARLIAMENTS**

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### **ABSTRACT**

In the modern era, Britain is the oldest and India is the largest democratic country. In India, the gradual development of democracy during the contemporary period occurred under British colonial rule; however, its present democratic structure is entirely different. After independence, the framers of the Indian Constitution declared the adoption of a written constitution along with a parliamentary form of government to strengthen the political system and achieve the highest level of national development. This can only be achieved if the relevance, dynamism, and vitality of the Constitution are maintained. Therefore, in the present time, both the Indian and British Parliaments have been vested with the power to amend the Constitution. The primary objective of this study is to understand the significance of constitutional amendments by conducting a comparative analysis of the constitutional amendment powers of the parliaments of both countries. The researcher has employed historical, comparative, and analytical methods in this research paper. It can be concluded that, for the governance system of any country, the Constitution is as essential as the provision for its amendment, so that the Constitution remains relevant in the changing times.

**Key Words** – Indian Parliamentary System, British Parliamentary System, Constitutional Amendment, Power of Constitutional Amendment.

### **INTRODUCTION**

The Constitution serves as the fundamental foundation of the political, social, and institutional structure of any nation. It not only provides direction to the functioning of the state but also guarantees the rights, duties, and freedoms of its citizens (Basu, 2021, p. 52). In every era, changes in society, politics, and technical demands require that the Constitution remain flexible and adaptable. In this context, the concept of "constitutional amendment" becomes extremely significant, as it enables the Constitution to function as a living document. Almost all written constitutions include provisions for amendment—for instance, Articles 5 and 357–358 of the Constitutions of the United States and Colombia, respectively, provide for constitutional amendment (Dixon & Stone, 2015; Vile, 2015; Raj & Noorani, 2020, p. 84). Under this concept, the legislature engages in creative action to deliberate on new issues, challenges, and policies, resolving the problems faced by the people. The Indian Constitution contains a clear and detailed provision for constitutional amendment. In contrast, the Constitution of the United Kingdom, being unwritten and flexible, does not have such explicitly defined provisions; however, the concept of constitutional amendment in the UK is considerably more flexible than in India. For any system of governance to remain relevant, changes and adaptations are natural and necessary—otherwise, those systems risk losing their legitimacy. In the United Kingdom, Parliament is supreme, and there exists no separate or formal process for constitutional amendment. Any statute passed by the Parliament automatically becomes part of the Constitution. Hence, the constitutional amending power of the British Parliament is considered unlimited, unrestricted, and extremely flexible (Rohal, 2014, p. 7). In contrast, the framers of the Indian Constitution accorded supremacy to the

Constitution over the Parliament. While Parliament has the power to amend the Constitution, it cannot alter or destroy its basic structure (Kesavananda Bharati v. State of Kerala, 1973). This demonstrates that the amendment procedure in India is balanced and represents a model of a prudent democracy. Through this research, the scholar seeks to develop a comparative understanding of the amending powers within the Indian and British constitutional frameworks. This study is also relevant for those legislative systems that are reconsidering or reforming their constitutional amendment procedures. Therefore, the subject is not only of academic importance but also holds significant practical and policy-making relevance. The researcher has employed historical, comparative, and analytical methods. This study is based on the secondary source and The primary aim of undertake a comparative examination of the amendment processes in the constitutions of India and the United Kingdom—two key parliamentary democracies to analyze the strengths and weaknesses of each system and to understand the necessity, relevance, and significance of the concept of constitutional amendment.

## **BACKGROUND OF THE CONSTITUTIONAL AMENDING POWERS OF THE INDIAN AND BRITISH PARLIAMENTS**

The power to amend a constitution is arguably the most profound expression of any sovereign nation's constitutional authority. It embodies the inherent capacity of a constitution to adapt, evolve, and redefine its foundational principles in response to changing social and economic needs, political dynamics, and historical imperatives. Regardless of how visionary the framers of a constitution may be, or how meticulously they may have drafted its provisions, it is impossible to accurately anticipate future contingencies and uncertainties. Therefore, no constitution can establish a strong and prudent institutional framework without incorporating provisions for amendment (Ambedkar, November 25, 1949; Basu, 2021, pp. 511–512). According to the debates of the Indian Constituent Assembly, no explicit limitations were placed on the Parliament's power to amend the Constitution. During the deliberations, some members advocated for a highly rigid procedure, while others supported a more flexible approach. Ultimately, the Assembly adopted a mixed or hybrid process of constitutional amendment (Raj & Noorani, 2020, p. 85; Austin, 1966). The process of constitutional amendment defines the essential character of a constitution. It determines whether a constitution is categorized as rigid or flexible and significantly influences the balance of power among the legislative, executive, and judicial branches, as well as between the central government and its constituent units within federal systems. This comprehensive introductory inquiry provides a foundation for the comparative analysis of the constitutional amending powers enshrined in the British and Indian constitutions. These two systems represent distinct yet equally compelling models in the realm of constitutional theory and practice.

At first glance, the constitutional frameworks of India and the United Kingdom appear to be entirely distinct—indeed, almost antithetical. India, a vast federal republic, functions under the aegis of an elaborate and meticulously drafted written Constitution. This document is the supreme law of the land, with its provisions being clearly defined and extensively detailed. The amendment process prescribed within it is multi-tiered, directive in nature, and explicitly codified, subject to the rigorous scrutiny of an independent judiciary. In contrast, the United Kingdom—an ancient unitary state—operates within the ambit of a constitutional monarchy and takes pride in its unwritten constitution. This constitution is a unique amalgamation of centuries-old common law principles, enduring traditions, and authoritative scholarly writings. Within this distinctive structure, the sacrosanct doctrine of parliamentary sovereignty reigns supreme, signifying that Parliament possesses the ultimate and unrestricted authority to enact or repeal any law. No other body—judicial or executive—has

the legal power to invalidate or challenge the legislative enactments of Parliament (Kumar, 2023; Raj & Noorani, 2020). The foundational differences in the constitutional structures of India and the United Kingdom naturally give rise to divergent approaches to constitutional amendment. These differences extend beyond legal procedure and bear a substantial impact on the overall system of governance, the protection of citizens' rights, and the fundamental nature of the state itself.

The framers of the Indian Constitution, drawing extensively from the experiences of both highly rigid constitutions such as that of the United States and more flexible systems like the British model, crafted a foundational document capable of accommodating the nation's dynamic socio-economic development and its expanding democratic aspirations (Devadoss, 2021). This delicate equilibrium is primarily embedded in Article 368 of the Constitution, which carefully outlines a comprehensive procedure for constitutional amendment (Constitution of India, Art. 368). Unlike the British system, where there is no legal distinction between ordinary legislative enactments and laws of a constitutional nature, the Indian Constitution distinctly separates the ordinary law-making process from the more rigorous and solemn task of constitutional amendment. While India's robust constitutional framework ensures clarity and procedural discipline, the United Kingdom's method of constitutional amendment is shaped by its unwritten constitutional tradition and the principle of parliamentary sovereignty (Dicey, 1885). Due to the absence of a codified constitution in the UK, there exists no special procedure for amending constitutional laws. The inherent flexibility of this system lies in the fact that even long-standing constitutional principles or entrenched conventions can be altered or abolished by a simple majority in Parliament, provided that the government of the day possesses the necessary political will and enjoys adequate public or parliamentary support (Hart, 1961). The role of the judiciary in the UK is largely confined to the interpretation and application of laws enacted by Parliament; thus, there is no recognized doctrine of a "basic structure" that limits Parliament's legislative authority or its capacity to enact constitutional changes. In contrast, India maintains a defined amendment process, upheld by the principles of constitutional supremacy and judicial review (Basu, 2021). While the amendment procedures in the two nations are markedly different, it is evident that both systems recognize, in broad terms, the importance of constitutional amendment as a means of ensuring the ongoing relevance of the Constitution and the political order. The relevance of a governance system forms the first step toward national stability, and such stability, in turn, becomes the catalyst for sustained development.

## **THE CONCEPT OF CONSTITUTIONAL AMENDMENT: A LIVING DOCUMENT**

The Constitution is a living document of any nation, which defines the framework of governance, the rights of citizens, and the powers of various organs of the state. Constitutions are broadly classified into two types: written and unwritten. The first written constitution originated in the United States. Constitutional amendment refers to the formal modifications—both minor and major—made to the Constitution in response to changing societal and temporal contexts, thereby ensuring its dynamism (Sharma, 2024; Singh, 2023). A constitution may generally be amended through four primary methods: (1) by formal amendment procedures, (2) by periodically rewriting the entire document, (3) through judicial interpretation, and (4) by legislative enactments (Lutz, 1994). Through constitutional amendments, evolving socio-economic realities, scientific advancements, new political ideologies, public aspirations, national dynamism, and foresight are given practical expression. According to this concept, the Constitution is not merely a compilation of ideals but a functional guide that necessitates periodic change to establish a delicate balance between stability and adaptability (Dixon, 2011). The process of constitutional amendment

seeks to ensure that unnecessary impediments are removed without compromising fundamental principles. It is not a purely mechanical procedure but one grounded in several foundational doctrines, which will be discussed in the sections that follow.

1. **Doctrine of Adaptability**-From the era of primitive humans and the Industrial Revolution to the Digital Age, societies have undergone unprecedented transformations and remain in a constant state of flux. In the process, new social values, economic structures, and political expectations continue to evolve, while old customs, laws, and regulations often become obsolete. The principle of constitutional amendment enables this adaptability. For instance, when India granted constitutional status to the Panchayati Raj institutions through the 73rd and 74th Amendments, it represented an institutional adaptation to the changing needs of rural and urban local self-governance. This reform brought numerous positive transformations at the grassroots level in India.
2. **Doctrine of Constitutional Stability**-Following adaptability, constitutional stability becomes a fundamental necessity for any nation. Frequent and arbitrary amendments can erode the dignity and authority of the Constitution. Hence, in most constitutions, the amendment procedure is deliberately made more complex than that of ordinary legislation. This rigidity ensures that amendments result from broad consensus and long-term deliberation, thereby preserving the integrity of the constitutional order.
3. **Doctrine of Relevance**-A constitution must always remain relevant to its citizens and responsive to contemporary challenges; otherwise, it risks becoming obsolete. There are numerous instances where countries like France, Thailand, and Nigeria, after widespread distrust in their constitutions, opted for complete constitutional overhauls and enacted new documents. Constitutional amendments help ensure that a constitution remains capable of addressing both present and future challenges. In contrast, neighboring countries like Pakistan, Bangladesh, and Myanmar have experienced chronic instability due to a lack of constitutional continuity, which has significantly impeded their development trajectories.
4. **Doctrine of Separation and Balance of Powers**-The process of constitutional amendment often reflects the balance of power among the three branches of government—legislature, executive, and judiciary. In some systems, the judiciary exercises control over the power of amendment (as seen in India and the United States through the doctrine of judicial review), whereas in other countries, amendments may require referenda or ratification by constituent states. In some systems, the judiciary's role in constitutional amendment is merely advisory, reflecting a diversity of approaches toward institutional checks and balances.
5. **Constitutional Sovereignty vs. Parliamentary Sovereignty**-This represents a fundamental theoretical distinction shaping the amendment processes across different countries:
  - **Constitutional Sovereignty (e.g., India):** In this model, the Constitution is supreme. All organs of the government, including the legislature (Parliament), operate under the authority of the Constitution. The power to amend is also subject to the constitutional framework. In India, the "basic structure" doctrine imposes a significant judicial limitation on Parliament's amending authority, ensuring that the core structure of the Constitution cannot be altered.
  - **Parliamentary Sovereignty (e.g., United Kingdom):** In this model, Parliament is supreme. It holds unfettered legislative authority, and no law exists beyond its power to



enact, modify, or repeal. There is no legal distinction between constitutional and ordinary laws, and constitutional changes may be effected through the ordinary legislative process. The judiciary's role in this system is limited, reflecting the preeminence of parliamentary authority.

## **THE POWERS AND PROCEDURE OF CONSTITUTIONAL AMENDMENT IN THE INDIAN PARLIAMENT**

The Indian Constitution is a living document that reflects the evolving aspirations of the nation. Its unique vitality lies in the powers of constitutional amendment conferred upon the Parliament, as articulated in Part XX, Article 368 of the Constitution of India. This authority grants Parliament a constructive role, enabling it to amend the Constitution through "addition, variation, or repeal" as necessitated by the circumstances (Kashyap, 2021). This power is not merely concerned with altering textual provisions but entails the solemn and critical responsibility of aligning the fundamental principles of the nation with the changing times. It is not just a legal mechanism, but a remarkable instance of constitutional engineering—striking a balance between stability, development, and transformation. The process of constitutional amendment is distinct from the ordinary legislative procedure and is broadly classified into three main categories, which are discussed in the following sections.

1. **Amendment by Simple Majority**-The first category of constitutional amendment refers to those changes that require only a simple majority of members present and voting in both Houses of Parliament. For instance, matters such as the formation of new states or the alteration of existing states' areas, boundaries, or names fall under this category. This provision ensures the necessary flexibility in the reorganization of states, as witnessed during the creation of Andhra Pradesh, Chhattisgarh, Telangana, and the reorganization of Jammu and Kashmir. Similarly, subjects like citizenship laws, parliamentary quorum, salaries and allowances of Members of Parliament, and the creation or abolition of Legislative Councils are also amendable by simple majority. Amendments mentioned in Articles 4, 11, 169, Paragraph 7(2) of the Fifth Schedule, and Paragraph 21(2) of the Sixth Schedule fall within this classification. This mechanism prevents the Constitution from becoming unnecessarily rigid in relation to minor or administrative changes (Achary, 2008, pp. 5–6; Constitution of India, 1950; Basu, 2021).
2. **Amendment by Special Majority**-This is the most common and significant method of constitutional amendment, applicable to the majority of constitutional provisions. It requires a special majority in each House of Parliament—namely, a majority of the total membership of the House (i.e., more than 50%) and a majority of not less than two-thirds of the members present and voting. A constitutional amendment bill under this procedure may be introduced in either House of Parliament, whether by a minister or a private member, and does not require prior approval from the President. Both Houses must pass the bill separately, and there is no provision for a joint sitting under Article 108 in the case of constitutional amendment bills. Once passed by both Houses, the bill requires the assent of the President to become law. Examples include amendments concerning Fundamental Rights, the Directive Principles of State Policy, and those aspects of the federal structure that do not require ratification by the states. This procedure ensures that any alteration to fundamental principles occurs only through broad political consensus and rigorous deliberation (Constitution of India, 1950; Kashyap, 2021).
3. **Amendment by Special Majority with Ratification by States**-This procedure is reserved for amending those provisions of the Constitution that pertain to the federal structure of India. Its primary objective is to maintain the balance of power between the

Union and the states, thereby safeguarding the interests of the states. In this process, in addition to a special majority in Parliament, the proposed amendment must also be ratified by at least half of the state legislatures by a simple majority. That is, once the bill is passed by the required special majority in both Houses of Parliament, it is transmitted to the state legislatures. Only if a minimum of half of the states ratify the bill by a simple majority does it proceed for presidential assent. The President is constitutionally obligated to give assent to such a bill. This method ensures that no amendment affecting the fundamental aspects of the federal arrangement is enacted without the consent of the states. For example, the enactment of the 101st Constitutional Amendment Act, which introduced the Goods and Services Tax (GST), followed this procedure because it altered the distribution of taxation powers between the Centre and the states. Provisions that fall under this category include the election and procedure of the President, the powers and jurisdiction of the Supreme Court and High Courts, the distribution of legislative powers between the Union and the states, and amendments to Article 368 itself. This is regarded as the most stringent amendment procedure in the Indian constitutional framework. It reinforces the federal character of the Indian polity, wherein the states are considered crucial stakeholders in the process of constitutional transformation (Constitution of India, 1950; Kashyap, 2021; Basu, 2021).

## **JUDICIAL REVIEW AND THE DOCTRINE OF BASIC STRUCTURE: THE GUARDIAN OF CONSTITUTIONAL SOVEREIGNTY**

The most significant and influential limitation on Parliament's power to amend the Constitution lies in the doctrine of the "Basic Structure," propounded by the Supreme Court of India. In the landmark judgment of *Kesavananda Bharati v. State of Kerala* (1973), the Court held that while Parliament possesses the authority to amend any part of the Constitution, it cannot alter, dismantle, or destroy its basic structure. This doctrine was subsequently reaffirmed in *Indira Nehru Gandhi v. Raj Narain* (1975), where the Supreme Court once again emphasized its foundational importance (Shrivastava, 2019, pp. 167–168). Further endorsement came through the *Minerva Mills v. Union of India* case (1980), wherein the Court upheld and expanded the basic structure doctrine (Manhas & Kumar, 2024). In the *Kesavananda Bharati* decision, core features of the Constitution—such as democracy, secularism, constitutional supremacy, the rule of law, federalism, and the independence of the judiciary—were identified as integral components of the basic structure. At present, this doctrine continues to evolve through judicial interpretation and application. The doctrine of the basic structure serves as a judicial check on parliamentary sovereignty, ensuring that the soul of the Constitution and its foundational principles remain inviolate. It is a manifestation of constitutional supremacy in India, wherein the judiciary acts as the sentinel to prevent any encroachment upon the essential identity of the constitutional framework.

## **CONSTITUTIONAL AMENDMENT POWERS AND PROCEDURE OF THE BRITISH PARLIAMENT**

The constitutional framework of the United Kingdom (UK) is uncoded, meaning there is no single, written constitutional document as found in countries like India or the United States. Rather, the UK Constitution is derived from multiple sources, including statutes passed by Parliament (Statute Law), judicial decisions (Common Law), conventions, and significant historical documents such as the *Magna Carta* and the *Bill of Rights* (1689) (Barber, 2021; Bogdanor & Riddell, 2009). Within this system, the constitutional amending power of the British Parliament is considered highly flexible and extensive. There exists no formal or special procedure for constitutional amendment, and Parliament enjoys legally unlimited legislative authority. Any part of the constitutional framework can be amended through the

ordinary legislative process. Notable examples include the *Parliament Acts of 1911 and 1949*, the *Human Rights Act, 1998*, the *Scotland Act, 1998*, the *Government of Wales Act, 1998*, and the *Northern Ireland Act, 1998*. These Acts brought about significant constitutional changes via ordinary legislative procedures—namely, by a majority vote of members present and voting in both the House of Commons and the House of Lords (Dixon & Stone, 2015). In practice and politics, however, mechanisms such as the Sewel Convention and public referenda exert constraints on Parliament's theoretically unlimited powers. According to the Sewel Convention, the UK Parliament will not normally legislate on devolved matters relating to Scotland, Wales, or Northern Ireland without the consent of the respective devolved legislatures. The influence of public referenda was prominently evident during Brexit, wherein the referendum outcome significantly affected parliamentary decision-making (Subramaniam, 2019). Although referenda are not legally binding, they carry substantial political and public weight. Bills passed by Parliament follow the same process as ordinary legislation, consisting of the following stages:

- **Introduction:** The Bill is introduced in either the House of Commons or the House of Lords.
- **Readings:** The Bill is debated, often across multiple stages.
- **Committee Stage:** The Bill undergoes detailed scrutiny and potential amendments.
- **Vote:** Both Houses pass the Bill by a simple majority of those present and voting.
- **Royal Assent:** Finally, the Bill receives formal approval from the monarch and becomes law.

## **SIMILARITIES IN CONSTITUTIONAL AMENDMENT POWERS BETWEEN THE INDIAN AND BRITISH CONSTITUTIONS**

India and the United Kingdom both vibrant democratic nations, vest the power of constitutional amendment in their respective parliaments. Despite the fundamental structural differences between the two constitutional systems, there exist notable points of convergence concerning the powers and mechanisms of constitutional amendment. These similarities are outlined as follows:

1. **Parliament as the Principal Constitutional Amending Authority** - In both India and the UK, the power to amend the Constitution rests with the Parliament. It is the exclusive body authorized to make legal changes to the constitutional framework, whether through the introduction of new provisions, alteration of existing ones, or repeal thereof. In India, this power is explicitly provided under Article 368 of the Constitution, whereas in the UK, it is inherently derived from the principle of Parliamentary Sovereignty.
2. **Influence of Political Will**- In both systems, the process of constitutional amendment is heavily influenced by political will and the presence of a legislative majority. This often means that the success of an amendment depends significantly on whether the ruling political party or coalition commands sufficient support in Parliament. While India requires a special majority for most constitutional amendments, the UK relies on a simple majority, yet in both cases, political consensus or dominance is crucial.
3. **Indirect Role of Public Opinion**- Though neither the Indian nor the British constitutional frameworks formally include referenda or direct public participation in the amendment process, public opinion and mass sentiment play a significant indirect role. For example, in India, widespread public support and political consensus led to the passage of the 73rd and 74th Constitutional Amendments concerning local self-

governance. Similarly, in the UK, the Brexit referendum catalyzed substantial constitutional transformation. Thus, both systems, while not legally obligated, are politically responsive to public opinion.

4. **Doctrine of Constitutional Evolution-** Both nations adhere to the view that the Constitution is a living document, capable of adapting to changing socio-economic and political circumstances. In both India and the UK, Parliament holds the authority to amend the Constitution, thereby ensuring its responsiveness to contemporary and future challenges.
5. **Legislative Procedure as the Mode of Amendment-** Although India employs a special procedure for constitutional amendments, it fundamentally remains a legislative process whereby the Parliament introduces and passes an amendment bill. In the UK, constitutional amendments are enacted through ordinary legislative processes. In both cases, once Parliament passes the bill, it requires formal assent by the President in India and the Monarch in the UK. Notably, in India, the President's role is largely ceremonial, and assent is generally obligatory.

These parallels underscore a shared commitment to democratic governance through constitutional adaptability, even though the methods and legal frameworks differ in form and rigidity.

## **DISSIMILARITIES IN THE CONSTITUTIONAL AMENDMENT POWERS OF THE INDIAN AND BRITISH PARLIAMENTS**

India and the United Kingdom (UK) are both democratic and parliamentary nations; however, they differ fundamentally in their constitutions. These distinctions are particularly evident in the processes and limitations surrounding constitutional amendment, as described below:

1. **Codified vs. Uncodified Constitution-** India possesses a codified, comprehensive, and written Constitution that stipulates the procedure for amendment under Article 368. In contrast, the British Constitution is uncodified, comprising various sources such as parliamentary statutes, judicial decisions, conventions, and historical constitutional documents. It does not prescribe any formal or specific procedure for constitutional amendment.
2. **Special Majority Requirement vs. Simple Majority-** Amending the Indian Constitution often requires a special majority in Parliament. In certain cases—especially those affecting the federal structure—the consent of at least half of the state legislatures is also necessary. Conversely, in the UK, constitutional amendments do not require a special majority; they are enacted through the same ordinary legislative process used for any statute.
3. **Judicial Review and the Basic Structure Doctrine-** The Indian judiciary holds the authority to review constitutional amendments enacted by Parliament. In the landmark *Kesavananda Bharati v. State of Kerala* (1973) case, the Supreme Court propounded the "Basic Structure Doctrine," which prohibits Parliament from altering the Constitution's fundamental structure. In contrast, the UK adheres to the principle of parliamentary sovereignty, where the judiciary lacks the power to invalidate legislation passed by Parliament (Lester, 1976, p. 338).
4. **Federal vs. Unitary System-** India's federal structure mandates that certain amendments require ratification by the states, thereby involving them in the constitutional amendment



process. On the other hand, the UK is a unitary state with no constitutionally autonomous regions. Consequently, sub-national entities do not have any constitutional role in the amendment process.

5. **Rigidity vs. Flexibility**-The Indian Constitution is relatively rigid; its amendment involves a complex and stringent process, thereby ensuring that constitutional changes are not made for trivial matters. In contrast, the British Constitution is highly flexible. Any aspect of the Constitution can be altered through a simple Act of Parliament passed by a majority of those present and voting.
6. **Fundamental Rights and Their Constitutional Status**- In India, fundamental rights are explicitly enshrined in the Constitution and enjoy strong constitutional protection. Parliament cannot abrogate these rights altogether. Judicial intervention ensures that these rights are preserved even in the face of legislative overreach. Conversely, in the United Kingdom, fundamental rights are not constitutionally guaranteed. They can be granted or withdrawn by Parliament through ordinary legislation, such as the *Human Rights Act of 1998*, which itself is a standard statute and can be repealed or amended at Parliament's discretion.
7. **Supremacy of the Constitution vs. Supremacy of Parliament**- The Indian Constitution is the supreme law of the land, and even Parliament must function within its defined boundaries. Any law passed by Parliament that contravenes the Constitution is liable to be declared void by the judiciary. In contrast, the UK lacks a codified constitution to impose such limitations. The British Parliament is sovereign and holds the authority to amend, override, or repeal any constitutional convention or statutory provision, thereby maintaining unrestrained legislative power.
8. **Judicial Interpretation and Constitutional Limits**- In India, constitutional interpretation by the judiciary plays a pivotal role in maintaining the sanctity of the Constitution. The judiciary has struck down provisions of constitutional amendments that violated the basic structure doctrine, as seen in the case of the 42nd Amendment. In the UK, while courts can interpret laws passed by Parliament, they do not possess the authority to declare them unconstitutional. The doctrine of parliamentary sovereignty, as articulated by A.V. Dicey, affirms that Parliament may make or unmake any law, and no court or body can override or set aside its legislative authority.

These distinctions underscore the fundamental differences in constitutional philosophy between India and the United Kingdom—India emphasizing constitutional supremacy, separation of powers, and judicial checks, whereas the UK reflects an enduring tradition of parliamentary sovereignty without rigid constitutional constraints.

## MAJOR CONSTITUTIONAL AMENDMENTS BY THE INDIAN AND BRITISH PARLIAMENTS

The Indian Constitution has undergone a total of 106 amendments to date. In contrast, the United Kingdom does not possess a written and codified constitution; hence, there is no formal enumeration or count of "constitutional amendments" as such. Every new law enacted by the British Parliament effectively alters the constitutional framework. In India, several significant amendments have played a vital role in shaping the country's social, political, and economic landscape, as outlined below:

1. **The First Amendment, 1951** - The first constitutional amendment in India was enacted to allow the imposition of reasonable restrictions on the freedom of speech and

expression. It also introduced the Ninth Schedule to shield land reform laws from judicial review.

2. **The Forty-Second Amendment (1976)**- Often referred to as the "Mini-Constitution," this amendment brought about several sweeping changes. Notable among these were the insertion of the terms "*Socialist*," "*Secular*," and "*Integrity*" into the Preamble, the incorporation of Fundamental Duties for citizens, and making the President constitutionally bound to act under the advice of the Council of Ministers.
3. **The Forty-Fourth Amendment, 1978**- This amendment removed the Right to Property from the list of Fundamental Rights, reclassifying it as a legal right. Furthermore, it replaced the term "*internal disturbance*" with "*armed rebellion*" as a legitimate ground for declaring a national emergency, thereby curtailing the executive's emergency powers.
4. **The Seventy-Third and Seventy-Fourth Amendments, 1992**- These amendments are regarded as highly significant in Indian constitutional history. They conferred constitutional status on Panchayati Raj institutions and urban local bodies, thereby strengthening grassroots democracy in rural and urban areas.
5. **The One Hundred and First Amendment, 2016**- This amendment introduced the Goods and Services Tax (GST), establishing a unified indirect tax regime across the country. It brought a major reform to India's tax structure and realized the vision of "One Nation, One Tax." In the case of the United Kingdom, due to the absence of a codified constitution, constitutional changes occur through regular legislative enactments. Hence, each new act of Parliament—such as the Parliament Acts of 1911 and 1949, the Human Rights Act of 1998, or the Government of Wales Act of 1998—functions effectively as a constitutional amendment, without any formally designated amendment process.

## MAJOR CONSTITUTIONAL AMENDMENTS OR REFORMS IN THE UNITED KINGDOM

In the United Kingdom, when Parliament enacts a new statute that fundamentally alters core aspects of governance, rights, or the relationships between different parts of the state, it is regarded as a constitutional change. Some of the significant constitutional amendments or reforms that have substantially shaped the UK's uncoded constitution are as follows:

1. **Magna Carta (1215)**- Although an ancient reform, Magna Carta laid the foundation for limiting royal authority and establishing certain rights, such as the right to trial by jury. It is regarded as an initial step toward the rule of law.
2. **Bill of Rights (1689)**- This is a foundational document that affirmed parliamentary supremacy over the monarchy. It restricted the powers of the monarch, affirmed parliamentary rights (such as freedom of speech within Parliament and regular elections), and codified certain individual rights, including the prohibition of cruel and unusual punishment.
3. **Acts of Union (1707 and 1801)**- The Act of 1707 united England and Scotland to form Great Britain, and the Act of 1801 further united Great Britain and Ireland to form the United Kingdom. These statutes fundamentally restructured the constitutional and political composition of the British state.
4. **Parliament Acts (1911 and 1949)**- These acts curtailed the legislative powers of the House of Lords.
  - **1911**: Removed the Lords' power to veto money bills and limited their power to delay other public bills to two years.

- **1949:** Further reduced the Lords' delaying power on most public bills to one year. These acts firmly established the supremacy of the elected House of Commons.
- 5. **European Communities Act (1972) and European Union (Withdrawal) Act (2020)-** The 1972 Act facilitated the UK's membership in the European Economic Community (later the European Union), whereas the 2020 Act formally ended the UK's membership in the EU. These acts represented fundamental shifts in the UK's legal and political landscape.
- 6. **Human Rights Act (1998)-** This legislation was enacted to ensure that individuals could claim their fundamental rights within British courts. Previously, individuals had to approach the European Court of Human Rights in Strasbourg. Post-enactment, domestic courts gained the authority to protect human rights, and the Act significantly altered the relationship between Parliament and the judiciary, as courts could now review whether parliamentary laws conformed to human rights standards.
- 7. **Devolution Acts (e.g., Scotland Act 1998, Government of Wales Act 1998, Northern Ireland Act 1998)-** These acts transferred significant legislative and executive powers from the UK Parliament to newly established assemblies and governments in Scotland, Wales, and Northern Ireland. They fundamentally transformed the UK's unitary nature, introducing a quasi-federal arrangement. These examples illustrate how significant legislative changes in the UK—though not labeled as “formal constitutional amendments” due to the absence of a codified constitution—nevertheless operate as constitutional transformations by altering fundamental principles and institutions of governance.

## COMPARATIVE ANALYSIS OF CONSTITUTIONAL AMENDMENT POWERS OF THE INDIAN AND BRITISH PARLIAMENTS

When comparing the constitutional amendment powers of the Indian and British Parliaments, one encounters two fundamentally distinct philosophies and historical evolutions that significantly influence the functioning of governments and the rights of citizens. This comparison is not merely about procedural differences in law but also reflects a profound divergence in the foundational principles and notions of sovereignty in both nations. In India, the Constitution is regarded as a living document and the supreme law of the land. The supremacy of the Constitution implies that no organ of the government, including the Parliament, stands above it. Although the power to amend the Constitution is vested in the Parliament, it must be exercised with great deliberation and in accordance with prescribed procedures. Article 368 of the Constitution outlines the various methods for amendment, including simple majority, special majority, and in certain cases, special majority along with ratification by at least half of the state legislatures. This multi-tiered process safeguards the federal structure and ensures the stability of the Constitution's significant provisions. The most defining feature of this process is the “Basic Structure Doctrine” developed by the Indian judiciary. In the landmark case of *Kesavananda Bharati v. State of Kerala* (1973), the Supreme Court established that while Parliament does possess the power to amend the Constitution, it cannot enact any amendment that destroys or damages its “basic structure.” This basic structure includes certain implicit but fundamental features such as the supremacy of the Constitution, secularism, democracy, republican character, separation of powers, and judicial review. The doctrine functions as a critical restraint, imposing moral and legal limits on Parliament's amending powers, thereby ensuring that the essential spirit of the Constitution remains intact, regardless of changing governments. It protects the Constitution from arbitrary legislative overreach and safeguards the rights of citizens. In stark contrast, the United Kingdom adheres to the principle of Parliamentary Sovereignty, which establishes the

British Parliament as the supreme legal authority in the country. Theoretically, the Parliament can enact any law, repeal any existing law, and there is no law that cannot be altered by a future Parliament. Due to this inherent characteristic, the British Constitution is considered extremely flexible. In the United Kingdom, the process of constitutional amendment is not distinct from that of enacting any ordinary legislation. A constitutional change—such as the legislation for exiting the European Union or the enactment of the Human Rights Act—can be passed by a simple majority in both Houses of Parliament. The power of judicial review in the UK is also significantly different from that in the Indian context; British courts do not have the authority to invalidate laws passed by Parliament on the grounds that they violate any higher constitutional principles. Their role is limited to ensuring the proper implementation of parliamentary statutes. This effectively means that the will of Parliament is supreme, and there are no binding legal limitations on its power, apart from those it chooses to impose upon itself or the constraints guided by political conventions. This comparison highlights that, while India has adopted a blend of rigidity and flexibility to preserve the sanctity of the Constitution and federalism, the United Kingdom has, based on its historical evolution and parliamentary traditions, endowed its Parliament with unrestricted legislative authority. In India, the judiciary functions as an active guardian, interpreting and safeguarding the Constitution, whereas in the UK, the power of Parliament is deemed final, rendering its constitutional evolution more dynamic and subject to political forces. This results in a fundamental divergence in both countries' systems of governance, the balance of power, and their respective approaches to citizens' rights. No constitution can remain entirely static, as societal and temporal needs continue to evolve. For instance, the Constitution of the United States—often regarded as the most rigid in the world—has undergone 27 amendments to date. Thus, in light of changing socio-economic conditions, judicial interpretations, new doctrines, technological advancements, political developments and experiences, as well as the needs of national security and unity, constitutional amendments become both necessary and significant to preserve the relevance and vitality of the Constitution.

## **FINDINGS:**

1. The British Constitution is the result of gradual evolution, with much of it remaining unwritten, whereas the Indian Constitution was formally enacted on 26th January 1950 and is a fully written document. Therefore, while the Indian Constitution contains explicit provisions for constitutional amendment, in the British system, amendments to the constitution are made through ordinary legislation, and there is no explicit codified process for constitutional amendment.
2. India has adopted the doctrine of complete separation of powers, inspired by the United States Constitution, whereas this principle is largely absent in the British system. As a result, the British Parliament possesses considerably broader authority to amend constitutional matters compared to the Indian Parliament.
3. For the effective functioning of the governance system in any country, the existence of a constitution is essential, and equally important is the provision for constitutional amendments to ensure that the constitution remains relevant over time.
4. In India, the Constitution is regarded as supreme, whereas in the United Kingdom, parliamentary sovereignty is upheld. Accordingly, the power to amend constitutional matters rests with the parliaments of both countries. However, the fundamental difference lies in the fact that in India, the "basic structure" of the Constitution cannot be altered, and constitutional amendments can be challenged and invalidated by the judiciary. In contrast,



in the UK, while judicial review of constitutional changes may occur, courts do not have the authority to invalidate parliamentary acts.

## **SUGGESTIONS:**

1. In the present time, the increasing number of cases and delays in justice delivery have contributed to a growing perception of inefficiency in the Indian judicial system. Therefore, excluding matters of constitutional amendment, the role of the judiciary in policymaking should be advisory in nature.

## **CONCLUSION**

The Indian Constitution stands as a refined example of a "living document," one that is not only adaptable to changing times but also resilient enough to withstand arbitrary or ill-conceived alterations. It embodies the principles of constitutionalism, wherein the Constitution itself is held as the supreme authority, serving as the ultimate legal standard that clearly delineates and limits the powers of all branches of government, including the legislature. In contrast, the British model represents a unique system wherein Parliament, as the supreme representative institution, holds ultimate legal authority, and constitutional development occurs as a continuous, organic process driven predominantly by legislative action, rather than through a distinct, formal process of constitutional amendment. Hence, this comprehensive comparative analysis serves as a profound intellectual inquiry into two divergent philosophies regarding the distribution and exercise of state power. It reflects humanity's enduring pursuit of a balanced, just, and effective constitutional order capable of addressing the complexities of national development and global transformation. It offers governance pathways that are tailored to the unique historical, cultural, and aspirational contexts of each nation.

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