



LEGAL ASPECTS OF AMENDING THE CONSTITUTION

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Abstract

In order to understand the topic in all its aspects, this research has been divided into three sections. In the first topic, we will deal with the concept of constitutional amendment and In the second topic, the authority concerned with constitutional amendment and its procedures either As for the third and final topic, we have devoted it to clarifying the restrictions that are placed on the authority concerned with constitutional reform. We have followed in this research the analytical and comparative approach as it relies on extracting judgments and principles in order to reach the objectives of the research and shed light on the constitutional amendment in terms of its types and procedures, and an indication of its importance, as well as a statement of the provisions of the constitutional amendment in its various aspects, starting from its proposal until its ratification.

Key words:

proposal, constitutional amendment , Flexible Constitution, Rigid Constitution, law

I. INTRODUCTION

The constitution is the law on which the system of government is based and it organizes the relationship between the various state bodies in accordance with the principle of legality and ensuring the protection of rights and freedoms . every constitution is not without formal features that distinguish it from other constitutions in a way that corresponds to the nature, customs and history of the people of the state that you want to experience the best and most suitable for itself and its society. Therefore, we make constitutional amendments, and the effect of these amendments on these characteristics appears here. Constitutions are the foundations of the legal life of states. So do not imagine the existence of a modern state without a constitution that organizes the affairs of government, its rules, its actions and its various activities. If a country is devoid of a constitution, chaos and corruption will prevail, then the constitution will come into play, which is the basic law on which governance is based. The constitution establishes the



rules and delineates the boundaries between the three legislative, executive, and judicial authorities to show how rights and freedoms are exercised in accordance with the provisions of the constitution. where the importance of the constitution is evident and that its rules governing governance are at the top of the legal hierarchy Other laws derive their existence from the constitution, and they cannot violate its provisions, otherwise they will be null and These constitutions are a set of political, social and economic organizational rules that are affected by circumstances Therefore amending the constitution is necessary in the various fields of political, social and economic life. Constitutions are not eternal laws, even if they are described as permanent, but they are permanent until a time of change and the need to eliminate the gap between the political, social and economic reality and the constitutional text.

II. THE COCEPT OF CONSTITUTIONAL AMENDMENT

We will divide this requirement into two sections. In the first section we will deal with the definition of amendment Constitution, and then we will discuss in the second section the types of constitutions in terms of the possibility of amending them As follows:

A. *Definition of constitutional amendment and its types*

There are many definitions of constitutional amendment, which refer to the definition of an amendment as proposing a text that is subject to For the Parliamentary Assembly to ratify it [1]It was also known as a change attached to a constitutional text or part of It [2]

B. *Types of constitutions*

Constitutions, in terms of the possibility of preparing them, are divided into flexible constitutions rigid constitutions It is intended as follows

1. **Flexible Constitution**

It is a constitution that does not require special procedures to amend it, As is the case in the British constitution.

2. **Rigid Constitution**

It is the Constitution that requires special measures more severe than those procedures Established in relation to ordinary laws, and these procedures are



intended. An example of this is the French Constitution of 1932 [3] The Iraqi constitution of 2005 is considered one of the rigid constitutions that lay down complex procedures Amending some of its paragraphs Although the 2005 constitution gave the right to the president of the republic or five of the people Members of Parliament to propose amending the constitution without modifying the stated basic principles and the rights and freedoms contained in the second chapter of the constitution .Also The amendment required approval by one-third of the members of the House of Representatives and The people will vote in the referendum on the amendments and the approval of the President of the Republic within seven days [4] There are many practical applications for these types of solid constitutions

- A rigid and absolute constitution: which is meant to ban permanently and forever. This type of constitution is very rare in modern constitutions.
- Temporary total deadlock: That is the constitution may not be amended except after a specific period of time has passed from the date of action with it. And an example The Syrian Constitution of 2012, where it stated in Article 153 of it: “It is not permissible to consider a request to amend the constitution before the lapse of two years from the date of entry into force.”
- Temporary partial deadlock: It means prohibiting the amendment of some provisions stipulated in the Constitution for a specific period. An example of this is the Kuwaiti constitution, Article 176: “The powers of the Emir of the country set out in the constitution may not be proposed to be amended.”

c. *Purposes of constitutional amendment*

There are those who believe that constitutional amendment is a necessity for the development of constitutions in order to deal with the needs of society. Therefore, the necessary goals for amending the constitution are many. Show as following [5].



1. Appropriateness and keeping abreast of new developments and ideas in the community that includes The prevailing ideologies in society are constantly changing with changing times and conditions For example if the constitution stems from a socialist thought and philosophy just as the Egyptian constitution year 1971. The constitution cannot be endowed with endurance and respect unless it is consistent with the reality life of the political state of and in agreement with the ideas advocated by the people and if the constitution contradicts Individual hopes in the community, then this has become necessary in order to cope with the necessities Life[6]
2. Redistribution of constitutional powers in the federal state. A constitutional amendment may be issued in federal states for the purpose of redistributing powers Between the central authority and the authority of the regions .And the constitutional amendment also led to a change in the system of government from a republican system to an imperial system Likewise, the constitutional amendment changes the system of government from a dictatorial monarchy to a regime parliamentary

III. The authority responsible for amending the constitution

Opinions differ on the authority competent to amend the constitution. Some of them went to give the right of constitution amending to the people without being restricted to any specific procedure, and some of them went to give that right to the authority stipulated in the constitution itself. In this topic we will determine the position of constitutional regimes regarding determining the authority competent for the amendment,

1- The position of the authority in determining the competent authority to amend
Some opinions went to the need for the general public to agree to amend the constitution It requires collective consent on the part of individuals Certainly, this method of amendment is impossible to apply, given the impossibility of unanimity in this regard

2- Authorizing the people to amend

As this trend goes to the effect that amending the constitution must be accompanied by
With the consent of all the people, on the basis that the amendment of the constitution



must be done with the consent of all of them It is noticeable that this opinion ends with the absolute stagnation of the constitution, as unanimity is impossible among the constitutions that entrusted the people with the power to amend by referendum are the French Constitution of 1958 and the Egyptian Constitution of 1956

3- Authorizing the power of amendment to the majority of the people or Parliament Supporters of this trend believe that the power to amend the constitution is only granted to the majority of the people or to Parliament among those who advocated this direction, the French (**Sieyes**) who believes that the nation is the sovereign and possesses the right to amend the constitution as it was issued before, without restricting a specific form to its procedures. The will of the nation is the supreme law.

IV. The reasons for making the constitutional amendments

There are many reasons that motivate the constitutional amendment, and to find out the reasons that motivate the constitutional amendments, we must address two main reasons.

- 1- Achieving the public interest: The legality of constitutional amendments requires that they come in response to a necessity to achieve the public interest of society. These necessities may be legal, political, social or economic
- 2- Achieving personal or individual interest: The reason for the amendment may be to strengthen the powers of the president, whether in normal or exceptional circumstances, as happened to the Egyptian constitution in 1971 and 2007, and one of the most amendments in the third world is to increase the term of office of the president

V. THE AUTHORITY RESPONSIBLE FOR CONSTITUTIONAL AMENDMENT

- 1- Giving the power of amendment to the people themselves, as the amendment of the constitution must be approved by all members of the nation and the people.
- 2- Making the power of amendment the right of the representatives of the nation: the constitution can be amended either directly with the approval of the majority of the people, or through the indirect parliamentary way through the representatives or representatives of the nation.



- 3- Giving the power of amendment to the constituent authority specified by the constitution and within the procedures to be followed to amend the constitution. This opinion has prevailed in man-made laws for its simplicity, and most constitutions have adopted it

A. Constitutions Amendment Procedures:

The procedures for amending constitutions differ from one country to another, and this difference is due to for two reasons: legal and practical.

Legal consideration requires the state to organize the amendment on the basis of making the task of amending the constitution the prerogative of the constituent authority that drafted it and following the same procedures and forms that this authority applied when issuing the constitution.

As for the practical consideration, it is represented in the desire to facilitate the process of amending the constitution, which is the safest solution because it is consistent with considerations of political wisdom that require not placing obstacles that prevent the possibility of amendment.

B. The stages of constitutional amendment

It is well known that procedures for amending a rigid constitution differ from procedures for amending a law It is normal that these procedures and differ from one constitution to another. These procedures can be divided into Four stages, which we will deal with in four sections as follows.

1. Amendment proposal

The authority that holds the amendment proposal varies according to the political trends of the constitutions If it is given to the executive authority, then this means that the constitution gives an increase in the influence of this authority With regard to other authorities, , and some constitutions may adopt some kind of The balance between the two authorities is equal, as some constitutions deliberately give a right The amendment proposal is to the people in partnership with their representatives [7],[8]



2. Approval of the amendment

Approval of the amendment means consent in principle to the amendment being made Without going into its details or formulation. And most constitutions resort to authorizing Parliament as (Representative of the people) Most constitutions authorize Parliament To suggest the amendment and to indicate the extent of the need for it and constitutions decide to approve The amendment is by Parliament, and it is voted upon with approval or rejection According to the majority established by the constitution in most countries like French constitution for the year 1191. As well as the constitutions of 1838 and 1932 in France and most European constitutions [9].

3. Preparing the amendment project

Constitutions differ, some require Electing a special commission for the purpose of amending the constitution, such as the French constitution of 1739. However, most of the constitutions in parliamentary countries authorized the preparation of the amendment project to the parliament itself, but with special conditions and in some constitutions The necessity to dissolve the parliament after the completion and approval of the amendment project, and the requirement to elect a new parliament as Belgian Constitution of 1831 years

4. Final amendment

Most constitutions grant the legislature the right to approve the amendment in its final form with Some special conditions, as Article 73 of the French Constitution of 1959 did not allow entry. of amendment to the constitution by the National Assembly unless it is approved by a two-thirds majority After that, the President of the Republic issues the text that was amended to Articles 73 and 74

VI. Conclusion

1. Constitution amending is a change in the constitutional texts, or a part of them, that the Specialized authority in amendment carries out. The constitutions are types in terms of the possibility to be amending by them, which are flexible constitutions And rigid constitutions, a flexible constitution is one that does not require special procedures to amend it There is no difference between it and ordinary law. As for the rigid constitution it is what It requires special



procedures to amend it that is more severe than those prescribed by ordinary laws.

2. The purpose of amending the constitution is to suit the developments and new ideas in society which organizes it, as well as filling gaps in the constitution and equality in the distribution of constitutional powers in federal states.
3. The authority competent to propose an amendment to the constitution, and like any other legal authority, is not Absolute in the exercise of its competencies, but it is restricted by restrictions sometimes they are objective and sometimes are temporal.

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