

***Political & Legal
Aspects of Changing
the Constitution***

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Informal Modes

- The Supreme Court exercises its power of judicial review over cases or controversies requiring interpretation of the provision/s of the Constitution.
- The ruling becomes a Constitutional doctrine, a part of the constitution itself that cannot be changed by the legislature through an enactment of a law.
- Can only be changed through a new ruling of the Supreme Court (or a “formal” Constitutional change).
- The Supreme Court was called veritably a “continuing constitutional convention.”
- Interpretations of the Executive Department in their “faithful execution of laws.”

Major Parts of the Constitution

- Constitution of Liberty: Fundamental Rights of the People (Arts. II, III, XIII, XIV, XV, XVI)
- Constitution of Government: Framework of Government, its Powers, Rules of Administration and the Electorate (Arts. IV, V, VI, VII, VIII, IX, X, XI)
- Constitution of Sovereignty: Mode or Procedure of Amending or Revising the Constitution (Art. XVII)
- Constitution of the Economy: Economic Policies and Principles (Art. XII)

Importance of the Amending Process

- The Constitution is by the people: “sovereignty resides in the people and all government authority emanates from them.”
- Need to cope with the times: written constitutions are more rigid and definite.
- To avert a revolution by providing a safety valve in bringing about changes in the Constitution through pacific means.

Formal Modes

- The 1987 Constitution provides:
 1. By Congress upon the vote of three-fourths of all its Members
 2. By constitutional convention; and third, by people's initiative.
 - *The first and second modes, Congress and constitutional convention respectively, apply to any "amendments to, or revisions of this Constitution" as stated in Section 1 thereof.*
 3. The third mode, people's initiative, applies only to "amendments to this Constitution" as stated in Section 2 thereof.

Amending or Revising the 1987 Constitution

- First, proposal to amend or revise the Constitution which may be effected by Congress upon a vote of $\frac{3}{4}$ of all its Members or by a constitutional convention, or proposal to amend by people's initiative; and
- Second, ratification of the adopted provisions of the Constitution in case of amendments or of a new constitution in case of a revision by the majority votes of the people in a plebiscite.

Proposing Constitutional Changes

- Congress as a Constituent Body
- Constitutional Convention
- People's Initiative

Constituent Assembly

- Senators and members of the House of Representatives act, not as members of Congress, but component elements of a constituent assembly.
- How can Congress convene and vote when exercising constituent power because Section 1, Article XVII, fails to provide whether Congress will sit in joint session or not, and when in joint session, whether to vote jointly or separately?

Constituent Assembly

- Interpretations:
 - 3/4 of all the Members of the House and the Senate taken together would mean that, only 3/4 of 261 or 196 are all that is required to adopt changes in the Constitution.
 - Merely send an invitation to individual Senators informing them of the planned session of the House to discuss proposed changes to the Constitution; With or without the Senators, once the House adopted the proposed changes with 3/4 votes, it shall merely notify the Senate of such action; and then send the resolution to the COMELEC.
 - Each House may separately formulate amendments by a vote of 3/4 of all its members, and then pass it on the other House for a similar process. Disagreements can be settled through a conference committee

Constituent Assembly

- The Constitution requires the two Houses of Congress to meet in joint session:
 - Existence of a state of war;
 - Confirms the President's nomination of a member of the Senate or of the House to be Vice President of the Philippines in the event of a vacancy in that office;
 - Decision on whether to revoke the President's proclamation of martial law or suspension of the privilege of the writ of habeas corpus;
 - When it sits as a board to canvass the votes for President and Vice President and declare the winners, or to break a tie between candidates
 - In determining whether the President, who has declared himself unable to discharge the duties of his office and later desires to resume office but his cabinet objects
 - When Congress opens its regular session.

Constituent Assembly

- Constituent Assembly is the most expedient, less expensive and most convenient of the modes because Congress as an institution is already put in place, has its own organizational structure, secretariat, place of work, and the Members have their own staff personnel to assist them in exercising such additional work.

Constitutional Convention

- Constitutional convention may be called by Congress directly upon 2/3 votes of all its Members, or pass to the electorate the question of calling constitutional convention by a majority of all its Members.
- Once a constitutional convention is established either by direct action of Congress or by the electorate, a new coordinate branch of government comes into being.
 - It exercises constituent power and is not subject to control by Congress even if its existence may have initially emanated from the legislature.

Constitutional Convention

- Constitutional Convention is the most popular among the three modes of proposing changes.
 - Delegates who must be elected by popular vote in an election called for such purpose base on proportional representation by district, province or region have the better view and knowledge in constitution making.
- Criticism: High cost of expenditures, no time limit when work will be finished, most delegates who will get elected are scions of political families, and the convention will just become a breeding ground of new politicians.

People's Initiative

- People's Initiative is a form of direct democracy where people take upon themselves the exercise of governmental powers, a radical deviation from indirect or representative democracy where people govern themselves through their chosen representatives.

People's Initiative

- Formal Requirements
 - “Directly proposed by the people through initiative upon a petition” is that the entire proposal on its face is a petition by the people.
 - “These essential elements are present only if the full text of the proposed amendments is first shown to the people who express their assent by signing such complete proposal in a petition.”
 - “The full text of the proposed amendments may be either written on the face of the petition, or attached to it. If so attached, the petition must state the fact of such attachment.”

People's Initiative

- Substantive Requirements
 - Only propose amendments not a revision of the Constitution;
 - Could not be exercised for the first five years after the Constitution took effect and thereafter can only be exercised once every five years;
 - Needs an act of Congress providing for its implementation;
 - Not more than one subject shall be proposed as an amendment or amendments to the Constitution.

People's Initiative

- Amendments v. Revisions
 - Justice Antonio in the case of Javellana vs. Executive Secretary, where he stated: "...**Revision** may involve the rewriting of the whole constitution. The act of amending a constitution on the other hand, envisages a change of only specific provisions. The intention of an act to **amend** is not the change of the entire constitution but only the improvement of specific parts of the existing constitution or the addition of provisions deemed essential as a consequence of changed conditions or the elimination of parts already obsolete and unresponsive to the needs of the times."

Changes in Previous Constitutions

- The 1935 Constitution was changed three times. It was amended twice by Congress as a constituent assembly in 1940 and 1947, and revised by a constitutional convention that was established in 1971 that gave birth to the 1973 Constitution, including:
 - First, the conversion of the unicameral National Assembly to a bicameral Congress called the House of the Senate and the House of Representatives;
 - Second, the shortening of the six-year term of the President and Vice-President to four years with reelection provided that the total number of years of service should not exceed eight consecutive years; and
 - Third, the establishment of the Commission on Elections as an independent body.

Changes in Previous Constitutions

- The 1935 Constitution was effected via a revision since the 1973 Constitution was a completely new document embodying provisions on liberty, government, and sovereignty, and new political, social and economic concepts, such as:
 - Establishment of a parliamentary government with a unicameral national assembly;
 - Enfranchisement of the youth to vote at the age of eighteen;
 - Strengthening of the Judiciary, the Civil Service Commission, the Commission on Audit, and the Commission on Elections;
 - Establishment of Sandiganbayan and the Ombudsman;
 - Nationalization and management of mass media, etc.

Changes in Previous Constitutions

- Without, full implementation of the 1973 Constitution taking place, it underwent a multitude of significant changes in 1976, 1980, 1981 and 1984 during Marcos time. Among these were:
 - Establishment of an interim Batasang Pambansa in lieu of the interim National Assembly, and eventually to become the regular Batasang Pambansa;
 - Amendment No. 6 which empowered President Marcos to continue exercising legislative powers despite the creation, existence and functioning of the interim Batasang Pambansa and later the regular Batasang Pambansa;
 - Installation of presidential system with parliamentary trimmings in 1981.

Changes in Previous Constitutions

- In 1986, when President Corazon Aquino took power, the 1973 Constitution was repudiated and a revolutionary government was formed with a Freedom Constitution put in place which was substantially similar to the 1973 Constitution except that the Batasang Pambansa was abolished and the country was indeed run by a new dictator.

Present rule on Amendments v. Revisions

- Revision:
 - Alters a basic principle in the constitution, like altering the principle of separation of powers or the system of checks-and-balances.
 - Alters the substantial entirety of the constitution, as when the change affects substantial provisions of the constitution.
 - Generally affects several provisions of the constitution.
- Amendment:
 - Adds, reduces, or deletes without altering the basic principle involved. Affects only the specific provision being amended.

Current attempts to change the constitution: What is/are the real objective/s? What are the proposals - political, economic & others?

instructions, shall be immune from suit after their tenure of office.”

Thank you.

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