
AMENDMENT OF THE CONSTITUTION IN INDIA AND US: A COMPARATIVE STUDY

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ABSTRACT

In a cohesive country, the constitution is expected to be complex and well-defined, but the main goal of the artists was to make it a more flexible and flexible text rather than a strong governing framework. Therefore, the Indian constitution itself has provided the legislature with an opposition weapon in the form of the power to change the constitution (Art. 368), to make the constitution more flexible. However, this power is not absolute, and a check was made in the legislature by making the judiciary a watchdog over the legislative power of the legislature.

Since its independence, the Supreme Court has served as a test of Parliament's legislative power to protect the fundamental and original principles of the builders. As a result of the activism of the judiciary, the Doctrine of the Constitution emerged, limiting the power of the legislature to amend the constitutional basis. This doctrine served as a safety precaution, but an important flaw was revealed in the case of Indira Gandhi when the court ruled that the doctrine of the basic constitution applies only to constitutional amendments and does not apply to general law revisions. Therefore, a review of common laws that contradict the core framework of the constitution will remain legal.

The author will establish a study to analyze the comparisons between the Indian constitution and the USA constitution through my research. With this in mind, we can better view developmental areas and the provision of constitutional amendments between the two world powers. Also, the author will be analyzing the merits and demerits that contribute to the constitutional amendment points.

INTRODUCTION

As we all know, the Constitution is a living document rather than a dry one. A document with a unique legal status. It is the supreme law of the land, the supreme law of the land, and the supreme law that must be obeyed. The country's constitution represents the goals and aspirations of citizens. The United States of America has become the first country in the world to write its constitution.

When it came to the drafting of the Indian Constitution, it was M Roy Roy who proposed the establishment of a forum to draft this document. According to him, the draft would achieve three objectives, including removal of the political parties as intermediaries, articulating a constitutional vision, and transferring the powers from the British to India.¹ The INC then formally submitted the request to the British government. In what has been known as the 'August offering,' the British government approved the proposal in 1940. Sir Stafford Cripps developed the Cripps Mission Plan to establish the Constituent Assembly but was rejected by the Islamic State, which called for a separate Constituent Assembly. to write the Constitution of Pakistan. The Muslim League eventually approved the revised plan of Lord Pethick Lawrence, known as the Cabinet Objectives Plan, and the Legislature was established under this plan in 1946. And the Indian Constituent Assembly made all its decisions in the union. Because he was an old member, Drs. Sachidanand Sinha was elected interim President at the first meeting of the Council. Many committees were also formed, such as the Design Committee, the Executive Committee, the Advisory Committee, and the State Committee. Its Building Committee took 141 days to finalize the draft Constitution. After 11 sessions, the draft was completed, and the Constitution was adopted on November 26, 1949.

The constitution originally listed 395 articles, twenty-two sections, and eight editions, but has now been changed to 465 articles. There are twenty-five pieces and twelve schedules in total. The Legislature took three years to draft a constitution, two years, eleven months, and eight days. It was written in two languages: Hindi and English, and it was handwritten. According to BR Ambedkar, the Constitution of India was drafted after a thorough review of all known international constitutions. Many parts of India, as a means of amendment, have been adopted in South Africa, and the fundamental rights, representations, and written constitution are

¹ Constitution of Free India: A draft available at https://www.constitutionofindia.net/historical_constitutions/constitution_of_free_india___a_draft__m_n__roy__1944__1st%20January%201944

derived from the United States.

Now, the question may arise in our minds: why do we need to change our Constitution when it took almost three years and a heroic effort to draft it?

The author will cover all aspects of the Amendment in my research paper. Several types of patches are available. The need to amend our Constitution and the study also includes comparisons of amendments to various countries, such as the United States and India.

Finally, there are two types of constitutions: solid and flexible. The best example of a strong constitution is the United States Constitution, which is why amendments are so difficult. That is why changing the US constitution is so difficult. The Constitution of India is a mixture of strong and flexible principles.²

Meaning of Constitution

What is the meaning of the constitution? The constitution is a set of rules and regulations that establish the mechanisms of the provincial government and define and determine the relationship between the executive, judiciary, and judiciary, as well as the central, district, and local government. The Constitution is the source, the legal source from which all other laws should come, concisely and concisely. The written Constitution of the United States of America was the first known example of a written Constitution, which established a unique pattern and was unanimously adopted as a remarkable text "for its shortness, restraint, and simplicity." Many other constitutions have adopted many of its features, but not its brevity. One such text is the Constitution of India. India's constitution, the longest in the world, is believed to represent the political, economic, and social views and aspirations of the Indian majority at the time of writing (1947-1949). This is true of all constitutions to some degree.

What is the need for a constitution?

This topic has been discussed in two ways by scholars and readers of the comparative constitution: First and foremost, the answer The Constitution is the natural desire of politically organized people to have a tolerant law that defines national form and government planning. jobs, by the nature of the public contract. This planning and design are essential to the stability

² Nora Headling, Fundamentals of Constitution available at <https://constitutionnet.org/sites/default/files/2016-10/The%20Fundamentals%20of%20a%20Constitution.pdf>

of national government and law.

II. CONTENT

WHAT IS AN AMENDMENT & WHAT IS THE SIGNIFICANCE OF AN AMENDMENT?

In the case of ordinary persons, an amendment involves altering, modifying, or deleting a text or provision. A formal or formal declaration of changes in legal rules is known as a legislative amendment. Why do we need such an idea, even though many jurists, prominent lawyers, and other notable figures give their opinions on the drafting of a country's constitution? The answer to this can be found in the principles of our constitution. There are various provisions in our first constitution, such as the right to education, freedom of the press, bookings, provisions relating to panchayats, municipalities, GST, and so on. They have been hearing slowly.

Now, the purpose of this amendment concept is to change things for the better. It may take the form of adding, subtracting or amending any part of the law for the benefit or welfare of the community of its social structure. If it is better to renew the law than to write a new one, an amendment is often used². And only the legislature has the power to make changes.

Other reasons for the need for change are the following: The founders of the constitution incorporate the provisions of the amendment to overcome the challenges that may arise in the future. The law, like time, does not stand still; it keeps appearing. People's social, economic, and political conditions are constantly changing, so the country's constitution must be conducive to meeting those changing, changing lives. If no constitutional amendment provisions were made, people would have to use an unconstitutional strategy, such as reform, to change the constitution. The founders of the Indian constitution demanded a text that could be developed with a growing nation and adapt to changing conditions of the increasing population. From time to time, the Constitution should be revised. No one can say it is the end of the floor. An unchanging constitution is the one that becomes the biggest obstacle to the nation's process.

A. PROCEDURE OF AMENDMENT: NATURE AND SCOPE

The country's constitution is like another practical tool that must change through social change. Constitutional changes are brought about by two processes:

1. *De jure* or formal modification – this is made through amending process provided in the constitution itself, and
2. *De facto* or informal modification it can be made through judicial interpretation for amendment.³

Such changes can be affected by: -

- a) the Courts interpretation
- b) legislation- by filling gaps or supplementing the Constitution
- c) changes in conventions and constitutional usages.

Flexible and Rigid Constitutions -The amendment procedures can be classified into two heads as *rigid* and *flexible*.

1. Rigid procedures mean difficult to amend the constitution like that of the U.S., Australia, Canada, and Switzerland and
2. Flexible procedure means in which procedure to amend is easy and can be done even bypassing normal legislation like that of United Kingdom.

Even though this approach is defined as strong under the Indian constitution, it has shown flexibility in operation.

Article 368 of the Constitution of India provides for the right to amend. The process to be followed in India is simple and consistent, and there are differences in procedure when it comes to the state of the Union government. In any House, an amendment bill may be introduced. In India, all constitutional amendments require a Special Majority, which means that they must be approved by both houses with more than half the total number of members present and voting.⁴

B. PROCESS OF AMENDMENT IN CONSTITUTION OF INDIA

³ Massey, I. P. "THE PROCESS OF AMENDMENT AND THE CONSTITUTION A STUDY IN COMPARATIVES." *Journal of the Indian Law Institute*, vol. 14, no. 3, Indian Law Institute, 1972, pp. 407–19, <http://www.jstor.org/stable/43950146>.

⁴ Shukla, V.N., *Constitution of India*, Eastern Book Company. Lucknow, 2008

The Provisions related to amendment in the constitution are as follows: -

1. Many of the articles that can be amended by Parliament, in general, are article 4 Article 189, and article 243 which is not subject to the procedure set out in Article 368 of the constitution.
2. Articles of the constitution that can be amended by special majority such as FRs, apps
3. Articles which required in addition to the special majority mentioned above, ratification by not less than $\frac{1}{2}$ of the state legislatures, are as follows—
 1. Election of the president (Art. 54 and 55)
 2. Extent of the executive powers of the Union and the states (Art. 73 and 162)
 3. Articles dealing with the judiciary in union and high courts in the state (Art. 214-231, Art. 133-147)
 4. Legislative relation between power and state (Art. 245 –255)
 5. Representation of state in parliament (IV schedule)
 6. Article 368 itself.

The process of amendment under Section 368 - a constitutional amendment bill that may be introduced in Parliament must be passed by each house with most of the total membership in the house and by a minimum of two-thirds of the members present and voting. Once a bill has been passed by both houses it is presented to the president for approval, who will provide access to the bill and the constitution will be amended.

C. DOCTRINE OF BASIC STRUCTURE OF THE CONSTITUTION

The process of amendment under Section 368 - a constitutional amendment bill that may be introduced in Parliament must be passed by each house with most of the total membership in the house and by a minimum of two-thirds of the members present and voting. Once a bill has been passed by both houses it is presented to the president for approval, who will provide access to the bill and the constitution will be amended. The certain examples of basic structure

as given in the case of *Keshavananda Bharti*⁵ and some that have evolved with time are:

1. The Rule of law
2. The principle of equality
3. The doctrine of separation of powers
4. The supremacy of the Constitution
5. Federalism
6. Secularism
7. The sovereign democratic-republican nature of polity
8. Parliamentary system of Government
9. Free and fair elections
10. Independence of judiciary (Independent Judicial System)
11. Powers of the Supreme Court under Arts. 32, 136, 141 and 142
12. Fundamental Rights in certain cases
13. Limited power of Parliament to amend the Constitution
14. Power of Judicial Review
15. Republican and democratic form of Government

The features listed above are not exhaustive. The court will decide whether the feature is "important" or not from time to time as the need arises. Art. 368 of the Constitution of India empowers parliament to amend the Constitution. To understand the basic doctrine of architecture, one must first understand Section 133, which is regarded as the custodian of fundamental rights. Article 13 adds teeth to basic rights, which would be like a "toothless leopard" if they did not.

⁵ Writ Petition (Civil) 135 of 1970)

This principle limits the legislative power of the legislature conferred on Article 368 of the constitution. In addition, Article 13 has a future effect. Article 13 also established the doctrine of judicial review and was held in the case of *Minerva Mills v. Union of India*⁶ that the review of justice is part of the framework of the Constitution.

D. ANALYSIS OF CASES DURING THE DISCUSSION

*1. Shankari Prasad V. Union of India 1951*⁷

The First Amendment Act of the Constitution was challenged in this case. It was about the completion of the Zamindari program. This action was opposed because it violated the property right. It was elevated from having a basic right to a constitutional right⁶ over time. Articles 31A and 31B have been added because of this article. This problem first arose in this case, where it was determined that the word “law” in Article 13 refers to principles enshrined in the common law. It does not include constitutional revisions made under the special procedure of Article 368. As a result, by amending the constitution, parliament may deprive them of fundamental rights.

*2. Sajjan Singh V. State of Rajasthan 1965*⁸

The 17th CAA, which introduced the ninth edition, was challenged in this case. Anything included in Schedule 9 will not be excluded from legal review. The Supreme Court ruled in favor of Shankari Prasad in a 3: 2 majority, ruling that parliament has the power to change fundamental rights. According to J. Gajendragadkar, constitutions do not have a clear clause stating that parliament cannot change fundamental rights. However, this decision did not satisfy J. Hidayatullah and J. Mudholkar.

*3. Golak Nath V. State of Punjab 1967*⁹

The Supreme Court overturned its previous rulings, concluding that fundamental rights are sacred and given a "superior and immutable" status, and that parliament has no authority to amend Part III of the constitution to remove or restrict basic rights. In Article 13, the word 'law' includes the word 'amendment.' If the authors of the Constitution had intended to

⁶ AIR 1980 SC 1789

⁷ 1951 SCR 89; AIR 1951 SC 458

⁸ 1965 AIR 845, 1965 SCR (1) 933

⁹ 1967 AIR 1643; 1967 SCR (2) 762

exclude amendments to Article 13, they would have made that clear. In addition, Section 13 (3) is written in extremely broad terms. It is contained in Article 13 if there is no alternative to change, then a constitutional amendment will not infringe on basic human rights. It is used to have a future effect.

4. 24th Amendment Act 1971

Responding to a Supreme Court decision in the Golak Nath case, Parliament passed the 24th amendment, overturning the decision. The amendment adds Article (4) of Section 13 to make it clear that the word “law” in Article 13 does not include constitutional amendments, and Article (3) of Section 368 clearly states that parliament may change any part of the constitution, including Fundamental Rights.

5. *Keshavanand Bharti V. State of Kerala 1973*¹⁰

In this case, the constitutional validity of the 24th Amendment was challenged. The Supreme Court overruled its judgment in the Golak Nath Case, and it upheld the validity of the 24th Amendment and stated that the parliament is empowered to abridge or take away any of the fundamental rights. At the same time, the Supreme Court fulfilled its role as the guardian of fundamental rights of citizens and it formulated the classical ‘Doctrine of Basic Structure’ of the Constitution. According to it, the parliament can amend fundamental rights, but it cannot touch those fundamental rights which form a part of the ‘basic structure’ of the constitution. Basic structure denotes the basic pillars upon which the Constitution stands. This concept was picked up from the Wilmer Constitution (Germany) to guarantee basic rights to all citizens and to prevent its encroachment by the state. In conclusion, we can say that the net result of Keshavanand Bharti’s judgment was that it over-ruled Golaknath Case and it upheld Shankari Prasad subject to the doctrine of basic structure.

The theory of the basic structure of the Constitution was reaffirmed and applied by the Supreme Court in *Smt. Indira Nehru Gandhi vs. Raj Narain case*¹¹ and certain amendments to the Constitution were held void.

The effect of the various decisions of the Supreme Court may be thus summarized:

¹⁰ (Writ Petition (Civil) 135 of 1970)

¹¹ (1975 AIR 865, 1975 SCR (3) 333)

1. Parliament has limited powers to amend the constitution.
2. Parliament cannot damage or destroy the basic features of the Constitution.
3. The Procedure prescribed for the amendment is mandatory. Noncompliance with it will result in the invalidity of the amendment.
4. Clauses (4) and (5) inserted in Art. 368 by the 42nd Amendment Act is invalid because they take away the right of judicial review.
5. Parliament cannot increase its amending power by amending Art.368.

E. COMPARATIVE STUDY OF UNITED STATES AND INDIA

All these countries are democratic, with America being the oldest democratic country in the world, with a constitution drafted in 1789. Although India was an English colony until 1947, the Indian Constitution was ratified in 1950. Even though the United Kingdom is a democratic country, the king is the head of state. Besides, the UK constitution is different from the United States and India because it is not compiled.

F. AMENDMENT PROCEDURE OF US CONSTITUTION

Amendments (amendments) to the US Constitution are permitted under Article V of the Constitution.

Article V: "Congress shall propose amendments to this Constitution whenever two-thirds of the two Houses deem it appropriate or shall call for a Bill to propose Legislative Amendments to two-thirds of the various States."

The Article provides that the Constitution can be amended either through:

- a) an act of Congress (parliament)
- b) a national constitutional convention.¹²

The procedure for amendments in the US follows this path: (1) Proposal by Congress (2)

¹² Brenda Erikson, Amending the US constitution available at <https://www.ncsl.org/research/about-state-legislatures/amending-the-u-s-constitution.aspx>

Submission to States (3) Ratification¹³

Two-thirds votes for each house are required. Also, unlike in India and the United Kingdom, the proposed amendment is not forwarded to the President after it has been approved. Instead, it is sent to the provinces. To date, only one constitutional conference has taken place: The 1787 Constitutional Conference that established the United States Constitution.

Provincial legislatures play a significant role in changing the constitution in the United States, and the US Congress is not fully empowered. Apart from voting as the ANC, the President of the United States has no significant role to play in the constitutional amendment. In the United Kingdom and India, every amendment passed by Parliament by its constitution is referred to the President of the Prime Minister for his approval. And an amendment becomes part of the constitution only when approval is granted, but in the United States, any amendment becomes part of the constitution only after the required number of provinces have been approved.

G. MERITS AND DEMERITS OF THE AMENDING CONSTITUTION

The merits of amending a constitution include:

- It will assist in the evolution of law with the change in needs and time.
- It will help in the removal of vague and unnecessary laws.
- It will help in the addition of new provisions which might not have been required to be enacted during the time of the making of the constitution.
- It prevents internal revolts by making timely laws.
- Assists in taking quick decisions

The demerits of amending a constitution include:

- It makes the constitution highly instable
- The constitution would become a puppet of the ruling government.

¹³ United States Constitutional Amendment process available at <https://www.house.leg.state.mn.us/hrd/pubs/conamendlegal.pdf>

- The fundamental rights can be infringed
- The doctrine of constitutional supremacy would lose its identity.
- It may lead to democracy turning into tyranny

III. CONCLUSION AND SUGGESTIONS:

We can conclude that, although both the United States and India are democratic countries, their mechanisms, laws, and amendments are quite different. In India, there is no special constitutional amendment body as there is in the United States. The Constitution of India can only be amended by the Parliament of India.

In India, the role of the state in the constitutional amendment is limited, but in the United States, the states play a key role, and the United States can even propose a constitutional amendment. Countries, on the other hand, are unable to propose constitutional amendments to India.

Article 368 gives the Indian Parliament the power to amend the constitution in some cases, but it also requires the approval of at least half of the provinces. A crucial point to note is that neither Indian nor US constitutions provide a time limit for verification. India's constitution is weak and flexible. On the other hand, the US, Australia, Canada, and Switzerland have a strong constitution.