COMPARATIVE APPRAISAL OF THE AMENDMENT PROCEDURES IN INDIA AND SOUTH AFRICA

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ABSTRACT

A Constitution is regarded to be the supreme law of the land, the 'grundnorm'. It represents the collective will and aspirations of the people. The Indian Constitution is known to be a 'bag of borrowings' as it borrows different aspects and ideals from different nations and applies them in the country, acknowledging the unique Indian context. Given the evolving social and political contexts, constitutional flexibility is paramount and essential which is ensured through amendments. Such amendments are brought about by the legislatures, by taking into consideration the ever evolving context and needs of the people. This article aims to understand what 'amendment' means and how it it carried out in the Indian democracy, while comparing and contrasting the same with the South African Constitution, which has influenced the concept of 'amendments' in India. The article focuses on how the amendment procedure, although influenced by South Africa, has some differences in its provisions which makes the two (procedures in India and South Africa) same, yet different. The whole article is based on qualitative research method along with comparisons between the two to understand better. The article finds that India's relatively flexible process has enabled and facilitated 106 amendments to date, while South Africa's stringent framework, strengthened by judicial oversight, has permitted merely 17 amendments. An emphasis on the similarities has also been drawn and the article concludes by critically appraising the strengths and weaknesses of each system, highlighting India's reliance on the "Basic Structure Doctrine" and South Africa's emphasis on procedural safeguards.

Keywords: Amendment, Constitution, Procedures, India, South Africa

I. INTRODUCTION

The constitution, in all nations, is considered to be the fundamental law of the land and the most fundamental legal document, having legal sanctity. From this 'grundnorm', all the other laws of the land emerge and get their validity while it remains the supreme law which has to be followed and cannot be superseded. It reflects the dreams and aspirations of the people of the nation. The Indian Constitution is an epitome of all these ideas.

The idea of making the 'Constituent Assembly' for drafting the constitution of India was proposed by MN Roy, demand regarding the same was put forth by the INC to the British government. The demand of the same was accepted by the British in what is known as the 'August Offer'. The plan for the formation of the Constituent Assembly was known as the 'Cripps Mission Plan'. When same was, however, rejected by the Muslim League who demanded a separate constituent assembly for framing of the Constitution of Pakistan. Sir Pethick Lawrence headed the new plan named the 'Cabinet Mission Plan' and under this, the Constituent Assembly was set up in 1946, which took all decisions by mode of a consensus. There existed various committees such as the Drafting Committee, Advisory Committee, Steering Committee etc. After approximately 11 sessions, the drafting of the Constitution was completed and it was finally adopted on the 26th of November, 1949. The commencement of the Constitution took place on the 26th of January, 1950 [1]. The Indian Constitution was framed after ransacking all the well-known Constitutions of the world. Known as the bag of borrowings, the Indian Constitution takes it procedures like the amendment process from South Africa, Emergency provisions from the German Reich, Fundamental rights from the USA, and so on. It took the Constituent Assembly approximately 3 years (2 years, 11 months and 18 days to be exact) for framing the constitution we have today. So why do we need to 'amend' it? Wouldn't the framers of the foundational legal document put in enough thought to make it almost perfect?

In this paper, I delve into the meaning of the word 'amendment', what it stands for in the Indian context and how such amendments can be brought about. Since the procedure of amendment, as listed out in the Indian Constitution, was predominantly a South African idea, the main focus of the

[1] Sudarshan Pradhan, "Making of the Indian Constitution" LXXVI No. 6 *Odisha Review* 1-5 (2020).

paper remains to focus on comparing and contrasting the flexible Indian procedure with the somewhat rigid South African procedure of amendments. An appraisal of both the constitutions' amendment procedure is also done towards the end. South Africa has been chosen as a comparator because, like India, it emerged from colonial oppression, yet it adopted a far more rigid constitutional design with an entrenched Bill of Rights. In addition to this, since the procedure of 'amendments' in India has been influenced by the South African procedure, a comparison is drawn to showcase how the difference in context brings about changes in the procedure as well.

II. WHAT IS MEANT BY A "CONSTITUTIONAL AMENDMENT" ?

A modification to the Constitution refers to a Constitutional amendment. This change may either be an addition or a variation, even a subtraction (repeal) of a provision at times. Hence, any altercation made to the Constitution is an 'amendment'. Such a modification is carried out in accordance with the procedure laid down by the Constitution itself [2]. The Constitution embodies the collective will of the people. Such will and desires tend to change with time, because of which a Constitution cannot remain static. With change in time, circumstances and the society, the Constitution should evolve too. This is so because what might have been the will of the people back in the 1940's need not necessarily be the same in the 2020's - it could have evolved in one way or the other.

Let us understand this with the help of an example. Back in the 1940's, people wanted social and economic equality, which was guaranteed through the fundamental rights [3]. If we refer to the present digital age, in addition to these equalities, people might also seek a 'right to privacy' towards their personal lives, but the Constitution has such no provision for the same. Does this mean that the demand and wish of the people is invalid? This is not true. With change in times, the laws also change. Considering the same, the Supreme Court upheld the 'right to privacy' as a fundamental right under Article 21 (Right to Life) [4]. Therefore, the Constitution grows with the people and is of a dynamic nature. It also addresses the question of social change. To ensure it's character as a 'living document', amendments are carried out over periods of time, assuring the public that the Constitution till date, remains a tool for their voices and aspirations.

[2] The Constitution of India, art. 368.

[3] The Constitution of India, art. 14-18.

[4] *Justice K.S.Puttaswamy vs Union Of India*, AIR 2017 SC 4161.

Unlike ordinary laws, constitutional amendments may alter the foundational framework of governance. This raises questions about their limits: in India, judicially recognised through the Basic Structure Doctrine; in South Africa, safeguarded through procedural rigidity and judicial review by the Constitutional Court.

This process of amending the Constitution depends entirely on the provisions and procedure it lays down for the same. In this regard, the procedure could either be rigid or flexible, according to the nature of the Constitution. A rigid Constitution is one in which the amendments to the law of the land are difficult to enact and might even require long and special complex processes. The US and South African Constitutions are considered to be rigid. A flexible Constitution, on the other hand is the one which can be comparatively easily amended, just like other laws of the land. The Indian Constitution is considered to the perfect blend of a rigid and flexible constitution.

III. AMENDMENT PROCEDURE UNDER THE INDIAN CONSTITUTION

One of the most significant feature of the Indian Constitution is its capacity for amendments, which gives it power to evolve with changing times, circumstances and societies, making it a 'living document'. This power of the Indian Constitution is enshrined in Article 368 of the Constitution. This Article provides the amendment procedure which deals with additions, variations and repellent of any provision of the Constitution. Till date, there have been 106 successful amendments [5] to the Constitution, where each of these modifications promote stability and adaptability of the documents framework.

A. METHODS OF AMENDMENT

There exist 2 ways in which the constitution may be amended: formal and informal method of amendment. These are explained as follows :

1. Formal/ De Jure method of amendment

   The formal amendment refers to the modifications brought about according to the law. These can be made by the parliament in three ways, either by Simple Majority, Special

[5] The Constitution (Amendment) Acts, Legislative Department, Ministry of Law and Justice, GOI.

Majority and Special Majority with Ratification of states. This method is provided in the Constitution itself, under Article 368. Out of these, the simple majority amendment is not included under the article, meaning it is out of the purview of Article 368, while the other two types are explicitly mentioned.

2. Informal/ De Facto method of amendment

The informal method of amendment refers to the one which is not mentioned explicitly under the law. These modifications are not in accordance with the Constitution provisions, and do not impact the text directly. Such modifications can be made through judicial/ court interpretations for amendments, changes in conventions and even through 'gap-filling' done by legislations.

The process of amendment in India is simple. For amending the Constitution, an amendment bill can be introduced in any House of the Parliament. All the Constitutional amendments require a Special Majority, i.e the bill introduced must be approved by both houses with more than half the total number of member who are present and voting.

B. TYPES OF AMENDMENT

There exist 3 categories of amendments. These are explained as follows:

1. Simple Majority Amendments:

- The Simple Majority Amendments deal with modifying the non-essential parts of the Constitution such as changes to the Schedules or making new states, etc.
- This procedure cannot be used for amending the important and major parts of the Constitution because of which it falls outside the purview of Article 368. Changes brought about by simple majority do not affect the Constitution exhaustively.

Simple Majority = 50 percent of members present and voting.

- A few examples of the provisions that can be amended by simple majority are:
    - Admission or establishment of new states,
    - Formation of new states and alteration of areas, boundaries, or names of existing states,
    - Abolition or creation of Legislative Councils in states, etc.

2. Special Majority Amendments:

- Most of the amendments need a 'Special Majority' from the Parliament in order to be passed. Here, a special majority refers to at least two thirds of the members present and voting should give their assent to the bill and this majority need to be more than the majority i.e more than half of all the members in each house.
- This type of amendment is laid down explicitly under Article 368. All amendments, except for those referred to the above case of 'Simple Majority', must be affected by a majority of the total membership of each house of the Parliament (Lok Sabha, Rajya Sabha) as well as a 2/3 of the members present and voting.
- Here, majority of the house is of more than 50 percent of the total membership of the house. The total membership refers to the total number of members which the house can host, irrespective of the fact that there are vacancies or absentees.

Special Majority = 50 percent of the total membership + 2/3rd of the members present and voting.

- The provisions which are amended by a Special Majority are:
    - Fundamental Rights,
    - Directive Principles of State Policy,
    - All other provisions that are not covered by the first and third categories (of Simple and Special Majority with Ratification by States categories).

3. Special Majority with State Ratification Amendments:

- Amendments which affect the federal structure of the Constitution cannot be passed easily by Simple or Special Majority, but rather require a ratification by the states as well. Proviso to Article 368 lays down this rule.
- 'Ratification' refers to the assent/ resolution passed in favour of the bill by at least half of the state legislatures.
- This provision is contained in Article 368, and ensures that any modifications which affect the federal structure and the balance of power between the centre and the states cannot be enacted without the consent of the states. This ensures no autocracy on part of the centre.

Special Majority with State Ratification = 50 percent of the total membership + 2/3rd of the members present and voting + ratification by 1/2 of the states by Simple Majority.

- For example, changes in power of the Rajya Sabha and process for electing the President of India can only be done with Special Majority with State Ratification.

- The states' consent has no prescribed time limit according to the constitution. It is also not required that all the states give their consent to the bill, the moment the majority states give their consent, the formality is said to be completed and the bill is passed.

C. PROCEDURE FOR AMENDMENTS

I) An amendment to the Constitution, according to Article 368, can only be initiated with the introduction of a bill for the same purpose in either house of the Parliament, but not in the state legislatures. The same can take place without the prior permission of the President.

II) The bill must be passed in each house by a Special Majority, that is, a majority (that is more than 50 percent of the total membership) (or Special Majority with Ratification in certain cases)of the house and a majority of 2/3rd of the members of the house present and voting.

III) Each house must pass the bill separately. In case of a disagreement between the two houses, there exists no such provision for holding a joint sitting according to the Constitution.

IV) If the bill seeks to amend the federal structure of the Constitution, it must be ratified by the legislatures of half of the states by a simple majority, that is a majority of the members of the house present and voting.

V) After being duly passed by both the houses of the Parliament and being ratified by the state legislatures, wherever necessary, the bill is to be presented to the President for the assent.

VI) The President must give his assent to the bill. He can neither withhold his assent nor return the bill for reconsideration to the Parliament. Hence, the President cannot exercise the veto power in case of bill of amendment.

VII)After the President's assent, the bill becomes an Act (constitutional amendment act) and the Constitution stands amended in accordance with the terms of the Act.

D. JUDICIAL INTERPRETATIONS AND LIMITATION OF AMENDING POWERS

There exists a plethora of case laws which deal with the question of 'amendments', dealing with different aspects of it. Following are some important landmark judgements delivered by the judiciary which shape the prospects of amendments in the Indian democracy, focusing on what can be amended and what cannot, in a chronological order (according to the judgements delivered).

I) Shankari Prasad V. Union of India [6]

In this case, the 1st Constitutional Amendment Act was challenged. The Supreme Court, in this case, held that there existed a clear distinction between the amending power (as stated by Article 368) and general legislative power. This basically meant that the Parliament had the power to amend any part of the Constitution, which included the fundamental rights. The Court upheld Parliament's power under Article 368 to amend any part of the Constitution, including Fundamental Rights, establishing a broad interpretation of the amending power. The same was upheld in the case of *Sajjan Singh V. State of Rajasthan* [7].

II) Golak Nath V. State Of Punjab [8]

In this case, the Supreme Court overruled its earlier proposition and held that the Parliament cannot amend any fundamental right, under Article 368. The Court reversed its earlier view, holding that Parliament could not amend Fundamental Rights, treating them as inviolable. In light of this, the *24th Constitutional Amendment* [9] was passed by the Parliament as a reaction , which circumvented the decision. The Parliament, in this amendment, added Clause (4) to Article 13 which expressly stated that the word 'law' under the same article does not include 'Constitutional Amendments', meaning that the amendments can touch the fundamental rights, since they are not under the purview of 'law'. Clause (3) to Article 368 was also added stating that the Parliament can amend any part of the Constitution, including the fundamental rights.

III) Keshavananda Bharati V. State of Kerala [10]

The Constitutional validity of the 24th Amendment was challenged. The Supreme Court overruled the judgement delivered in *Golak Nath Case,* stating that the *24th Amendment* was valid and Parliament had the power to do away with any fundamental right, but it laid down some limitations to this 'amending' power. The Supreme Court, being the guardian of the Fundamental Rights, formulated the 'Doctrine of Basic Structure', stating that the Parliament does have the power to amend any part of the Constitution, provided that the 'basic structure' of the Constitution is not affected. Here, the basic structure refers to the basic pillars on which the Constitution stands (eg.

[6] AIR 1951 SC 458
[7] AIR 1965 SC 845.
[8] AIR 1967 SC 1643.
[9] 1971.
[10] AIR 1973 SC 1461.

secularism, democracy, rule of law, etc). The landmark judgment upheld Parliament's power to amend any provision but introduced the "Basic Structure Doctrine," ensuring that core constitutional principles could not be destroyed.

IV. AMENDMENT PROCEDURE UNDER SOUTH AFRICAN CONSTITUTION

Historically, South Africa endured years of apartheid rule, where racism and white dominance prevailed. *The Union of African Nations Act of 1909,* passed by the British colonisers was the founding document of the Union of African Nations, formed by various republics. The British colonial administration implemented the Act, which established the Union and granted the King absolute authority over its administration. The King and Parliament were the sole lawmakers, with the Union's legislative power under the King's authority.

South Africa finally gained freedom from white colonial rule and became a republic in 1961. The Constitution for South Africa was adopted in 1996 and amended 17 times since then. The process for amending the Constitution is outlined in Chapter 14, with Section 74 providing for the amendment of any provision. These procedures are more stringent than other legislative-making processes to safeguard the Constitution from political volatility and potential misuse by transient majorities.

A. UNDERSTANDING THE AFRICAN PARLIAMENT

- The African Parliament comprises of 2 houses, the National Assembly (NA) and the National Council of Provinces (NCOP). South Africa, thus, has a bicameral structure. The National Assembly is the House which id directly elected by the voters (just like the Indian Lok Sabha), while the National Council of Provinces is elected by the provinces and represents them to ensure that provincial interests are taken into account in the national sphere as well.
- The National Assembly comprises of 400 members and has the Speaker as the head, as mandated by the Constitution. The NCOP consists of 90 delegates (10 delegates from 9 provinces) [11].

[11] How Parliament Is Structured, Parliament of the Republic of South Africa.

- In matters related to amendments and their validity, the South African Constitution establishes the creation of a 'Constitutional Court' which is empowered to decide on the constitutionality of these amendments [12].

B. TYPES OF AMENDMENT

The South African Constitution recognises 3 main types of amendments which take place on different levels. These are illustrated under Section 74 as:

1. Simple Majority:

- The Non-substantive changes in the Constitution, like technical corrections, can be done with a Simple Majority in the National Assemble.
- Simple Majority refers to majority i.e 50 percent + 1 of the total members, this means that for passing a bill for amendment at least 201 members must assent to the same.

Simple Majority = 50 percent + 1 (≥201)

2. Two Thirds Majority:

- Most of the Constitutional Amendments require a two-thirds majority in the National Assembly. This however is stricter than in India and emphasises on a 'consensus', covering amendments like the alterations in the bill of rights and governmental powers, etc.
- Any amendment which doesn't effect the Provincial interest can be passed with two third majority.

Two Thirds Majority = 2/3rd of total strength

3. Two Thirds Majority with Provincial Approval :

- Any amendment which will impact the provincial interests, like that of the NCOP or the provincial boundaries, the powers, etc, require a two-thirds majority in the National Assembly, along with an approval from at least 6 out of 9 provinces in the NCOP.
- A provision specifically dealing with a provincial matter, then also two thirds of the Assembly and six provinces must agree. This provision ensures that the provincial input is put in while any structural changes are done to the Constitution.

[12] Role of the Constitutional Court, Constitutional Court of South Africa.

- In addition, if a proposed amendment only affects a specific province/s, the legislative council of the affected province/s should consent to the proposed amendment
- Any other amendment only requires two-thirds of the National Assembly to agree [13].

Two Third Majority with Provincial Approval = 2/3rd of total strength + 6 out of 9 NCOP assent.

4. Three Quarter Majority:

- The Constitution of South Africa recognises some special cases wherein a three quarterly or 75 percent assent is required (of the NA) in order to pass an amendment.
- Some of these provisions include the founding values in the Constitution – as set out in Section 1 – which can only be amended with a supporting vote of 75 percent of the members of the National Assembly. As long as an amendment doesn't affect the values in Section 1 (specifically the Rule of Law), a 75 percent majority wouldn't be required.
- Section 25 of the South African Constitution, which deals with land reforms and right to property, also states that for any amendment to this particular Section would also require a 75 percent majority.

Three Quarter Majority = 75% assent of National Assembly

C. PROCEDURE FOR AMENDMENTS

- The procedure for amending the Constitution differs from the procedure to pass or amend ordinary legislation. It is more difficult to amend the Constitution than it is to pass or amend ordinary laws. This is because the Constitution is the supreme law of the Republic. The Constitution does not prescribe any particularly cumbersome rules in relation to the tabling of proposals for constitutional amendment. As such, all those entities that have the power to propose 'ordinary' Bills also have the power to table proposals for constitutional amendment.

- A Bill amending the Constitution can't include provisions other than constitutional amendments and matters connected with the amendments. This means a constitutional amendment may not be included in another Bill dealing with other matters to secure its passage. For example, a constitutional amendment can't be attached to the budget in the hope that MPs will be forced to pass it in order to pass the budget.

[13] How a Law is made, Parliament of the Republic of South Africa.

- However, what the Constitution does do is to impose time limits (a type of 'cooling-off' period) on the tabling of amendment proposals. A person or committee intending to introduce a Bill for the amendment of the Constitution should publish the proposed amendment in the Government Gazette for public comment at least 30 days before it is tabled before Parliament. In other words, all constitutional amendments must be published in the national Government Gazette with a call for public comment at least 30 days before being introduced in Parliament. This would include the text of the amendment and the motivation for it. After the Bill which proposes amendments to the Constitution is tabled, 30 days must pass before it can be put to a vote in the National Assembly.

- At the same time these details must also be submitted to the provincial legislatures to get its views. Only after this 30 day period can the Bill be formally tabled in the National Assembly [14]. When it's introduced in the assembly, the government must also submit any written comments from the public and the provincial legislatures to the Speaker for tabling in the assembly. These must also be tabled to the chairperson of the National Council of Provinces. This process could take some time to conclude as it can be time consuming to ensure extensive public involvement in the process.

- In addition, the involvement of the provinces in the constitutional amendment process is largely limited to their participation in the National Council of Provinces. As such, the Constitution does not require that, in addition to an affirmative vote of the National Council of Provinces, each of the provinces should also ratify a proposed amendment. This is because delegates of the provinces in the Council vote as blocks where each province has a single vote.

- Once the Bill amending the Constitution has been through all these steps, it's then referred to the President for signing into law.

- The Constitution of the country also provides for the creation of a special 'Constitutional Court'. The Constitutional Court is South Africa's highest court on constitutional matters. So its jurisdiction - the scope of its authority to hear cases - is restricted to constitutional matters and issues connected with decisions on constitutional matters. It is the highest court in the country when it comes to the interpretation, protection and enforcement of the Constitution [15].

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[14] The Constitution of South Africa, s. 74 (7).

[15] *Supra* n. 14

- Rather than expressly excluding certain provisions from constitutional amendment, the drafters of the final Constitution of South Africa opted to empower the Constitutional Court to 'decide on the constitutionality of any amendment to the Constitution'. The power to control the constitutionality of constitutional amendments makes the South African Constitution one of the most powerful constitutional courts in the world. The Constitutional Court is the guardian of the Constitution in every sense of the term.
- Nevertheless, some authors have argued that the Constitutional Court should rely on the basic structure doctrine to invalidate amendments that are 'manifestly undemocratic'.

V. COMPARATIVE ANALYSIS AND APPRAISAL

The process of amending a constitution lies at the heart of its ability to adapt to changing social, political, and economic realities while preserving its core principles. Both India and South Africa, though emerging from vastly different historical contexts—India from colonial rule in 1947 and South Africa from the apartheid regime in 1994—have established constitutional amendment procedures that balance flexibility with safeguards against potential misuse. This comparative analysis and appraisal times to explore the similarities, differences, and underlying philosophies of these amendment mechanisms, assessing their effectiveness in safeguarding democratic values while enabling constitutional evolution.

In India, for example, while most proposals to amend the constitution require the support of only a special majority of the Parliament present and voting or at times even a ratification of the states (provided this is also no less than two-thirds of the total number of representatives). Likewise in South Africa, while most constitutional amendments require the support of only a two-thirds majority of either the National Assembly or six (i.e. two-thirds of) provinces in the National Council of Provinces, amendments that affect the provinces are subject to the more requirement of two-thirds support in both houses; and amendments that purport to alter the fundamental constitutional principles found in Section 1 of the 1996 Constitution require the support of three-quarters, as opposed to two-thirds, of the National Assembly [16] .

Inducing this kind of increased deliberation about proposed constitutional amendments has not only the benefit of promoting the role of reason in processes of constitutional self-government but also

[16] The Constitution of South Africa, s. 74 (1), (3).

the further benefit of creating the kind of delay in such processes that can 'give passions time to cool down' [17].

S. No.	Basis for similarity	Indian and South African Constitution
1	Procedure	Both the Constitutions have a detailed and codified written amendment procedure, with various provisions on basis of nature of the amendment.
2	Special Majority Requirement	Both the Constitutions elaborate on how a 'Special Majority' in terms of two thirds of the members in addition to State approval (ratification; provinces approval) is required for bringing about significant Constitutional changes.
3	Power of Courts	Both the countries empower their Apex courts (Supreme Court in India, Constitutional Court in South Africa) to act as the guardian of the Constitution and questions the validity of the amendments.
4	Federal/ State involvement	Both the Constitutions have provisions which incorporate the opinion and concerns of the states/provinces (ratification, province approval).
5	Amending power	The explicit amending power, in both the countries, is vested in the Parliament, which can be exercised with certain limitations.

Table 1. Key similarities in the Amendment procedures of the 2 countries (India and South Africa).

Key Differences and Similarities

- Rigidity and Flexibility: When talking of flexibility, the Indian Constitution is considered to be comparatively flexible (although it is defined as the perfect blend of both rigidity and flexibility), especially when it comes to amendments requiring only a simple or special majority. The amendment procedure in the Indian Constitution is lenient. The overwhelming majority of the Indian Constitution may be amended through a mere two-thirds majority vote in each of the two legislative houses. Whereas South Africa's Constitution places stricter requirements for broader consensus, especially for changes in the powers in relation to the provinces and fundamental

[17] Jon Elster, "Don't Burn Your Bridges Before You Come to It: Some Ambiguities and Complexities of Precommitment" 81 *University of Texas Law Review* 1764-1765 (2003).

rights. It is comparatively easier to bring about effective changes under the Indian Constitution, while the same cannot be said for the South African Constitution. In fact, the constitutional amendment procedure in India is almost as rigid as the most lenient of the four categories of amendment procedure in South Africa (a mere two-thirds majority vote of the National Assembly).

- Provincial Involvement: South Africa mandates provincial approval for amendments affecting provinces, ensuring representation of local interests. In case a particular amendment effects a particular province, then assent of the particular state is mandatory. India's Constitution requires state ratification only for certain federal amendments, showing less routine engagement of state legislatures.

- Protection of Fundamental Rights: In both countries, fundamental rights receive special protections. Without the assent of the provinces (6 out of 9 provinces) in matters of provincial effecting amendments, the same cannot be passed. India's Basic Structure Doctrine prevents the amendment of core principles, while South Africa's Bill of Rights amendments need an even higher cap (75 percent), showing a strong emphasis on protecting civil liberties.

- Judicial Safeguard: The Basic Structure Doctrine in India is a judicially created protection, while South Africa embeds rigid procedural requirements within the Constitution itself as it has no such explicit doctrine. The basic structure doctrine was developed to address real and perceived risks to the constitutional order in the Indian context. There have not been any such continuous battles between Parliament and the Constitutional Court in South Africa thus far. In short, the circumstances in India are such that the basic structure doctrine may be more justifiable than any similar doctrine in South Africa. Nevertheless, some authors have argued that the Constitutional Court (South Africa) should rely on the basic structure doctrine to invalidate amendments that are 'manifestly undemocratic' and thus adopt the concept from India. Hence, India provides for 'judicial' limitations while South Africa deals with procedural limitations (with the establishment of the Constitutional Court).

- In India's first-past-the-post (FPTP) system, a party may secure a parliamentary supermajority without winning an equivalent share of the popular vote. This raises concerns that constitutional amendments could be enacted with less than two-thirds voter support. By contrast, South Africa's

proportional representation (PR) system ensures that the distribution of parliamentary seats closely mirrors the share of votes received. As a result, the supermajorities required for constitutional amendments in South Africa reflect broader electoral consensus, lending stronger democratic legitimacy. Consequently, South Africa's amendment procedure is more effective at preventing majoritarian or regressive changes than India's comparatively flexible system.

S. No.	Basis for differentiation	Indian Constitution	South African Constitution
1	Provision for Amendment	Article 368 of the Indian Constitution.	Section 74 of the South African Constitution.
2	Types of Amendments	3 types: Simple majority (outside purview of Art 368), Special Majority, Special Majority with State Ratification.	4 types: (varies on basis of what to be amended) Simple Majority, Two Thirds Majority, Two Thirds with Provincial Approval, Three Quarter Majority (75%).
3	Historical Context	Drafted in 1949, adopted in 1950 with end of colonial rule.	Drafted and adopted in 1996, with end of colonial rule and apartheid.
4	Participation of States/ Provinces	State participation present in Special Majority with State Ratification, where is 50% of states assent, formality is completed.	Provinces participation mandated through NCOP + 6 out of 9 provinces must assent for change related to provincial interests.
5	Limitation on Parliamentary power to amend	Basic Structure Doctrine ensures that the basic structure remains protected and not affected by any amendment, hence a valid limitation.	No such doctrine, the Constitutional Court maintains a check on the validity of the amendments.
6	Public Participation	Not mandated in the Constitution, since amendment brought about by peoples representatives.	Sec 74(7) mandates that bill is to be published in National Government Gazette for public commentary before being placed in the National Assembly.

S. No.	Basis for differentiation	Indian Constitution	South African Constitution
7	Scope for Amendment	Comparatively more flexible hence can be amended easily.	Comparatively rigid in structure.
8	Number of Amendments done	106 amendments done till date.	Only 17 amendments till date.

Table 2. Key differences in the Amendment procedures of the 2 countries (India and South Africa).

VI. CONCLUSION

The amendment procedures in India and South Africa balance flexibility with protection of core principles, reflecting their unique histories and governance needs. The background and history of both the countries were largely different but yet the same: emerging victorious against Colonialism. Thus, the Constitutions reflect the ideas which were manifested in such a background and aims to ensure the ever-changing nature of the document as well. India allows more frequent amendments with varied thresholds, while South Africa's Constitution places stronger procedural safeguards, especially regarding rights and federal interests.

The Indian Constitution talks about amendments under Article 368, talking of two types of amendments: Special Majority and Special Majority with Ratification by States, and a Simple Majority amendment which falls outside the ambit of the Article 368. Special Majority requires a 2/3rd majority of the members present and voting, while sometimes, ratification is also required by the states. A Simple Majority, on the other hand, is not used for Constitutional amendments, but for other laws where only a majority of the total is required. The process of amendments under the Indian Constitution is said to be adopted from the South African Constitution, however since the contexts remain completely different, they stand for different things. In the South African Constitution too, four types of amendments are mentioned under Section 74 of the Constitution, however the scope of these remain quite stringent. Since the Indian context is different, the application also varies. The application of the 'amendment' procedure in India remains the perfect blend of rigid yet flexible. The difference can be felt in the number of amendments witnessed by both the countries where only 17 have occurred till date in South Africa in contrast to 106 amendments in India. There might exist a number of differences in these approaches regarding modifying the Constitutions, however the main idea behind such 'modifications' remains the same,

which is development and holistic growth of the society and the Constitution as well. At the end, the procedure is carried out to maintain the adaptability of the Constitution to ensure its status as a 'living document'.

Together, these approaches illustrate how constitutional amendment procedures can reinforce democratic values and adaptability while safeguarding foundational structures.

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