
AMENDING THE CONSTITUTION: A COMPARATIVE ANALYSIS OF INDIAN AND U.S. AMENDMENT PROCEDURES

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ABSTRACT

Constitutional amendments represent the paramount expression of sovereign constituent power. The capacity of nations to reshape fundamental law responding to changing social, political, and economic circumstances. This paper presents a comprehensive comparative analysis of amendment procedures under Article 368 of the Indian Constitution and Article V of the U.S. Constitution, examining historical development, procedural frameworks, substantive limitations, and judicial interpretations governing constitutional change in both jurisdictions.

The Indian Constitution employs a tripartite amendment structure reflecting sophisticated constitutional engineering: Simple majority amendments for administrative provisions; Special majority (two-thirds members present and voting in both houses) for most substantive amendments; and Special majority plus ratification by fifty percent of state legislatures for amendments affecting federal structure and state representation. This categorized rigidity enables responsive governance while protecting core constitutional principles. Conversely, the U.S. Constitution maintains a single, uniform, exceptionally stringent procedure: Two-thirds supermajority in both congressional houses (or convention called by two-thirds states) and ratification by three-fourths of states. This uniformity embodies constitutional philosophy prioritizing stability and entrenchment of fundamental principles.

The divergent amendment trajectories illuminate constitutional values. The Indian Constitution has been amended over 100 times in 75 years, demonstrating adaptability to developmental needs but raising concerns regarding constitutional stability whereas the U.S. Constitution has been amended only 27 times in 235 years, reflecting rigidity compensated through dynamic judicial interpretation. This comparative study demonstrates that amendment procedures embody deeper constitutional philosophies and serve distinct constitutional cultures. India prioritizes flexibility within protected

constitutional boundaries, while the U.S. emphasizes entrenchment of fundamental principles through procedural stringency. Both approaches have demonstrated capacity to maintain constitutional stability while enabling necessary constitutional evolution.

Keywords: Article 368, Article V, Basic Structure Doctrine, Constitutional Amendments, Constitutional Flexibility, Judicial Interpretation.

1. INTRODUCTION

The ability to amend a constitution represents the ultimate expression of sovereign power i.e. the capacity of a nation to reshape its fundamental law to meet changing circumstances¹. As Justice Joseph Story observed, *"A government with a rigid structure that lacks flexibility will ultimately become incompatible with the nation's conditions, resulting in either its decline or revolution."*² Yet constitutional amendments must be constrained sufficiently to prevent tyranny through constitutional change. This tension between adaptability and entrenchment characterizes all constitutional democracies.

The Indian Constitution, adopted in 1950, contains 395 articles and 8 schedules, representing the world's longest written constitution. Article 368 establishes three categories of amendments, enabling India to address pressing social, economic, and political challenges through constitutional reform. In contrast, the U.S. Constitution, framed in 1787, contains merely 4,400 words and has been amended only 27 times. Article V's stringent requirements reflect the framers' concern with constitutional stability and entrenchment of fundamental principles.

The significance of comparing these amendment procedures lies in understanding how different constitutional cultures approach the fundamental challenge of managing constitutional change. India's approach reflects postcolonial needs for rapid modernization and social transformation, while America's approach reflects eighteenth-century concerns with preventing majoritarian tyranny and protecting individual liberty. Both approaches have merit; both present challenges.

This paper examines the historical development, procedural frameworks, limitations, and

¹ Joseph Story and Thomas M. Cooley, *Commentaries on the Constitution of the United States*, (Hansebooks, 2017)

² Ibid

judicial interpretations of amendment procedures in both constitutions. Through comparative analysis, the study illustrates how constitutional amendment mechanisms embody deeper constitutional values and demonstrates that no single model of constitutional flexibility is universally optimal.

2. HISTORICAL DEVELOPMENT OF AMENDMENT PROCEDURES IN INDIA AND USA

2.1. Indian Amendment Procedure: From Constituent Assembly to Article 368

The constitutional architecture for amending India's Constitution evolved through deliberate constitutional design during the Constituent Assembly's proceedings in 1947-1950. The Union Constitution Committee, established in June 1947, received the Constitutional Advisor B.N. Rao's questionnaire asking whether constitutional provisions should include mechanisms for amendment³.

The responses reflected competing visions of constitutional change. N. Gopalaswami Ayyangar and Sir Alladi Krishna Ayyar proposed that amendments require two-thirds majority in both houses of Parliament plus ratification by two-thirds of state legislatures. This proposal incorporated federalism principles, recognizing states' roles in constitutional modification. Professor K.T. Shah's more elaborate proposal included referendum mechanisms for fundamental changes, requiring two-thirds parliamentary approval followed by ratification by two-thirds state legislatures and, ultimately, approval by majority of adult citizens through referendum⁴.

The Constituent Assembly rejected the referendum mechanism as impractical for India's vast, diverse population with low literacy rates and complex caste-community divisions. Dr. Ambedkar championed a balanced approach: flexibility sufficient for governance but rigidity adequate for constitutional protection. The resulting Article 368 crystallized this balance through three amendment categories, representing a masterstroke of constitutional engineering.

2.2. American Amendment Procedure: Article V's Stringent Design

³ Shiva Rao, *The Framing of India's Constitution—Select Documents*, (Vol. IV, Indian Institute of Public Administration, New Delhi, 2005).

⁴ Ibid

The American framers approached constitutional amendment with profound skepticism towards easy change. Under the Articles of Confederation, amendment required unanimous state consent, a barrier that rendered constitutional evolution nearly impossible. This experience informed the Constitutional Convention's deliberations on Article V.

George Mason articulated the core tension: *"It is better to implement changes through a methodical, constitutional procedure instead of depending on randomness and violence for modifications."*⁵ Alexander Hamilton proposed granting Congress unilateral power to convene amendment conventions, while James Madison refined this to require two-thirds congressional majorities to propose amendments or to respond to two-thirds state legislature requests for constitutional conventions.

The Convention inserted protective provisions into Article V itself. The prohibition on depriving states of equal Senate suffrage without consent protected federalism. The temporary ban on amendments regarding slave importation until 1808 represented a Southern compromise. These entrenchments reflected the framers' determination to embed fundamental values beyond ordinary legislative amendment.

The resulting Article V established a single, uniform procedure far more rigorous than India's approach: two-thirds supermajority in both congressional houses (or convention called by two-thirds states) and ratification by three-fourths of states. This uniformity and stringency reflected American constitutional philosophy prioritizing stability over adaptability.

3. AMENDMENT PROCEDURE IN INDIA UNDER ARTICLE 368

Article 368 of the Indian Constitution establishes three distinct amendment categories, each with unique procedural requirements reflecting the constitutional significance of the provisions affected.

3.1. Simple Majority Amendments

Articles 4, 5, and 6 address administrative matters such as formation of new states, alteration of state boundaries and names and interpretation of related provisions. These amendments require only simple majority approval in both houses of Parliament, no state ratification

⁵ Max Farrand (ed.), *The Records of the Federal Convention of 1787*, vol. I, Yale University Press, New Haven, 1911, pp. 121-22.

necessary. A simple majority constitutes over 50% of the House members who are present and casting votes. Consider a Lok Sabha of 545 members: 45 are absent and 100 have abstained. Consequently, just 400 members cast their votes. The necessary simple majority is 201 (50% plus one). Examples include successive amendments creating new states (Telangana via 69th Amendment, Chhattisgarh via 53rd Amendment). The rationale: these matters are primarily administrative, devoid of fundamental constitutional significance, justifying streamlined procedures.

3.2. Special Majority Amendments

Most constitutional provisions fall within this category and the procedure is as follows:

- (i) To initiate a constitutional modification, a Bill must be presented in either House of the Union Parliament.
- (ii) The Bill is submitted to the President for approval following its passage in both Houses of Parliament by a majority of total membership and two-thirds of those present and voting. The President is required to endorse Amendment Bills passed by either House of Parliament.
- (iii) Upon the President's approval, the Constitution is modified in accordance with the provisions of the Bill.⁶

This includes amendments to fundamental rights, directive principles, union-state relations, and electoral systems. Over 100 amendments have utilized this procedure. The special majority requirement reflects the Constituent Assembly's judgment that substantive constitutional changes require broader consensus than ordinary legislation without approaching the consensus level demanding state participation.

3.3. Special Majority Plus State Ratification

Amendments affecting federal structure, state representation, and Supreme Court jurisdiction require not only special parliamentary majority but also ratification by at least fifty percent of state legislatures prior to submission to the President for assent. This provision protects

⁶ Narender Kumar, *Constitutional Law of India*, 738 (2002)

federalism by ensuring states participate in constitutional changes undermining their constitutional position.

Examples include the 7th Amendment (increasing union-state financial distribution), the 73rd Amendment (Panchayati Raj institutions), and the 74th Amendment (urban local bodies).

3.4. Presidential Assent and Limitations

Notably, Article 368 mandates that the President must assent to constitutional amendments without discretionary rejection authority. In *Shankari Prasad v. Union of India*, the Supreme Court held that presidential assent to amendments is purely formal, not substantive⁷. This reflects constitutional theory distinguishing amendment from ordinary legislation. Amendments exercise constituent power, not legislative power subject to executive veto.

Crucial express limitations exist as the procedure specified in Article 368 itself cannot be unilaterally changed and equal representation of states in the Rajya Sabha cannot be altered without that state's consent (mirroring Article V).

3.5. The Basic Structure Doctrine: Implied Limitations

The Seventh Amendment's legitimacy was challenged in *Sajjan Singh v. State of Rajasthan*.⁸ The Sajjan Singh lawsuit questioned the authority of Parliament to curtail fundamental rights under Article 368. The *Golak Nath* ruling⁹ established Article 13(2) as a restriction on the state, rendering any modification to basic rights legally impossible. The majority decision in the *Golak Nath* case presents four principal propositions.

- (i) The authority to alter is not contained within Article 368. This article solely delineates the process for amending the Constitution.
- (ii) Legislation enacted under Article 368 is governed by Article 13(2), similar to other statutes.
- (iii) The term 'amend' denotes slight modifications to existing provisions, rather than

⁷ *Shankari Prasad v. Union of India*, AIR 1951 SC 458.

⁸ *Sajjan Singh v. State of Rajasthan*, 1965 AIR 845

⁹ *Golak Nath v. State of Punjab*, AIR 1967 SC 1643.

substantial alterations.

(iv) Parliament is required to assemble a Constituent Assembly to modify fundamental rights.

Beyond express textual limitations, the Supreme Court has judicially imposed substantive limitations through the basic structure doctrine. Established in *Kesavananda Bharati v. State of Kerala* (1973), this doctrine holds that Parliament cannot amend features constituting the Constitution's basic structure¹⁰. Seven of thirteen judges affirmed this revolutionary principle.

The doctrine protects: supremacy of the Constitution, democratic governance, secularism, republicanism, federalism, separation of powers, judicial independence, individual rights, sovereignty, and the amendment procedure itself. This judicial innovation transformed Article 368 from textually specified procedural requirements into substantively limited constituent power.

In the *election case*¹¹, the Supreme Court referenced *Kesavananda Bharti* and endorsed the prevailing interpretation about the Constitution's fundamental structure. The 42nd Amendment (1976), passed during the Emergency, threatened fundamental rights through Article 31C. The *Minerva Mills case* (1980) confirmed basic structure protections, establishing that no amendment can nullify constitutional checks and balances¹².

4. AMENDMENT PROCEDURE IN USA UNDER ARTICLE V

Article V prescribes a single, uniform, and exceptionally stringent amendment procedure applicable to all constitutional provisions without categorical distinctions.

4.1. Proposal Mechanisms

Two pathways enable amendment proposals:

1. **Congressional Proposal:** Two-thirds supermajority in both houses of Congress may propose amendments. This remains the exclusive method historically employed as all

¹⁰ *Kesavananda Bharati v. State of Kerala*, AIR 1973 SC 1461.

¹¹ *Indira Nehru Gandhi v. Raj Narain*, AIR 1975 SCC 2299.

¹² *Minerva Mills v. Union of India*, AIR 1980 SC 1789.

the 27 amendments were congressionally proposed.

2. **Convention Method:** Upon request of two-thirds of state legislatures, Congress must convene a constitutional convention to propose amendments. This untested mechanism reflects the framers' concern that Congress might obstruct necessary amendments.

The convention pathway, never utilized, raises contemporary questions: Would a modern convention be bound by original constitutional scope, or might it propose wholesale constitutional revision?

4.2. Ratification Requirements

Proposed amendments become constitutional law upon ratification by three-fourths of state legislatures (or conventions, as Congress determines). This supermajority requirement has frustrated numerous proposed amendments as the child labor amendment, congressional apportionment amendment and balanced budget amendment all achieved two-thirds congressional approval but failed state ratification.

The three-fourths requirement ensures that amendment represents near-national consensus, preventing amendment through bare majorities that might inadequately represent national sentiment.

4.3. Judicial Interpretation of Article V

American courts have consistently held Article V's amendment procedures constitute judicially unenforced political questions. In *Hawke v. Smith* (1920), the Supreme Court declined to examine whether state ratification procedures complied with federal constitutional requirements¹³. *Coleman v. Miller* (1939) held that Congress possesses sole authority to interpret ratification deadlines and procedures, rendering Article V amendment processes essentially self-judging¹⁴.

This restraint contrasts sharply with Indian judicial activism in scrutinizing amendment validity through substantive constitutional principles.

¹³ *Hawke v. Smith*, 253 U.S. 221 (1920).

¹⁴ *Coleman v. Miller*, 307 U.S. 433 (1939).

4.4. Textual Limitations

Article V itself contains two express limitations. First, no amendment prior to 1808 could affect slave importation or state tax provisions, a Southern compromise. Second, no state shall be deprived of its equal Suffrage in the Senate without its Consent, an entrenchment clause protecting federalism. This limitation cannot be amended even by constitutional amendment, reflecting the framers' determination to embed certain constitutional features beyond political reach.

Whether other implicit limitations constrain Article V has been theoretically debated but never authoritatively resolved. Some scholars contend that fundamental features (democratic governance, republican structure, individual rights) cannot be amended while others argue Article V's stringency itself constitutes the only meaningful limitation.

5. COMPARATIVE ANALYSIS

Aspect	Indian Constitution (Article 368)	U.S. Constitution (Article V)
Amendment Categories	Three (Simple Majority, Special Majority, Special + State Ratification)	One (Uniform Procedure)
Proposal Requirement	Simple majority introduction in either House	Two-thirds in both houses; OR two-thirds state legislatures request convention
Approval Requirement	Simple, Special, or Special+50% State approval	Two-thirds in both houses
Ratification	50% states (for certain amendments)	75% (3/4) states
Parliamentary Procedures	Joint sitting prohibited during amendment disputes	Single, uniform procedure
Rigidity Level	Flexible (categorized rigidity)	Rigid (uniform stringency)
Total Amendments (1950/1789-2025)	100+ (75 years)	27 (235 years)

Judicial Limitations	Basic structure doctrine; substantive judicial limits	Minimal; process treated as political question
Express Constitutional Limits	Amendment procedure itself; equal state representation	Equal state Senate suffrage; pre-1808 slavery provisions
Presidential Role	Assent mandatory; no discretion	No presidential role; state ratification determinative
Populace Participation	Absent (legislature-driven)	Absent; state-legislature or convention-driven

Table 1: Comparative Framework: Indian and U.S. Amendment Procedures

The comparative framework reveals divergent constitutional philosophies. India's tripartite structure reflects responsiveness to developmental governance within a federal framework. The simple majority category enables rapid adaptation to administrative needs, the special majority protects fundamental provisions and the special majority plus state ratification preserves federalism.

Conversely, the U.S. Constitution's uniform stringency reflects skepticism toward constitutional change itself. The requirement of two-thirds supermajority (not mere majority, but substantial supermajority) and three-fourths state ratification creates near-insurmountable barriers, deliberately. James Madison articulated this design that constitutional change must represent near-unanimous national consensus, preventing transient majorities from dismantling constitutional structures.

5.1. Flexibility vs. Rigidity

India's 100+ amendments in 75 years versus America's 27 in 235 years demonstrates contrasting equilibrium points. Indian flexibility enabled addressing caste discrimination through reservations (93rd Amendment), establishing local self-governance (73rd, 74th Amendments), and modernizing taxation (101st Amendment establishing GST). Yet this flexibility raises concerns such as constitutional instability, legislative overreach, and potential constitutional dismantling.

American rigidity, conversely, protected fundamental constitutional structures from transient

political pressures. Yet it also necessitated unusual judicial interpretation to address modern challenges (commerce clause expansions, fourteenth amendment developments), arguably placing excessive interpretive burden on courts.

6. CONCLUSIONS

This comparative constitutional analysis reveals that amendment procedures embody fundamental constitutional values and political cultures. Neither approach is universally superior and each reflects legitimate constitutional priorities. The Indian Constitution's flexible amendment structure, tempered by basic structure doctrine, facilitates responsive governance addressing diverse societal needs while preserving core constitutional identity. Over 100 amendments demonstrate adaptability and judicial limitations prevent constitutional dismantling. The tripartite structure reflects sophisticated federalism consciousness absent from American design.

The U.S. Constitution's rigid amendment procedure, never fundamentally reformed despite 235 years, protects constitutional stability and constrains majoritarian tyranny. The near-unanimity required for amendment ensures that constitutional change represents genuine national consensus rather than temporary political coalitions. Yet rigidity necessitates compensatory judicial interpretation, placing substantial evolutionary responsibility on courts.

The Indian Supreme Court's basic structure doctrine represents unique judicial innovation: substantive constitutional limits on amendment power judicially enforced. This contrasts American judicial restraint, treating Article V as a self-executing political question. India's approach protects constitutional identity while America's protects democratic processes by limiting judicial amendment scrutiny.

Future constitutional development might benefit from hybrid approaches. India might benefit from clearer, legislatively defined basic structure provisions reducing judicial ambiguity while the U.S. might benefit from occasional formal amendment processes instead of sole reliance on judicial interpretation. Both systems have demonstrated enduring constitutional capacity to adapt to changing circumstances while maintaining core values. The respective amendment mechanisms enable this delicate constitutional balance and that constitutes their ultimate vindication.

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