

A Comparative Analysis of the Amendments to the Constitution of India and Usa

Himanshu Singh

CMP Degree College (University of Allahabad)

"Today's Constitution is a realistic document of freedom only because of several corrective amendments. Those amendments speak to a sense of decency and fairness that I and other Blacks cherish."

-Justice Thurgood Marshall

Abstract—A constitution is the main and working document of any country. The Indian and United States constitutions are the foundational legal written documents of the world's two largest democracies and have distinct processes for amendment. This project talks about the comparative analysis of these amendment procedures, highlighting their similarities, differences, of the Indian Constitution and American Constitution. The constitution cannot be amended as per the will of the legislatures. There must be certain limits for amending the constitutions of the country. This project also talks about the limitations which are imposed on the procedure while amending the constitution in both India as well as in the USA. The United States Constitution has relatively rigid amendment process given in Article V. It requires a proposal by two-thirds of both houses of Congress or by a national convention called for by two-thirds of the state legislatures, followed by ratification by three-fourths of the states, either through their legislatures or by conventions. It has amended only twenty-seven times since its establishment in 1787. On the other hand, the Indian Constitution which adopted in 1950, provides a more flexible amendment procedure under Article 368 of Part XX. Amendments can be initiated by the introduction of a bill in either House of Parliament and must be passed by a special majority (two-thirds of the members present and voting, and a majority of the total membership of each House). Certain amendments that affect the federal structure also require ratification by the legislatures of not less than one-half of the states. This tiered system allows for relatively more frequent amendments, addressing the evolving needs and

aspirations of a diverse and dynamic nation. This project will provide analysis into the historical context and will also explore the practical implications of these differing amendment processes on constitutional interpretation, judicial review, comparing landmark amendments. This project aims to provide a critical understanding of how each country adapts its foundational law while balancing the principles of constitutional supremacy and popular sovereignty. Ultimately, this comparison will highlight on the strengths and weaknesses of both amendment models in ensuring a living and relevant constitution.

I. INTRODUCTION

Constitutions serve as the foundational pillars of democratic governance, providing a framework for the distribution of power, protection of rights, and mechanisms for adaptation to societal change. A written constitution must possess the ability to adapt to the changing needs of society through amendments. A critical aspect of constitutional governance is the process of amending these foundational documents. The Constitution of the United States (1787) and the Constitution of India (1950) are both supreme legal documents with amendment mechanisms, yet they differ significantly in their philosophies and procedures. The U.S. Constitution is known for its rigidity, having only twenty-seven amendments over more than two centuries. In contrast, the Indian Constitution is relatively flexible, with over one hundred five amendments, reflecting its dynamic and evolving nature.¹

This paper undertakes a comparative analysis of the amendment processes of both constitutions, focusing on their structural mechanisms, guiding principles, and key judicial decisions. Landmark rulings such as

¹ Granville Austin, *Working a Democratic Constitution: The Indian Experience* (Oxford University Press, New Delhi, 1999).

Kesavananda Bharati v. State of Kerala,² which established the 'basic structure doctrine' in India, and Marbury v. Madison,³ which laid the foundation for judicial review in the U.S., highlight how constitutional courts shape the scope and limits of amendments. This study seeks to demonstrate how each constitutional system reconciles the need for continuity with the demands of change, thereby safeguarding democratic governance.⁴ The amendment process in India, enshrined in Article 368 of the Constitution, is marked by a combination of parliamentary supremacy and federalism. The United States, renowned for its system of checks and balances, features a constitution with a complex amendment process outlined in Article V of the United States Constitution.

1.1 Objective of the Study

The primary objective of this project is to undertake a comparative examination of the constitutional amendment processes in India and the United States, two of the world's largest democracies with codified constitutions.

Additionally, the study seeks to evaluate the role of the judiciary in shaping the scope and limits of constitutional amendments through landmark judgments. It also intends to explore the constitutional amendment provisions, the frequency and nature of amendments, and the impact of constitutional change.

1.2 Meaning of 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.

1.3 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 of national government and law.

II. AMENDMENT UNDER THE CONSTITUTION

The amendment means nothing but it is a formal or official change made to a law or other legal documents. It is based on the verb to amend, which means to change for better. Amendments can add, remove, or update parts of these agreements. They are often used when it is better to change the document than to write a new one.⁵ Only the legislative branch is involved in the amendment process. It is a crucial process that allows the constitution to adapt to the evolving needs and aspirations of society while maintaining its foundational principles.

2.1 Importance of the Constitutional Amendment

The provision for amendment of the Constitution carries multiple significance as such as;

- **Adaptability in Governance:** The Constitution lays down fundamental principles of governance. A diverse and constantly evolving country like India cannot be governed by a set of fixed rules. The amendment of the constitution enables to bring changes in governance as per needs and situations.⁶

² AIR 1973 SC 1461.

³ 5 US (1 Cranch) 137 (1803).

⁴ D.D. Basu, *Introduction to the Constitution of India* (LexisNexis, Gurgaon, 2020).

⁵ <https://www.merriam-webster.com/dictionary/amendment> last seen on 28th February, 2026

⁶ <https://www.nextias.com/blog/amendment-of-the-constitution/> last seen at 1 March, 2026

- **Adjusting New Rights:** With rising awareness, various sections of society are becoming assertive of their rights. For example, of late, the LGBT community has been demanding their rights. The amendment enables providing for such rights.
- **Correcting Errors and Oversights:** The framers of any constitution, despite their best efforts and foresight, cannot anticipate all future contingencies or may inadvertently include provisions that prove problematic or unjust in practice. Amendments offer a way to rectify these errors, address unintended consequences, and improve the overall functioning of the constitutional system.
- **Evolution of New Rights:** New interpretations of the Constitution led to the evolution of new rights. For example, a new interpretation of the Right to Life and Personal Liberty gave rise to the Right to Privacy. The amendment enables accommodating such rights.
- **Resolving Constitutional Crises and Ambiguities:** In times of constitutional crisis or when ambiguities in the original text leads to conflicting interpretations, amendments can provide clarity and a definitive resolution. This helps to maintain the rule of law and prevent political deadlocks.
- **Facilitating Social Reform:** Constitutional amendments can be a powerful tool for driving social reform by outlawing discriminatory practices, promoting equality, and creating a legal framework for a more just and equitable society.
- In essence, constitutional amendments are vital for maintaining a constitution as a living document that can effectively guide a nation through changing circumstances, uphold democratic principles, protect rights, and reflect the evolving will and conscience of its people.

2.2 Scope of Constitutional Amendment

A. India: Under Article 368 of the Indian Constitution, Parliament is empowered to amend the Constitution by following either a simple or special majority procedure. The power extends to amending any provision, including fundamental rights and directive principles. In *Kesavananda Bharati v. State of Kerala*,⁷ the Supreme Court ruled that Parliament's power under

Article 368 is not unlimited and is subject to the basic structure doctrine. C.J. Sikri said that "While the amending power is plenary, it is not absolute."

B. United States: Article V of the U.S. Constitution provides the amendment procedure, involving;

1. Proposal by two-thirds of both Houses of Congress, or by a convention called by two-thirds of state legislatures.
2. Ratification by three-fourths of the state legislatures or conventions.⁸

The scope is wide but rigid. It requires consensus at both federal and state levels. So that only 27 amendments have been ratified since 1789, indicating the difficulty of the process.

2.3 Limitations of Constitutional Amendment

1. Procedural Limitations:

These limitations govern the process by which amendments are made, ensuring that changes are not undertaken lightly and reflect a broad consensus. Common procedural hurdles include:

- **Special Majorities:** Requiring more than a simple majority vote in the legislature (e.g., a two-thirds or three-fourths vote) is a common safeguard. This ensures that amendments have widespread support.
- **Separate Deliberations/Multiple Votes:** Some constitutions require amendments to be debated and voted upon multiple times, often with a period of delay in between, to allow for thorough consideration and public debate.
- **Approval by Sub-National Units:** In federal systems, amendments may require ratification by a certain number of state legislatures or regional bodies, ensuring that the interests of constituent units are considered. Like in India some amendments require ratification by at least half of the states (Article 368(2)).

2. Substantive Limitations:

These limitations restrict the content of amendments, prohibiting changes that would alter or destroy the fundamental principles or "basic structure" of the constitution. Like in India, in the case of *Minerva*

⁷ AIR 1973 SC 1461.

⁸ Tribe, L.H., *American Constitutional Law*, 2nd ed., Foundation Press, Mineola, NY, 1988.

Mills v. Union of India,⁹ supreme court held that certain core values cannot be abrogated, even with the amending power. Article V of the Constitution of the United States also prohibits amendment of equal representation of states in the Senate without state consent. It often involves judicial interpretation.

3. Implied Limitations:

Some argue that even without explicit unamendable provisions or a formal basic structure doctrine, there are inherent or implied limitations on the amendment power. The argument is that an amendment cannot be so radical as to effectively create a new constitution or abrogate the core identity of the existing one.¹⁰

4. The Role of Judicial Review:

Courts, particularly constitutional courts or supreme courts, often play a crucial role in interpreting the scope and limitations of constitutional amendments. They may be called upon to:

- Determine whether the correct procedures for amendment have been followed.
- Assess whether an amendment violates any explicit substantive limitations.
- In jurisdictions that recognize it, evaluate whether an amendment infringes upon the "basic structure" or fundamental principles of the constitution.

The "Basic Structure" Doctrine developed by the Supreme Court of India in the landmark *Kesavananda Bharati v. State of Kerala*¹¹ case, holds that while Parliament has the power to amend any part of the Constitution, it cannot alter its "basic structure" or "essential features." What constitutes the basic structure is not exhaustively defined but has been interpreted to include elements like:

- Supremacy of the Constitution
- Rule of law
- Separation of powers
- Parliamentary democracy
- Federal character
- Secularism
- Judicial review

⁹ AIR 1980 SC 1789.

¹⁰ Corwin, E.S., *The Constitution and What It Means Today*, 14th ed., Princeton University Press, Princeton, 1978.

¹¹ AIR 1973 SC 1461.

¹² 307 U.S. 433 (1939).

The U.S. Supreme Court has generally refrained from imposing substantive limitations on the amending power (e.g., *Coleman v. Miller*¹²).

III. 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.¹³

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.

IV.CONSTITUTIONAL AMENDMENT PROCESS IN INDIA

Law changes according to change of time. Constitutional law of the country should change according to the time. If it does not change, then it will be outdated, in the wake of social, economic and political development of the country.

¹³ 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>.

Provision for amendment of the Constitution is necessary in view of the difficulties which may encounter in the future. So, in every Constitution it is desirable to provide a mechanism by which Constitution can be amended to serve the contemporary needs of the people.

In *Kesavananda Bharati v. State of Kerala*,¹⁴ Court said that, it is necessary to change the Constitution as a fundamental law of the country with social changes. By this, the possible danger of the overthrow of our political institutions would be prevented.

A) Formal Method:

In India, the modes of amendment of the Constitution are synonymous with the formal method of amendment as provided for in Article 368 of the Indian Constitution. This article lays down the procedure for amending the Constitution and encompasses the following steps:

a) Amendment bill introduction

An amendment to the Constitution of India can be initiated only by the introduction of a bill in either house of Parliament. The bill may be introduced either by a minister or by any other member of Parliament. Once introduced, the bill undergoes the standard legislative process, including debates, committee scrutiny, and voting, as applicable to other bills.¹⁵

b) Approval by parliament

The approval by Parliament in the formal method of amendment procedure in India involves the passage of an amendment bill by both houses of Parliament, the Lok Sabha (House of the People) and the Rajya Sabha (Council of States). This approval process generally requires a special majority, as specified in Article 368 of the Indian Constitution. The bill of amendment so initiated must be passed in each house by a majority of the total membership.¹⁶

However, not all amendments require a special majority. Some amendments may be passed by a

simple majority of the members present and voting in each house.

c) Ratification by state

Ratification by States is a significant aspect of the formal method of amending the Constitution of India. It involves obtaining approval for certain amendments from the state legislatures in addition to the parliamentary process.

- **Ratification Requirement:**¹⁷ - Article 368 outlines the procedure for amending the Constitution. While most amendments are passed through the parliamentary process, certain amendments require ratification by the state legislatures.
- **Procedure for Ratification:** - Once an amendment bill is passed by both houses of Parliament, it is sent to the state legislatures for ratification. The exact number of states required for ratification varies depending on the nature of the amendment.
- **Required Majority for Ratification:** - In most cases, ratification by a simple majority of the state legislatures is sufficient. However, for certain amendments, such as those affecting the representation of states in Parliament or the powers of the states, a special majority of the state legislatures may be required.

d) Presidential assent

After being passed by Parliament and, if necessary, ratified by states, the amendment bill is presented to the President for assent. The President's assent is mandatory for the bill to become law and amend the Constitution.¹⁸

B) Informal methods:

The informal method of amending the Constitution of India refers to the process of bringing about changes or modifications to the Constitution without following the formal procedures laid down in the Constitution itself, such as those outlined in Article 368. Unlike the formal method, which involves a specific process of amendment requiring the consent of the Parliament

¹⁴ AIR 1973 SC 1461

¹⁵ parliamentofindia.nic.in last seen 2nd march 2026

¹⁶ Total membership in this context has been defined to mean the total number of members comprising the House irrespective of any vacancies or absentees on any account vide Explanation to Rule 159 of the

Rules of Procedure and Conduct of Business in Lok Sabha.

¹⁷ J.N. Panday, Constitutional Law of India, chap 39 (Central Law Agency, Prayagraj, 59th ed. 2022)

¹⁸ D.D. Basu, Introduction to the Constitution of India (LexisNexis, Gurgaon, 2020).

and, in certain cases, the ratification by a specified number of state legislatures, the informal method involves changes that occur through judicial interpretation, conventions, practices, and societal developments.

a) Judicial Interpretation

In this case, the constitutional text does not change, but its interpretation undergoes a change¹⁹

In India, judicial interpretation plays a crucial role in understanding and applying the provisions of the Constitution, particularly in cases where informal methods of amendment are involved. The informal methods of amendment refer to those changes in the Constitution that occur through judicial interpretation, custom, conventions, and practices rather than through the formal amendment process outlined in Article 368 of the Indian Constitution. The judiciary, particularly the Supreme Court, plays a significant role in interpreting the provisions of the Constitution. Through its judgments and interpretations, the Court may effectively alter the understanding or application of constitutional provisions, thereby bringing about changes in the constitutional framework.

One key aspect of judicial interpretation in the Indian context is the doctrine of judicial review²⁰, which allows the judiciary to review the actions of the legislative and executive branches to ensure they are consistent with the constitution.

A landmark case illustrating this is *Kesavananda Bharati v. State of Kerala*²¹ where the Supreme Court of India established the doctrine of the "basic structure" of the constitution. This doctrine holds that while the constitution can be amended, certain core principles and features, termed the "basic structure," are beyond the amending power of the legislature. This decision effectively limits the power of the legislature to amend the constitution in a manner that would violate its basic structure.

Additionally, judicial decisions have often filled gaps in legislation or clarified ambiguous constitutional provisions through their interpretations. This process

has helped in adapting the Constitution to changing societal norms and requirements without the need for formal amendments.²²

b) Constitutional conventions

This is another process of slow metamorphosis, of imperceptible change, the operation of constitutional provisions may be modified by the growth of conventions, practices and observances.²³ Constitutional conventions play a vital role in the informal method of amending the Indian Constitution. These conventions are unwritten rules and practices that have evolved over time and are followed by constitutional authorities, even though they are not legally enforceable. They often serve to supplement the formal provisions of the Constitution and contribute to its effective functioning. Here's a brief exploration of constitutional conventions in the context of informal constitutional change in India:

1. Prime ministerial accountability to parliament

One significant constitutional convention in India is the principle of prime ministerial accountability to Parliament. While the Constitution provides for a parliamentary system of government, the exact nature of the relationship between the Prime Minister and Parliament is largely governed by convention rather than explicit constitutional provisions. Prime Ministers are expected to be accountable to Parliament for their actions, policies, and decisions, and they regularly participate in parliamentary debates and answer questions from Members of Parliament (MPs). *S. R. Bommai v. Union of India*²⁴: In this case, the Supreme Court of India reaffirmed the principle of parliamentary democracy and emphasized the importance of parliamentary accountability, highlighting the role of conventions in ensuring effective governance.

2. Council of ministers' collective responsibility

Another constitutional convention is the principle of collective responsibility of the Council of Ministers to

¹⁹ M.P. Jain M.P. Jain, *Indian Constitutional Law* (LexisNexis, 8th ed., 2022).

²⁰ Judicial review is the power of the courts to examine laws and executive acts and test their conformity with the constitution and strike them down if they are found to be inconsistent with it.

²¹ AIR 1973 SC 1461

²² Granville Austin, "The Indian Constitution: Cornerstone of a Nation" (1966).

²³ M.P. Jain M.P. Jain, *Indian Constitutional Law* (LexisNexis, 8th ed., 2022).

²⁴ AIR 1994 SC 1918

the Parliament. While Article 75 of the Indian Constitution outlines the collective responsibility of the Council of Ministers to the Lok Sabha (House of the People), the exact workings of this principle are largely determined by convention. Ministers are expected to act collectively, and decisions of individual ministers are considered decisions of the entire council.

In, *Kesavananda Bharati v. State of Kerala*²⁵: Although primarily known for establishing the basic structure doctrine, this case also underscored the principle of collective responsibility of the Council of Ministers as a fundamental feature of the Indian parliamentary system.

3. Governor's role in state administration

A convention exists regarding the role of Governors in state administration. While the Constitution outlines the appointment and powers of Governors in states, their actual functions and interactions with the state government are governed largely by convention. Governors are expected to act as constitutional heads of the state, exercising their powers impartially and in accordance with constitutional norms.

In, *Nabam Rebia v. Deputy Speaker, Arunachal Pradesh Legislative Assembly*²⁶ In this case, the Supreme Court clarified the role and powers of Governors in state administration, reaffirming the importance of constitutional conventions in defining their functions.

C) Modes of amending the provisions of constitution

The constitution provides three modes of amending its provisions, namely-

1) Amendment by simple majority

Several provisions of the Constitution can be amended by parliament by simple majority as that required for passing of any ordinary law. The amendments contemplated in Articles 4, 169, 239-A, can be amended by parliament by simple majority. A bill for this purpose may be initiated in either House of parliament. The amendment of these provisions is expressly excluded from the purview of the procedure prescribed in Article 368 of the Constitution.

2) Amendment by special majority

Articles of the Constitution which can be amended by parliament by special majority has been laid down in Article 368 of the Constitution. All constitutional amendments other than referred to above come within this category and must be effected by a majority of the total membership of each House of parliament as well as by a majority not less than 2/3 of the members of that House present and voting. It is to be noted that it is obligatory for the President to give his assent to an Amendment Bill having been passed by the House of parliament. After receiving the assent of the President, the Constitution stands amended in accordance with the terms of the Bill²⁷.

3) Amendment by special majority and ratification by the state – Proviso to clause (2) of Article 368 provides that, if the amending bill mentioned above seeks to make any change in the following provisions, then such a bill having been passed by special majority in each House of parliament, shall not be presented to the President for his assent to it, until the bill has been ratified by the legislatures of not less than one half of the States by passing resolutions to that effect. These provisions are –

- (a) article 54, article 55, article 73, article 162 or article 241, or
- (b) Chapter IV of Part V, Chapter V of Part VI, or Chapter I of Part XI, or
- (c) any of the Lists in the Seventh Schedule, or
- (d) the representation of States in Parliament, or
- (e) the provisions of article 368²⁸,

In united states

The US Constitution is one of the shortest Constitutions and the first Written Constitution around the globe. The US Constitution is rigid in its format and consists of only 7 articles and 27 amendments.

Article V of the US Constitution states that-

The Congress, whenever two thirds of both houses shall deem it necessary, shall propose amendments to this Constitution, or, on the application of the legislatures of two thirds of the several states, shall call a convention for proposing amendments, which, in either case, shall be valid to all intents and purposes,

²⁵ AIR 1973 SC 1461

²⁶ AIR (2016) 8 SCC 1

²⁷ The Constitution of India, 1947, art.368

²⁸ The Constitution of India, 1947, art.368

as part of this Constitution, when ratified by the legislatures of three fourths of the several states, or by conventions in three fourths thereof, as the one or the other mode of ratification may be proposed by the Congress; provided that no amendment which may be made prior to the year one thousand eight hundred and eight shall in any manner affect the first and fourth clauses in the ninth section of the first article; and that no state, without its consent, shall be deprived of its equal suffrage in the Senate²⁹.

In the case of *Ullman v. United States*, the US Supreme Court declared that the only method for amendment of the US Constitution for adding or removing language in the document is to be done as per the procedure provided under the Article V. The text of the Article V provides for two methods for proposing an amendment,

1. Congress may propose an amendment to the states, upon a two-thirds vote of both the houses; or
2. A convention may propose an amendment to the states. A convention is called by Congress, on application of two-thirds of the states.

Once the amendment is proposed the next step includes the ratification. The ratification may occur through two processes, as determined by the Congress:

1. Ratification by three-fourths of the state legislatures; or
2. Ratification by three-fourths of states, acting by state convention³⁰. Although there is no limitation on the substance that can be amended, but as the US Constitution provides for Federalism itself, even an amendment cannot modify the balance of power among states in the Senate, without the consent of each affected state.³¹

The amendments to the Constitution proposed till now have all been through the congressional method and none of them have been through conventional method.³²

²⁹ Constitution of The United States of America, 1787

³⁰ Brenda Erikson, Amending the US constitution available at <https://www.ncsl.org/research/about-state-legislatures/amending-the-u-s-constitution.aspx>

³¹ In 1922 in the case of *Leser v. Garnett*, 258 US 130 (1922), the US Supreme Court heard a challenge to the Amendment 19th (Women's right to vote), based on a claim that it impermissibly violated a state's autonomy as a political body if the state failed to

A) Congressional Method

1) Congressional Proposal:

Amendments can be proposed by a two-thirds majority vote in both the House of Representatives and the Senate. This method is the most common way amendments are proposed and has been used for all 27 amendments to date.

The following steps must be completed for an amendment proposed by Congress to be added to the United States Constitution³³.

Step 1. Passage by Congress: Proposed amendment language must be approved by a two-thirds vote of both houses.

In the *National Prohibition Cases*,³⁴ The Court ruled that in proposing an amendment, the two Houses of Congress thereby indicated that they deemed revision necessary. The same case also established the proposition that the vote required to propose an amendment was a vote of two thirds of the Members present—assuming the presence of a quorum—and not a vote of two-thirds of the entire membership. The approval of the President is not necessary for a proposed amendment.³⁵

Step 2. Notification of the states: The national archivist sends notification and materials to the governor of each state.

Step 3. Ratification by three-fourths of the states: Ratification of the amendment language adopted by Congress is an up-or-down vote in each legislative chamber. A state legislature cannot change the language. If it does, its ratification is invalid. A

ratify the amendment (the petitioners were from Maryland, which had not ratified the amendment). The Court rejected the claim.

³² R. Bernstein, *Amending America*, 1993.

³³ <https://www.ncsl.org/about-state-legislatures/amending-the-us-constitution>

³⁴ 253 US 350 (1920).

³⁵ *Hollingsworth v. Virginia*, 3 U.S. (3 Dall.) 378 (1798).

governor's signature on the ratification bill or resolution is not necessary³⁶.

Step 4. Tracking state actions: Proposed amendments must be ratified by three-fourths of the states in order to take effect. Congress may set a time limit for state action. The official count is kept by Office of the Federal Register at the National Archives. Legislatures must return specific materials to show proof of ratification.

Step 5. Announcement: When the requisite number of states ratify a proposed amendment, the archivist of the United States proclaims it as a new amendment to the U.S. Constitution. Actual certification is published immediately in the Federal Register and eventually in the United States Statutes-at-Large.

State legislatures often call upon Congress to propose constitutional amendments. While these calls may bring some political pressure to bear, Congress is under no constitutional obligation to respond. The U.S. Constitution does not contain a provision requiring Congress to submit a proposed amendment upon request by some requisite number of states

1) Convention of States: Alternatively, if two-thirds of state legislatures call for it, a convention can be convened to propose amendments. However, this method has never been used to propose an amendment.

B) Ratification stage

1) Congressional Ratification: Once an amendment is proposed, it must be ratified by three fourths (38 out of 50) of the state legislatures. Congress determines the method of ratification, which can either be through state legislatures or state conventions³⁷.

2) State Ratification Conventions: Congress can choose to bypass state legislatures and instead require special conventions in each state to ratify amendments. This method was used only once for the 21st Amendment, which repealed Prohibition.

When a state has ratified an amendment, it must submit a set of paperwork back to the National Archives and Records Administration. The Office of the Federal Register verifies that the documents appear to be in proper order and acknowledges receipt. The

National Archives and Records Administration also receives records of other legislative actions—such as rejection of an amendment or rescission of a ratification—but it does not make any substantive determination about the validity of these actions. When it appears that a sufficient number of states have ratified a proposed amendment, the Archivist of the United States issues a proclamation certifying that the amendment has been ratified. The certification is published and serves as an official notice of ratification. A ratified amendment is effective as of the day a sufficient number of state ratifications are completed, not on the day the certification is proclaimed.

C) Time limitations

1) No Constitutional Time Limit: The Constitution does not explicitly provide a time limit for ratification. However, Congress has set specific time limits for ratification for some amendments, which vary in length.

2) Validity of Time Limits: The validity of time limits imposed by Congress has been debated. In some cases, amendments have been ratified after the expiration of Congressionally imposed time limits, leading to uncertainty over their legality.

D) Judicial interpretation

1) Role of the Courts: The Supreme Court has the authority to interpret the Constitution and its amendment process. While the Court generally defers to Congress on procedural matters, it has the final say on constitutional interpretation.

2) Judicial Review: The Court's power of judicial review allows it to strike down amendments or parts of amendments that violate the Constitution's original principles, as demonstrated in cases like *Marbury v. Madison* (1803).

³⁶ United States Constitutional Amendment process available at <https://www.house.leg.state.mn.us/hrd/pubs/conamendlegal.pdf>

³⁷ <https://www.ncsl.org/about-state-legislatures/amending-the-us-constitution>

V. ROLE OF JUDICIARY TO INTERPRET THE CONSTITUTIONAL AMENDMENTS

In India

1. Shankari Prasad v. Union of India³⁸

In Shankari Prasad, the Court upheld the Parliament's authority under Article 368 to amend any part of the Constitution, including the Fundamental Rights. The decision was grounded in the interpretation that the word "law" in Article 13 applied only to ordinary legislation, not constitutional amendments. This initial stance underscored the broad amending power vested in Parliament.

2. Sajjan Singh v. State of Rajasthan³⁹

During a period of extensive agrarian reforms, the Seventeenth Amendment was challenged in Sajjan Singh v. State of Rajasthan. While the majority upheld the constitutional validity of the amendment by allowing modifications to Fundamental Rights, dissenting judges argued that the term 'Fundamental Rights' implied inherent, non-amendable rights. This dissent hinted at the emerging idea that certain constitutional features should remain sacrosanct.

3. Golak Nath v. State of Punjab⁴⁰

The Golak Nath decision marked a pivotal moment by establishing that Fundamental Rights were beyond the reach of amendment. The majority opined that Fundamental Rights were "primordial rights" essential for human development, thus laying the foundation for limiting the amending power of Parliament. The ruling, however, was controversial and set the stage for legislative intervention through the 24th Amendment.

4. Kesavananda Bharati v. State of Kerala⁴¹

As discussed earlier, the Kesavananda Bharati case is the cornerstone of the Basic Structure Doctrine. The judgement affirmed that while Parliament could amend the Constitution, it could not destroy its basic structure. This decision has had a profound impact on

Indian constitutional jurisprudence, ensuring that the core values—such as democracy, secularism, federalism, and the rule of law—remain inviolable.

5. Indira Nehru Gandhi v. Raj Narain⁴²

This case arose from challenges to amendments that sought to insulate the executive from judicial review in election disputes. The Court held that free and fair elections were an essential part of the basic structure, thereby reinforcing the idea that electoral democracy is a fundamental constitutional value.

6. Minerva Mills v. Union of India⁴³

In Minerva Mills, the Supreme Court scrutinised amendments introduced by the 42nd Constitutional Amendment, which sought to confer unlimited amending powers upon Parliament. The Court held that an absolute amending power would render judicial review ineffective, thereby undermining the supremacy of the Constitution. It reaffirmed that judicial review is an integral part of the basic structure, and any amendment that curtails this power would be unconstitutional.

In United States

1. Marbury v. Madison⁴⁴

In this case, the principle of judicial review was established, empowering the Supreme Court to declare laws unconstitutional. It laid the foundation for the role of the judiciary in American constitutionalism.

2. McCulloch v. Maryland⁴⁵

This case confirmed the doctrine of implied powers under the Necessary and Proper Clause and denied the power of states to tax federal institutions. Strengthened the supremacy of federal law.

3. Brown v. Board of Education⁴⁶

It declared racial segregation in public schools unconstitutional, overturning Plessy v. Ferguson. It was a monumental decision in the civil rights movement

³⁸ AIR 1951 SC 458

³⁹ AIR 1965 SCR (1) 933

⁴⁰ AIR 1967 SCR (2) 762

⁴¹ AIR 1973 SC 1461.

⁴² AIR 1975 SC 2299.

⁴³ AIR 1980 SC 271.

⁴⁴ 5 US (1 Cranch) 137 (1803).

⁴⁵ 17 US (4 Wheat) 316 (1819).

⁴⁶ 347 US 483 (1954).

4. *Miranda v. Arizona*⁴⁷

It established the Miranda rights, requiring that individuals taken into police custody be informed of their right to an attorney and against self-incrimination under the Fifth Amendment.

5. *Roe v. Wade*⁴⁸

It recognized a woman's constitutional right to privacy under the Due Process Clause of the 14th Amendment, legalizing abortion nationwide (though later overruled in *Dobbs v. Jackson Women's Health Organization*, 2022).

VI. MAJOR AMENDMENTS TO THE CONSTITUTION

- Indian Constitution

- 1st Amendment (1951):

It introduced the Ninth Schedule to shield land reform laws and other included legislation from judicial review and added Articles 31A and 31B after Article 31⁴⁹.

- 7th Amendment (1956):

The classification of states into four categories—Part A, B, C, and D was abolished, and states were reorganized into 14 states and 6 union territories.

- 42nd Amendment (1976):

It comprised 59 clauses and introduced numerous changes, earning it the title of a “Mini Constitution.” It incorporated three new terms into the Preamble: socialist, secular, and integrity and introduced Fundamental Duties under a new Part IV-A. It also facilitated the establishment of All India Judicial Service.

- 44th Amendment (1978):

This amendment restored the original tenure of the Lok Sabha and State Legislative Assemblies to five years and replaced the term ‘internal disturbance’ with ‘armed rebellion’ in provisions concerning a national emergency and required the President to declare a national emergency only upon the written recommendation of the cabinet. It ensured that Articles 20 and 21 cannot be suspended during a national emergency.

- 61st Amendment (1988):

It reduced the voting age from 21 years to 18 years for the Lok Sabha and state legislative assembly elections.

- 73rd and 74th Amendments (1992):

- 73rd Amendment Act:

Panchayati Raj Institution was constitutionalized through this amendment. This act has added a new Part-IX to the Constitution of India and consists of provisions from Articles 243 to 243 O. In addition, the act has also added a new 11th Schedule to the Constitution and contains 29 functional items of the panchayats.

- 74th Amendment Act:

Urban local governments were constitutionalized. It added Part IX -A and consists of provisions from Articles 243-P to 243-ZG. In addition, the act also added the 12th Schedule to the Constitution. It contains 18 functional items of Municipalities.

- 86th Amendment (2002):

It made elementary education a fundamental right under the Article 21A and added a new fundamental duty under Article 51-A.

- 100th Amendment Act, (2015):

It gives effect to the acquiring of territories by India and the transfer of certain territories to Bangladesh in pursuance of the agreement and its protocol entered into between the Governments of India and Bangladesh.

- 101st Amendment (2016):

It allows both the centre and states to levy the Goods and Services Tax (GST). Before the 2016 amendment, taxation powers were divided between the centre and states.

- 102nd Amendment Act, (2018):

It Provides Constitutional status to the National Commission for Backward Classes and relieves the National Commission for Scheduled Castes from its functions with regard to the backward classes. It also empowered the President to specify the socially and educationally backward classes in relation to a state or union territory.

- 103rd Amendment (2019):

For the first time in independent India, it introduced reservations for the Economically Weaker Sections

⁴⁷ 384 US 436 (1966).

⁴⁸ 410 US 113 (1973).

⁴⁹ <https://legislative.gov.in/constitution-of-india/>

(EWS). The amendment to Article 16 provides a 10% reservation for EWS in public employment⁵⁰.

- 104th Amendment Act, (2020):

This amendment provides extension of deadline for the cessation of seats for SCs and STs in the Lok Sabha and state assemblies from 70 to 80 years and also removal of the reserved seats for the Anglo-Indian community in the Lok Sabha and state assemblies.

- 105th Amendment Act, (2020):

It restores the power of state governments and union territories to identify and recognize Socially and Educationally Backward Classes. It came into effect on August 15, 2021.

- 106th Amendment (2023):

The Constitution (106th Amendment) Act, 2023, reserves one-third of all seats for women in Lok Sabha, State legislative assemblies, and the Legislative Assembly of the National Capital Territory of Delhi, including those reserved for SCs and STs⁵¹.

- The United States constitution

The first 10 of these amendments are known as the Bill of Rights and relate to personal and individual rights. The Bill of Rights was ratified by three-fourths of the state legislatures on December 15, 1791. Over 12,000 constitutional amendments have been proposed in U.S. history, with hundreds introduced in Congress each year, though very few advance to the ratification process⁵².

- The 1st Amendment (1791):

The 1st Amendment protects Freedom of speech, religion, press, assembly, and petition. It prohibits Congress from restricting these rights but does not apply to private individual.

- The 2nd Amendment (1791):

The 2nd Amendment is about the right to bear arms. In the modern world, the continued right to own firearms and protect property according to the law.

- The 4th Amendment (1791):

It is about the right of the people of the United States to feel secure in their homes and possessions without

fear of “unreasonable searches and seizures.” This relates to modern law concerning the need for a warrant to search property.

- The 5th Amendment (1791):

It provides several protections, including protection against double jeopardy, the right against self-incrimination, and the right to due process. It also includes eminent domain, allowing the government to take private property for public use with just compensation.

- The 13th Amendment (1865):

The 13th Amendment is about the abolition of slavery. The promise that slavery, or “involuntary servitude,” would exist no longer within the United States. The exception here is on the conviction of a crime⁵³.

- The 19th Amendment (1920):

It is about the right for any citizen of the United States to vote, regardless of their biological sex. Essentially, this was the moment women joined male citizens and were granted the right to vote in the United States.

- The 22nd Amendment (1951):

It is the notion that no president should be eligible for election into office for more than two terms. Furthermore, anyone promoted to president for two years or more of a term cannot be elected for more than one additional term.

- The 25th Amendment (1967):

It says that the vice president will take office and take over the role of president if the president is removed from office, resigns, or dies.

- The 26th Amendment (1971):

It is about the voting rights of all American citizens over 18. Before this, the voting age had been 21. There is also mention of being able to do so without fear of having their vote denied because of their age.

- The 27th Amendment (1992):

The 27th Amendment submits that any changes to the salary of those in Congress should not take effect until the next election of representatives⁵⁴.

⁵⁰ <https://www.drishtiiias.com/loksabha-rajyasabha-discussions/in-depth-major-constitutional-amendments>

⁵¹ <https://legislative.gov.in/constitution-of-india/>

⁵²

<https://constitutionus.com/constitution/amendments/constitutional-amendments/>

⁵³

<https://constitutionus.com/constitution/amendments/constitutional-amendments/>

⁵⁴

<https://constitutionus.com/constitution/amendments/constitutional-amendments/>

VII. COMPARATIVE ANALYSIS

Based on the above discussion it can be said that the Indian Constitution is partly rigid and partly flexible. Whereas based on the fact that till date there has only been 27 amendments in the US Constitution, it is the most rigid constitution in the world. But the option of proposing amendment has given more prominence to states as they are also allowed to propose the same, whereas in India only either of the houses of the parliament can propose the amendment.

Though both the countries have formal procedures mentioned under their respective constitution, In India Article 368 and in USA Article V, the informal procedure varies as the informal amendment is done by the Judiciary in case of India but in USA it is done by the States itself.

In India, the ratification by states is only needed in the case of such an amendment which is changing the federal structure and in that too only more than half of the states need to verify, which makes it very narrow. While in the USA, constitutional amendment becomes valid only after being ratified by 3/4th of the states acting by the state conventions or by 3/4th majority of the state legislatures.

In India, once the amendment is passed by both the houses of the Parliament, the bill is sent to the President for his assent, while in the USA there is no need to place a constitution amendment before the president for approval or veto. The amendment comes into force in India only after it has been duly published in the Official Gazette of India. Whereas in the US the amendment comes into force from the date when the requisite 3/4th number of states has ratified it. But after that the NARA certifies the amendment and gives a certificate that the amendment is valid.

One of the glaring differences between both the Constitutions is that, in India the text of the Constitution is amended itself so as to make the amendment part of the constitution, but in the USA the original text of the constitution is not touched rather an amendment is added just like an annexure. This could be because of the reason that the US prefers to safeguard the sanctity of the original text of the Constitution, whereas India prefers to have such a system where the amendments are placed at a pedestal on par with the original wordings of the Constitution. Both in the US and India, the amendments to the Constitution are subject to Judicial review. And in

both the countries the legislature has “no right to rewrite the whole of the constitution.”

VIII. CONCLUSION AND SUGGESTIONS:

We can conclude that amendment is the most important pillar of a democracy. It not only helps a nation to keep up with the evolving world but also helps to maintain a just and equal environment for everyone. Constitution is known to be of 2 types i.e. Rigid and Flexible. While the US constitution can be considered as a rigid one, the UK is completely opposite to it. The power to amend any provision in the US is equally divided. The houses as well as the states have an equal responsibility to accept the proposition to ultimately turn it into a bill; whereas, the whole power in India lies between the houses. If one house does not accept the bill, it cannot be passed since there is no provision for conducting a joint meeting to settle disputes.

After analysing both the procedures, it is safe to say that India lies between the two, making it comparatively easier to amend the constitution by providing powers with limits. Even though the United States and India are democratic nations, their ways of working, creating rules, and amending authority are all distinct. In India, there is no independent constituent body for the intent of amending the constitution, like there is in the United States. The Parliament in India has the power to change the Constitution. In India, the state's position in constitutional amendment is small, but in the United States, states have a larger role to play, and states may also propose constitutional amendments. States, on the other hand, are unable to propose constitutional amendments in India.

In India, an amendment enacted by Parliament in accordance with Article 368 will only become part of the Constitution after the President's assent. However, in the United States, the President would not have any authority, and the US Constitution makes no allowance for the President's assent. Article 368 grants the Indian Parliament the power to change the constitution in certain cases, however in certain cases, approval by at least half of the states is needed.

The important thing to note is that neither the Indian nor the US constitutions provide a time period for ratification. Finally, it can be claimed that the Indian Constitution is more fluid than rigid. Just a few constitutional changes need passage by state

governments, and even then, bills by one-half of the states will suffice. The Indian Parliament may change the remainder of the Constitution with a special majority vote. The United States, on the other hand, has a strict constitution that can only be revised by the US Congress by a mechanism established by the US Constitution for that reason.

One of the major points that can be taken after studying this paper is that both the countries completely ignore the opinions of citizens before making an amendment. It is suggested that the states should always be given an opportunity to express their views before an amendment is proposed in the country. Thus, although both the amending procedures are not identical, they have certain basic elements in common like giving adequate protection against changes in the important rights of the states, judicial review and also making the state involvement in amending procedure a common feature.

REFERENCES

- [1] J. N. Pandey, Constitutional Law of India, 59th ed. Prayagraj, India: Central Law Agency, 2022.
- [2] D. D. Basu, Introduction to the Constitution of India, 8th ed. Gurgaon, India: LexisNexis, 2020.
- [3] L. H. Tribe, American Constitutional Law, 3rd ed. Mineola, NY, USA: Foundation Press, 2000.
- [4] The Constitution of India, 1949.
- [5] The Constitution of the United States of America, 1787.
- [6] "Constitutional Amendments," Constitution of the United States. Available: <https://constitutionus.com/constitution/amendments/constitutional-amendments/> (accessed Mar. 15, 2026).
- [7] U.S. Senate, "Constitution of the United States." Available: <https://www.senate.gov/about/origins-foundations/senate-and-constitution/constitution.htm> (accessed Mar. 17, 2026).
- [8] Supreme Court of the United States, "Constitution of the United States." Available: <https://www.supremecourt.gov/about/constitutional.pdf> (accessed Mar. 20, 2026).
- [9] Legislative Department, Government of India, "Constitution of India." Available:

<https://legislative.gov.in/constitution-of-india/> (accessed Mar. 21, 2026).

- [10] Drishti IAS, "In-Depth: Major Constitutional Amendments." Available: <https://www.drishtiias.com/loksabha-rajasabha-discussions/in-depth-major-constitutional-amendments> (accessed Mar. 23, 2026).