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## CONSTITUTIONAL AMENDMENT IN INDIA: A COMPARATIVE ANALYSIS WITH THE USA & UK

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### ABSTRACT

*This research paper undertakes a comprehensive comparative analysis of constitutional amendment processes in India, the USA, and the UK. Constitutional amendments are pivotal mechanisms that reflect a nation's evolving socio-political landscape. This study aims to dissect the procedural intricacies, historical evolution, and practical implications of amendment procedures in these three distinct democracies. The Indian, American, and British constitutions serve as cornerstones for their respective nations, but they vary significantly in terms of amendment mechanisms. Through an extensive examination of legal texts, historical records, and scholarly literature, this research delves into the underlying rationales for differences in amendment requirements, such as supermajorities, bicameralism, and judicial review.*

*Additionally, this study explores the political dynamics that have shaped the amendment processes in each country. By comparing landmark amendments and their contextual backdrop, the paper illuminates how societal shifts, legal interpretations, and political exigencies have driven constitutional changes in these nations. The comparative approach sheds light on the intricate interplay between legal frameworks, historical trajectories, and political dynamics in shaping the core legal foundations of these countries. The study's insights have implications for constitutional design, reform, and the broader discourse on democratic governance.*

**Keywords:** *Amendment, Constitution, Democracy, India, USA and UK.*

## 1. INTRODUCTION

The constitution of a country is a basic and most fundamental law of the land which governs or limits all the other laws of the land. It is the most important legal document to exist for a particular country. According to the Cambridge Dictionary Constitution is “the set of political principles by which a state or organisation is governed, especially in relation to the rights of the people it governs”<sup>1</sup>. According to Aristotle “constitution is the way by which all citizens or constituent parts of the state are organised in relation to each other”<sup>2</sup>. George Cornewell Lewis has described the constitution as a “system and distribution of sovereign power as community or government”.

Merriam-Webster dictionary has defined a constitution as “the basic principles and laws of a nation, state, or social group that determine the powers and duties of the government and guarantee certain rights to the people in it”<sup>3</sup>. Any change or ratification or removal of any part or provision of the constitution in formal terms is called Amendment to the constitution, it is done through a predefined process already mentioned in the constitution or the procedure rules of the nation. According to Merriam-Webster dictionary amendment is “the process of altering or amending a law or document (such as a constitution) by parliamentary or constitutional procedure”. Also according to Leacock “The Constitution is the form of government” and Austin defined the constitution as , “It fixes the structure of supreme government.”<sup>4</sup>

The primary motivation for introducing the notion of a constitution was to eliminate inequalities and hold those who represent the people responsible. The Constitution was also written with the intention of establishing it, which is very different from amending it. Every nation has a specific and unique process for altering its constitution. The constitutions of both India and the United States of America, two democracies, are absolutely essential. They both have written constitutions, which is one thing they share in common. Due to the lack of a

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<sup>1</sup> Constitution, CAMBRIDGE DICTIONARY (June 4, 2023, 4:00 PM), <https://dictionary.cambridge.org/dictionary/english/constitution>

<sup>2</sup> Definition of Constitution and its Classification, LEGAL PATHSHALA, (June 4, 2023, 4:30 PM), <https://legalpaathshala.com/definition-of-constitution-and-its-classification/>

<sup>3</sup> Constitution, MERRIAM WEBSTER (June 4, 2023, 5:00 PM), <https://www.merriam-webster.com/dictionary/constitution>.

<sup>4</sup> Jackson Katabaro, The Meaning and Functions of Constitution, ACADEMIA, (June 4, 2023, 5:30 PM), [https://www.academia.edu/29664563/The\\_Meaning\\_and\\_Functions\\_of\\_Constitution](https://www.academia.edu/29664563/The_Meaning_and_Functions_of_Constitution)

written constitution, the United Kingdom is mainly dependent on the laws passed by parliament. Making the amending process challenging was intended to prevent political disagreements and usher in a stable administration. To comprehend the differences between various systems of governance, comparative research is necessary. Understanding the benefits and drawbacks of making revisions to various acts and laws can also be helpful in designating them as the highest law. It very conveniently provided the people's authority while also limiting the power of the government. While drafting the constitution, the founding fathers included a provision that might be used to adjust the legislation to suit changing circumstances. This solution was sometimes referred to as an amendment. When a law has to be changed to keep up with current society, constitutional amendments might be made.

## **2. CONSTITUTIONAL AMENDMENT: CONCEPT AND NEED**

Constitutional amendment is a tool by which a constitution can be changed or updated to meet the growing requirements of the country. It is added to the constitution to overcome any future difficulties. No generation has a monopoly on knowledge, and no generation has the authority to constrain other generations from modifying the political system to suit their needs. The people would turn to extra-constitutional methods, such as revolt, to amend the Constitution if no measures were created for doing so.

"It has been the nature of the amending process itself in federation that has led political scientists to classify the federal Constitution as rigid. A federal constitution is generally rigid in character, as the procedure for amendment is unduly complicated. The procedure for amending the American Constitution is very difficult. So is the case with Australia, Canada, and Switzerland. It is a common criticism of the federal Constitution that it is too conservative, too difficult to alter, and that it is consequently behind the times."

For India, the constitutional amendment played an important role in striking a balance between the rigidity and the flexibility of the 72-year-old constitution. As in most nations, constitutional amendments can only be initiated by the political power that has the majority and holds the confidence of the people; hence, the general will of the people can be embodied in the constitution in the form of amendments. Also, as time changes, the social and

geopolitical needs of the country change, and through amendment, the constitution can be updated to reflect this ever-evolving change.

### **3. PROCEDURE OF AMENDMENT IN INDIAN CONSTITUTION**

The Indian constitution, like many other constitutions in the world, is in written format. The amendment procedure for the Indian constitution has been written within the document and is to be followed if the government wants to introduce an amendment. The amendment procedure is defined in Article 368<sup>5</sup> of the Indian Constitution and is borrowed from the Constitution of South Africa.

#### **3.1 Types of amendment in Indian Constitution**

The Indian Constitution allows for formal amendments to be made through amendment acts. The several constitutional articles are split into three groups for amending purposes. While the other two are under the ambit of Article 368, the first group is not covered by it.

The three different procedures for amending the Indian constitution are:

1. Amendment by way of simple majority<sup>6</sup>
2. Amendment by way of a special majority
3. Amendment by way of a special majority and ratification by states

##### **3.1.1 Amendment By Simple Majority**

This kind of amendment can be effected by the parliament with a simple majority, just like what is required to pass an ordinary bill. A simple majority means a majority of 50% of the members of the house present and voting. Articles covered under this type of amendment are

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<sup>5</sup> INDIA CONST. art. 368

<sup>6</sup> INDIA CONST. art. 368, cl. 2

mainly of unitary character and do not disturb the federal balance of the Indian constitution; hence, no ratification or special majority is needed for the amendment. They include<sup>7</sup>:

- Admission of a new state,
- provisions related to citizenship,
- delimitation of the constituency,
- creation and abolition of the state legislative council,
- salaries and allowances of the President and Vice President,
- powers and privileges of parliamentarians

### **3.1.2 Amendment By Special Majority**

Provisions for special amendments are discussed in Article 368<sup>8</sup> of the constitution. According to this article, the process of changing the relevant constitutional provision can only be started by proposing a bill in one of the two houses of parliament. The bill must be passed in both houses with "not less than a two-thirds majority of the members present and voting", and in the event of stalling in either house, no joint sitting can be called under Article 108. After receiving the assent of the president, the article stands amended.

The following provisions of the Indian Constitution must be modified as a result of this procedure:

- Fundamental Rights
- Directive principles of state policies
- All the other provisions of the constitution except the specific provision mentioned in Article 368

### **3.1.3 Amendment By Special Majority And Ratification By States**

Certain articles can only be amended with a special majority and the state legislature's ratification. The proviso to Article 368 defines the aforementioned criterion. A resolution to that effect must be ratified by at least half of the state legislatures in order to be implemented

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<sup>7</sup> Preeti Dalal, Procedure For Amendment In Constitution Of India, LEGAL SERVICES INDIA (June 5, 2023, 6:00 PM), <https://www.legalserviceindia.com/legal/article-8840-procedure-for-amendment-in-constitution-of-india.html>

<sup>8</sup> INDIA CONST. art. 368, cl. 2

as a constitutional amendment. At the present moment, the current number of states in India is 28; hence, at least 14 states will have to ratify the amendment bill for it to take effect. This procedure of amendment is most rigid, and it is enacted by the constitution makers to ensure that the federal structure and will of the states are respected as well as taken into account. Article 368 provides a list of provisions that are to be amended through this method, which are:

- With relation to the presidential election (Article 54 & 55)<sup>9</sup>.
- Extent of the Union's and the State's executive authority (Article 73 and 162)<sup>10</sup>.
- the seventh schedule.
- provisions referring to the Indian Supreme Court (Part V- Chapter 4).
- provisions referring to the High Courts in India (Part VI- Chapter 5).
- High courts in UTs (Article 241)<sup>11</sup>.
- State's representation in the Parliament (Article 80 & 81)<sup>12</sup>
- Amending procedure ( Article 368)

#### 4. PROCEDURE OF AMENDMENT IN CONSTITUTION OF AMERICA

The US Constitution is the supreme law of the country; it was drafted following the American War of Independence, ratified on June 21, 1788, and came into force on March 4, 1789<sup>13</sup>. This constitution constituted the United States of America as a constitutional presidential federal republic. As the very first modernised federal constitution, the US Constitution has had a profound impact on subsequent federations. Recognising that future ages would have new difficulties, challenges, and interests, the Founding Fathers established a method for amending the Constitution.

Article V of the constitution of U.S defines Mode of Amendment, it says 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*

<sup>9</sup> INDIA CONST. arts. 54 & 55

<sup>10</sup> INDIA CONST. arts. 73 & 162

<sup>11</sup> INDIA CONST. art. 241

<sup>12</sup> INDIA CONST. arts. 80 & 81

<sup>13</sup> Constitution of the United States, UNITED STATES SENATE (June 6, 2023, 5:00 PM), <https://www.senate.gov/about/origins-foundations/senate-and-constitution/constitution.htm>

*Intents and Purposes, 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 Senate”.*<sup>14</sup>

The amendment to the United States Constitution is particularly complicated. The Constitution, as stated in Article V, can be amended in two ways:

1. An amendment can be made by a vote of two-thirds of both the House of Representatives and the Senate, followed by ratification by three-fourths of the respective state legislatures. This first form of amendment is still in use today<sup>15</sup>.
2. If the proposed amendment is adopted by three-fourths of the state legislatures, the Constitution may be altered by a convention summoned for that purpose by two-thirds of the state legislatures.

Amendments are difficult to make since they can be vetoed by withholding permission from a mere 13 states (in either of their two chambers). There are a total of 50 states in the USA, out of which the consent and ratification of 28 states are needed to amend the constitution. In reality, just 27 amendments have been adopted since the Constitution went into existence in 1789, with 10 of them occurring shortly afterward as the Bill of Rights<sup>16</sup>. Even for the second procedure of amending the constitution, 28 states or more are needed to call for a constitutional convention, and in this convention, a three-fourths majority is required for the amendment proposal to pass<sup>17</sup>. The difficulty of amending the Constitution increases the importance of Supreme Court judgements interpreting the Constitution because reversing the Court's decision by amendment is unlikely except in cases where public opposition is intense and close to unanimity. Even adverse Court decisions (such as the US Supreme Court's upholding the decision of the court in the case of *Planned Parenthood of Southeastern Pa. v.*

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<sup>14</sup> U.S. CONST. art V

<sup>15</sup> Constitutional Amendment Process, OFFICE OF THE FEDERAL REGISTER (June 8, 2023, 7:00 PM), <https://www.archives.gov/federal-register/constitution>

<sup>16</sup> The Constitution, THE WHITE HOUSE (June 8, 2023, 5:00 PM), <https://www.whitehouse.gov/about-the-white-house/our-government/the-constitution/#:~:text=The%20founders%20also%20specified%20a,has%20been%20amended%2027%20times>

<sup>17</sup> Constitutional Amendment Process, OFFICE OF THE FEDERAL REGISTER (June 8, 2023, 7:00 PM), <https://www.archives.gov/federal-register/constitution>

Casey<sup>18</sup> and overruled the decision of Roe v. Wade<sup>19</sup> (abortion case) are capable of standing until the Court changes its opinion.

## 5. PROCEDURE OF AMENDMENT OF BRITISH CONSTITUTION

The British constitution is not in the form of a single written document; it encompasses written and unwritten acts, documents, and procedures that together become the law of the land. So far, no significant attempt has been made to codify such an arrangement into a single written document; hence, the British constitution is also called the uncodified constitution<sup>20</sup>. The very nature of the British constitution makes it very easy to amend, as no specific provisions are formally established.

Following are the documents that are considered important parts of the British Constitution<sup>21</sup>:-

- Magna Carta 1215 is said to be a foundational constitutional document of the British constitution, which was an agreement formed between the king and a group of British barons that limited the king's power over its subjects.
- The Bill of Rights (1689) is a historical Act of the British Parliament that has survived in the domain of Parliament since its commencement. The Bill established the concepts of periodic parliaments, free and fair elections, and freedom of expression in Parliament, presently known as parliamentary privilege.
- The Act of Settlement of 1701 was enacted to ensure Protestant succession to the throne and to strengthen the guarantees of a parliamentary system of government.

There is no unique provision in the British constitution for amending acts or conventions; so, the standard method of enactment of a bill is used. The Commission for Democracy, the Government, or any house of Parliament can propose amendments to the British constitution. The Commission for Democracy has been tasked with assessing the amendment process.

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<sup>18</sup> Planned Parenthood of Southeastern Pa. v. Casey 505 U.S. 833(1992)

<sup>19</sup> Roe v. Wade, 410 U.S. 113(1973)

<sup>20</sup> The UK constitution, THE CONSTITUTION SOCIETY (June 8, 2023, 6:00 PM) <https://consoc.org.uk/the-constitution-explained/the-uk-constitution/>

<sup>21</sup> The Constitution, THE WHITE HOUSE (June 8, 2023, 5:00 PM), <https://www.whitehouse.gov/about-the-white-house/our-government/the-constitution/#:~:text=The%20founders%20also%20specified%20a,has%20been%20amended%2027%20times>



## **6. KEY DIFFERENCES IN AMENDMENT PROCEDURES OF US AND UK WITH THAT OF INDIA**

All three constitutions, although democratic in nature, are different in many aspects, one of which is that they are made for countries situated on three different continents of the earth with three different socio-political and legal requirements. For example, the USA is a country that got its independence from the British monarchy in the year 1776 and later formed a country by bringing together different states that were initially confederates; hence, it is called the Coming Together Federation. The concept of separation of power is applied in the US in a more strict sense than that of India and the UK, as state rights were given equal importance with those of the union. The US has a presidential form of government, whereas India and Britain have a Westminster form of government. One of the most important differences between the constitutions of the US and those of Britain and India is that in the US, its 50 states also have different constitutions, and the federal constitution, which is the US constitution, cannot encroach upon the domain of the state's constitution, whereas India as a whole has only one constitution after the abrogation of Article 370<sup>22</sup> in 2019, and Britain doesn't have any kind of territorial arrangement, hence it doesn't have a federal structure or quasi-federal structure compared to the US and India.

Talking about the amendment procedures of the three constitutions, it can be concluded that India has the most options to amend the constitution but is balanced with respect to the power given to the Parliament for the same. The Indian Supreme Court serves as the Constitution's defender, whereas the British Parliament has unparalleled power to amend the Constitution like an ordinary bill. The US constitution is the hardest to amend, as the requirement of a three-fourths majority in both houses with ratification by three-fourths of the states makes it difficult to amend, and it is the reason why the US constitution has been amended only 28 times<sup>23</sup> in its more than 230 years of history, whereas the Indian constitution has been amended 105 times in its 72 years of enactment.

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<sup>22</sup> INDIA CONST. art. 370

<sup>23</sup> Constitutional Amendment Process, OFFICE OF THE FEDERAL REGISTER (June 8, 2023, 7:00 PM), <https://www.archives.gov/federal-register/constitution>

In India, the power of the head of state (President) is restricted for amendment of the constitution and is obligated to approve the amendment measure agreed by both houses of parliament, whereas in Britain, the assent of the head of state (Monarch) is necessary for amending the constitution. The case of the US from this perspective is totally different from that of the other two, as in the former case the head of state merely acts as a parliamentarian and only has the power to vote, but in the latter case the head of state has to give its assent, which makes its position different from that of the parliamentarians.

## 7. CONCLUSION

From the information stated above, it can be concluded that amendment is one of the most important aspects of a constitution, as it helps the constitution evolve with the times and changing needs of the country and remain relevant in modern times. A constitution can be either rigid or flexible; the constitution of the US is of a rigid nature, whereas the British constitution is flexible in nature. The Indian Constitution is a mixture of both, as it is partially rigid and partially flexible; hence, the constitution of the US is the hardest to amend, whereas the constitution of Britain is the easiest. The Indian Constitution is balanced, as for certain provisions it is easy to amend, but when it comes to provisions under Article 368 Proviso, it becomes difficult because of the criteria of ratification by half of the states. In the United States, the power to amend the constitution is equally divided between the federation and its states because both have equal opportunity, but in India, the power is slanted towards the union to amend the constitution because the state directly does not have a say in two of the three procedures. In the UK, all the power to amend the constitution is with the Parliament. A noticeable point in both the Indian and US constitutions is that no time period is provided for ratification by the states, which makes it a long-drawn process. For the British constitution, the limitation of an ordinary bill applies in the case of constitution amendments as well. In the Indian and British constitutions, the head of state had to give assent to complete the amendment procedure, whereas in the US constitution, the president, who is the head of state, only has a vote and has no other role, which implies that in the Indian constitution, the principle of separation of powers is not adopted in a strict sense, whereas in the US constitution, the executive and legislative powers are separated strictly.