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THE ARCHITECTURE OF AMENDMENT: A COMPARATIVE CONSTITUTIONAL STUDY BETWEEN INDIAN AND U.S CONSTITUTION

-Dakshita

ABSTRACT

Constitutional Amendments have always been embedded within highly structured procedural mechanisms and require unraveling through many administrative layers. The process of translating constitutional reforms into nation-binding laws is a task which involves legal intricacies at various levels and institutional safeguards, especially in differently marked democracies like India and the United States. This research investigates the amendment mechanisms of the Indian and American Constitutions exploring the differing political and institutional philosophies.

Both India and the United States show substantial divergence in a lot of factors, like their historical backgrounds, demographics, economy, political institutions, to name a few. This study undertakes a detailed examination of the institutional mechanisms governing constitutional amendments in India and the United States, and an intricate analysis into the respective devoted articles for the process of making an amendment. To complement the comparative analysis, a survey of 32 respondents was incorporated to assess public opinion on constitutional functioning in both nations, providing an empirical dimension to the research.

While performing my study on this topic of analysis, I did not undertake an amendment-by-amendment comparison, it focuses on analyzing the institutional structures and procedural mechanisms governing constitutional amendments in both countries, aiming to understand the

fundamental nature and underlying principles of their respective constitutions specially regarding statutory modification in the official legal text of their respective nations.

Keywords: Constitutional Amendments, Article V, Article 368, Rigidity, Flexibility, Historical trajectory, relevance

Introduction

Understanding the concept of An Amendment

The origin of the word 'amendment' comes from *a Middle English*, derived from *Old french* word *amender* meaning 'to correct' or 'to make it better' The ultimate roots of this word originate from the Latin word- '*emander*' which means '*free from faults*'

To define an amendment

An amendment is a formal or official change made to a law, contract, constitution, or other legal document. .

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.

The need of an amendment

In the context of the constitution, an amendment is considered to be a very integral part. A constitution is considered to be a living document, and a nation is considered to be an ever-evolving process. An amendment comes down to be very necessary in this scenario since - the constitution, the rule book for the nation has to serve a legal purpose.

An amendment is a very essential part to cater the evolving needs of the people of the nation, the geo-political scenarios, to ensure the fundamentals of human existence are protected well.

Examining the Pros and Cons of the Amendment

Incorporating the procedure of amendment into the constitution has many advantages as listed -:

- **Adaptability-** The process of amendment allows the constitution to be changed as per the societal needs

- **Raises accountability-** The process of amendment focuses on raising accountability as it is meant to respond to the public demands.
- **Formal Changing-** The process of Amendment focuses on changing through a formal procedure, without just involving informal changes through just public conventions.

Also on the other hand, there are some criticisms as to why the idea of amendment doesn't feel as appealing to them-:

- **Possibility of potential abuse-** The amendments, can be used as a weapon to increase hold on their power, while weakening the system of checks and balance
- **Democracy backsliding-** Amendment can lead to decrease in democracy, often which is accompanied by weakening of institutions like courts and protecting individuals' rights.
- **Instability and Uncertainty-** Frequently or poorly conceived amendments may lead to can lead to instability and a lack of certainty in the legal and constitutional framework

The constitution- India VS United States

This research paper scrutinizes two worldly recognized constitutions- The constitution of the United States of America, the oldest constitution and The Indian Constitution, the longest constitution in the world. Both the constitutions have their own historical trajectory, their own background which has of course shaped the due course of their country's legal document.

The Constitutional Mechanism for Amendment: An Analytical Study

Let us first talk about Article V of the American constitution.

The constitutional provision enshrined in Article 5

“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, 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.”

Understanding this article, first of all it guides us into two ways of how an amendment can be proposed.

- One way is when *Congress proposes an amendment and the states have to ratify their proposed amendment*. But in order to propose an amendment, two-thirds of each house of congress must vote for it. For the amendment to be added in the constitution , it needs to be *ratified by 3/4th of the states*.
- Another way of amending the constitution, is to *call for a convention*. Now this way bypasses the congress although it has never been used. *2/3rds of the legislature of several states can call for a convection*. The amendment can be proposed, whether or not congress approves of them. It is then sent to the stats for ratification.

This article has given rise to several noteworthy interpretations.

1. **Firstly**, this article does not specify any time limit for the ratification. This can be expounded to make different understandings. This reflects a flexible approach, as the makers of this constitution trust the political prudence and public consensus for the right moment for ratification and intended to evolve organically. But also on the other hand, if an amendment is ratified after a very long time, it may lack democratic contemporaneity- i.e consent of the people at the ratification. It may also lead to democratic anachronism- that is where outdated proposals become laws without modern deliberations.
2. **Secondly**, the ratification of states. There is no specification about the guidelines as to whether or not states can rescind their ratification and if yes, then till upto when. There have been instances like the 14th amendment- where Ohio and New Jersey tried to withdraw their ratifications but congress ignored the recisions and counted their earlier ratification.

Followed by this, in the 15th amendment, New York tried to rescind. Post the judicial interpretation on this topic, the court finalized that whether to accept or ignore a state's withdrawal from the ratification will be left on the Congress's discretion.

The silence of the article shows the lack of explicit guidance in Article V implies that the framers deliberately left it open from Congressional discretion and evolving democratic practice

The last two sentences of the amendment- deals with the unamendable part of the article. The first part deals with a temporary limitation which expired in 1808. It referred to two clauses-

- *[Clause 1]* talked about the importation of slaves (the slave trade clause)
- *[Clause 4]* works on the direct taxation appointment among the states.

The second part deals with keeping up with the sovereignty of its state-making sure that each state has equal representation and this cannot be amended until the state agrees. This leads us to think that the constitution has well prescribed federal equality, that too so fundamentally that even the democratic majorities cannot override.

3. This highlights another very important aspect- the clause on amendments contained in Article V draws attention to its feature of being *self-limiting*. A paradox is created that the constitution allows for its own change but also declares one of its own rules as untouchables.

Understanding Article 368: The Framework for Amending the Indian Constitution

Power of Parliament to amend the Constitution and procedure therefor

(1) The Parliament may, in the exercise of its constituent power, amend by way of addition, variation or repeal any provision of this Constitution in accordance with the procedure laid down in this article.

(2) An amendment of this Constitution may be initiated only by the introduction of a Bill for the purpose in either House of Parliament, and when the Bill is passed in each House by a majority of the total membership of that House and by a majority of not less than two-thirds of the members of that House present and voting, it shall be presented to the President who shall give

his assent to the Bill and thereupon the Constitution shall stand amended in accordance with the terms of the Bill.

(3) Nothing in this article shall apply to amendments made under article 368(2) which require, in addition, ratification by the Legislatures of not less than one-half of the States by resolution to that effect passed by those Legislatures before the Bill is presented to the President for assent.

(4) Such ratification shall be expressed by a resolution passed by the Legislature of the State concerned in accordance with the provisions of its rules and procedures.

Let's first go through understanding the procedure and the types of amendment prescribed in the constitution of India under article 368-:

- The first way of amending the constitution is by *simple majority i.e. it should be passed by at least 50% of majority in both Lok Sabha and Rajya Sabha*. Amendments made through this are excluded from the purview of Article 368.

The provisions which can be amended by this method include

- ❖ Some parliamentary operations- like quorum in parliament, rules of procedure etc.
 - ❖ Abolition or creation of legislative council
 - ❖ Allowances and privileges and so on of the president, the governors, speakers, judges etc.
-
- Another pathway for amendment is by *special majority, - wherein a majority of total membership of each house (50%+1) and majority of two-thirds members of each house present and voting*. Some provisions which require amendment through special majority include
- ❖ Fundamental Rights
 - ❖ Directive Principle Of State Policy.
 - ❖ Provisions not covered by the first and 3rd categories.

- Additionally, another way is Special majority and ratification by the states which are the basis of federal structure. For incorporating amendments here, *special majority in each house of the parliament plus the ratification of states by not less than ½ required.*

The provisions in which such a procedural way is used includes

- ❖ Election of the president
- ❖ Gst Tax council
- ❖ Articles dealing with union and state judiciary

As stated in the clause of this article, the introduction of an amendment in the constitution can only be initiated by the introduction of a bill for a purpose in either house of parliament.

One peculiar thing I noticed while assessing this article and its background is the inconsistent pattern of understanding its permissibility and scope.

When it was to understand whether or not Article 368 has its scope lying in amending the fundamental rights, it has surrounded a lot of debate- which conclusively surrounded the lack of coherence in the implementation of article.

- ❖ Earlier, it came under *the Sankari Prasad VS Union of India 1951*, under the purview of article 368, fundamental rights could be amended. This implies that the constitutional amendment will be valid even if it abridges or takes away any fundamental rights. A similar pattern of interpretation was followed in *Sajjan Singh Vs The state of Rajasthan 1965*- an amendment in the constitution means amendment in all parts of the constitution.
- ❖ The dynamics began to alter when in *the Golak Nath Vs The State of Punjab* prospectively overruled its previous cases. The parliament from the date of decision, had no power to amend part 3 of the constitution so as to take away the fundamental rights.
- ❖ As in for the 24th Amendment 1971, it specified by adding a clause to **Article 13**- restoring parliamentary power again and making the assent of the President mandatory to the constitutional amendment bill.
- ❖ Now again its validity was challenged in the iconic *Keshvananda Bharati case* where the Golak Nath case was overruled but the court added that the constitution cannot be amended to damage or destroy the basic structure of the constitution.

- ❖ Once again, the judiciary intervened to define the scope of Article 368. *The 42nd Constitutional Amendment 1976*, to overrule the Keshavananda Bharati Case added 2 clauses-:
- ❖ [Clause 4]- provided that amendment of the constitution of will not be questioned in any court
- ❖ [Clause 5]- there shall be no limitations on the constituent powers of the parliament to amend any part of the constitution.
- ❖ Yet again, through *the Minerva Mills VS Union of India 1980*, the clauses above were struck down and again the amending powers were limited to challenge if the basic structure is destroyed.

The evolution of Article 368 of the Indian Constitution reflects a dynamic and often contested dialogue - legislature and judiciary over the scope and limit of constitutional amendment powers. It reveals an evolving constitutional philosophy that balances constitutional flexibility with constitutional permanence. The judiciary's introduction and preservation of the basic structure doctrine transformed Article 368 from here into a procedural to a guardian of the identity of the constitution.

It underlines the shift from India prioritizing Parliamentary supremacy to one of constitutional supremacy, where neither the legislative or judiciary holds unchecked authority. It encapsulates India's constitutional journey from textual rigidity to interpretive sophistication- reflecting the living, self-corrective nature.

Survey Analysis

As a part of my research paper on A Comparative study on Indian and American Constitutional Amendments, I conducted a survey. The responses were recorded through Google forms and the total number of people surveyed was 30. The questionnaire included Multiple- choice questions to have more streamlined responses.

Demographically the survey was circulated between people from different educational backgrounds, age groups and educational qualifications as well to capture a variety of opinions.

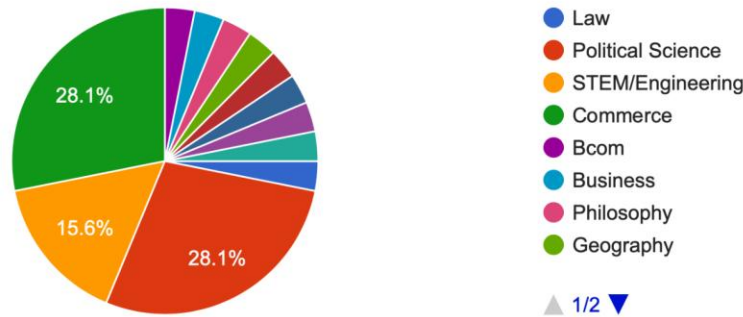
The questionnaire consisted of questions which aim to capture people’s awareness about the topic and their standpoint related to the idea of amendment in the context of India and the United States.

Survey Results: Interpretation and Insights

- Majority of the participants were from 18-24 years of age - 96.8%
- There were 87.1% undergraduates, 9.7% post-graduates and only 3.2% people from high school.
- As for the field of study, respondents from various backgrounds participated- Commerce being the highest, followed by Political Science and then STEM/engineering ; streams like law, philosophy etc. also contributed.

What is your field of study?

32 responses



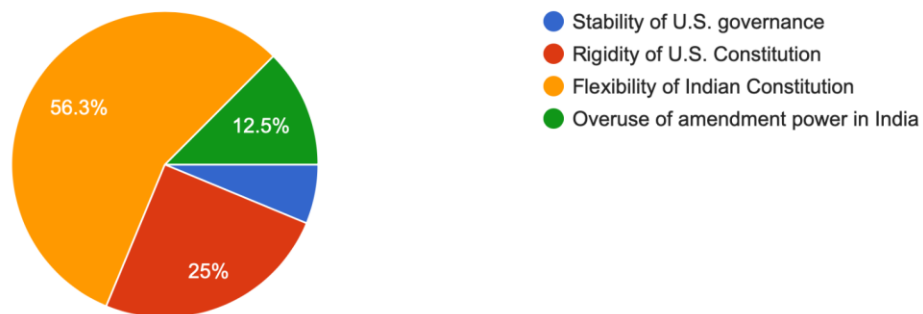
Coming forward, there was an awareness section to check the respondent’s level of understanding regarding the concept of constitutional amendments and their frequency in India.

Somewhat Familiar	51.6%
Very Familiar	38.2%
Not Familiar	9.7%

- It is to be noted that most of the people from the STEM background were ‘somewhat familiar’ with the concept.
- Most of the ‘very familiar’ responses came from the people from Commerce and Political Science background.
- In the questionnaire when they were asked about if they were aware about how many times was the constitution amended, most of them (64.5%) answered that the Indian Constitution was amended more than 100 times- showing that they are *well-imparted* about the constitutional status of the country.
- Most people think that the more amendments the Indian constitution has, in comparison to the American Constitution- shows that our constitution is more adaptable and depicts that the American Constitution is not welcoming to the dynamic demands.
- Although on the other hand, people also believe that too many amendments also points out *the overuse of the power vested*. Additionally, though *really less*, some also believe that it shows *stability in the US constitution*.

The U.S. Constitution has only 27 amendments, while India has over 100. What does this indicate in your opinion?

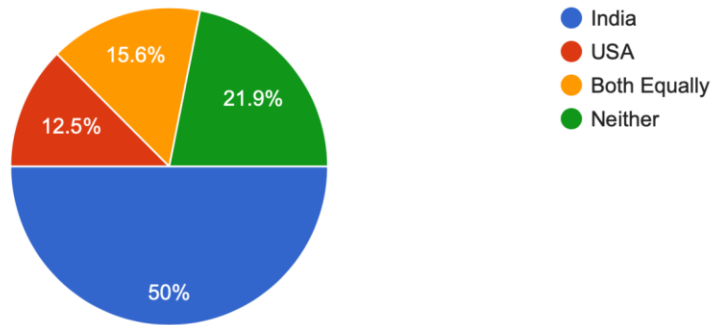
32 responses



The survey also highlights a very significant observation, about how respondents believe that among the India Vs US scenario, the Indian Constitution is more people oriented.

Which country in your opinion do you think has a more people-oriented amendment process?

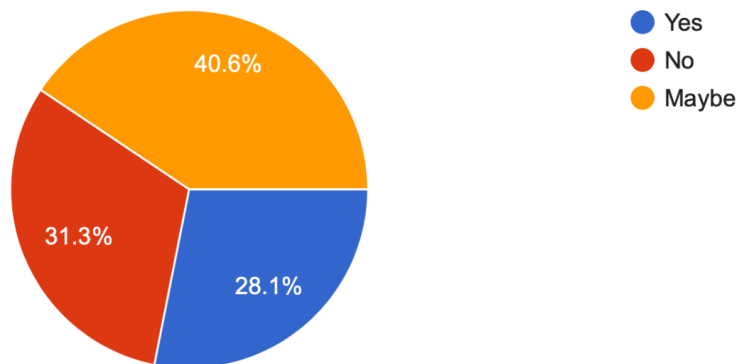
32 responses



- The survey indicates that respondents generally support adopting stricter mechanisms for constitutional amendments, especially for changing fundamental rights or the basic structure- highlighting a concern for constitutional stability alongside adaptability.

In your opinion, should India adopt stricter amendment procedures like the USA?

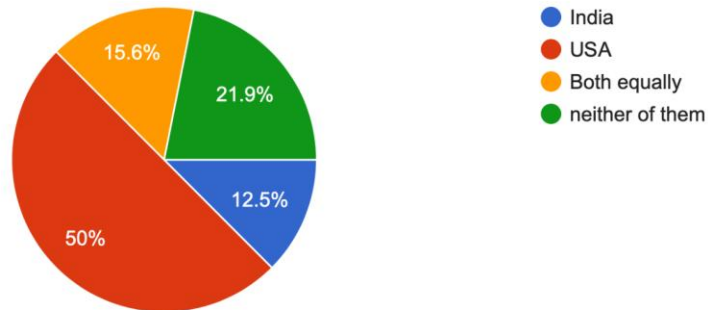
32 responses



- The survey provides a very significant insight: respondents believe that the constitution of the *US is more legally stable than the Indian Constitution.*

Which country's constitution do you think provides more legal stability?

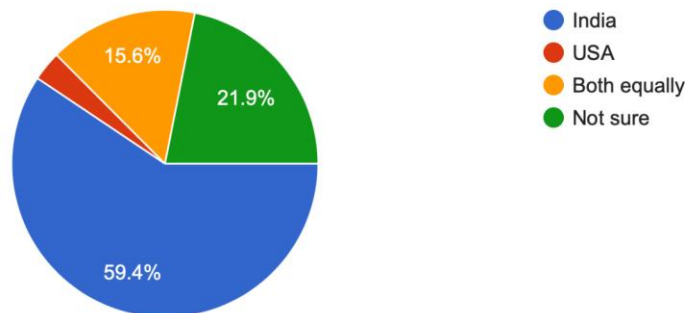
32 responses



- Yet again, people believed that the *Indian constitution provides more flexibility to adapt to societal changes than the US constitution.*

Which country's constitution do you think provides more flexibility to adapt to societal changes?

32 responses



Interpretation of the data

The data which was collected provided valuable insights regarding the public perception on constitutional amendments . It reflected the public opinion regarding both the country's provisions for amendment and how they impact the people and governance.

When they were asked about the number of amendments in the Indian constitution, most of them listed 100+, reflecting an aware youth. The point, when they were asked about the implications of amendments- a high number of people gave a very nuanced approach in understanding that since the constitution is a living document, stability still needs to be preserved.

Regarding the public referendum or approval, the majority expressed that it should be applied contextually rather than universally. That is because there are some sensitive matters which need to be dealt with by public opinion while some need to be contentious in terms of decision making and enacted quickly. Again, this is a very circumstantial approach.

While most people believe that the Indian constitution is more democratically inclined which emphasizes its inclusivity, flexibility and changing needs of the society. while most of them believe that the constitution of the US is more legally stable which emphasizes its institutionalized firmness and consistency. The collective understanding portrayed through this survey underscores a mature and informed perspective among the youth toward constitutional governance and reform.

Conclusion

The comparative study of the constitutional amendment procedures in both the countries- India and US reflected two very different constitutional philosophies. After studying both of these country's laws regarding bringing change into the supreme legal document governing their respective countries, I was able to underscore how complex the process is, having flaws in both yet serving and evolving to the best interest of their country.

The amendment procedure in India outlines *flexibility, adaptability to the dynamic and ever-evolving surroundings*. While the one in the US highlights *legal stability and institutional consistency*.

This brings into our notice, that both the nations are balancing permanence with progress - one through preservation and other through adaptability.

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