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Article 368 vs. Article V- A Guide to the Amendment Procedure of Constitution of India & United States

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ABSTRACT

Law, being a ubiquitous one is necessary to understand as it tells us about the various aspects of the society. Indian Constitution being one of the lengthiest constitutions is the supreme source of law. American constitution, on the other hand is the first written constitution. India and USA, two of the world's largest and oldest democracies are governed with their written constitutions. Amending the laws as per changing times is the need of the hour. With the rising uncertainty in today's world, amendments become necessary to keep up with the fast growing pace of the society and to keep in touch with the growing needs of the individuals so as to bring peace and harmony among them. Amendments also pave ways for political advancements and economic development of the country. In this research paper, we will be pondering upon the amendment procedure with respect to India and USA. Although the two documents are similarly progressive in character and personality, there is a vast gulf of history and context that separates these two. India is an indestructible union of destructible states having a blend of rigid as well as flexible amendment process. Similarly, USA being an indestructible union of indestructible states, their amendment process is quite onerous one. Concentrating on the needs of amending the constitutions, and as to how flexible should the amending procedure be is the basic objective of this paper. It is right to quote that,' India did not replicate the US Constitution; it took what worked for it and no more'. This paper aims at discussing the fast changing needs of the society because of which the Constitution needs to be amended to meet the needs of the political society. Amendment procedures, even though require a large amount of ratifications, are necessary for the society to develop.

I. INTRODUCTION

"…however good a Constitution may be, it is sure to turn out bad because those who are called to work it, happen to be a bad lot. However bad a Constitution may be, it may turn out to be

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good if those who are called to work it, happen to be a good lot"[3]

- Dr. B.R. Ambedkar

It is not easy for nations to rewrite their constitutions in response to change of circumstances, change of ideas and change in socio economic conditions of the society. It is also true that the constitution makers were very visionary and also provided for many solutions for future generations. Adoptability to circumstances is the main characteristics of a democratic constitution that also reflects the will of the people. A living constitution is a democratic document which is passed across the generations and this is only possible when there is a functioning and effective constitution and functioning democracy. An ultimate measure of a successful constitution is how it balances entrenchment and change. A constitution reflects the desire and the core values of its governance. It is a document in which the society limits itself in an effort to protect its values, custom, ideas and institutions, therefore, such a constitution should always be easy to revise. The competing interests and ideas of a society are always bone of contentions; therefore a constitution must be balanced respectively among the society. Amendments are always judged within the constitutional morality. Therefore, the stability and sustainability of the constitution depends upon its flexibility.

An amendment to the constitution of any country is an improvement, correction or revision which is done to meet the changing needs of the nation and the individuals living in it. As the economy is growing, with it also grows the need to ratify the laws. It makes it necessary that our pre- stated rules and regulations are amended. An amendment is a special procedure laid down to amend the basic law of land. The procedure of Amendment is guided by certain parliamentary conventions, morality of the constitution, formula and method which is to be followed by any country that is willing to amend its written Constitutional Law. Keeping these aspects in mind this paper tries to attempt to make a comparison of these different methods or procedure which is followed by India and USA while making Amendment of the Constitution. The democratic Constitutions of India and U.S. have abilities to sustain, develop and mature because of their amending nature.

Two types of Constitutions have been described by A.V Dicey. The flexible constitution is the one under which every law legally be changed with no difficulty and in the similar manner by one and the same body and the rigid constitutions are the one under which certain laws which are generally known as constitutional or fundamental laws, cannot be changed in the same

[3] "Constituent Assembly of India Debates (Proceedings) - Volume XI", 25 November, 1949, http://loksabhaph.nic.in/writereaddata/cadebatefiles/C25111949.html (visited on June 11, 2021)

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manner as ordinary laws.[4]

II. AMENDMENT OF THE CONSTITUTION OF INDIA

The amending procedure of The Constitution of India is a blend of rigidity and flexibility. To help India to adapt itself to the changing circumstances, the amendment procedure was made party flexible and to keep a check and to avoid the Parliament to assume itself to be the Supreme law of land, the amendment procedure was made partly rigid. Dr. B.R. Ambedkar in the Constituent Assembly while defending the procedure contented that *"the procedure for amendment in the Indian Constitution is a simple procedure, as compared to US, Australia or Canada, and deliberately models of convention and referenda are avoided. He further said that it may be possible that in future this power may be used for partisan motives and hence some rigidity is required in the procedure"*. Hence the amendment procedure of Indian constitution is partly rigid and partly flexible.

Methods of Amendment

1. Informal Modification (*de facto*): Even though Constitutions do contain provisions for their amendment, still some times informal methods, such as judicial interpretation and conventions are adopted.[5]In this process, the written provisions of the Constitution, remaining the same, its operation and its application, undergoes a change and the Constitution stands amended.[6] The words in the Constitution having one meaning in one context may be given a somewhat different meaning in another context, while the language of the Constitution does not change. It is the procedure where the constitutional text retains its original form and phraseology, where there is no visible modification on the face, but underneath the surface, a change has come about so far as the working, operation and application of the provision is concerned. Other than judicial processes and conventions, Executive actions are also the methods of informal amendment.

2. Formal Modification (*de jure*): A procedure for formal method of Amendment is as important as the procedure of Constitution making. The formal method of amendment of The Constitution of India is laid down in Article 368 in Part XX. Under this method, it is the text or written provision of the Constitution which is amended, by way of addition, variation or repeal.[7] Formal method of Amendment is perhaps the most significant way of adopting the Constitution to the changed context of social need. The Constitution of India has been amended

[4] A.V. Dicey: Introduction to the Study of the Law of the Constitution, London, 1952, p. 127
[5] Justice V. Madhava Rao, Constitutional Amendments Lawyer Citation, Vol. 12, No. 5
[6] Golak Nath vs. State of Punjab, AIR 1967 SC 1643
[7] Article 368 (1) of The Constitution of India

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in a formal method for more than 100 times since it was first enacted in 1950. The Constitution (Forty-second Amendment) Act, 1976, was so big that almost all parts of the Constitution, including the Preamble and the amending clause were changed. This Amendment of 1976 is also known as Mini-Constitution.

Amendment of Indian Constitution:

"The Assembly has not only refrained from putting a seal of finality and infallibility upon this Constitution by denying the people the right to amend the Constitution…, but has provided for a facile procedure for amending the Constitution.... If those who are dissatisfied with the Constitution have only to obtain a two-thirds majority and, if they cannot obtain even a two-thirds majority in the Parliament elected on adult franchise in their favour, their dissatisfaction with the Constitution cannot be deemed to be shared by the general public."[8]

- Dr. B.R. Ambedkar

Amendment of the Constitution in India can be done by three modes:

III. AMENDMENT BY SIMPLE MAJORITY

i. **Amendment by Parliament:** The provisions contemplated in Article 4, 11, 135 and 239-A etc. of the Constitution can be amended by simple majority vote in both houses of the Parliament i.e. majority of more than 50% of the members present and voting. The amendment of these provisions is specifically kept outside the scope of Article 368 because these do not affect the federal structure of the Constitution. Hence the procedure to amend these provisions is identical with that is required to pass an ordinary bill.

ii. **Amendment at the instance of States:** Certain provisions of the Constitution can be amended by Parliament by enacting a law, at the instance of the States e.g. Article 169 relating to the creation and abolition of Legislative Council in the States. Certain other provisions can be amended in consultation with the States e.g. Article 3.

iii. **Amendment by State Legislatures:** Some provisions of the Constitution can be amended by a law enacted by the State Legislature by Simple Majority procedure. A law enacted by the State Legislature for the purpose of Article 164(5), 186 and 195, would affect consequential amendments in Schedule II also.[9]

[8] "Constituent Assembly of India Debates (Proceedings) - Volume XI", 25 November, 1949, http://loksabhaph.nic.in/writereaddata/cadebatefiles/C25111949.html (visited on June 11, 2021)
[9] Narendra Kumar, Constitutional Law of India, [Edition 2019-2020]

1. **Amendment by Special Majority:** Most of the provisions of Constitution can be amended by special majority i.e. majority of the total membership of each house and by majority of not less than two third of the members of each house present and voting. Article 368 deals with this kind of amendment. The provisions which do not require ratification by States and which cannot be amended by simple majority come under this category of amendment. Fundamental Rights and Directive Principles can be amended by special majority.

2. **Amendment by Special Majority plus ratification by at least half of the state legislatures:** Some provisions of the Constitution require amendment by special majority as well as ratification by at least half of the state legislatures. So the States have an important role in the amendment of these matters. These provisions[10] are:

i. Election of President[11],

ii. Article 73, article 162 or article 241, or

iii. Chapter IV of Part V, Chapter V of Part VI, or Chapter I of Part XI, or

iv. Any of the Lists in the Seventh Schedule, or

v. The representation of States in Parliament[12], or

vi. The provisions of Article 368

Procedure for Amendment under Article 368

An amendment of the Constitution may be initiated only by the introduction of a Bill for the purpose in either house of Parliament.[13] This bill can be introduced either at the instance of Union Government or at the behest of the States. When the Bill is passed in each house by the simple or special majority, as the case may be, it shall be presented to the President for his assent. When the President gives such assent to the Bill, the Constitution shall stand amended according to the terms of the Bill. But a Bill which seeks to amend the provisions mentioned in Article 368 require in addition to the special majority mentioned above the ratification by the at least half of the States, the Bill after passing by both the houses is sent to State Legislatures and after receiving ratification by at least half of the State legislatures, the Bill is sent to the President for his assent and upon such assent being given, the Constitution shall stand amended.

[10] Article 368(2)
[11] Article 54 and 55
[12] Fourth Schedule
[13] Article 368(2)

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Amendment of Article 368:

Article 368 itself can be amended by the special majority vote in Parliament i.e. by a majority of total membership of each House of Parliament and by majority of not less than two third of membership of each House present and voting for the Amendment of these provisions.[14] No ratification by the State is necessary.

Initially the title of Article 368 was 'Procedure for amendment of the Constitution', but by virtue of Constitution (Twenty-fourth Amendment Act), 1971, the title of the Article was amended to 'Power of Parliament to amend the Constitution and procedure therefore'[15]. Hence it was by Section 3(a) of the Constitution (Twenty-fourth Amendment Act), 1971 by which Article 368 itself was amended.

Clauses (4) and (5) which were inserted by section 55 of the Constitution (Forty-Second Amendment) Act, 1976 have been declared invalid by the Hon'ble Supreme Court in the case of ***Minerva Mills Ltd. vs. Union of India[16]***

Amendment of Fundamental Rights

The question of amendment of Fundamental Rights for the first time came in the case of ***Shankari Prasad vs. Union of India[17],***in which the Constitution (First Amendment Act), 1951 was challenged. The Supreme Court in this case held that the Parliament have constituent power under Section 368 to amend the Fundamental Rights. In the case of ***Sajjan Singh vs. State of Rajasthan[18],*** the decision in Shankari Prasad's case was confirmed.

Then in 1967, In the case of ***Golak Nath vs. State of Punjab[19]***, the 11 Judge Bench of Supreme Court by majority of 6:5 overruled the decisions in ***Shankari Prasad vs. Union of India*** and ***Sajjan Singh vs. State of Rajasthan*** Cases. The Hon'ble Supreme Court in this case clearly held that the Parliament have no power to abridge Fundamental Rights because this power was vested only with the Constituent Assembly and not with the Parliament.[20] But the Supreme Court in the words of J. Hidayatullah made a clarification that the Parliament have power to convoke another Constituent Assembly, pass a law under Item 97 of List I of Seventh Schedule, to call a Constituent Assembly. That Assembly might be able to abridge or take away the

[14] Article 368 (2)
[15] Article 368
[16] Minerva Mills Ltd. vs. Union of India, AIR 1980 SC 1789
[17] Shankari Prasad vs. Union of India, AIR 1951 SC 458
[18] Sajjan Singh vs. State of Rajasthan, AIR 1965 SC 845
[19] Golak Nath vs. State of Punjab, AIR 1967 SC 1643
[20] I.R. Coelho vs. State of Tamil Nadu, AIR 2007 SC 861

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Fundamental Rights, if desired.[21]

To negate the judgment in the ***Golak Nath case***, the Parliament introduced Constitution (Twenty-forth Amendment Act), 1971 which stated that the Parliament have absolute, unlimited and uncontrolled power to amend any part of the Constitution, including Fundamental Rights.

The Constitution (Twenty-forth Amendment Act), 1971 was challenged in the Landmark case of ***Kesavananda Bharti vs. State of Kerala***[22]which is also known as **Fundamental Rights case**, in which the Supreme Court held that no doubt the Parliament have power to amend any part of the Constitution including Fundamental Rights but it introduced a **Theory of Basic Structure**. According to this theory, the 13 Judge Bench of Supreme Court by 7:6 majority held that the Parliament has power to amend any part of the Constitution but cannot change its basic structure. This concept of Basic Structure was reaffirmed in the case of ***Indira Nehru Gandhi vs. Raj Narayan***[23]**.** The Supreme Court applied this theory and struck down clause (4) of Article 329-A, on the ground that it was beyond the amending power of the Parliament as it was against the basic structure of the Constitution.

After this, the Parliament passed Constitution (Forty-second Amendment Act), 1976 and inserted clause (4) and clause (5) in Article 368. Clause (4) declares that the amendments made under Article 368 will not be subject to judicial review and Clause (5) declares that there shall be no limitation on the constituent power of Parliament to amend this Constitution. Both the clauses have been declared invalid by the Supreme Court in the case of ***Minerva Mills Ltd. vs. Union of India***[24]. The Supreme Court held that the Judicial Review is one of the basic structure of the Constitution and it cannot be curtailed. It was also held that the Parliament has limited amending power and it cannot use this power to expand its own power. Further in the case of ***Waman Rao vs. Union of India***[25], the Supreme Court held that the test of Basic Structure will be applied prospective only i.e. after the ***Kesavananda Bharti*** Judgment.

IV. AMENDMENT OF THE CONSTITUTION OF USA

The Constitution of United States is considered to be the Supreme law of United States of America. Written on 17th September, 1787, ratified on 21st June, 1788 and came into force on 4th March, 1789, it is the world's oldest existing written charter of the Government, making it

[21] Golak Nath vs. State of Punjab, AIR 1967 SC 1643
[22] Kesavananda Bharti vs. State of Kerala, AIR 1973 SC 1461
[23] Indira Nehru Gandhi vs. Raj Narayan, AIR 1975 SC 2299
[24] Minerva Mills Ltd. vs. Union of India, AIR 1980 SC 1789
[25] Waman Rao vs. Union of India, AIR 1981 SC 271

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299 years old. It has been amended 27 times and includes one amendment that was repealed in order to meet the continuously changing needs of the nation since the eighteenth century. The Constitution of US comprises of seven articles. The first three articles support doctrine of separation of powers. Being federal in nature, the government of USA is divided into three branches, namely, The Legislative, which consists of Bicameral Congress, The Executive, having the president and subordinate officers, and The Judiciary, which has The Supreme court and the other federal courts. The first three words of the constitution i.e. we the people, affirms the citizens that the government of United States exists to serve them and their only motive is to work for their betterment. Rightly termed as a skeleton constitution, the framers of the constitution left the details to be filled in by the various acts of the congress.

US Constitution

For amending the constitution, it needs not to be rigid. A constitution is called flexile where it can be amended by the ordinary law making procedure. It will be called rigid when a special procedure is required for amendment and that can be measured through the obstacles which are faced in any amending procedure. The Constitution of USA is the most rigid constitution of the world. It can only be amended by a very lengthy and a cumbersome procedure and that is why it takes years for an amendment to become operative after it has been passed. This rigidity is one of major factors because of which only 27 amendments have taken place in the United States so far. Regardless of this rigidity, the constitution has been able to adjust itself to the changing times. Amending procedure and constitutional instability go hand in hand. The procedure which the framers of the constitution considered to be fairly simple and easy has turned out to be most difficult one in practice on account of the appearance of two factors which they could not foresee, namely, the increase in the size of Congress and the number of states forming the union.[26] The first 10 amendments to the constitution are collectively known as bill of rights as these were designed to protect individual's rights and liberties

Article V

Article V of the constitution provides us with the procedure of amending the US constitution i.e. how new provisions can be added to the text of the constitution. It is provided that the US constitution could only be amended by following this legal procedure and any other method of amendment would be termed as unconstitutional. Article V reads as follows:

"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

[26] K. R. Bombwall, Major Contemporary Constitutional System, 154-155 (1972)

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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."[27]

History and Framing of Article V

It is really important to have a better understanding of this article and for that it is really necessary to understand the framing of the same. The colonists by whom the American Federation was formed chose to adopt a formal amending procedure for the constitution and not to follow the system of changing the constitution by ordinary legislative procedure that was established in England, by which they were familiar at that time. Before the constitution of US came into existence, eight state constitution of American confederation contained amending clauses and they also had provisions for their own clauses. During the Federation Convention of 1787, Edmund Randolph, in his draft, proposed a plan for the formation of a new Constitution in the form of fifteen resolutions, out of which the thirteenth resolution declared that there should be a provision for the Amendment of the Constitution and for that, the assent of the National Legislature should not be required.

At the same meeting, Charless Pinckney, advocate of a strong federal government who also served as a delegate to the 1787 Philadelphia Convention, which wrote a new federal constitution, proposed that if the legislature of two thirds of the states should apply for calling a Convention to Amend the Constitution, then the National Legislature should call one, or alternatively, the Congress, by a two thirds vote to each House, might propose, and two thirds of the legislatures might adopt.[28] Both drafts were referred to the Committee of the whole House and during the discussion in June on Randolph's resolution, Pinekney doubted the need of an Amendment clause. It was also thought that the novelty and the difficulty of the experiment required periodical revision. Randolph's resolution was discussed against and several members thought that the clause to be added was unnecessary and also expressed that it was improper to dispense with the consent of the Congress. It was only favored by Charles

[27] Article V, Constitution of USA
[28] Ferrand, The Records of the Federal Convention of 1787, Vol. Ill, Appendix D, at 595.

Manson as he thought that the Constitution may need changes in future but was opposed to the idea of participation of Congress in it on the ground that it might abuse the power granted to it. Hence, the resolution was adopted and consideration of the clause relating to consent of the Congress was postponed for further revision.[29]

John Rutiedge, an American legislator and delegate of the constitutional convention, delivered the report to the committee on 6th August, 1787. Article nineteen of the said draft provided that Congress should call a convention on the application of the legislature of two thirds of the states and During the discussion on August 30, Governor Momis suggested that it was in the power of the Congress to call this convention whenever it liked. The Convention approved then the Article in the form it was originally proposed by the Committee. The motion for reconsideration of Article XIX was also passed on the ground that it gave power to two thirds of the states to obtain a convention which may force the Union to threaten a state constitution. It was supported by Hamilton on the ground that the manner of amending the constitution was not adequate. Shemran who served as a delegate to the 1787 Philadelphia Convention, thereafter, proposed that Congress should be permitted to propose Amendment but stated that no Amendment shall be binding until consent was given by the several states. Wilson moved to insert 'two thirds of before the words "several states" in Sherman's proposal, but this motion failed but later the motion by Wilson to insert the words "three fourths of' was adopted.

Another similar proposal was made which is the part of the present Article V. It provided for proposal of Amendments by Congress either on a two third vote of each House or on application of the legislatures of two thirds of the states and ratification by the legislature or conventions of three fourth of the states and was supported by Hamilton, whereas, Rutledge had an objection to it. Accordingly, the amendment was adopted and the and the Article XIX of the first draft was presented as article 5 of the second draft. The amendment which was proposed contained "*that no state shall without it consent be affected of its internal police, or deprived of its equal suffrage in the senate*", to which James Madison, also known as the father of the constitution had an objection that the term 'internal police' was too wide and hence, this proposal was not adopted. Thereafter, a proviso was proposed by Morris "that *no state without its consent, shall be deprived of the equal suffrage in the senate*" and that was adopted. With the adoption of this Amendment, the drafting of Article V was finally completed.

Procedure for Amendment under Article V

According to the procedure laid down in this article, it can be seen that the amendment can take

[29] Id, Vol. II, at 188

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place in two stages. First one is the constitutional convention method and the other one is Congressional Method.

1. Constitutional Convention method: An amendment may be proposed by constitutional convention to be called by the Congress on the application made by at least two third of the state legislatures[30]. A convention can only be called on the request of the state legislatures only and congress cannot do so at its own. Essentially, a convention called under Article V could only propose but not enact any amendment. This method has not been used since the original convention of 1787 was convened to establish the Constitution.

This proposition is supported by 10th amendment of the U.S constitution. This method of proposing amendment is exclusively available to the states as congress only has the powers which have been marked to it specifically by the constitution. In the case of ***Hailing Sworth v. Virginia[31]***, it was held by the Supreme Court of the United States that the Congress do not have power to reject the application to call a convention. It is mandatory on the part of the congress to call a convention but there is no legal remedy if the Congress refuses to do so but ultimately political remedy is always there. Another important aspect to be taken into account is that the States also do not have power to withdraw the application to call for convention.

2. Congressional Method: A proposal for amendment is made in the form of joint resolution by a 2/3rd vote in each house of the Congress. The content of the joint resolution includes the text of proposed amendment and the method of ratification (by legislature or by state convention).[32] This proposal by the congress is not of a legislative character, hence; the provisions of the Constitution relating to passing of ordinary legislations do not apply in this method. In the case of ***Hollingsworth vs. Virginia[33],*** it was held by the Supreme Court that it is not necessary to place constitutional amendments before the President for approval or veto. Because of the fact that so far all the adopted Amendment in the U. S. have originated in this way, that is why this method seems to be the most significant.

The Ratification Process: The proposed amendment shall be valid after the ratification by special ratification convention i.e. to be ratified by 3/4th of the states, acting by state conventions or by 3/4th of State legislatures before being added to the Constitution. The method of ratification is decided by the Congress only. Out of all the amendments the special ratification convention/ state convention method for ratification has been used for only one i.e.

[30] Article V, Constitution of USA
[31] Hollingsworth vs. Virginia, 3 U.S. 378 (1798)
[32] Matt Gehring, (legislative analyst in the house research department), United States Constitutional Amendment Process Legal Principles for State Legislators..
[33] Hollingsworth vs. Virginia, 3 U.S. 378 (1798)

Twenty first Amendment.[34]

Once the Congress approves the amendment, it is forwarded to National Archives and Records Administration (NARA). The Director of Federal Registrar is responsible for the letter of ratification to Governors. The Governors submits the letter of ratification to the States legislatures with all the proposed amendments specifications. It is the responsibility of 'The Archivist of the United States'[35] to administer the ratification process and to publish the amendment, with his certificate that the same has become valid, to all intents and purposes, as a part of the Constitution of the United States.[36]

The amendment and its certificate of ratification by 'The Archivist of the United States' are then published in the '*Federal Register'* and '*United States Statutes at Large'*. This serves as official notice to Congress and to the nation that the ratification process has been successfully completed.[37]The amendment made comes into force as soon as it is ratified by necessary number of states rather than on the later date when its ratification is certified.[38]

- The following table makes it easy to understand the process of amendment in a simple manner:

S.NO.		**CONSTITUTIONAL CONVENTION METHOD**	**CONGRESSIONAL METHOD**
1.	**PROPOSAL**	By constitutional convention by Congress on the petition of 2/3rd of the States. (never so far used)	By 2/3rd votes of both the houses of congress
2.	**RATIFICATION**	By 3/4th of the states, acting by state conventions (used for ratification of 21st amendment) (OR) By 3/4th majority of the State Legislatures (used in almost all the amendments except the 21st Amendment) [Decided by the Congress]	

[34] Thomas H. Neale, The Article V Convention to Propose constitutional amendments: Contemporary Issues for Congress

[35] The Archivist of the United States is the head and chief administrator of the National Archives and Records Administration (NARA) of the United States.

[36] § 106b of Title 1 of U.S. Code

[37]Constitutional Amendment Process, https://www.archives.gov/federal-register/constitution, (visited on June 24, 2021)

[38] Dillon vs. Gloss, Deputy Collector, 256 U.S. 368

COMPARATIVE ANALYSIS: Although the amendment processes of both the countries are completely different from each other, still the comparison between the procedures of both is as follows:

S. NO.	THE CONSTITUTION OF INDIA	THE CONSTITUTION OF THE UNITED STATES
1.	It is partly flexible and partly rigid.	It is most rigid constitution of the world.
2.	A constitutional amendment bill can only be initiated in either house of the parliament.	A constitutional amendment proposal can be proposed by congress and by the States.
3.	Both formal and Informal methods are adopted for amendment. Formal (Article 368) is followed by the legislation, while Informal is followed by the judiciary.	Both formal and Informal methods are adopted for amendment. Formal (Article V) is followed by the Congress and Informal is followed by the States.
4.	Constitution amendment bill shall either by passed by simple majority or special majority or special majority plus ratification by half of the states.	Constitutional amendment bill shall either be proposed by constitutional convention method or by congressional method.
5.	Constitutional Amendments need ratification by at least half of the states only if the amendment seeks to change the federal nature of the constitution as specifically provided under section 368.	Constitutional amendment becomes valid only after being ratified by $3/4^{th}$ of the states acting by state conventions or by $3/4^{th}$ majority of the state legislatures.
6.	After being passed by both the houses of the parliament, the bill is sent to The President for his assent.	There is no need to place constitution amendment before the president for approval or VETO.

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7.	In India, the amendment comes into force after it is published in the Official Gazette of India.	The amendment made comes into force as soon as it is ratified by necessary number of states rather than on the later date when its ratification is certified.
8.	The amendment is valid after the assent of the President and comes into force after it is published in the Official gazette of India.	After the amendment is ratified by the required number of States, NARA certifies the amendment and gives a certificate that the amendment is valid.
9.	In India, the constitutional amendments are subject to Judicial Review.	In USA, the amendment so made, also subject to judicial review.
10.	Parliament has no power to rewrite the whole constitution again u/a 368.	Congress also, has no power to rewrite the whole constitution again u/a V.

V. CONCLUDING REMARKS

"While we want this Constitution to be as solid and permanent as we can make it, there is no permanence in Constitutions. There should be certain flexibility. If you make anything rigid and permanent, you stop the nation's growth, the growth of a living, vital, organic people . . . "[39]

- *Pt. Jawaharlal Nehru*

No matter how rigid the Constitutions may be but they can be amended according to the need of the generations and must adopt the changing circumstances. No matter how flexible the Constitutions may be but they should not be so easy for amending against their basic philosophy. The best Constitutions serve people across generations and represent their will. The sustainability of the Constitutions depends upon their amendability and ability to include the wider prospective. The amendment process in both the Constitutions of US and India is unique as well as rigid. Both the democratic Constitutions have ability to survive and contains the capacity to respond to socio-political and economic change.

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

[39] "Constituent Assembly of India Debates (Proceedings) – Vol. VII", 8 November 1948, https://web.archive.org/web/20111103153825/http://164.100.47.132/LssNew/constituent/vol7p4.html (visited on June 18, 2021)

the People 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.

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