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INDIA VS USA: A DETAILED ANALYSIS OF THE CONSTITUTIONAL AMENDMENT PROCESS

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INTRODUCTION

Understanding the constitutional amendment process in India and comparing it with the United States unfolds a complex narrative of democracy and governance. The Indian Constitution, effective since 1950, showcases its flexibility through Article 368, which permits the legislature to make amendments, balanced by judicial oversight to ensure these do not disrupt its basic structure.¹ In contrast, the US Constitution outlines a more stringent amendment procedure, requiring a significant consensus among both Houses of Congress or state legislatures, followed by ratification from a majority of the states.² This difference indicates a fundamental divergence in the approach to constitutional amendments between India and the USA, reflecting their unique political and social contexts.

The amendment history of both nations further emphasizes this disparity; India has amended its Constitution 106 times, signifying a more adaptable framework, while the U.S. has introduced only 27 amendments, suggesting a more conservative attitude towards constitutional changes. Given these variations, the analysis of the constitutional amendment process provides insights into the evolving nature of democracy and governance within India by 2024 and contrasts it against the rigidity and historical continuity within the United States.

HISTORICAL CONTEXT AND IMPORTANCE OF CONSTITUTIONAL AMENDMENTS

The historical context and importance of constitutional amendments in both India and the USA reveal the evolving nature of democracy and governance in these countries. Here, we delve into the historical backdrop and the significance of the amendment processes in India, contrasting it with the USA's approach.

¹ Introduction, available at <https://ijirl.com/wp-content/uploads/2022/03/AMENDMENT-OF-THE-CONSTITUTION-IN-INDIA-AND-US-A-COMPARATIVE-STUDY.pdf>, last seen on 18/03/2024.

² Introduction, available at <https://www.civildaily.com/mains/compare-the-procedures-adopted-in-the-indian-and-the-u-s-constitution-towards-the-constitutional-amendment-do-you-agree-with-the-view-that-the-flexibility-towards-amendment-procedure-has-led-to-more/>, last seen on 18/03/2024.

India's Amendment Process: A Dual Approach

De jure Amendments: These are formal changes made through the constitutional amendment process outlined in Article 368, allowing the Indian Parliament to amend the constitution with certain restrictions.

De facto Amendments: In addition to formal amendments, changes can occur through judicial interpretations, legislation, alterations in conventions, and constitutional usages, showcasing the constitution's flexibility.

Influence and Flexibility: The Indian Constitution, inspired by the South African Constitution, was designed to be a living document, adaptable over time. This adaptability is evident from the 106 amendments made as of 2021, making it the most amended national constitution globally.³

The Doctrine of Basic Structure: A pivotal moment in India's constitutional history was the emergence of the Doctrine of the Basic Structure. This doctrine, established by the Keshavanand Bharti case in 1973, limits the Parliament's power to amend the constitution's fundamental aspects, ensuring that changes do not alter the constitution's core principles.

USA's Amendment Process: Rigidity and Challenges

A High Threshold for Amendments:

The US Constitution, established in 1789, sets a high bar for amendments. This rigidity is intended to ensure stability but also makes it challenging to remove outdated provisions.⁴

Notable Amendments: Despite the stringent process, successful amendments like the 21st, which repealed Prohibition, demonstrate the US system's capacity to evolve. However, with only 27 amendments to date, the process reflects a conservative approach to constitutional changes

This comparative analysis highlights the contrasting approaches to constitutional amendments in India and the USA. India's flexible yet controlled amendment process allows for more frequent changes, reflecting the country's evolving democratic and social needs. In contrast, the USA's rigorous amendment process underscores a preference for stability and the enduring nature of its founding principles.

³ Historical context, available at https://en.wikipedia.org/wiki/Amendment_of_the_Constitution_of_India, last seen on 18/03/2024.

⁴ USA amendment process, available at <https://sites.google.com/site/thepoliticsteacherorg/advantages-and-disadvantages-of-the-amendment-process>, last seen on 18/03/2024.

COMPARATIVE ANALYSIS OF AMENDMENT PROCEDURE IN INDIA AND THE USA

The amendment processes in India and the USA showcase distinct approaches reflective of their unique constitutional frameworks and historical contexts. Here, we delve into a comparative analysis, focusing on the procedural nuances and underlying principles governing amendments in both countries.

India: A Blend of Rigidity and Flexibility

Amendment Proposals: In India, an amendment can be initiated in either house of Parliament, requiring a two-thirds majority of members present and voting. Certain amendments also necessitate ratification by at least half of the State Legislatures.

Types of Amendments: The Indian Constitution delineates three methods for amendments, including a simple majority of Parliament, a two-thirds majority of Houses, and a special majority plus ratification by state legislatures for some changes.

Doctrine of Basic Structure: A unique feature of the Indian amendment process is the judicially created doctrine of the basic structure, limiting Parliament's power to alter the constitution's fundamental ethos, thus ensuring a balance between flexibility and preservation of core principles.

USA: A Testament to Stability and Consensus

Amendment Proposals: The US amendment process can be initiated by a two-thirds majority in both houses of Congress or through a constitutional convention called by two-thirds of the states, emphasizing a broad consensus model.

Ratification Requirements: After proposal, an amendment requires ratification by three-fourths of the states, either through their legislatures or special ratifying conventions, underscoring the federative principle and the high threshold for constitutional change.⁵

Rigidity and Judicial Review: The US Constitution is characterized by its rigidity, making formal amendments challenging. However, the Supreme Court plays a crucial role in interpreting the Constitution, allowing for informal amendments and adaptation over time.

⁵ Amendment of the constitution of India and USA comparative study, available at <https://ijlra.com/wp-content/uploads/2022/03/AMENDMENT-OF-THE-CONSTITUTION-IN-INDIA-AND-US-A-COMPARATIVE-STUDY.pdf>, last seen on 18/03/2024.

Comparative Insights

Flexibility vs. Rigidity: The Indian Constitution is designed to be amendable, reflecting a quasi-federal structure that can adapt to changing circumstances. In contrast, the US Constitution's rigidity aims to preserve foundational principles over time, making amendments a rare occurrence.⁶

Amendment Frequency: This inherent flexibility in India has resulted in over 100 amendments since its adoption in 1950, compared to the US, which has seen only 27 amendments since 1789, highlighting the divergent approaches to constitutional change.

Basic Structure and Entrenchment: While the Indian Constitution incorporates the doctrine of the basic structure to prevent alterations to its core principles, the US employs entrenchment clauses and a high ratification threshold to protect its constitutional integrity and federal balance.⁷

This comparative analysis underscores the constitutional amendment process in India and the USA, revealing how each country's process reflects its governance ethos, historical experiences, and societal values. The Indian approach demonstrates a blend of flexibility and safeguard mechanisms, allowing for evolution while preserving essential features. Conversely, the US system emphasizes stability and consensus, ensuring that amendments reflect widespread agreement and enduring principles.

THE IMPACT OF AMENDMENTS ON SOCIETY AND GOVERNANCE

Constitutional amendments have profound implications on the fabric of society and the structure of governance, affecting everything from the distribution of power to the protection of individual rights. The impact of these amendments can be observed through various lenses:

Governance and Accountability

Constitutional amendments can foster improved governance by instituting mechanisms for greater accountability, transparency, and public participation

⁶ Comparative Insights, available at <https://unacademy.com/content/nda/study-material/polity/constitutions-historical-perspective>, last seen on 18/03/2024.

⁷ Basic structure and Entrenchment, available at <https://sites.google.com/site/thepoliticsteacherorg/advantages-and-disadvantages-of-the-amendment-process>, last seen on 18/03/2024.

This ensures that governance structures evolve in response to societal needs, promoting predictability and the rule of law.⁸

By defining and safeguarding citizens' rights, amendments act as a bulwark against governmental overreach, ensuring that power is exercised within defined legal bounds. This is critical for maintaining the balance of power between different branches of government and protecting individual freedoms.

Social Impact and Human Rights

The Indian Citizenship Amendment Act (CAA) of 2019 illustrates how amendments can have targeted social impacts, in this case, by creating expedited citizenship pathways for certain religious groups from neighboring countries, while excluding others such as Rohingya Muslims and Sri Lankan Tamils.⁹ This selective approach has sparked discussions on the principles of equality and non-discrimination.

Amendments can also have unintended consequences, such as the potential for the CAA, alongside the National Register of Citizens (NRC) and Foreigners Tribunals, to be utilized in ways that could disproportionately affect the Muslim minority community in India. This raises concerns about the broader implications of constitutional changes on social cohesion and minority rights.

Civil Liberties and Dissent

The cancellation of 102 Overseas Citizen of India (OCI) registrations between 2014 and May 2023, including those of journalists and academics, underscores the potential for constitutional amendments and related policies to impact freedom of expression and the right to dissent. The crackdown on protests against the CAA through arbitrary detention and heightened surveillance further highlights how amendments can influence civil liberties and the democratic space for opposition.

These examples underscore the dual nature of constitutional amendments: while they can reinforce the foundations of good governance and protect rights, they also carry the risk of being

⁸ Governance and Accountability, available at <https://www.adb.org/sites/default/files/publication/28636/governancebrief13.pdf>, last seen on 18/03/2024.

⁹ Social impact and Human rights, available at <https://www.amnesty.org/en/latest/news/2024/03/india-citizenship-amendment-act-is-a-blow-to-indian-constitutional-values-and-international-standards>, last seen on 18/03/2024.

used in ways that might undermine democratic principles and marginalize certain groups. The balance between flexibility and stability, individual rights and societal needs, is a delicate one, requiring careful consideration in the constitutional amendment process.

CHALLENGES AND CRITICISMS OF THE AMENDMENT PROCESSES

The challenges and criticisms of the amendment processes in India highlight several areas of concern that merit attention:

Flexibility and Inclusivity Concerns:

- Critics point out the need for a more adaptable approach to the constitutional amendment process in India to better reflect evolving societal needs and changes.¹⁰ This suggests a potential gap between the rigid structure of the current process and the dynamic nature of society.
- The absence of a specialized body, such as a Constitutional Convention or Constitutional Assembly, for amending the Constitution is seen as a limitation, potentially hindering comprehensive and inclusive discussions on amendments.

Initiation and Ratification Challenges

- The exclusive power of the Parliament to initiate amendments, with state legislatures unable to propose any bill or amendment is viewed as a centralization of power that may not fully represent regional interests and concerns. A significant critique is the lack of a prescribed timeframe for state legislatures to ratify or reject an amendment, which can lead to uncertainties and delays in the amendment process.
- The absence of a provision for a joint sitting of both Houses of Parliament in case of a deadlock over a constitutional amendment bill further complicates the process, potentially stalling important amendments.

Comparative Insights with the USA:

- The comparison with the American system brings to light differences in the level of federalism and citizen involvement in the amendment process. While Indian states cannot

¹⁰ Challenges and criticisms, available at <https://testbook.com/ias-preparation/criticism-of-the-amendment-procedure>, last seen on 18/03/2024.

request amendments to the Constitution, American states possess equal power to propose amendments, showcasing a more federated approach to constitutional changes.

- The difference in leadership roles, with the American President being directly elected and serving for 4 years, versus the Indian President elected by members of the Rajya Sabha for 5 years, reflects divergent governance structures and their implications on the amendment processes in both countries.¹¹

These critiques underscore the need for a more flexible, inclusive, and decentralized approach to amending the Constitution in India. They highlight the importance of balancing stability with adaptability, ensuring that the amendment process can adequately respond to changing societal needs while preserving the core values and principles of the Constitution.

CONCLUSION AND RECOMMENDATIONS

Through this comprehensive analysis, it becomes evident how the constitutional amendment processes of India and the USA reflect their distinct approaches towards governance, societal values, and the balance between flexibility and stability. India's myriad of amendments speaks to its adaptability and the evolving nature of its democracy, underscored by mechanisms like the Doctrine of the Basic Structure, which ensures that changes do not erode the fundamental ethos of the constitution. Conversely, the USA's stringent amendment process and fewer amendments underscore a commitment to long-term stability and the safeguarding of foundational principles, with the judiciary playing an essential role in interpretation and adaptation over time.

The examination of the amendment processes not only illuminates the differences in governance models but also prompts a reflection on the broader implications for society and democracy. As both nations continue to evolve, the challenges and criticisms highlighted herein underscore the need for a balanced approach that respects the integrity of the constitution while responding to the dynamism of societal needs. This analysis ultimately reaffirms the importance of constitutional amendments as a tool for progress and adaptation, advocating for processes that are inclusive, deliberative, and representative of the diverse interests within each country.

¹¹ Comparative Insights with the USA, available at <https://unacademy.com/content/bpsc/study-material/polity/the-us-constitution-and-the-indian-constitution>, last seen on 18/03/2024.