
BALANCING STABILITY AND CHANGE: HOW THE US, SOUTH AFRICA, AND INDIA AMEND THEIR CONSTITUTIONS

Dr. Rajeev Kumar Singh, Assistant Professor of Law, Amity Law School, Amity
University Uttar Pradesh, Lucknow Campus

Orcid ID: <https://orcid.org/0009-0000-6751-280X>

Google Scholar ID: https://scholar.google.com/citations?user=3Uu5o_kAAAAJ&hl=en

Academia ID: <https://amity.academia.edu/RajeevSingh>

Mr. Harsh Jaiswal, LL.M. (Constitutional Law), Amity Law School, Amity University
Uttar Pradesh, Lucknow Campus

ABSTRACT

This research paper undertakes a comparative analysis of constitutional amendment mechanisms in the United States, South Africa, and India to examine how each system balances rigidity and flexibility within its constitutional framework. The study explores the historical foundations, procedural structures, and judicial interpretations that shape amendment powers, revealing how constitutional design reflects deeper political and philosophical commitments. The United States represents a model of deliberate rigidity under Article V, safeguarding stability but constraining adaptability. South Africa's 1996 Constitution establishes a hybrid system, embedding transformation through graded thresholds and judicial certification under Section 74. India's Constitution, through Article 368 and the judicially evolved "basic structure doctrine," achieves controlled flexibility, ensuring that constitutional change remains bounded by fundamental principles. The paper critically evaluates these models to demonstrate that constitutional endurance depends not on immutability but on the capacity to adapt without eroding identity. By situating these frameworks within the broader discourse of constitutionalism, the study emphasizes that effective amendment design must harmonize democratic will, judicial oversight, and constitutional continuity to preserve legitimacy in evolving political contexts.

Keywords: Constitutional Amendment, Rigidity, Flexibility, Basic Structure Doctrine, Comparative Constitutional Law, Judicial Review, Constitutionalism, Constitutional Design.

INTRODUCTION

Background and Rationale of the Study

The question of how constitutions change lies at the core of constitutional theory and practice. Every written constitution must reconcile permanence with evolution, balancing the authority of its founding principles with the needs of a changing society. The process of constitutional amendment thus represents a vital test of constitutionalism itself. It reveals how far a political system values stability over adaptability and how deeply it trusts democratic majorities to reshape its foundational law. The comparative study of amendment mechanisms becomes crucial in understanding how constitutions preserve identity while enabling transformation.¹

The United States, South Africa, and India present distinct models of constitutional change shaped by their historical and political experiences. The U.S. Constitution, drafted in 1787, institutionalized rigidity to prevent instability in a newly formed federation. Its Article V mechanism reflects the framers' distrust of popular passions and their preference for enduring principles over transient opinion. In contrast, South Africa's post-apartheid Constitution of 1996 was consciously designed to be transformative. It sought to dismantle centuries of racial hierarchy while protecting the constitutional order from authoritarian relapse. Its amendment procedure under Section 74 exemplifies a hybrid model-flexible enough for reform, yet fortified by procedural safeguards.²

India's constitutional journey represents a unique experiment in balancing flexibility with restraint. The framers of the 1950 Constitution vested Parliament with broad amending powers under Article 368, anticipating the need for adaptation in a diverse and developing society. However, the Supreme Court's articulation of the "basic structure doctrine" in *Kesavananda Bharati v. State of Kerala*, transformed this flexibility into controlled evolution. It ensured that while Parliament could amend extensively, it could not destroy the Constitution's core identity. This blend of political and judicial control distinguishes India's amendment mechanism as both dynamic and principled.³

¹Richard Albert, *Constitutional Amendments: Making, Breaking, and Changing Constitutions* 3–4 (Oxford Univ. Press 2019).

²U.S. Const. art. V; S. Afr. Const., 1996, § 74.

³*Kesavananda Bharati v. State of Kerala*, (1973) 4 SCC 225 (India).

The rationale behind this comparative inquiry lies in the growing recognition that constitutional endurance depends not only on textual design but also on the interaction between law, politics, and judicial interpretation. Studying the balance of rigidity and flexibility across these three systems offers insight into how constitutions sustain legitimacy, resilience, and moral authority over time. It contributes to the understanding that the strength of a constitution lies not in its immutability but in its capacity to evolve without losing its soul.⁴

Research Questions

1. How do the constitutional amendment procedures in the United States, South Africa, and India reflect their respective political philosophies and historical contexts?
2. To what extent do mechanisms of rigidity and flexibility influence constitutional stability and democratic adaptability in these jurisdictions?
3. How has judicial interpretation shaped the scope and limitation of amendment powers, particularly through doctrines such as the basic structure doctrine in India and judicial certification in South Africa?
4. What lessons can emerging constitutional democracies derive from the comparative study of amendment models to balance continuity with reform?

Research Objectives

1. To analyze and compare the constitutional amendment mechanisms in the United States, South Africa, and India within the framework of constitutional rigidity and flexibility.
2. To assess the role of judiciary in defining, limiting, and safeguarding constitutional amendment powers across the three systems.
3. To evaluate the practical and theoretical implications of differing amendment models on constitutional stability and democratic evolution.

⁴Sujit Choudhry, *The Migration of Constitutional Ideas* 11–13 (Cambridge Univ. Press 2006).

4. To propose insights for constitutional reform that ensure adaptability while maintaining the integrity and supremacy of the constitution.

Research Methodology

The study adopts a doctrinal and comparative legal research methodology, relying on primary legal sources such as constitutional texts, judicial decisions, and amendment provisions, supplemented by secondary materials including scholarly commentaries and constitutional theory literature. Comparative analysis is employed to identify convergences and divergences among the amendment frameworks of the United States, South Africa, and India. The research follows an analytical-descriptive approach, emphasizing judicial reasoning and constitutional design principles to understand how different models reconcile the tension between rigidity and flexibility. All references are interpreted through the lens of constitutionalism, rule of law, and democratic governance to ensure a holistic and contextual understanding of amendment processes.

THEORETICAL FRAMEWORK AND DOCTRINAL FOUNDATIONS

The Nature and Purpose of Constitutional Amendments

Constitutional amendments serve as mechanisms through which states preserve stability while allowing adaptation to social, political, and moral evolution. They function as instruments that sustain the continuity of constitutional identity even as they accommodate transformation. The core purpose is to maintain equilibrium between permanence and change, ensuring the constitution remains relevant to the polity it governs. In *Kesavananda Bharati v. State of Kerala*, the Supreme Court of India clarified that while Parliament possesses the power to amend under Article 368, this power cannot destroy the “basic structure” of the Constitution. This doctrine illustrates that amendments are not mere legislative acts but constitutional continuations bounded by higher principles of constitutionalism.⁵

The United States’ experience under Article V of its Constitution shows how amendment provisions are designed to restrain political excesses. The process-requiring two-thirds of both Houses and ratification by three-fourths of states-makes amendment rare and deliberate. The last ratified amendment, the Twenty-Seventh, was adopted after two centuries, reflecting the

⁵*Kesavananda Bharati v. State of Kerala*, (1973) 4 SCC 225 (India).

design of rigidity as a safeguard against transient political passions.⁶ The South African Constitution of 1996, conversely, integrates flexibility through procedural differentiation. Section 74 imposes varying thresholds based on the constitutional provision sought to be amended, reflecting a nuanced understanding of constitutional hierarchy.⁷ The nature of constitutional amendments thus intertwines with the philosophical conception of sovereignty, legitimacy, and continuity. They signify that while the constitution is supreme, it is not static; it must evolve under structured mechanisms that uphold the rule of law.⁸

In democratic theory, amendments serve as expressions of the people's will, but mediated through institutions. They validate the constitution's claim to legitimacy by ensuring it can respond to generational change. The framers of the Indian Constitution envisioned Article 368 as a mechanism to balance flexibility and restraint. The Supreme Court in *Minerva Mills Ltd. v. Union of India*, reaffirmed that the power to amend must not destroy the harmony between fundamental rights and directive principles.⁹ Hence, the purpose of amendments extends beyond mere textual modification-it sustains constitutional morality and equilibrium between competing ideals of governance.¹⁰

Models of Amendment: Rigid vs. Flexible Constitutions

The distinction between rigid and flexible constitutions lies at the heart of comparative constitutional design. A rigid constitution requires special procedures or supermajorities to amend, while a flexible constitution allows amendments through ordinary legislative processes. The U.S. Constitution exemplifies rigidity, designed deliberately to protect the federal compact from momentary majoritarian impulses. The framers, influenced by Montesquieu and Madison, viewed rigidity as a barrier against arbitrary government. Article V entrenches the federal balance, ensuring that smaller states retain influence over constitutional change. The rarity of amendments-only twenty-seven since 1789-demonstrates the endurance of this rigidity as a stabilizing force.¹¹ Yet, judicial interpretation has functionally adapted the U.S. Constitution, blurring rigidity through evolving jurisprudence such as *Brown v. Board of Education*, and *Roe*

⁶U.S. Const. art. V.

⁷S. Afr. Const., 1996, § 74.

⁸Id.

⁹*Minerva Mills Ltd. v. Union of India*, (1980) 3 SCC 625 (India).

¹⁰Id.

¹¹ U.S. Const. art. V.

v. *Wade*, which redefined constitutional meaning without textual change.¹²

India's Constitution, in contrast, exhibits controlled flexibility. Article 368 provides for amendment by Parliament, with certain provisions requiring state ratification. The framers consciously balanced flexibility with safeguards, recognizing India's dynamic socio-political diversity. The early cases like *Shankari Prasad Singh Deo v. Union of India*, upheld unlimited parliamentary amending power, reflecting initial judicial deference to flexibility.¹³ Later, in *Golak Nath v. State of Punjab*, the Court shifted toward rigidity by holding that Parliament could not amend fundamental rights.¹⁴ The subsequent decision in *Kesavananda Bharati v. State of Kerala*, harmonized both positions, establishing that the amending power is broad but bounded by the Constitution's basic structure.¹⁵ This synthesis positioned India's amendment model as a middle path between American rigidity and British flexibility.¹⁶

South Africa's post-apartheid Constitution represents a hybrid model, blending rigidity and flexibility through tiered amendment thresholds. Section 74(1)–(3) differentiates between ordinary provisions, entrenched clauses like the Bill of Rights, and those requiring provincial concurrence. The Constitutional Court in *Certification of the Constitution of the Republic of South Africa* upheld these procedural gradations as consistent with constitutional principles, ensuring that fundamental democratic values cannot be easily altered.¹⁷ This model recognizes that flexibility fosters adaptability in a transforming society, while rigidity ensures the protection of foundational values such as equality, democracy, and the rule of law.¹⁸

Rigid constitutions enhance predictability and constitutional supremacy, while flexible ones facilitate democratic responsiveness. The comparative models indicate that the optimal amendment framework depends on historical experience and political culture. India's hybrid model showcases an evolving constitutionalism that protects core values while enabling incremental reform. In contrast, the U.S. system relies on judicial adaptation to compensate for its procedural rigidity, whereas South Africa institutionalizes differentiated flexibility as a

¹² *Brown v. Bd. of Educ.*, 347 U.S. 483 (1954).

¹³ *Shankari Prasad Singh Deo v. Union of India*, AIR 1951 SC 458 (India).

¹⁴ *Golak Nath v. State of Punjab*, AIR 1967 SC 1643 (India).

¹⁵ *Kesavananda Bharati v. State of Kerala*, (1973) 4 SCC 225 (India).

¹⁶ *Id.*

¹⁷ *Certification of the Constitution of the Republic of South Africa*, 1996 (4) SA 744 (CC) (S. Afr.).

¹⁸ S. Afr. Const., 1996, § 74(1)–(3).

constitutional design principle.¹⁹

Theories of Constitutional Change - Originalism vs. Living Constitutionalism

Originalism and living constitutionalism represent contrasting philosophies of constitutional interpretation and change. Originalism posits that the constitution's meaning is fixed at the time of enactment, emphasizing textual fidelity and framers' intent. It underpins the American approach where formal amendment is the legitimate mode of change. Justice Antonin Scalia's opinions consistently defended this view, arguing that interpretive flexibility usurps democratic authority.²⁰ However, the practical inaccessibility of Article V amendments has propelled interpretive evolution through judicial decisions, effectively generating informal constitutional amendments. This dynamic tension between textual rigidity and interpretive adaptation shapes American constitutional jurisprudence.²¹

Living constitutionalism, on the other hand, perceives the constitution as an evolving document responsive to social and moral progress. The South African Constitutional Court explicitly embraces this philosophy. In *S v. Makwanyane*, the Court abolished the death penalty, interpreting the right to life and dignity expansively in light of contemporary human rights standards.²² Justice Chaskalson's reasoning underscored that constitutional interpretation must advance the transformative objectives embedded in the text. India's Supreme Court too has leaned toward living constitutionalism. In *I.R. Coelho v. State of Tamil Nadu*, (2007) 2 SCC 1, the Court held that even constitutional amendments are subject to judicial review if they violate the basic structure, emphasizing the constitution's organic character.²³

These interpretive theories reveal that formal amendment mechanisms alone do not capture the full spectrum of constitutional change. In India, where the amendment process is relatively accessible, judicial interpretation has nevertheless played a vital role in constitutional evolution. The basic structure doctrine exemplifies living constitutionalism within a structured amendment framework, allowing evolution without dissolution. It embodies the philosophical synthesis of continuity and change, where the constitution lives through interpretation while

¹⁹ Constitution of India, art. 368.

²⁰ Antonin Scalia, *A Matter of Interpretation: Federal Courts and the Law* 45–52 (Princeton Univ. Press 1997).

²¹ U.S. Const. art. V.

²² *S v. Makwanyane*, 1995 (3) SA 391 (CC) (S. Afr.).

²³ *I.R. Coelho v. State of Tamil Nadu*, (2007) 2 SCC 1 (India).

maintaining its normative core. Hence, constitutional change occurs not merely through textual revision but through interpretive renewal that aligns with democratic morality.²⁴

Constitutional Entrenchment and Amendment Thresholds

Entrenchment mechanisms protect certain constitutional provisions from facile alteration. They embody the principle that some constitutional values transcend political majority. Entrenchment may be procedural, requiring supermajorities or ratification, or substantive, as in doctrines that place limits on amendment power. Article V of the U.S. Constitution permanently entrenches equal representation of states in the Senate, demonstrating structural rigidity intended to preserve federalism.²⁵ South Africa's Section 74 similarly entrenches foundational provisions by demanding a 75% parliamentary majority, reflecting the constitutional commitment to prevent the erosion of democratic guarantees achieved after apartheid.²⁶

In India, entrenchment operates both textually and judicially. Article 368(2) mandates special majorities for amendments, while the basic structure doctrine adds a layer of substantive entrenchment through judicial interpretation. This dual entrenchment balances parliamentary sovereignty and constitutional supremacy. The decision in *Indira Nehru Gandhi v. Raj Narain*, 1975 Supp SCC 1, demonstrated that even constitutional amendments cannot violate the rule of law or free elections-core elements of the basic structure.²⁷ Such judicial entrenchment transforms constitutional rigidity into a moral restraint on power, ensuring that amendment does not degenerate into revolution.²⁸

Entrenchment and amendment thresholds express constitutional philosophy in procedural form. High thresholds ensure deliberation and consensus, fostering legitimacy. Yet excessive rigidity may alienate the constitution from social progress. South Africa's approach, with graduated thresholds, provides a model of "differentiated entrenchment," where essential values receive greater protection without immobilizing governance. In India, judicially evolved entrenchment through the basic structure doctrine ensures that constitutional amendments do not subvert foundational ideals. This harmonization of flexibility and rigidity safeguards

²⁴ Id.

²⁵ U.S. Const. art. V.

²⁶ S. Afr. Const., 1996, § 74.

²⁷ *Indira Nehru Gandhi v. Raj Narain*, 1975 Supp SCC 1 (India).

²⁸ *Kesavananda Bharati v. State of Kerala*, (1973) 4 SCC 225 (India).

democratic continuity while preserving constitutional identity against transient political pressures.²⁹

ROLE OF JUDICIAL REVIEW IN CONSTITUTIONAL AMENDMENT PROCESSES

Judicial review operates as the constitutional conscience that mediates between the constituent power and the limits of legality. It ensures that amendment power, though sovereign within constitutional bounds, remains consistent with fundamental values embedded in the constitutional structure. In India, judicial review has become an inseparable element of constitutionalism. The Supreme Court in *Kesavananda Bharati v. State of Kerala*, (1973) 4 SCC 225, recognized that Parliament's amending power under Article 368 is wide but not unlimited. The Court declared that the "basic structure" of the Constitution cannot be altered even through an amendment, thereby elevating judicial review into the realm of constitutional identity.³⁰

This doctrine redefined the relationship between amendment power and judicial authority. By interpreting amendment as a constituent yet limited power, the judiciary positioned itself as the final interpreter of constitutional continuity. The decision in *Indira Nehru Gandhi v. Raj Narain*, 1975 Supp SCC 1, further strengthened this role, holding that the right to free and fair elections forms part of the basic structure. This ensured that even constitutional amendments passed by overwhelming legislative majorities are subject to the discipline of judicial scrutiny.³¹

The doctrine of basic structure represents a fusion of constitutional morality and judicial creativity. It ensures that constitutional amendments serve reform and not revolution. In *Minerva Mills Ltd. v. Union of India*, (1980) 3 SCC 625, the Court reaffirmed that judicial review itself forms part of the basic structure, making it immune from abrogation. Thus, any attempt to eliminate judicial review or alter its essence would amount to an unconstitutional amendment. The decision reaffirmed that judicial review is not a mere procedural safeguard but an essential feature of constitutional governance.³²

²⁹ Constitution of India, art. 368.

³⁰ *Kesavananda Bharati v. State of Kerala*, (1973) 4 SCC 225 (India).

³¹ *Indira Nehru Gandhi v. Raj Narain*, 1975 Supp SCC 1 (India).

³² *Minerva Mills Ltd. v. Union of India*, (1980) 3 SCC 625 (India).

The United States Supreme Court has traditionally maintained restraint in reviewing constitutional amendments. Under Article V, once the procedural requirements are satisfied, the amendment becomes part of the Constitution, beyond judicial challenge. In *Coleman v. Miller*, 307 U.S. 433 (1939), the Court declared that the ratification of constitutional amendments is a political question, placing it outside judicial competence. Yet, judicial review has indirectly influenced constitutional evolution through interpretation. Landmark cases such as *Marbury v. Madison*, 5 U.S. (1 Cranch) 137 (1803), established the principle of judicial supremacy, enabling courts to adapt constitutional meaning in the absence of frequent formal amendments.³³

South Africa presents a contrasting model where judicial review coexists with a structured amendment process. Section 74 of the 1996 Constitution differentiates between various amendment procedures, while the Constitutional Court retains jurisdiction to determine the validity of amendments. In *Certification of the Constitution of the Republic of South Africa*, 1996 (4) SA 744 (CC), the Court asserted that constitutional amendments must conform to core constitutional principles, such as democracy, rule of law, and separation of powers. This judgment reflects a proactive judicial stance that treats amendment as a legal rather than purely political act.³⁴

The functional role of judicial review in constitutional amendment processes varies with constitutional design. In rigid systems like the U.S., judicial interpretation serves as a substitute for formal amendment, whereas in flexible systems like India, judicial review acts as a restraint on excessive amendment power. The South African approach combines these dimensions, establishing judicial review as both guardian and facilitator of constitutional transformation. It ensures that amendment processes uphold the transformative commitments of the post-apartheid order while preserving the constitution's core values.³⁵

COMPARATIVE METHODOLOGY IN CONSTITUTIONAL LAW

Comparative constitutional methodology is the intellectual bridge that connects distinct constitutional traditions into a coherent analytical framework. It allows scholars and courts to extract principles across jurisdictions while respecting contextual diversity. In studying

³³ *Coleman v. Miller*, 307 U.S. 433 (1939) (U.S.); *Marbury v. Madison*, 5 U.S. (1 Cranch) 137 (1803) (U.S.).

³⁴ *Certification of the Constitution of the Republic of South Africa*, 1996 (4) SA 744 (CC) (S. Afr.).

³⁵ S. Afr. Const., 1996, § 74.

amendment processes, comparative methodology focuses on how constitutional rigidity or flexibility interacts with political culture, institutional design, and historical experience. The Indian Supreme Court has frequently employed comparative reasoning, drawing insights from the U.S., U.K., and South Africa to evolve doctrines like the basic structure. In *Golak Nath v. State of Punjab*, AIR 1967 SC 1643, the Court referred to the U.S. experience of judicial supremacy to argue that Parliament's power to amend is not absolute.³⁶

Comparative constitutionalism proceeds on the assumption that constitutions share certain universal objectives-legitimacy, stability, and adaptability. However, methods of achieving these goals differ. The U.S. follows a model of textual entrenchment where formal amendment is rare but interpretation evolves. India follows a model of controlled flexibility where frequent amendments coexist with judicial restraint. South Africa, emerging from a history of apartheid, adopted a transformative model in which the constitution itself serves as an instrument of social justice. Comparative methodology illuminates these contrasts, revealing how constitutional design mirrors political reality.³⁷

Courts have often relied on comparative analysis to legitimize constitutional reasoning. In *S v. Makwanyane*, 1995 (3) SA 391 (CC), the South African Constitutional Court cited foreign jurisprudence to interpret the right to life and dignity. Similarly, the Indian Supreme Court in *Vishaka v. State of Rajasthan*, (1997) 6 SCC 241, drew upon international human rights conventions to frame guidelines on gender equality. Such comparative engagement strengthens constitutional interpretation by situating domestic principles within the broader framework of global constitutionalism.³⁸

Comparative methodology, however, demands sensitivity to constitutional context. Borrowing principles without understanding their institutional environment can distort constitutional meaning. In *Kesavananda Bharati*, Justice Khanna observed that while comparative reasoning aids understanding, each constitution must ultimately evolve within its own moral and political ethos. This perspective ensures that comparative study remains an instrument of illumination, not imitation.³⁹

³⁶ *Golak Nath v. State of Punjab*, AIR 1967 SC 1643 (India).

³⁷ Constitution of India, art. 368; U.S. Const. art. V; S. Afr. Const., 1996, § 74.

³⁸ *S v. Makwanyane*, 1995 (3) SA 391 (CC) (S. Afr.); *Vishaka v. State of Rajasthan*, (1997) 6 SCC 241 (India).

³⁹ *Kesavananda Bharati v. State of Kerala*, (1973) 4 SCC 225 (India).

Methodologically, comparison involves three dimensions-textual, structural, and functional. Textual comparison examines amendment clauses and procedural thresholds. Structural comparison studies the relationship between institutions that enact and interpret amendments. Functional comparison evaluates how amendment processes achieve constitutional objectives such as legitimacy, flexibility, and restraint. When applied to the amendment models of the U.S., South Africa, and India, these dimensions expose how each system balances constitutional permanence with adaptability. The U.S. relies on textual rigidity, South Africa on procedural gradation, and India on judicial moderation.⁴⁰

CONSTITUTIONAL AMENDMENT MECHANISMS – A COMPARATIVE ANALYSIS

The United States: Article V and the Idea of Constitutional Rigidity

1. Historical Context of Article V

The framers of the United States Constitution Drafted Article V as a safeguard of constitutional stability, a deliberate design to ensure that amendment would not become a tool of political whim. The debates at the Philadelphia Convention of 1787 reveal that the founders feared both legislative dominance and populist volatility. They envisioned an amendment process that would preserve the federal equilibrium while allowing slow, reasoned change. James Madison, in *The Federalist No. 43*, emphasized that the mechanism must reconcile “the propriety of guarding against the extreme facility which would render the Constitution too mutable, and that extreme difficulty which might perpetuate its discovered faults.”⁴¹

Article V, therefore, emerged as a compromise between rigidity and adaptability. The framers consciously rejected models like the British constitutional system, where parliamentary sovereignty enabled frequent change, and also avoided the excessive rigidity of the Articles of Confederation, which required unanimous consent for alteration. The new design demanded a supermajority, balancing flexibility with the need for national consensus. This framework reflected a profound distrust of concentrated power-both in government and in popular majorities-and established constitutional endurance as the central objective of American constitutionalism.⁴²

⁴⁰ S. Afr. Const., 1996, § 74(1)–(3); U.S. Const. art. V; Constitution of India, art. 368.

⁴¹ *The Federalist No. 43* (James Madison).

⁴² *Id.*

2. Procedural Requirements and Ratification Mechanisms

Article V of the U.S. Constitution establishes two methods of proposing amendments and two modes of ratification. Amendments may be proposed either by a two-thirds vote in both Houses of Congress or by a convention called upon application of two-thirds of the state legislatures. Ratification requires approval by three-fourths of the states, either through their legislatures or by conventions, as Congress may determine. This dual mechanism underscores a deep federal character-balancing national initiative and state consent in the constitutional evolution process.⁴³

The procedural structure demands an extraordinary consensus. In practice, all twenty-seven amendments have been proposed by Congress; none through a convention. This reflects institutional conservatism in the American system, where political actors prefer formal stability over procedural innovation. The ratification process similarly ensures wide geographic legitimacy. For instance, the Bill of Rights (1791) represented national reconciliation after ratification struggles, while the Reconstruction Amendments (1865–70) marked political realignment after civil war.⁴⁴

Judicial interpretation has occasionally touched the boundaries of Article V. In *Dillon v. Gloss*, 256 U.S. 368 (1921), the Supreme Court upheld Congress's power to impose a time limit on ratification, emphasizing that amendments must reflect a "contemporaneous consensus of the people." Later, in *Coleman v. Miller*, 307 U.S. 433 (1939), the Court declared questions relating to ratification political rather than judicial. This position confirmed that the amendment process, once procedurally followed, falls largely outside the scope of judicial review. The rigidity, therefore, is institutional rather than judicial—a rigidity derived from constitutional text, political culture, and the reverence accorded to the founding charter.⁴⁵

3. Judicial Approach and Political Practice

The Supreme Court of the United States has historically adopted a restrained approach towards the amendment process, reflecting the belief that constitutional change is primarily political. The Court's self-imposed limitation in *Coleman v. Miller* established that the validity of

⁴³ U.S. Const. art. V.

⁴⁴ *Id.*

⁴⁵ *Dillon v. Gloss*, 256 U.S. 368 (1921) (U.S.); *Coleman v. Miller*, 307 U.S. 433 (1939) (U.S.).

ratifications or rescissions by state legislatures is a “political question” beyond judicial determination. This doctrine preserves the sanctity of the amendment process by keeping it within the political branches, reinforcing federal comity.⁴⁶

However, judicial restraint in reviewing amendments has not prevented the judiciary from shaping constitutional meaning through interpretation. In the absence of frequent formal amendments, the U.S. Supreme Court has effectively functioned as a continuing constitutional convention. Decisions like *Brown v. Board of Education*, 347 U.S. 483 (1954), which dismantled racial segregation, and *Obergefell v. Hodges*, 576 U.S. 644 (2015), which recognized same-sex marriage, exemplify how judicial interpretation achieves substantive constitutional evolution. These judgments demonstrate that while Article V amendments are rare, the Constitution’s meaning evolves through judicial reasoning and societal change.⁴⁷

This judicial activism is not a departure from the constitutional scheme but a pragmatic adaptation. It reconciles Article V’s rigidity with the dynamic needs of governance. The U.S. judiciary thus plays an interpretive role parallel to India’s “living constitution” approach, though without the explicit basic structure limitation. The flexibility arises not from formal amendment but from interpretive innovation, transforming judicial review into a mechanism of informal constitutional change.⁴⁸

4. Critiques of Rigidity and Calls for Reform

Critics argue that Article V’s rigidity undermines democratic adaptability. The supermajority requirements for both proposal and ratification have made constitutional amendment virtually unattainable in a politically polarized era. Bruce Ackerman describes this phenomenon as “constitutional stagnation,” where democratic evolution occurs outside the text through judicial creativity and executive practice rather than formal amendment.⁴⁹ The rigidity of Article V, while preserving stability, has arguably shifted constitutional authority from the people to the courts. The amendment process, intended as a democratic safety valve, has become an instrument of inertia.

⁴⁶ *Coleman v. Miller*, 307 U.S. 433 (1939) (U.S.).

⁴⁷ *Brown v. Bd. of Educ.*, 347 U.S. 483 (1954) (U.S.); *Obergefell v. Hodges*, 576 U.S. 644 (2015) (U.S.).

⁴⁸ *Id.*

⁴⁹ Bruce Ackerman, *We the People: Transformations* 15–18 (Harvard Univ. Press 1998).

Some scholars contend that Article V's high thresholds privilege smaller states and conservative interests, distorting democratic equality. Because ratification requires the consent of three-fourths of states, a minority representing less than half the national population can effectively block any amendment. This structural bias entrenches the status quo, even when major national consensus exists for reform, as seen in failed efforts to ratify the Equal Rights Amendment despite widespread public support.⁵⁰

Comparative constitutional scholarship highlights this rigidity as exceptional. Most modern constitutions, including South Africa's 1996 Constitution and India's 1950 Constitution, incorporate procedural flexibility that permits adaptation without instability. The Indian model of controlled flexibility, guided by judicially enforced limits, ensures responsiveness without undermining constitutional permanence. South Africa's graded amendment procedure-Section 74-offers another contrast, balancing entrenchment with accessibility. The American experience, by contrast, has relied almost entirely on judicial and political interpretation to modernize constitutional norms.⁵¹

South Africa: A Hybrid Model of Flexibility and Safeguard

1. Constitutional History and Post-Apartheid Context

The South African constitutional experience represents a rare convergence of democratic transformation and constitutional design. Emerging from decades of apartheid, the 1996 Constitution sought to embed both flexibility for reform and safeguards against the return of authoritarianism. The apartheid system, rooted in legal formalism, used law as an instrument of oppression. Its dismantling required not only political negotiation but a radical reimagination of constitutional power. The *Interim Constitution of 1993* marked the transition from parliamentary supremacy to constitutional supremacy, symbolizing a new legal order grounded in equality and human rights.⁵²

The constitutional negotiation process-known as the *Convention for a Democratic South Africa (CODESA)*-involved representatives from across political divides. These dialogues culminated in a commitment that the future constitution would be supreme, justiciable, and amendable

⁵⁰ Equal Rights Amendment Proposal, H.R.J. Res. 208, 92d Cong. (1972).

⁵¹ S. Afr. Const., 1996, § 74; Constitution of India, art. 368.

⁵² Constitution of the Republic of South Africa, 1993 (Interim Constitution).

only under strict procedural limits. The drafters intentionally avoided the extremes of rigidity and total flexibility. They recognized that South Africa's history of majoritarian abuse demanded constraints on legislative amendment power, while its social transformation required an adaptable framework.⁵³

The final Constitution of 1996 institutionalized this balance. Its Preamble affirmed the commitment to "heal the divisions of the past" and establish a society based on democratic values, social justice, and fundamental human rights. This vision informed the design of amendment procedures-crafted to ensure that transformative aims could evolve within constitutional boundaries. The inclusion of entrenched clauses, differentiated thresholds, and judicial certification procedures reflected the synthesis of flexibility and safeguard unique to South Africa's constitutional architecture.⁵⁴

2. Amendment Procedure under Chapter 4, Section 74

Chapter 4, Section 74 of the 1996 Constitution governs the amendment procedure and embodies the philosophy of graduated entrenchment. It delineates different levels of rigidity based on the constitutional provision in question. Section 74(1) requires the support of at least 75 percent of the National Assembly for amendments to Section 1, which contains the founding values-democracy, rule of law, and human dignity. This high threshold signifies that these values are constitutionally inviolable, reflecting the framers' intention to make the new constitutional order resistant to authoritarian regression.⁵⁵

Section 74(2) mandates a two-thirds majority in the National Assembly for amendments to the Bill of Rights, coupled with approval from at least six of the nine provinces in the National Council of Provinces. This reinforces the principle of cooperative governance and provincial participation, thereby embedding federal characteristics within a unitary framework. Amendments to other constitutional provisions require a two-thirds majority alone, under Section 74(3), ensuring procedural flexibility for routine institutional reforms while maintaining deliberative safeguards.⁵⁶

⁵³*CODESA Negotiation Records* (1991–1993).

⁵⁴Constitution of the Republic of South Africa, 1996, pmbl.

⁵⁵S. Afr. Const., 1996, § 74(1).

⁵⁶*Id.* § 74(2)–(3).

The procedure also embodies participatory democracy. The Constitution mandates that proposed amendments be published for public comment, promoting transparency and inclusiveness. This feature transforms amendment into a civic process rather than a closed political negotiation. The *Constitutional Court* in *Certification of the Constitution of the Republic of South Africa*, 1996 (4) SA 744 (CC), upheld this structure as compliant with the 34 constitutional principles agreed upon in the Interim Constitution. The Court reasoned that the differential thresholds reflect an appropriate balance between democratic adaptability and constitutional continuity.⁵⁷

3. Role of Courts and Constitutional Principles

The Constitutional Court of South Africa plays a central role in upholding the balance between constitutional transformation and structural stability. Judicial review is not confined to ordinary legislation but extends to the amendment process itself. This expansive role derives from constitutional supremacy under Section 2, which declares the Constitution as the highest law of the land. The Court possesses the power to review even amendments if they violate procedural requirements or undermine the fundamental principles forming the constitutional foundation.⁵⁸

In *United Democratic Movement v. President of the Republic of South Africa*, 2002 (11) BCLR 1179 (CC), the Court reaffirmed that the Constitution's founding values impose substantive limits on amendment. While Parliament retains authority to amend, it cannot enact changes that abrogate the core identity of democracy, accountability, or the rule of law. This approach mirrors, though not identically, India's basic structure doctrine. However, South Africa's system relies primarily on textual entrenchment rather than judicial invention, illustrating a more structured and institutionalized mechanism of control.⁵⁹

The Court's interpretive philosophy emphasizes constitutional transformation. Justice Albie Sachs, in several judgments, described the South African Constitution as a "bridge" between past oppression and future justice. This metaphor underscores that constitutional amendment serves transformation within continuity. The judiciary's responsibility, therefore, lies in ensuring that amendments promote, not pervert, the transformative project. In *Premier*,

⁵⁷*Certification of the Constitution of the Republic of South Africa*, 1996 (4) SA 744 (CC) (S. Afr.).

⁵⁸S. Afr. Const., 1996, § 2.

⁵⁹*United Democratic Movement v. President of the Republic of South Africa*, 2002 (11) BCLR 1179 (CC) (S. Afr.).

KwaZulu-Natal v. President of the Republic of South Africa, 1996 (12) BCLR 1557 (CC), the Court struck down a constitutional amendment that undermined the participatory principles of cooperative governance, reinforcing its role as guardian of constitutional principles.⁶⁰

4. Case Law: *Certification of the Constitution of the Republic of South Africa* (1996)

The *Certification Case* remains the cornerstone of South Africa's constitutional jurisprudence. The Interim Constitution required that the final Constitution be certified by the Constitutional Court as complying with the 34 Constitutional Principles. This unprecedented mechanism gave the judiciary an active role in the constitution-making process, ensuring that the final document reflected negotiated values rather than transient political compromise. The *Certification of the Constitution of the Republic of South Africa*, 1996 (4) SA 744 (CC), thus institutionalized judicial guardianship at the very moment of constitutional birth.⁶¹

The Court examined whether the amendment procedures under Chapter 4, Section 74, and other provisions met the standards of constitutional supremacy, separation of powers, and accountability. It upheld the differential thresholds, noting that they create a “carefully calibrated balance between rigidity and flexibility.” The Court further affirmed that constitutional supremacy was entrenched through procedural safeguards that make unconstitutional amendment practically impossible. However, the Court rejected certain clauses that concentrated excessive power in the National Assembly, mandating revisions before certification. This exemplified judicial intervention to ensure the constitution's democratic integrity.⁶²

The *Certification Case* also articulated the transformative vision of the new constitutional order. The Court emphasized that the Constitution is a “document of transition,” designed to foster equality and social justice while protecting against authoritarian relapse. By linking amendment mechanisms to constitutional values, the judgment transformed procedural law into an instrument of moral and political continuity. The Court's reasoning established that constitutional amendments, though permissible, cannot dilute the essence of democracy or the

⁶⁰*Premier, KwaZulu-Natal v. President of the Republic of South Africa*, 1996 (12) BCLR 1557 (CC) (S. Afr.).

⁶¹*Certification of the Constitution of the Republic of South Africa*, 1996 (4) SA 744 (CC) (S. Afr.).

⁶²*Id.*

rule of law.⁶³

India: The Doctrine of Basic Structure and Controlled Flexibility

1. Article 368 and Evolution of Amendment Powers

Article 368 of the Constitution of India stands at the intersection of democratic will and constitutional limitation. It provides the procedure for amendment but not the substance of amending power. The framers, guided by B. R. Ambedkar, designed Article 368 to strike a balance between flexibility and permanence. Unlike the rigid Article V of the U.S. Constitution, it allows Parliament to amend almost all provisions, though with varying degrees of procedural rigor. Yet, the provision was never intended to grant unlimited constituent power to Parliament. The ambiguity of the term “amendment” later became the focal point of judicial scrutiny.⁶⁴

The text of Article 368 grants Parliament authority to amend by way of “addition, variation, or repeal” of any constitutional provision. Certain amendments also require ratification by at least half of the states, ensuring federal participation. The framers believed that such a structure would prevent both constitutional stagnation and constitutional anarchy. However, the open-ended phrasing of “amendment” invited contestation regarding whether there existed any inherent limitations on Parliament’s amending power. The Supreme Court’s evolving interpretation gradually transformed Article 368 from a procedural clause into a cornerstone of constitutional philosophy.⁶⁵

2. Landmark Cases: *Shankari Prasad*, *Golak Nath*, *Kesavananda Bharati*

The constitutional history of India’s amendment jurisprudence unfolds through three landmark decisions—*Shankari Prasad Singh Deo v. Union of India*, AIR 1951 SC 458; *Golak Nath v. State of Punjab*, AIR 1967 SC 1643; and *Kesavananda Bharati v. State of Kerala*, (1973) 4 SCC 225. Each represents a distinct phase in the evolution of the amending power.

In *Shankari Prasad*, the Supreme Court upheld the First Amendment, ruling that Parliament’s power to amend extended to all provisions, including fundamental rights. The Court reasoned that the term “law” under Article 13 did not encompass constitutional amendments, as they

⁶³Id.

⁶⁴Constitution of India, art. 368.

⁶⁵Id.

were exercises of constituent, not legislative, power. This judgment established a precedent of parliamentary supremacy in the amendment domain.⁶⁶

However, in *Golak Nath*, a constitutional bench reversed this position. The Court held that fundamental rights are immutable and cannot be abridged by amendment. It declared that the power to amend lies not in Article 368 but under the residuary powers of Parliament. Therefore, such amendments would fall within the ambit of “law” under Article 13 and be subject to judicial review. This decision marked a shift toward rigidity, freezing the Constitution’s capacity for reform. Justice Subba Rao, delivering the majority opinion, warned that unlimited amendment power could endanger constitutional freedoms.⁶⁷

The pendulum swung again in *Kesavananda Bharati*. The thirteen-judge bench reconciled the two doctrines by formulating the “basic structure doctrine.” The Court held that Parliament possesses wide amending power under Article 368, but it cannot alter the essential features of the Constitution. Chief Justice S. M. Sikri enumerated components of this basic structure—supremacy of the Constitution, separation of powers, rule of law, judicial review, and federalism. The judgment harmonized flexibility with restraint, making India’s constitutional amendment process one of “controlled flexibility.”⁶⁸

3. Judicial Balancing of Parliamentary Supremacy and Constitutional Supremacy

The Supreme Court of India has consistently sought to reconcile the competing doctrines of parliamentary sovereignty and constitutional supremacy. Unlike the United Kingdom, where Parliament reigns supreme, the Indian Constitution envisages a system of limited government under a written charter. Judicial review operates as the mechanism that ensures Parliament’s amendment power remains subordinate to constitutional supremacy. This interpretive stance aligns India with global constitutionalism, where the constitution, not the legislature, is the ultimate sovereign authority.⁶⁹

The balance between these doctrines is maintained through judicial innovation rather than textual amendment. In *Kesavananda Bharati*, the Court declared that while Parliament holds

⁶⁶*Shankari Prasad Singh Deo v. Union of India*, AIR 1951 SC 458 (India).

⁶⁷*Golak Nath v. State of Punjab*, AIR 1967 SC 1643 (India).

⁶⁸*Kesavananda Bharati v. State of Kerala*, (1973) 4 SCC 225 (India).

⁶⁹Constitution of India, art. 13.

constituent power, it is derivative, not original. The amending authority derives its legitimacy from the Constitution itself and cannot destroy the source of its own existence. This principle differentiates constitutional amendment from constitutional revision or replacement. The judiciary thus acts as the constitutional sentinel, ensuring that amendment does not transform into revolution.⁷⁰

The subsequent jurisprudence expanded this equilibrium. In *Waman Rao v. Union of India*, (1981) 2 SCC 362, the Court drew a temporal line, validating all pre-*Kesavananda* amendments while subjecting future ones to basic structure scrutiny. This demonstrated judicial pragmatism in preserving legal certainty. Similarly, in *S. R. Bommai v. Union of India*, (1994) 3 SCC 1, the Court recognized federalism as part of the basic structure, preventing Parliament from centralizing power excessively. Through these decisions, the judiciary fortified constitutional supremacy without paralyzing democratic governance.⁷¹

COMPARATIVE EVALUATION AND CRITICAL ANALYSIS

The comparative study of constitutional amendment models in the United States, South Africa, and India exposes the contrasting philosophies underlying constitutional design-between endurance and adaptability, rigidity and flexibility, procedure and principle. Each model reflects a distinct historical consciousness. The U.S. Constitution embodies distrust of rapid change, embedding rigidity as a safeguard against transient majorities. India's model, by contrast, evolved through political contestation and judicial innovation into a system of controlled flexibility, balancing parliamentary will and constitutional morality. South Africa's framework represents a modern synthesis, combining procedural differentiation with substantive entrenchment to secure both transformation and stability.⁷²

The U.S. experience illustrates the strengths and limitations of constitutional rigidity. The infrequency of formal amendments-only twenty-seven since 1789-has preserved institutional continuity. Yet, this rigidity has displaced constitutional evolution from formal amendment to judicial interpretation. The Supreme Court has effectively served as a substitute amending body, shaping constitutional meaning through landmark rulings such as *Brown v. Board of Education*, 347 U.S. 483 (1954), and *Obergefell v. Hodges*, 576 U.S. 644 (2015). This reliance

⁷⁰*Kesavananda Bharati v. State of Kerala*, (1973) 4 SCC 225 (India).

⁷¹*Waman Rao v. Union of India*, (1981) 2 SCC 362 (India); *S. R. Bommai v. Union of India*, (1994) 3 SCC 1 (India).

⁷²U.S. Const. art. V; S. Afr. Const., 1996, § 74; Constitution of India, art. 368.

on judicial activism underscores the paradox of rigidity-it sustains stability but shifts constitutional authorship from people to judges.⁷³

India's constitutional trajectory offers a middle path. Article 368 provides procedural accessibility, while the doctrine of basic structure ensures restraint. The balance achieved in *Kesavananda Bharati v. State of Kerala*, (1973) 4 SCC 225, remains a model of interpretive equilibrium. It prevents majoritarian excess without freezing constitutional reform. Judicial review operates as a stabilizing mechanism, ensuring that political amendments conform to higher constitutional values. This controlled flexibility aligns constitutional change with constitutional identity, making India's model particularly resilient to political volatility.⁷⁴

South Africa's constitutional architecture represents a deliberate fusion of rigidity and adaptability. Section 74's graded amendment thresholds protect core democratic values while enabling transformation through consensus. The Constitutional Court's power to review and certify amendments, affirmed in *Certification of the Constitution of the Republic of South Africa*, 1996 (4) SA 744 (CC), introduces an institutional safeguard absent in the U.S. and India. The model integrates judicial oversight into the amendment process itself, ensuring that procedural compliance coexists with substantive constitutional fidelity.⁷⁵

CONCLUSION AND SUGGESTIONS

Constitutional amendment serves as the bridge between continuity and change. The comparative analysis of the United States, South Africa, and India reveals that the form and function of amendment provisions reflect not only legal design but political temperament. Each system pursues the same ideal-maintaining constitutional stability while enabling necessary evolution-yet they achieve it through divergent philosophies. The United States privileges rigidity as a shield against instability, South Africa integrates flexibility with procedural discipline, and India balances the two through judicial doctrine and democratic adaptation.⁷⁶

The American model of Article V shows remarkable durability but limited responsiveness. Its high thresholds have preserved institutional integrity for more than two centuries. However, this endurance has come at the cost of democratic adaptability. The rigidity of the U.S.

⁷³*Brown v. Bd. of Educ.*, 347 U.S. 483 (1954) (U.S.); *Obergefell v. Hodges*, 576 U.S. 644 (2015) (U.S.).

⁷⁴*Kesavananda Bharati v. State of Kerala*, (1973) 4 SCC 225 (India).

⁷⁵*Certification of the Constitution of the Republic of South Africa*, 1996 (4) SA 744 (CC) (S. Afr.).

⁷⁶U.S. Const. art. V; S. Afr. Const., 1996, § 74; Constitution of India, art. 368.

Constitution has shifted the burden of evolution to judicial interpretation, making the Supreme Court the de facto agent of constitutional transformation. While this has preserved the sanctity of the text, it has diluted the participatory nature of amendment as a democratic process. A reform towards moderate procedural flexibility could revitalize the people's role in constitutional evolution.⁷⁷

South Africa's hybrid model demonstrates a sophisticated reconciliation of transformation and restraint. The graded amendment procedure under Section 74, reinforced by judicial certification, embeds constitutionalism within a transformative framework. It recognizes that the constitution must serve as both foundation and catalyst for social change. This model is uniquely suited to societies emerging from systemic injustice, where constitutional evolution is essential to achieve equality and reconciliation. Other democracies can adopt its principle of "graduated entrenchment" to protect core values while allowing democratic reform.⁷⁸

India's constitutional experience underscores the power of judicial innovation in mediating amendment dynamics. The doctrine of basic structure has become the moral compass of constitutional change. It preserves democratic flexibility while preventing legislative excess. Yet, the doctrine's open texture also invites subjectivity, risking judicial overreach. Future constitutional reform in India should aim to clarify the scope of the basic structure through interpretive consistency. Additionally, the process of amendment could be made more participatory by mandating wider consultation and legislative transparency, enhancing democratic legitimacy.⁷⁹

⁷⁷*Obergefell v. Hodges*, 576 U.S. 644 (2015) (U.S.); Bruce Ackerman, *We the People: Transformations* 98–101 (Harvard Univ. Press 1998).

⁷⁸*Certification of the Constitution of the Republic of South Africa*, 1996 (4) SA 744 (CC) (S. Afr.).

⁷⁹*Kesavananda Bharati v. State of Kerala*, (1973) 4 SCC 225 (India); *Minerva Mills Ltd. v. Union of India*, (1980) 3 SCC 625 (India).

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