# Amendment of the US Constitution

Article V · Step-by-step procedure



## Text of Article V

> "The Congress, whenever two thirds of both Houses shall deem it necessary, shall propose Amendments to this Constitution, or, on the Application of the Legislatures of two thirds of the several States, shall call a Convention for proposing Amendments, which, in either Case, shall be valid to all Intents and Purposes, as Part of this Constitution, when ratified by the Legislatures of three fourths of the several States, or by Conventions in three fourths thereof, as the one or the other Mode of Ratification may be proposed by the Congress; Provided that no Amendment which may be made prior to the Year One thousand eight hundred and eight shall in any Manner affect the first and fourth Clauses in the Ninth Section of the first Article; and that no State, without its Consent, shall be deprived of its equal Suffrage in the Senate."

- Two stages: **Proposal** (federal level) and **Ratification** (State level)
- 2 ways to propose × 2 ways to ratify = **4 possible routes**

## The Procedure at a Glance

**STEP 1 · PROPOSAL** Congress (2/3rd of both Houses) **or** a National Convention called on the application of 2/3rd of State legislatures (34 of 50)

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**NO PRESIDENT** The proposal is not sent to the President for signature or veto

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**STEP 2 · ARCHIVIST** Joint resolution goes to the Archivist of the United States; the Office of the Federal Register (OFR) processes it

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**STEP 3 · TO THE STATES** The Archivist sends it to every State Governor; Congress has chosen the mode: State legislatures or State conventions

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**STEP 4 · RATIFICATION** 3/4th of the States must ratify (38 of 50); each State sends its certified ratification to the Archivist

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**STEP 5 · CERTIFICATION** OFR verifies the documents; the Archivist certifies the amendment and it is published in the Federal Register

## Step 1: Proposal

### Method 1: By Congress UGC NET

- Proposed as a **joint resolution**; can begin in either House
- Must be passed by **2/3rd of both Houses**
  2/3rd of the members present and voting, provided a quorum is present: National Prohibition Cases (1920).
- All 27 amendments so far were proposed this way

### Method 2: By a National Convention

- Congress **must call** a Convention when the legislatures of **2/3rd of the States** (34 of 50) apply
- **Never used** so far

### NOTE: No role of the President

- The proposal is NOT presented to the President; no signature, no veto
- Hollingsworth v. Virginia (1798): the President has no role in the amendment process

## Step 2: Sent to the Archivist

- The joint resolution goes to the **Archivist of the United States** (head of the National Archives)
  The duty is given by statute: 1 U.S.C. § 106b.
- The **Office of the Federal Register** (OFR) handles the paperwork for the Archivist
- The OFR prepares the joint resolution in slip-law form and an information package for the States

## Step 3: Submitted to the States

- The Archivist sends a formal letter to **each State Governor** with the proposed amendment
- **Congress decides** the mode of ratification:
  - by **State legislatures** (used for 26 amendments), or
  - by **State ratifying conventions**
    Used only once: the **21st Amendment** (1933), which repealed Prohibition (18th Amendment).
- Congress may also fix a **time limit** for ratification (usually 7 years)
  First fixed for the 18th Amendment. Upheld in Dillon v. Gloss (1921). Coleman v. Miller (1939): questions of timeliness are political questions for Congress.

## Step 4: Ratification

- Ratification by **3/4th of the States = 38 of 50** UGC NET
- Each State sends the original or a certified copy of its action to the Archivist
- The amendment becomes part of the Constitution as soon as **3/4th of the States** ratify it
  The later certification only records this fact.

## Step 5: Verification & Certification

- The OFR checks each State document for legal sufficiency and an authenticating signature
- When 38 valid ratifications are received, the OFR drafts a formal **proclamation** for the Archivist
- The Archivist **certifies** that the amendment is valid and part of the Constitution
- The certificate is published in the **Federal Register** and the **U.S. Statutes at Large**
- The Archivist's role is **ministerial**: he does not judge whether the amendment is good or bad

## Limits on Amendment (Entrenched Clauses)

1. Until **1808**, no amendment could affect Art. I, Section 9, Clauses 1 and 4
   Clause 1: import of slaves; Clause 4: capitation (direct) tax. This limit has expired.
2. No State can be deprived of its **equal suffrage in the Senate** without its consent
   The only limit still in force.

## Important Amendments UGC NET

**X Amendment (1791): Reserved powers of the States**
"The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people."

- Residuary powers lie with the **States**; this is why the US has a weak Centre
  Compare: in India (Art. 248) and Canada, residuary powers lie with the Centre.

**VI Amendment (1791): Rights of the accused in criminal trials**

"In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence."

- Speedy & public trial · impartial jury · informed of the charge · confront witnesses · compulsory process for witnesses · right to counsel
- Gideon v. Wainwright (1963): the State must give a lawyer to an accused who cannot afford one

  India: speedy trial under Art. 21 (Hussainara Khatoon, 1979); right to counsel under Art. 22(1); free legal aid under Art. 39A.

**XV Amendment (1870): Right to vote regardless of race**

Section 1: "The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude."

Section 2: Congress has power to enforce it by appropriate legislation.

- One of the three **Reconstruction Amendments** (XIII, XIV, XV) after the Civil War
- It did not give women the vote; that came with the **XIX Amendment** (1920)

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## All 27 Amendments at a Glance

| No. | Year | What it is about |
|---|---|---|
| **I** | 1791 | Freedom of religion, speech, press, assembly and petition |
| **II** | 1791 | Right to keep and bear arms |
| **III** | 1791 | No quartering of soldiers in homes |
| **IV** | 1791 | No unreasonable searches and seizures; warrants need probable cause |
| **V** | 1791 | Grand jury, no double jeopardy, no self-incrimination, due process, just compensation |
| **VI** | 1791 | **Speedy and public trial, jury, right to counsel** |
| **VII** | 1791 | Jury trial in civil cases |
| **VIII** | 1791 | No excessive bail or fines; no cruel and unusual punishment |
| **IX** | 1791 | Rights not listed are still retained by the people |
| **X** | 1791 | **Powers not given to the US are reserved to the States or the people** |
| **XI** | 1795 | A State cannot be sued in federal court by citizens of another State or a foreign country |
| **XII** | 1804 | Separate electoral votes for President and Vice President |
| **XIII** | 1865 | Abolition of slavery |
| **XIV** | 1868 | Citizenship, due process and equal protection against the States |
| **XV** | 1870 | **No denial of the right to vote on account of race, color or previous servitude** |
| **XVI** | 1913 | Federal income tax |
| **XVII** | 1913 | Direct election of Senators by the people |
| **XVIII** | 1919 | Prohibition of alcohol |
| **XIX** | 1920 | Women's right to vote |
| **XX** | 1933 | Start dates of terms (President: 20 January; Congress: 3 January) |
| **XXI** | 1933 | Repeal of Prohibition (XVIII); only one ratified by State conventions |
| **XXII** | 1951 | President cannot be elected more than twice |
| **XXIII** | 1961 | Electoral votes for Washington, D.C. |
| **XXIV** | 1964 | No poll tax in federal elections |

| | | |
|---|---|---|
| **XXV** | 1967 | Presidential succession and disability |
| **XXVI** | 1971 | Voting age 18 |
| **XXVII** | 1992 | A change in pay of Members of Congress takes effect only after the next election |

## Exam Facts

| Point | Fact |
|---|---|
| **Total amendments** | **27** |
| **Proposed by Congress and sent to the States** | 33 (27 ratified, 6 not ratified) |
| **Bill of Rights** | First 10 amendments, ratified in **1791** |
| **Only amendment ratified by State conventions** | **21st** (1933) |
| **Amendment that was repealed** | **18th** (Prohibition, 1919), repealed by the 21st |
| **Latest amendment** | **27th** (1992): proposed in 1789, ratified after more than 202 years |
| **Fastest ratified** | **26th** (1971, voting age 18): about 100 days |
| **Type of Constitution** | **Rigid** |

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## USA vs India

| Point | USA (Art. V) | India (Art. 368) |
|---|---|---|
| **Who proposes** | Congress, or a National Convention on the States' request | Only Parliament (either House); States cannot initiate |
| **Majority** | 2/3rd of both Houses | Majority of total membership + 2/3rd of members present and voting in each House |
| **Role of States** | Ratification by 3/4th of the States is **always** needed | Ratification by **half** of the States only for certain provisions |
| **Head of State** | No role; not sent to the President | President **must** give assent (24th Amendment, 1971) |
| **Ratification mode** | Chosen by Congress: legislatures or conventions | Resolution of State legislatures |
| **Limits** | Equal suffrage in the Senate | Basic structure (Kesavananda Bharati, 1973) |

### Quick Revision

- ✓ Article V = amendment procedure
- ✓ Proposal: 2/3rd of both Houses of Congress, or a Convention on the application of 2/3rd of States (never used)
- ✓ Ratification: 3/4th of the States (38 of 50), by legislatures or by conventions, as Congress decides
- ✓ NOT sent to the President (Hollingsworth v. Virginia, 1798)
- ✓ Archivist of the United States + Office of the Federal Register: send to States, verify, certify, publish
- ✓ 27 amendments; 21st is the only one ratified by conventions
- ✓ X = reserved powers of States; VI = rights of the accused; XV = no denial of vote on account of race