



Reconciling Constitutional Ideals: A Contemporary Reassessment of the Basic Structure Doctrine

Ms. Himgauri Patil¹

Abstract

The Indian Constitution establishes a framework where no governmental organ is supreme, mandating that all operate within its boundaries. While the Constitution should provide explicit mechanisms for judicial review, the judiciary has, in exceptional cases, developed doctrines like the 'basic structure' to ensure constitutional supremacy. The absence of explicit limitations on parliamentary amendment power in Article 368 led to the Ninth Schedule's problematic expansion, prompting the Supreme Court in the Kesavananda Bharati case to introduce the 'basic structure' doctrine, imposing implied limits. It emerged as a mechanism to impose limitations on Parliament's constituent power. However, the doctrine's ambiguity and lack of textual basis, coupled with the absence of clear criteria for its application, have raised concerns about judicial overreach and potential violations of the separation of powers. This paper examines the rationale behind the 'basic structure' doctrine, its composition, and its impact on the separation of powers. It also considers the need for explicit constitutional amendments to define the doctrine and address the risks associated with individual judicial interpretations. This paper examines the academic and historical origins of the doctrine, its evolution post-Kesavananda Bharati, and the constitutional and jurisprudential debates surrounding it in the contemporary era. The doctrine's applicability to Parliament's legislative authority, the precedential strength of Kesavananda Bharati under the doctrine of stare decisis, the concept of legislative overruling and its implications for constitutional governance, and the intersection of constitutional morality with the basic structure doctrine. These issues are integral to the broader discourse on separation of powers and judicial review. This paper critically engages with these themes, situating them within the present-day realities of India's constitutional framework.

Key Words: *Basic structure, Judicial Review, Constitution, Separation of Power, Independent Judiciary*

Introduction

Constitutions underpin democracies by providing a supreme law that legitimizes all other laws and political actions. They embody a nation's history, culture, and aspirations for civil order. The drafting of India's Constitution involved considering the past, adapting to the present, and allowing flexibility for the future, with certain 'basic principles' deemed unalterable. The judiciary is responsible for interpreting laws, including the Constitution, and safeguarding its integrity, leading to doctrines like the basic structure doctrine. This doctrine, inspired by Professor Dietrich Conrad's theory of implied limitation, was first debated in the Golaknath case (1967), though not initially accepted. It arose from concerns about Parliament's power to amend the Constitution.

¹ Legal Consultant, Gujarat High Court, Ahmedabad, Gujarat



The Sankari Prasad case (1951) initially affirmed Parliament's unlimited amending power, but later, in Sajan Singh, concerns were raised about preserving the Constitution's 'basic' features. Golaknath then restricted Parliament's power to modify Part III of the Constitution. Parliament responded with the Constitution (Twenty-fourth Amendment) Act, 1971, aiming to shield constitutional amendments from judicial review.²

The Kesavananda Bharati case (1973) established that while Parliament has broad amending powers, it cannot destroy the Constitution's 'basic structure.'³ This doctrine protects the fundamental principles of the Constitution, even without a specific list. Landmark cases like Raj Narain, Kihoto Hollohan, Minerva Mills, and Waman Rao have further defined the basic structure.

Constitutional changes in India can be formal or informal. Formal changes involve amendments to the written Constitution, like those under Article 368, or ordinary laws passed by Parliament. Article 368 balances flexibility and rigidity, making it easier to amend than the US Constitution, yet the Supreme Court's basic structure doctrine limits Parliament's power. Ordinary formal changes, while not considered amendments under Article 368, can still face judicial review. Informal changes occur without formal amendment. One type is judicially created constitutional change (JCICC), where court interpretations alter the Constitution's meaning. Roznai categorizes these as 'constitutionally sound' (CSICC) or 'unconstitutional' (UICC) if they change the essence of the Constitution. Examples include the Kesavananda case (basic structure doctrine), the Second Judges' Case (judicial appointments), and T.M.A. Pai Foundation (limits on fundamental rights).⁴

Informal changes also arise from evolving popular norms, ideals, and constitutional values. Legal theories must account for how law adapts to these shifts. Judges, as interpreters of societal values, influence this process. The Sarika case, concerning the protection of a Hindu idol, illustrates how changing cultural norms can shape judicial decisions. Similarly, the NALSA judgment, expanding the definition of 'sex' in Article 15(1) to include 'gender' and 'sexual orientation', reflects societal progress in non-discrimination.

The Indian Supreme Court's NALSA judgment, by including 'gender' and 'sexual orientation' in the definition of 'sex' under Article 15(1), exemplifies how societal shifts toward non-discrimination can lead to informal constitutional changes. Similarly, the Fourth Judges' Case expanded the understanding of 'judicial independence,' reflecting evolving constitutional values.⁵ In the Puttaswamy judgment, technological advancements and social media influenced the Court's interpretation of the right to privacy. More recently, the Ranjitsinh judgment prioritized climate change and environmental conservation, emphasizing that international law can inform the

² Shankari Prasad vs. Union of India (1951) Summary for UPSC Polity Notes - notes.saralupsc.com. <https://notes.saralupsc.com/shankari-prasad-vs-union-of-india-1951-summary-for-upsc-polity-notes>

³ judgments.ecourts.gov.in. (n.d.). *The Basic Structure Judgment - Kesavananda Bharati Judgment - Home*. <https://judgments.ecourts.gov.in>

⁴ Supreme Court Observer. (2023). *Determination of Minority Status: Court in Review - Supreme Court Observer*. [online] Available at: <https://www.scobserver.in/journal/determination-of-minority-status-court-in-review>

⁵ Constitutional Law and Philosophy. (2014). *NALSA v. UoI: The Supreme Court on transsexuals, and the future of Koushal v. Naz*. [online] Available at: <https://indconlawphil.wordpress.com>



interpretation of domestic law, even without explicit legislative enactment. These cases demonstrate how evolving norms, ideals, and values can drive informal constitutional change.

Guiding Constitutional Evolution: The Basic Structure Doctrine As A Check On Amendments

Early Judicial Position

Much has been written about the basic structure doctrine's evolution and legitimacy. This section focuses on the debate between constitutional entrenchment and change before the Kesavananda case.

The Sankari Prasad case first addressed limitations on amendment power (Article 368). The Court upheld the Constitution (First Amendment) Act, stating that constitutional law, made through constituent power, is distinct from ordinary law and not subject to fundamental rights under Article 13(2). Sajjan reiterated this view, though some judges expressed reservations.⁶

The Golaknath decision, by a narrow 6:5 margin, reversed Sankari Prasad and Sajjan. It established three key points: 1) Amendment power is a residuary power under Article 246, not inherent in Article 368; 2) Constitutional amendments are 'law' under Article 13 and subject to fundamental rights; and 3) Parliament cannot amend Part III to curtail fundamental rights. Dissenting judges argued that amendment power was unlimited and outside Article 13(2). The judgment received both praise and criticism. Following Golaknath, Parliament passed the 24th Constitutional Amendment to override the decision by amending Articles 13 and 368. This sets the stage for the Kesavananda case.

Kesavananda and the Birth of the Basic Structure Doctrine

In 1973, the Supreme Court in Kesavananda convened a 13-judge bench to assess the validity of the 24th Amendment. The Court issued eleven separate opinions, with the following key takeaways:

Regarding limitations on Parliament's amending power (Article 368), six judges argued it was unlimited, extending to all parts of the Constitution. Justice Mathew noted, however, that the power couldn't be used to entirely abolish the Constitution. Another six judges believed that while amendment was possible, it couldn't abrogate or undermine fundamental rights.

Justice Khanna broke the tie, stating that amendment power was plenary but subject to the Constitution's basic structure or framework. This established the basic structure doctrine, which some scholars consider a form of "unconstitutional constitutional amendments." Khanna also asserted that amendment power was inherent in Article 368 itself, not a residual power as Golaknath had suggested. On the applicability of fundamental rights to constitutional amendments, a 12:1 majority held that amendments under Article 368 are not considered 'law' under Article 13(2), thus exempting them from fundamental rights challenges and overruling Golaknath on this point.⁷

Following this analysis, the Supreme Court largely validated the 24th Amendment (except for a section limiting judicial review) and determined that the right to property

⁶ Manupatracademy.com. (2025). *Manupatra Academy*. [online] <https://www.manupatracademy.com>

⁷ Khosla, M. (2016). *Constitutional Amendment*. [online] Ssrn.com.



wasn't part of the basic structure. While a summary prepared by some judges was affirmed in later cases, some argue it doesn't accurately reflect the Kesavananda ruling, as it overlooked the reasoning of judges who favored limiting legislative power. Despite this, the basic structure doctrine remains a check on unconstitutional amendments. An attempt to overturn the Kesavananda ruling via the 42nd Amendment (introducing Article 368(4) and (5)) was later struck down in *Minerva Mills* as a violation of the basic structure itself.

Post-Kesavananda: Judicial Evolution of the Basic Structure Doctrine

Since Kesavananda, the Supreme Court has applied the basic structure doctrine in various cases, developing different tests.

- I. **The Chandrachud Test:** In *Narain*, the Court struck down amendments that immunized Indira Gandhi from election disqualification, deeming them violations of democracy, free elections, rule of law, and judicial review. Justice Chandrachud emphasized procedural compliance with Article 368 and whether the amendment damages the basic structure.⁸ He advocated examining a feature's place in the Constitution, its purpose, and the impact of its denial.
- II. **The 'Identity' and 'Width' Test:** Nagraj refined the Chandrachud test, creating a twin 'identity and width' test (also called the "essence of the rights" test). First, the Court must locate the principle within constitutional provisions. Second, it must assess if the amendment alters the principle's identity.⁹ If it does, the 'width' test determines if the amendment obliterates the principle or replaces it with something contrary.
- III. **"Direct Effect and Impact" or "The Rights" Test:** Introduced in *Coelho*, this test (building on the *Minerva* case) concerns laws inserted into Schedule IX, which aims to protect them from fundamental rights challenges. The Court in *Minerva* had struck down a move to insulate laws promoting Directive Principles from Articles 14 and 19 scrutiny. In *Coelho*, the Court stated that if a law added to Schedule IX *after* Kesavananda violates fundamental rights, it can be challenged for damaging the basic structure, especially the "golden triangle" of Articles 14, 19, and 21. Coelho's "direct effect and impact" test requires determining if the law violates fundamental rights and, if so, whether that violation destroys the basic structure.¹⁰ This test overrides the *Narain* and *Nagraj* tests in cases involving Schedule IX challenges; those earlier tests apply to all other basic structure doctrine challenges.

The Interplay of Basic Structure and Separation of Powers

Following the *Kesavananda Bharati* and *Indira Gandhi*¹¹ cases, the 42nd Amendment Act of 1976 added clauses 4 and 5 to Article 368, explicitly prohibiting judicial review of constitutional amendments. This amendment aimed to circumvent the implications of *Kesavananda Bharati*.

⁸ REPORTABLE IN THE SUPREME COURT OF INDIA, <https://api.sci.gov.in/supremecourt>

⁹ Faizan, M., Venugopal, P., Rao Justice, Z., Yacoob Justice, B., Jeevan, R., Granville, A., Singh, M., Galanter, V., Sarathi, P., Craig, A. and Lakshminath

¹⁰ Archive.org. (2015). *Full text of 'Aadhaar Supreme Court Cases'*

¹¹ *Supra* 3



However, in *Minerva Mills Ltd. v. Union of India*¹², the Supreme Court deemed these clauses unconstitutional, ruling that they damaged and destroyed the basic structure of the Constitution. *Minerva Mills* clarified the basic structure doctrine, safeguarding the Indian Constitution and legal system's identity against legislative attempts to radically alter them.

The Supreme Court reaffirmed and applied the basic structure doctrine in *Waman Rao v. Union of India*. In *I.R. Coelho*¹³ case, the Constitution Bench observed that, according to *Waman Rao v. Union of India* amendments to the Constitution made on or after 24th April, 1973 by which the Ninth Schedule was amended from time to time by inclusion of various Acts, regulations therein were open to challenge on the ground that they, or any one or more of them, are beyond the constituent power of Parliament since they damage the basic or essential features of the Constitution or its basic structure.

The Constitution Forty-Fifth Amendment Bill, 1978 (Referendum Proposal)

The Constitution (Forty-Fifth) Amendment Bill, 1978, during the Janata Government's rule, attempted to exhaustively enumerate basic structure elements, requiring a referendum for their amendment. These included:

- The secular or democratic character of the Constitution
- Rights of citizens under Part III
- Free and fair elections based on adult suffrage
- Independence of the Judiciary
- The amendment of the provision for the entrenchment of the above basic features and the requirement for the referendum.

Amendments to these areas would require approval through a referendum with a minimum voter turnout of 51% and a majority vote in favor. The opposition to the referendum wasn't due to entrenching the basic structure, but rather because it could lead to its destruction by popular vote. Some questioned leaving such critical matters to popular will.¹⁴

The basic structure doctrine gained legitimacy due to perceived abuses of constituent power. Ultimately, the Rajya Sabha, where the Congress Party held a majority, did not approve the proposed amendments. Drawing from Montesquieu's theory of separation of powers, the Indian Supreme Court has recognized this principle as a core element of the Constitution's basic structure. The Indian Constitution explicitly separates powers among the legislative, executive, and judicial branches. The Supreme Court first implied limitations on Parliament's amendment power (viewed as law-making power) in *Golaknath*. Later, through the basic structure doctrine, it significantly curtailed this power. While some argue *Kesavananda Bharati*¹⁵ overruled *Golaknath*,¹⁶ the author contends both cases similarly limit

¹² Sci.gov.in. (2024). *Digital Supreme Court Reports*. https://digiscr.sci.gov.in/view_judgment

¹³ Manupatra (2025). *Articles – Manupatra*. [online] Manupatra.com. <https://articles.manupatra.com>

¹⁴ View (2020). *Referendums and the Indian Constitution*. [online] The 'Basic' Structure. <https://thebasicstructureonlaw.wordpress.com>

¹⁵ Supra 3

¹⁶ Supra 2



Parliament's amending power. However, the Supreme Court in Keshavananda's case has overruled the part of the decision of Golaknath with respect to the non-acceptance of the constitutional amendment as law and upholding the constitutional validity of 24th Amendment. Otherwise, it makes no difference between both the decisions.

Critics like R. Dhavan and A. Shourie argue the Court has expanded judicial review beyond constitutional boundaries and encroached on executive and legislative powers. A central critique is that the basic structure doctrine subjects every parliamentary amendment to judicial approval, potentially leading to a "Government of Judges" where the judiciary has the final say, rather than Parliament.¹⁷

P.K. Tripathi echoed this concern, suggesting that the Court, not the people or Parliament, would determine what the Constitution *ought* to be. The Court would effectively act as the opposition, potentially overriding legislation it disfavours and governing routine matters typically left to Parliament and the Cabinet.¹⁸

Beyond Amendments: Applicability to Ordinary Legislation

The question of whether the basic structure doctrine applies to ordinary legislation is debated.

In *Narain*, the majority held that ordinary laws are not subject to the basic structure doctrine because they must already meet legislative competence requirements and comply with fundamental rights. Justice Mathew added that ordinary laws, even in Schedule IX, remain ordinary laws.

While Justice Beg in *Narain* suggested the doctrine *could* apply, he didn't in that case. Poudyal incorrectly applied the doctrine to an ordinary law, ignoring *Narain*'s larger bench and is thus *per incuriam*. Later, Madras controversially held that ordinary laws *could* be challenged under the basic structure doctrine. However, the correct legal position is that the basic structure doctrine does not apply to ordinary laws as per the case of *Bohra*. Because Madras didn't follow established protocol for challenging prior rulings from larger benches (like *Narain* and later *Karnataka*), it is *per incuriam* and not binding.¹⁹ Thus, the basic structure doctrine does not apply to ordinary laws (except when placed in Schedule IX to shield them from fundamental rights challenges).

The Basic Structure Doctrine: Scope

The Indian public appears to have accepted the basic structure doctrine, akin to the American acceptance of judicial review established in *Marbury v. Madison*.²⁰ The Court determines the elements of the basic structure on a case-by-case basis, keeping national consensus in mind. Although exhaustive articulation of the basic structure is impossible, during last few years the Supreme Court has intervened with constitutional amendments on the ground of basic structure occasionally.

A key criticism is the subjective nature of defining the basic structure. In *Kesavananda Bharati*, judges offered differing lists of principles included in the concept. This subjectivity raises concerns that the validity of constitutional amendments could

¹⁷ CHALLENGING THE BASIC STRUCTURE DOCTRINE: COMMENTS BY VICE-PRESIDENT DHANKAR (2023) *Jus Corpus*. [online] Jus Corpus., <https://www.juscorpus.com/challenging-the-basic-structure-doctrine>

¹⁸ *Id*

¹⁹ Trivedi, V. (n.d.). *The doctrine of Legal Precedent: Analysing Sub-Silentio and Per Incuriam*. <https://www.juscorpus.com/wp-content/uploads/2022/10/45.-Vidhi-Trivedi.pdf>.

²⁰ Urofsky, M. (2018). *Marbury v. Madison*, Background, Summary, & Significance. In: *Encyclopædia Britannica*. [<https://www.britannica.com>]



depend on individual judges' preferences, potentially leading to judicial usurpation of Parliament's amending power under Article 368. Some argue this is a dangerous trend in a democracy, where the amending power should reside with the people or their representatives.

Subject Matter of the Basic Structure Theory

The Supreme Court has identified the following as elements of the basic structure, which cannot be altered by Parliament under Article 368:

- Supremacy of the Constitution
- Republican and democratic form of government
- Secular character of the Constitution
- Separation of powers
- Federal character of the Constitution
- The mandate to build a welfare state (Directive Principles of State Policy)
- Unity and integrity of the nation
- Sovereignty of the country
- Democratic character of the polity
- Essential features of individual freedoms
- Equality of status and opportunity
- Justice (social, economic, and political)
- Liberty of thought, expression, belief, faith, and worship
- Rule of law
- Independence of the judiciary
- Judicial review
- Parliamentary system

The Judiciary's expansion of the basic structure doctrine has, it is argued, significantly constrained Parliament's power to amend the Constitution. By continuously adding new elements, the courts have increasingly limited the areas in which Parliament can legislate without facing judicial challenges.

Constitutional Transition, Replacement, And Abrogation

While the Kesavananda Bharati decision meets the numerical requirement for a majority ruling, its unanimity is questionable. Was the 'basic structure' limitation truly the majority's ratio decidendi? If not, the decision's authority as a binding precedent under Article 141 is weakened, making it potentially persuasive rather than authoritative.

Can the Indian constitution be extinguished via amendment? Can parliament replace it?

Conflicting judicial views persist on the extent of Parliament's amending power under Article 368, specifically whether it can be used to effectively abolish the existing Constitution and replace it with a new one. This question hinges on the interpretation of "amendment" and the nature of constituent power. We'll examine the doctrinal underpinnings of these conflicting viewpoints, primarily through the landmark cases of Golaknath and Kesavananda, highlighting the nuanced positions of key justices.



Golaknath: A Battle of Constituent Power Conceptions

In *Golaknath*, the court grappled with the fundamental question of where the power to amend originates and how it relates to ordinary legislative power. This was a clash between differing visions of popular sovereignty and the role of the judiciary.

- **Majority's View: Amending Power as Subordinate to Ordinary Lawmaking.** Chief Justice Subba Rao, along with Justices Shah, Sikri, Shelat, and Vaidialingam, argued that the amending power was akin to ordinary lawmaking, derived from Articles 245, 246, and 248, along with Item 97 of List I (the residuary power). Article 368, they contended, merely lays out the *procedure* for amendment but does not *grant* the power itself. They emphasized the procedural similarities between amending and ordinary lawmaking: the initiation of a bill, passage by both houses, and presidential assent. They also pointed to specific provisions in the Constitution (Articles 4 and 169, and paras 7 and 21 of Schedules V and VI) that explicitly conferred the power to amend through the ordinary legislative process. This meant amendments were subject to the same limitations as ordinary laws, including the fundamental rights enshrined in Article 13(2). Crucially, the majority explicitly avoided ruling on whether Parliament could use its amending power to destroy the "basic structure" of the Constitution. They alluded to the possibility of Parliament calling a Constituent Assembly for radical change, without endorsing the idea.
- **Minority's View: Amending Power as a Distinct, "Constituent" Power.** The minority, led by Justices Wanchoo, Bhargava, and Mitter (with a separate concurring judgment from Justice Bachawat), vehemently disagreed. They argued that the power to amend stemmed *solely* from Article 368, not from the articles conferring ordinary legislative powers. They dismissed the procedural similarities cited by the majority as accidental, stating that what emerges from Article 368 is "fundamental law," not ordinary law. This amending power, they argued, was a *constituent* power, fundamentally different from ordinary lawmaking. This "constituent" power, in their view, included the ability to add, alter, or delete *any* provision of the Constitution. They saw no express or implied limitations on this power within Article 368 itself. While acknowledging doubts about completely abrogating and replacing the Constitution, they leaned towards a more expansive view of Parliament's authority. The minority view did not distinguish between an unlimited primary constituent power in the hands of the people and a secondary constituent power of parliament to amend the constitution which could be subject to unamendability restrictions. Justice Bachawat even suggested that the safeguards for minorities were *not* beyond the amending power. The majority and minority judgements in *Golaknath* left open the possibility of a constitutional process to radically alter the constitution, pointing towards Albert's theory of dismemberment.²¹

²¹ Rao, C.N.R. and Rao, K.J. (1967). Phase transformations in solids. *Progress in Solid State Chemistry*, [online] 4, pp.131–185.



Kesavananda: The Birth of the Basic Structure Doctrine and Its Implications

- **Overruling Golaknath and Constraining the Amending Power.** *Kesavananda* fundamentally shifted the landscape. The majority, comprised of judges with varying reasoning but converging on a core principle, overruled *Golaknath*, firmly establishing that the amending power under Article 368 was *not* equivalent to ordinary lawmaking. More importantly, the Court articulated the *basic structure doctrine*, placing limits on Parliament's amending power. While Article 368 granted the power to *amend*, this power *could not be used to destroy the fundamental features* of the Constitution. This marked a significant intervention by the judiciary to safeguard the core values and principles of the Indian constitutional order.
- **Justice Khanna's Nuanced Position: Broad Amendment but No Replacement.** Justice Khanna's opinion is particularly significant because it was the deciding vote that led to the basic structure doctrine.²²

Constitutional Rejection and Secession

Constitutional rejection occurs when a region challenges the national constitution's applicability, asserting self-determination and constituent power to define its own constitutional future. This raises the question of whether a right to secession can be constitutionalized.

Arguments against including a secession clause highlight its incompatibility with the nature of a constitution, which embodies a united popular will rather than a compact between states. While the US Supreme Court in *Texas v White* (1868)²³ rejected secession as contradictory to forming a "more perfect union," the Canadian Supreme Court in *In Re Quebec secession* (1998)²⁴ acknowledged that a constitution is not rigid and that Quebec's secession wishes couldn't be ignored. It upheld the legitimacy of a negotiated settlement respecting democracy and the rule of law, rather than a unilateral right to secede.

In India, Article 370 granted special status to Kashmir. However, in 2019, this status was revoked, and the Indian Constitution was fully applied to Jammu and Kashmir. The Jammu and Kashmir Reorganization Act divided the state into two union territories, directly controlled by the central government. In December 2023, the Supreme Court upheld the constitutionality of this abrogation, stating that Jammu and Kashmir was an integral part of India and couldn't reject the Indian Constitution. The Court reasoned that the Jammu and Kashmir Constitution recognized its position as a constituent state of India and that the relationship between the state and the Union was one of "asymmetrical federalism."²⁵ This means that the Indian constitution accommodates concerns peculiar to particular States by providing for arrangements which are specific to that State. The Court thus concluded that the State

²² Drishti IAS. (2024). *50 Years of Kesavananda Bharati Judgment*. <https://www.drishtiiias.com>

²³ Justia Law. (n.d.). *Texas v. White*, 74 U.S. 700 (1868). <https://supreme.justia.com/cases/federal/us>

²⁴ decisions.scc-csc.ca. (1998). *Reference re Secession of Quebec - SCC Cases*, <https://decisions.scc-csc.ca/scc-csc/scc-csc/en/item/1643/index.do>.

²⁵ PMF IAS. (2023). *Asymmetric Federalism in India*. [online] Available at: <https://www.pmfias.com/asymmetric-federalism>



of Jammu and Kashmir did not have 'internal sovereignty'. A particular State may enjoy a degree of autonomy which another State does not. The difference, however, remains one of degree and not of kind.

Effects of the Basic Structure Doctrine on Parliament's Amending Power

The "Basic Structure" doctrine, a judge-made law, restricts Parliament's amending power by placing certain fundamental features of the Indian Constitution beyond its reach. While establishing the doctrine, the Court didn't definitively define what constitutes the basic structure.

Professor Upendra Baxi suggests the *Kesavananda Bharati*²⁶ decision imposes the following limitations on Parliament's amending power:

- A total repeal of the Constitution is prohibited.
- Expanding Article 368 to achieve the equivalent of a total repeal is also prohibited.
- Depriving the Court of its power to judicially review constitutional amendments is not permissible.
- The freedoms guaranteed by Articles 14, 19, and 21 limit the amending power.
- Abrogating Part IV of the Constitution (Directive Principles of State Policy) may violate the basic structure.
- The democratic nature of the Constitution cannot be validly transformed via Article 368.

Conclusion

According to the author, the 'basic structure' doctrine arose from constitutional omissions and parliamentary overreach. They contend that clear limitations on Article 368, direct provision for agrarian reforms, and the exclusion of property rights from fundamental rights would have averted this. Additionally, respecting constitutional supremacy regarding the Ninth Schedule would have prevented judicial intervention. The author also objects to executive influence on judicial appointments and the generalized use of the 'basic structure' doctrine, citing breaches of the separation of powers. This Research Paper explored constitutional change and transformation in India, engaging with both legal precedents and scholarly analysis. We've seen how constitutional changes span a spectrum, from minor corrections to substantive elaborations and even radical "dismemberment" of the constitutional framework.

In conclusion, the author argues that the basic structure doctrine might have been avoided if:

- The original Constitution had explicitly limited Parliament's amending power under Article 368.
- The original Constitution had provisions for agrarian reforms and had not included the right to property as a fundamental right.
- Parliament had exercised its amending power regarding the Ninth Schedule without undermining the Constitution's supremacy.

The Research paper examined:

²⁶ *Supra* 3



- **Observation I:** Formal amendment processes under Article 368, parliamentary legislation, and executive actions (particularly in the context of Article 370).
- **Observation II:** Informal amendment channels, including judicial interpretation, the impact of ordinary laws on constitutional provisions, and the influence of international norms and socio-economic changes on judicial opinions.
- **Observation III:** Informal limits on the amending power via the basic structure doctrine, its application through judicial "tests," and the potential extension of the doctrine to ordinary legislation.
- **Observation IV:** The nature of constitutional change itself, analyzing instances of deep transformation via existing amendment rules and the "rejection" of the national constitution by a subunit (referring to the situation in Jammu and Kashmir).

These discussions clarified the meaning of relevant legal provisions and judicial decisions, aiming to enhance our understanding of regime change theories, the scope of the amending power, and the validity of "unamendability" restrictions in the Indian context.