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The Basic Structure of the Constitution – A Critical Study

POULAMI CHAKI[1]

ABSTRACT

What is the Constitution of India, its framers intend to tell us? How was Constitution came into being? Was it all end of struggle of power? How would you define the Constitution's underlying framework? How urgent do you think it is to improve The Doctrine?

If you're looking into the Indian Constitution and have a head full of burning questions and a heart full of ifs and buts, one of the key issues you'll encounter is "the Basic Structure Doctrine". "Constitution is not a mere lawyers document" said the man widely credited with drafting India's founding text. The spirit of age is constantly there in this vehicle of existence. The document which is socio-economic and which shall never be misused or shall never be a plaything but the morality can and should be the criterion of validity and the judiciary ought to be the citadel of democracy.

The most interesting observations are those which is enshrined here are the judgments of the thirteen-bench judges. The bench of such number that ever sat till now. That how efficiently they have come into conclusions, harmoniously and creatively.

The case which has been famously pet named as the Fundamental Right Case, with an eye catching conflict of the wings has been portrait here with detailed and relevant judgments.

Here, the most controversial cases that have extensively been discussed and endeavoured to highlight the pros and cons of the Doctrine, that it was, it is and it would be in near future exploring the historical background and vital case laws and from a philosophical view point, summing up the future relevance and significance of "The Basic Structure Doctrine".

I. INTRODUCTION

India has often encountered challenges where the three wings of authority have been at odds with one another, with many ifs and buts following. The battle for control was especially perceptible in the relationship between the court and the legislative. But the mid-1970s were the climax of this kind of battle. The year 1973 saw notable arguments and innovative presentations on the battle for constitutional powers and their dominance. The case is known for its uniqueness in the history of international constitutions, its sheer length, numerous brainstorming opinions, the tactful balance of democratic powers, and, most importantly, the enshrined creative job of

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the High Court all through the judgment. The most controversial case, "Kesavananda Bharati", which involved 13 judges and took five months to complete, is known as the "*longest appellate decision*" of the 20th century. It is 800 pages long and contains about 420,000 words. The High Court maintained the requirement for the fundamental design and its application in the amendment procedure as well as the "judicial review" procedure. That the "soul of the Constitution" is to be kept as it is. Along with this, it attributed to itself the capability of saving the uprightness of the Constitution of India.

A Constitution is the measuring stick of the preeminent "law of land". It is the total of fundamental principles and established precedents, rules, maxims, and traditions that constitute the legal basis of a polity and provide its organic entity and validity.

The Indian main rule book is a socioeconomic document that reflects the intellect, character, and ambitions of the Indian people. The main law book provides the framework for revealing the nation's identity, principles, and international recognition; without it, the state's entire nature is altered.

To be a "sovereign", "socialist", "secular", "democratic", "republic" and to promote and maintain "justice", "liberty", "equality", "fraternity", and the "integrity" of the country has been portrayed as the "fundamental structure of India's Constitution"

In light of the Constitution's evolving function, the Constituent Assembly has delegated to house of authority to make a difference the Constitution in accordance with Article 368, which includes the authority to adapt Article 368 itself.

The Constitution's author gave the legislative branch, the Parliament, the authority to make changes to the document, striking a balance between rigidity and flexibility to meet the requisite materials and expectations of "we the people"

The Constitution is a country's highest legal instrument, detailing both the equitable and accountable of its citizens as well as the foundation for how the government should be organised and run. A Constitution typically consists of a preamble, articles, and amendments, among other important parts.

The preamble provides an introduction to the Constitution, describing its purpose, values, and goals. The articles outline the powers and responsibilities of the various branches of government, such as the executive, legislative, and judicial branches, as well as the rules for enacting laws and making changes to the Constitution.

A Bill of Rights, which lists certain fundamental liberties and rights that are guaranteed to all

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citizens and act as a check on the authority of the government, is another feature of most democratic constitutions. Along with guarantees of due process of law and equal treatment under the law, this Bill of Rights often includes safeguards for the freedoms of expression, practise of religion, and assembly.

In addition, the Constitution establishes a system of checks and balances between the different branches of government, which helps to ensure that no one branch becomes too powerful or dominant. The Constitution also provides for the amalgamations of powers between the federal and state governments, and outlines the procedures for resolving disputes between them.

A method for modifying or rewriting the Constitution is often included, allowing for changes to be made when necessary to reflect shifting social, political, or economic realities. This procedure often begins with a proposal from a public official or recognised entity, which is then approved by a predetermined number of states or by a constitutional convention.

In summary, the theory structure of a Constitution is a fundamental feature of modern democracies, providing a framework for the exercise of governmental power, the protection of individual rights and freedoms, and the stability and continuity of the nation as a whole.

The logical next issue is whether or not Parliament's power to amend the Constitution has ever been limited. If the question does not have a yes response, it is because the artisans of the Constitution did not intend for any such restriction to be included in the document.

Then, the issue of how far the Parliament may go in changing the supreme law of the nation emerges. If Parliament's ability to modify laws is unrestricted, may it one day be used to undermine the Constitution by altering its letter and spirit to the point where it no longer serves its intended purpose?

There can be no doubt that in order to meet the urgent demands of today's rapidly evolving world, the Constitution must be dynamic rather than static. Each and every generation must make its own decisions on how to live and how society should be structured. The Constitution should be adaptable enough so that each new generation may utilise it to realise its own dreams and goals. The topmost Court has used the “Basic Structure Doctrine” to preserve some clauses from being amended by the National Legislature. Sincere efforts have been made in this paper to present a critical analysis of the “Basic Structure Doctrine” and its vital applicability in the field of national justice, as well as the utmost importance thereof, to show why the existence of the Doctrine shall not be questioned regarding its validity and that the Doctrine is not a myth.

With a deep discussion of various case laws, this paper tries to substantiate the grave importance of this doctrine and show how far it is serving to protect the peoples rights and how far it will

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continue to do so in the future. The Constitution of India is no ordinary legal document; it is a "grundnorm" According to legal philosopher Hans Kelson's pure theory of law, a "Grundnorm" is a norm from which all other norms seek their validity. "Grundnorm" is in consonance with the "rule of recognition" As the proverbial saying goes, "If you can't say something nice about someone, don't say anything at all" The proverbial "law of unintended consequences" applies here. When other laws are consistent with this fundamental principle, their legitimacy is presumed.

The "Basic Structure Doctrine" in India is intertwined with the diverse concepts of natural law. From the natural laws, the concept of human rights took a gear. In India, certain human rights were protected as FRs and were affirmatively written in Part III of the Constitution. Basic Structure, which is a sub-division of FRs, also includes additional Natural Law theories that fall outside the ambit of the FRs. Thus, Basic Structure is not just a circumference of FRs. It is essentially what Natural Law is all about.

The prime doctrine was vaguely defined until the most controversial Kesavananda case[2], which acted as a catalyst for reshaping and ensuring the necessity of the existence of this doctrine in the Constitution of India. This was further affirmatively followed in cases like Minerva Mills.[3] ; M. Nagraj[4]; and so on, upholding the basic features as stated by the Constituent Assembly as not amendable.

This research paper will be focusing on why it is necessary to limit amendment by the Parliament (as enabled by the Constitution under Art. 368) of any Art.It is harmful to the Constitution as a whole, as the preservation of "national sovereignty" is its overarching goal, "socialism", "securalism", "democracy", "republicanism", "justice", "liberty", "equality", "fraternity", "unity", and "integrity", and that the list is not exhaustive.

This work investigates the reliability and usefulness of "the Basic Structure Doctrine". The Constitution is a snapshot of the drafters collective imagination, capturing their hopes and dreams for the nation. "The India of their dreams" In this paper, I have included various views of our Constitution drafters, what was on their minds, and how far India has come. Finally, why is it essential to continue to adhere to the Basic theory concept in the future, for both improved constitutional implementation and the restoration of the Constitution's foundational elements?

The significance of the main Doctrine is also addressed in my research work. The Basic

[2] 1973
[3] 1980
[4] 2006

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Structure dogma is all-powerful when it comes to alterations, as shown by a close examination of the most contentious case, Kesavananda Bharati. The long battle of the Legislature (the law maker) and the Judiciary (the law interpreter) comes to an end in the most creative and strategic way with the advent of "The Basic Structure Doctrine" It will be incomplete if we do not consider this doctrine, which in some ways protects our mother law and its basic characteristics.

Although there have been numerous questions on the validity, sanctity, absurdity, and arbitrariness of this doctrine, Questions have been raised regarding the Supreme Court of India's strategic stances. There have been brain-storming views from the 13 judges, but there has been one judgment that forms the nucleus of discussion. "The Basic Structure Doctrine" has increased the Court's authority, guaranteeing citizens' protections.

The Indian Constitution serves as a shield for our FRs. The FRs are part of human rights, which are to be protected from being taken away. India has experienced various types of submission, oppression, and dominance. Gone are those days where human dignity was of least priority. With our Constitution comes modern thinking. With modern thoughts come modern mechanisms and formulations. The characteristics mentioned in the Preamble are still present in the Constitution today and must be upheld.

It is history that taught us how to be civilized. It is history that has shown us how homo sapiens evolved 300,000 years ago and how we have changed behaviorally, culturally, and technologically. How important it has been to create laws in order to keep civilization civilized.How laws have evolved from time to time How the sovereignty shifted his position from God to the King, the King to the Company, the Company to the Queen, and finally the Queen to the People of the Land India has seen them all. Similarly, the foregoers and their experiences are what we take as footprints to carry on with the world we are dealing with. Everything is the same; just the ways are different. As a result, what the foregoer said stands because history does not repeat itself.

My research work defended the absolute validity of "The Basic Structure Doctrine" from a philosophical perspective. The dogma in India is intertwined with the diverse concepts of natural law.

Therefore, the foundational structure is more than a ring of FRs; it embodies the principles of natural law. A philosophy of the Constitution of India In this research, I highlighted how far "The Basic Structure Doctrine", a constitutional philosophy, goes. Evaluating the scope of further inclusion in the not exhaustible list. Whether constitutional amendments are subject to basic structure or not with a clear view as to how far this doctrine is necessary to prevent

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derogation of the Indian constitutional philosophy. With special focus on upholding the famous 13-bench judges case, a judgment of endless importance for further dealings in the Constitution of India.

(A) Problem Statement :

The Basic Structure Doctrine is a constitutional theory that I want to discuss at length in this study. Assessing the viability of adding more items to this non-exhaustive list. Whether CAA are subject to basic structure or not. With a clear view as to how far is this doctrine necessary to prevent derogation of the Indian Constitutional philosophy. With special focus on upholding kesavanandabharati case a judgment with endless importance for further dealings in the Constitution of India.

(B) Objective of the Research :

The primary purpose of my research is to provide vital evidence for the significance of The Doctrine.

- Critical analysis on the definition of "basic structure".
- How true the idea that "basic structure" doesn't exist is. How much broader is the Constitution of India's core structure?
- How far is the doctrine preventing from the derogation of the Indian Constitutional philosophy.

(C) Research Methodology :

This topic requires a thorough study of the existing theories which deals with judicial decisions. The entire study comprises of doctrinal research. Doctrinal research with the help of various secondary sources, that is, pronounced judgments of honorable SC of India and other high courts in India. Therefore, this paper is an admixture of doctrinal and research based on case laws.

Therefore, the basic structure prevents derogation of the Indian Constitutional philosophy.

This paper will be a summation of unique approaches given to us by a number of eminent jurists on basic structure, which shall provide mammoth value to the people at large in time to come.

II. THE HISTORICAL BACKGROUND

Before readily getting into the minds of historians, let us know some very basic questions that come into our minds. Firstly, what is a constitution? The very simple answer to this is that the Constitution is a book—a book of laws to be followed in order to make some regulations, by-laws, and laws of the land. So, basically, it is a "Grundnorm", a mother law, through which all

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other laws derive their origin.

The next question that comes to our mind is, “Who made it?”

In the final days of British rule in India, various numbers of plans, conferences, committees, and reports were passed with different view points and recommendations in additions, alterations, and omissions of the situations at that prevailing time.

The fundamental framework legal notion known as doctrine in constitutional law maintains that some essential elements of a constitution are inherent and unchangeable. It claims that the essential elements of the constitution circumferences on the legislative branch's authority and that any attempt to change or eliminate these elements would be illegal.

The doctrine of constitutionalism, which emphasised the significance of restricting governmental power and defending individual rights, is where the idea of a basic framework first emerged. In the Indian case, where the Supreme Court ruled that the Indian Parliament could not alter the fundamental framework of the Indian Constitution, this idea was further explored.

The “basic structure” idea has gained importance in many constitutional systems even though it is not recognised in all nations. It offers a means of safeguarding the core values and tenets of a constitutional order and guarantees that any amendments to the constitution are done in a way that is consistent with its essential structure and tenets. In nations with written constitutions, where the constitution is regarded as the “supreme law of the land”, the “basic structure” idea is especially pertinent.

So, it was in the year 1934, in the month of May, when there arose a demand to hold a constituent assembly at the “Swaraj Party Conference” Similar demands were raised in the working committee of “Congress in June 1934”. In “March of 1942”, a mission was sent to India, headed by Stanford Cripps, where a proposal for a Constituent Assembly was drafted but mentioned that the defense force of India would be in the hands of the British Government. This proposal was rejected as a demand for freedom had begun and the people of India felt the need for a defense force should be in their hands.

This gave rise to the next mission, “the Cabinet Mission Plan, in 1946”. Here, among other recommendations, the main recommendations were: the whole India Federation, including states and provinces; central control of defense; and the demand for a Constituent Assembly once again.

“The Constitution of India was ratified on November 20, 1946” marking the beginning of India's

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independence from British control. The British Raj ended in 1947 with the passage of the "Indian Independence Act 1947". The Indianmain rule book was composed by a number of committees established by the Constituent Assembly. Important committees were "Drafting committee" headed by Dr. Bhim Rao Ambedkar, Finance and Staff Committee headed by Rajendra Prasad, State Committee headed by Jawaharlal Nehru, Minorities Sub Committee headed by H.C. Mukherjee, FRs Committee headed by J.B. Kripalani, Business Committee headed by K.M. MunshiThe first and foremost aim of this assembly was to draught a constitution. In 1947, K.M. Munshi recommended that there be a committee to scrutinize the draught committee.

The first composition or outlining or formulation of "the Constitution" was submitted to the Constituent Assembly on November 4th, 1948. On the same day, November 26, the Constitution was ratified. As a result, the Constitution is a written instrument that enshrines the laws for managing the politics in India and guarantees the FRs to the inhabitants. Upon its inception, the Indian Constitution's 117,369 words, 444 Articles, 22 sections, and 12 schedules made it the "longest handwritten Constitution" in the world. It was the "Supreme Law of the Land" after the Constituent Assembly spent over three years (2 years, 11 months, and 18 days) on the final draught.

The Indian Constitution is an amalgamation of models from a number of different countries. As a matter of fact, the British Constitution is based on the idea that the people of a country should be able to govern themselves. The French Constitution served as an inspiration for the principles of fraternity, equality, and liberty. The United States Constitution is the source for the concepts of a federal system of government, judicial independence, and judicial review. The Canadian Constitution was used as a source for the Central/State Distribution of Powers clauses. Freedom of Trade and Commerce in Australia's Constitution, DPSPs in the Soviet Union's Constitution, and the Fundamental Duties in Ireland's Constitution.

The U.S. Constitution is much longer than any other contemporary constitution. It's made in a method that's considered appropriate for Indians. "Keeping in mind people's right to self-determination" It is more of a comprehensive document than a scary document, which is to say, it is subjected to elastic adaptability with changing needs over time. This feature of our Constitution is the most unique in the sense that it has elements of flexibility as well as rigidity, which may provide an ideal path for future generations.

(A) The historical background of "Basic Structure Doctrine"

If you ask a doctor whether a human being can live without a heart or not, he would say, No!

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Same way if you ask a judge whether the Constitution can live without its basic features or not. He will be answering you NO!Our Constitution is a supreme, social, and public document that acts as a road map for all organs of the government of India. The Constituent Assembly of India worked carefully and from a forward-thinking vantage point to craft the country's constitution. This document is very adaptable in nature. With the scope of adaptability comes the question of amending its provisions. The struggle between the Legislature and Judiciary has been a never-ending journey. The Constitution establishes Parliament as the body with authority to enact laws and the Judiciary as the body with authority to interpret those laws. When considering the fundamental structural idea, Articles 13 and 368 immediately stand out. The scope of "law" is defined in Article 13, while Parliament's authority to alter its own rules is established in Article 368.

While confusion reigned about whether provisions may be changed, Justice Mohammad Hidayatullah and Justice Janardan Raghunath Mudholkar argued that an amendment to the Constitution did not fall under the term of "law" as stated in Art. 13(2) of the Constitution. Justice Mudholkar, in laying forth the "intentions of the Constituent Assembly to give permanence to the basic features of the Constitution," provided the foundation for the core structure concept that was subsequently adopted by Kesavananda Bharat. "*It is also a matter for consideration whether making a change in a basic feature of the Constitution can be regarded merely as an amendment or would it be, in effect, rewriting a part of the Constitution*" Mudholkar said. However, comparative study in the field of law has been borne by many legal systems Worldwide.

(B) The Indian "doctrine of Basic Structure" with influences from German and French lawyers:

The tale begins with the concept laid out by renowned German constitutional lawyer Carl Schmitt, a theorist whose book "Verfassungslehre in 1928" showcases his ideas and theories on 'implied constitutional amendments'.

According to his point of view, the almighty Constituent Powers are the ultimate power and merely subject to any control. There were no mechanisms for amending the constitution in place under the so-called Weimar Constitution (Germany's founding document from 1919). The idea behind it was that constitutional amendments can be constituted only by legislation, which can only take effect when two-thirds of those present cast their consents or votes. A vote passed against the consent or objected to by the President is not permitted to be promulgated.

The theory is based on the concept that constituent powers are the basis of all powers. The

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Constitution was only legitimate because it reflected the desire of the constituent authority, which may be the people or the monarch. The constituent power alone had authority over FR-related matters. A positive interpretation of the Constitution would place authority for matters like government formation, the creation of new FRs, and the separation of powers in the hands of the people.

Schmitt's thesis, we might infer, is still very much alive in the theoretical frameworks of German law. He distinguished between Constituent Assembly and Constituted Powers, saying that both are not the same in the sense that laws which are fundamental decisions are to be subjected to Constituent Assembly since these are real constitutions and of higher important Constituent Assembly since these are "real constitutions" and of higher importance, and similarly, The lesser laws are merely to be called "constitutional laws" not included in the actual constitution.

Further, the tale of Maurice Hauriou was rather different, realistic, and normative. He taught administrative and constitutional law at the University of Toulouse in France and became a legal legend in the 20th century. Unlike Carl Schmitt, Maurice developed and argued on the implied limits amendments.

This theory was deeply rooted in the principles of commitment to democracy, structure, and realism. The theory was called a rule-of-law-based amendment theory.His views on constituent power were that legislative powers are an outcome of constituent powers, which have a sovereign nature. That the constituent powers are not completely restricted, they are bound by certain rules of law.

The Constitution further specifies that the assembly must be the product of a legitimately elected national assembly.

Regarding the matters of amendment, Hauriou argued that, since the Constitution has a unique and special nature, a unique procedure, distinct from that used for ordinary law legislation, should be used to make amendments.

According to Hauriou Maurice, there is a distinction to be made between incremental changes and wholesale changes to the Constitution. Only the National Assembly, with members elected for the express purpose, could make such a drastic change.

As a result, Maurice deduced that, unless it was composed by the national legislature, the modifying authority should be constrained by applicable laws.

Enshrining originality in the service of security has always been applauded. German legal professor at the University of Heidelberg, Dietrich Conrad, disputed about the Constitution of

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India's implicit amendment restrictions. His theories are mainly influenced by the theory of German lawyer Carl Schmitt and in part by that of French lawyer Hauriou Maurice.

Conrad's thesis stands out because it incorporates novel ideas that are well-suited to the realities of India. In 1965, Conrad spoke on "implied limitations of the amending powers" at "Banaras Hindu University's" law school. His publications on the implied restrictions of constitutional amendments in the Indian Law Journal are quite important.

In 1970, the Indian government issued the first of numerous Art.s titled "Limitation of Amendment Procedures and the Constituent Power" in their annual journal of international affairs. The document made a big splash, so much so that it was referenced in the landmark case Kesavananda Bharati.

Conrad's ideas on implied limits on constituent power were reconstructed using Schmitt's theory as a framework. He rejected Schmitt's mystic notion of an all-powerful component force that is unaffected by human control.

Conrad advocated for the concept that constituent assemblies are the proper forum for the expression of component power, which is different from, but complementary to, sovereignty. Conrad's perspective, especially when discussing the structure of the component powers, enshrines little of Hauriou's impact.

Conrad concluded by emphasising the absence of hard and fast rules for making changes. He outlined the main points of Schmitt's philosophy, which hold that the Constitution's framework cannot be altered via amendment. He contended and confirmed that "legal revolution" severely constrained the government's ability to make changes. That's why he stood for the theory of last resort, which he believed should be reserved for the most obvious situations of power abuse.

(C) Migration from German and French Lawyers

After careful examination, it is obvious that the "basic-structure doctrine" is distinct from and more suited than Schmitt's problematic theory. The concept of a supreme assembly with no interpreter has not made it to India, and it is to be hoped that it would soon be forgotten there as well. The only ideas that were significantly impacted were that the ability to modify is restricted, and that modification does not encompass annihilation.

Dietrich Conrad played a unique and quite thought-provoking card when it came to the Indian Constitution. He very well noticed that each state is unique in its own nature, and so is its constitution. Also, when it comes to the Constitution, amendments to a rigid constitution have always been different from those to a flexible constitution. But the position of the Constituent

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Assembly must be the same, and the concept of "*almighty sovereign*" was unsuccessful in India.

Principally, the Indian "basic-structure" philosophy is founded on the rule of law, whereas Carl Schmitt's view is predicated on the supremacy of the Constituent Assembly. The "basic-structure theory" exists to safeguard the Constitution's essential provisions for representative government. This part of the Constitution was fundamental to India's democratic system. Haurious Maurice, who likewise wished to safeguard some fundamental ideas, has a considerable degree of resemblance to the theoretical approach and is thus considered to be a proponent of the concept. The implied limited powers of the Constitution have two sides, the bright side being the power to control arbitrary and undemocratic behaviour and FRs, which are the core and soul of the Constitution. The darker side, if not handled with care, can destroy the democratic constitutional state.

(D) Indian lawyers and professors on "The Basic Structure Doctrine"

In the words of author and professor Upendra Baxi, "The two terms used in the Supreme Court's Kesavananda judgment uses two terms, basic structure and essential features which are not interchangeable.For raising serious questions regarding the legitimacy of the ruling in Shankari Prasad, we are indebted to Justice Mohammad Hidayatullah and Justice Janardan Raghunath Mudholkar. the realisation that a change to the Constitution is not "law" under Art. According to Section 13(2) of the Constitution's revaluation of this matter is precluded.

In the case of Bharati, Justice J.R. Mudholkar also argued for the "Basic Structure concept" He underlined the Constituent Assembly's desire to make the Constitution's fundamental principles irrevocable and paramount.

Furthermore, Justice Hidayatullah questioned whether FRs could be treated as a "*plaything of the majority*" which in turn came out to be the most, and suggested that unchecked powers of the Parliament can start going arbitrary. By this, he meant that The FRs should not be used as a pawn by any political body's majority, judiciary, bar, media, group of activists, or citizens of India.

Here, the idea that it is the citizen's obligation to observe and preserve Part III of the the principal law of the land, known as the "Basic Structure Doctrine" is affirmed, which is the FRs, in such a way that it prevents it from getting into the hands of any majority. The democratic aspect of India's constitution is one of its major tenets. In a democratic country, the freedom of the individual is the most important criterion. If any majority infringes on that, the whole Constitution will be violated. Such violations will further give rise to arbitrariness and the end of democracy, which is the very unique nature of our country that is imbued with the power of

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"*we the people of India*" a touch of fraternity and brotherhood that brings all the people from different communities, races, creeds, sexes, castes, and religions under the same umbrella.

(E) Justice J.R. Mudholkar enrooted "The Basic Structure Doctrine" in India

Various constitutions and treaties still include references to "the Basic Structure Doctrine", in the words of different jurists, lawyers, and professions, under various names such as the Doctrine of Limited Amendability and the Doctrine of Restricted or Implied Powers.

After the second constitution of Pakistan went into effect in 1962, the President was given the authority to make changes to it in the case of Fazlul Quader Chowdhry Then, he made sure that even those who aren't National Assembly members have the opportunity to speak and participate while a central minister is being questioned by lawmakers. Further, this provision was removed from the purview of the courts.

Fazlul Quader Chowdhry filed a petition with Pakistan's highest court. Appeal denied by Supreme Court Justice Cornelius. He relied on American judge T.M. Cooley's dissertation on constitutional restrictions in reaching this conclusion, which held that the provisions could not be altered in a manner that would alter the Constitution's essential character. In the Sajjan Singh case, which firmly established "The Basic Structure Doctrine in India", Justice J.R. Mudholkar was shaken by this same comment from Justice Cornelius. Therefore, Conrad's Lecture on Implied Constitutional Amendment at Banaras University and Justice J.R. Mudholkar's views on The Basic Structure Doctrine inspired by Justice Cornelius were enriched in the case of Kesavanada Bharati, the holiness and creativeness of which shall be sung for years to come since it perhaps talks of law with humanity.

An examination of the Kesavananda case and the legality of "The Basic Structure Doctrine" cannot begin until the cases leading up to the SC's 1973 decision are discussed. After the drafting and enforcement of our Constitution, the question of safeguarding it and the struggle for its custody arose from the situation where "right to property" was amended to not be a Rudimentary Right, which it was until 1978, under Art. 31.

a. Shankari PrasadSingh[5]

One of the most important cases in the history of Indian constitutional law is Shankari Prasad, theprime Court of India issued its ruling on the legality of the First Amendment to the Indian Constitution on February 10, 1951.

During India's freedom from British rule, India was suffering from inequality in landownership,

[5] Shankari PrasadSingh Deo vs. The Union of India (1951)

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which is to say, the framers had no security over the land they were cultivating. On the other hand, initially the Constitution gave us seven FRs, one of which was the right to property, which was stated in Art. 31.

Now, to remove such inequality and abolish the "Zamindari system", "The Agrarian Reform Committee" was established by the "Indian National Congress" and directed by J.C. Kumarappa. The land reform policy had two main objectives: firstly, increase agricultural production; and secondly, eradicate long-standing social injustice and provide opportunity to the rural population and equity of status. Therefore, in order to fulfil the objectives, a policy was adopted. There were fixed ceilings on land holdings; that is to say, every individual was subjected to fixed limits on land holding

Businessman Shankari Prasad argued that the First Amendment (which abolished the Zamindari system) approved by the Indian Parliament in 1951 was unconstitutional. The amendment inserted Art. 31A and Art. 31B into the Constitution, which sought to give the government the power to acquire and nationalize property without compensation and to immunise certain laws from judicial review. Restrictions were made in 19(1)(g) regarding the holding of a business, which then became open to state power to acquire partially or wholly.

The Court ruled 5-4 that the First Amendment is protected by the Constitution. According to the Court, Parliament's ability to modify the Constitution under Article 368 is unrestricted and subject to no other substantive constraints in the Constitution. Furthermore, the Court ruled that the FRs provided by the Constitution are not absolute and might be limited by a constitutional amendment. The Supreme Court, along with this, gave a verdict on the applicability of Art. 13, stating that this Art. is subjected to only ordinary law' and cannot be applied to Constitutional Amendment Acts.

This ruling established the idea that the Indian Parliament has the authority to make changes to any provision of the Constitution, including the FRs. As a result of this ruling, the Indian Parliament is now the highest court in the land and has unrestricted authority to make constitutional changes.

b. Sajjan Singh[6]

The 17th Amendment Act was challenged in this seminal ruling. The amendment that gave immunity to the 9th schedule, that is, the provisions in the 9th schedule that gave power to different state governments to form their own land reform acts This schedule was given

[6] Sajjan Singh Vs. State of Rajasthan, (1964)

supremacy and could not be reviewed or called violative of the fundamental right.Justice C.J. Gajendragad, who delivered the majority opinion on a five-judge panel, reasoned that the Constitution's authors would have included explicit provisions to protect the FRs from amendment if they had intended to do so. The other two judges on the panel disagreed. Given the lack of any contrary language in the Constitution, it will be assumed that FRs are subject to change.Among the five judges, Justice J. Mudholkar and Justice J. Hidyaytullah were not satisfied with Justice Gajendrag. Therefore, this case was referred to a bigger bench for justice.Alike the Shankari Prasad case, this case too was given priority over Art. 368 than Art. 13, that is, the Doctrine of Parliament was held supreme.

c. Golaknath[7]

Could the Parliament amend the FRs? Again, it was brought up in Golaknath v. In the history of Indian constitutional law, State of Punjab stands as a seminal case. The matter at hand concerned the authority of the Indian Parliament to make changes to the Constitution, and it was resolved by the Supreme Court of India on February 27, 1967. For the first time ever in India, eleven judges sat down to do justice. The Supreme Court found 6-5 that there is a difference between constituent power and legislative authority.

The constitutionality of the Seventeenth Amendment was questioned in this case. It was made possible for Parliament to limit or eliminate any of the FRs protected by the Constitution because to new language included in the amendment. The Supreme Court ruled that Parliament's ability to modify the Constitution is neither boundless, absolute, or reviewable by JR. In addition, the Court ruled that the FRs protected by the Constitution could not be diminished or eliminated by a constitutional amendment since they were the foundation of the Constitution. Therefore, the Supreme Court prioritised Article 13 and ruled that any alteration to any section of the Constitution proposed by Parliament must comply with Article 13, thereby making Article 13 applicable to Constitutional alteration Acts.

The court also ruled that FRs are so holy that they cannot be abolished by a simple majority of lawmakers. FRs are sacred, and the court acknowledged that retroactively applying this ruling to the CAA would cause chaos. As a result, the American idea of "prospective overruling," which can only give effect to future CAA, has been introduced. The Supreme Court has never before issued a ruling based on political ideology. However, the argument was criticised for flaws in legal theory and was generally rejected by legal experts. They were driven against the judgment.

[7] Golaknath Vs. State of Punjab, 1967

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The 24th modification Act, 1971 was quickly enacted by Parliament, and it included Article 13(4), which specifically excluded modification from Article 13's scope. Parliament's rejection of the Golaknath judgement and guarantee of protection from judicial scrutiny in the event of a violation of FRs by this amendment. The fundamental structural concept, which states that the FRs and basic characteristics cannot be changed by the Indian Parliament, was developed in response to this case. The original decision in this case was changed.

With the trend of Parliamentary supremacy, Constitutional supremacy was threatened. In democratic states like India, it is very essential to intact its citizens with the security of guaranteeing them with their basic fundamental rights. Therefore, further interpretation of this situation was quite essential. Therefore, with a larger number of judges , with intention to view with wider scope and with creative approach, sat 13-bench judge in the court of law.After such grave situation, the judiciary was the only solution to get rid of such. It was then become an utter essentials for the SC to act according to its role as guardian and a protector. If the Supreme Court wants to reconsider its own ruling, it has the authority to do so. This, together with JR's might, helped save the day. Thus, making such a judgment omnipotent to the history of judiciary as well as a lesson to all the upcoming members of this institution.

The judgment discussed below is own for its beauty, a brainstorming arguments that lead it to be one of the most talked about and famous case. However, we shall never forget how much it has power of the comparative study and how much the learned judges have gave efforts for coming into such conclusion. It shall never leave scope of praise for its impact has lead to further judgments which reshaped the structure of India.

III. "KESAVANANDA BHARATI SRIPANDANGALAVARU V. STATE OF KERALA"

The Supreme Court of India ruled that the "Basic Structure Doctrine" of the Indian Constitution was in violation of the First Amendment. This ruling was upheld on appeal.

The circumstances-

- The case's petitioner argued that a provision of Kerala's land reforms law limiting the administration of religious property was unconstitutional. It is the call of the petition under art.26 that the property of so owned for religious purpose shall have zero interference of the government.
- It called for the enforcement of FRs, stated under article 14, 19(1)(f), 25, 26, and 31.
- It also, questioned 24th and 25th CAA.
- It is within Parliament's purview to make changes to the Constitution and repeal or

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replace any part of it.

It is said to be a historical as --

It was the longest case proceedings for it had been continued as long as 68 days in the floor of the SC,

More than 100 cases within and outside of the country had been cited to elucidate the judgement,

More than 70 constitutions of various countries of the world had been compared to come into conclusion and includes a massive 703-page ruling from the Supreme Court's biggest bench in history, made up of 13 esteemed justices.

i. S. M. Sikri, Chief Justice
ii. A. N. Grover, Justice
iii. A. N. Ray, Justice
iv. D. G. Palekar, Justice
v. H. R. Khanna, Justice
vi. J. M. Shelat, Justice
vii. K. K. Mathew, Justice
viii. K. S. Hegde, Justice
ix. M.H. Beg, Justice
x. P. Jaganmohan Reddy, Justice
xi. S. N. Dwivedi, Justice
xii. Y. V. Chandrachud, Justice
xiii. A.K. Mukherjea, Justice

It is a landmark judgement as -

Granville Austin observed that, even if all 13 judge bench do not opine in the same tune, The majority decision upheld the Constitution's “basic structure” as an important term.

Honourable justices articulate such a unique concept that has not only influenced the Indian Judiciary but also enlightened all the democratic nations of the globe. Since then, the legal and academic communities have largely come to embrace it, and many enactments made to Parliament since then have been deemed invalid because they run counter to the theory.

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In a 7–6 judgement, the court upheld its authority to invalidate constitutional changes found to be in conflict with the document's underlying design.

Chief Justice Sikri and Associate Justice Hegde make up the majority. Shelat, J., 3.Mukherjee, J., 4. 5 Justices Grover; 6 Justices Jaganmohan Reddy and 7 Justices Khanna.

Judges Ray 1, Palekar 2, Matthew 3, Beg 4, Dwivedi 5, and Chandrachud 6 dissented

(A) Important Issues Raised:

a. Rule of Interpretation:

The Supreme Court held that "Hyden's Rules" have to be applied in case of an ambiguity of any term or provision.

b. "Amend" or "Amendment":

Constitution is basically a social document and the outcome of socio-economic ideals of the freedom struggle that substantiate its organic entity and validity. The Parliament, a creation of the constitution cannot 'amend' the constitutional validity by the process of "amendment".

c. Source of Amending Power:

The ability to modify the world's longest constitution comes only from Article 368.

d. Amendment of Fundamental Rights:

All the provisions of fundamental rights are not under the purview of basic structure and thus are amendable but the portion of which comes within the meaning of "basic structure" cannot be amended.

e. Implied Limitation:

Not the concept of implied limitation but the intention of the makers is of utmost importance to decide the feature of "basic structure"

f. Supremacy of People or Constitution:

India's people have sovereignty, but it's a purely political kind of authority. The Constitution is the ultimate source of law and order. People promised to adhere to the Constitutional norms and alteration of the essence of the Constitution is beyond their jurisdiction.

g. Parliament and Constituent Assembly:

There is no equivalence between the Constituent Power of Parliament and the Constituent Power of the Constituent Assembly. Parliament's fundamental authority comes from the Constitution itself, and it must stay within the bounds of that document.

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Articles 13(2) and 368:

Parliament's constituent authority to modify the Constitution is referred to in Article 368, whereas Parliament's regular legislative power is referred to in Article 13(2).

h. Judicial Review:

This power of court is of paramount importance and the heart of democracy and the core in the judicial process.Any proposed change to the Constitution is subject to judicial review on the "substantive limitation" "basic structure" and "procedural limitation" theories. Judicial review was one check among several in the system of checks and balances designed to keep government officials within their constitutional bounds.

(B) Whether Doctrine is vague in nature:

The concept cannot be nebulous just because it lacks a precise definition or a comprehensive list of its components. Concepts of law, such as the principle of natural justice or negligence, might remain concepts of law even if they defy succinct definition. The concept of Anobiter Dictumand may wisely be applied.

The observations of 13 honourable justices:

- **Sikri, Chief Justice observed:**

The Constitution granted Indian citizens freedoms to protect the country from any future tyranny of the people's representatives.

The Constitution must be interpreted in the context of its creation, with an understanding of the common law and the statute law as they were at the time.

Our Constitution is unique in the world. No other like our unites so various peoples with various languages, faiths, and economic conditions in a one nation, and no other nation undergoes such significant socioeconomic metamorphosis.

Apart from establishing the framework for administration, the constitution has lofty ideals. The Preamble highlighted the vision, of fundamental rights. The directive principles enhanced the broad spectrum of such vision.

The Preamble provides insight into the intent of the Constitution's framers on a number of different articles. This vast and noble vision is crucial, and it should be kept in mind while reading and interpreting the Consti.

Art. 13(1) and (2) are there to indicate that the Constitution was written with an abundance of care. If any legislative action violated a FR, the court should be able to declare that portion of

the law that violates the FR null and void.

The Constitution's framers foresaw the need for Parliament to be able to revise the Constitution in response to new challenges presented by the country's changing socioeconomic conditions.

Part III of the Constitution confers many guarantee that ought not be at the whims of a special majority.

The Constitution of the United States contains a sombre and dignified preamble that summarises its fundamental principles. That the Constituent Assembly intended to make the Constitution's foundational provisions permanent may be deduced from these.

Assuming for the moment that the Preamble does not become a part of our Constitution. There is no denying that the Consti's provisions provide more explanation and illustration of the ideas introduced in the Preamble.

The term "Constitutional amendment" is not without uncertainty. There are a number of possible interpretations for this phrase, and it is important to ascertain its precise meaning in the context of Article 368. The Constitution should be articulated without narrowness or pedantry and understood with a wide, liberal mind.

A limited meaning to the word amendment can better be obtained by the very evidence that contained Art 368 itself. In the end, it all boils down to the fact that the people who have the most to lose are the ones who have the most to gain from the status quo.

Parliament cannot change a provision of the Constitution beyond the bounds of the original document, even if doing so will improve its effectuation. When it comes to FRs, this would imply that while they cannot be repealed, reasonable restrictions on such rights may be implemented where doing so serves the greater good, as the expression modification of this Constitution in Art. 368 means any addition to or alteration in any of the provisions of the Constitution within the broad contours of the Preamble and the social law code of the land to carry out the objectives in the Preamble and the DPSP.

Despite the unique nature of Art. 368's amending authority, the very notion of an amendment cannot be criticised for being imprecise or unsatisfying. Even though it defies tidy quantification, weighing, or measurement, its presence cannot be disputed.

- "These elements make up the framework's basic form"
- "The Constitution's ultimate authority"
- "The Republican Party and the Democratic Party as political systems

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- Constitution's secular nature”
- “The Judicial, executive, and legislative branches are all independent from one another; Constitutional principles with a federalist flavour”

- **Shelat and Grover, JJ observed** :

According to K.M.Pannikar, the Constitution is a solemn commitment to the people of India that the legislature would do all in its power to remodel and recreate the society on new ideas.

Organs and tissues throughout the body owe their very existence to the Bill of Rights. Each must function within the four limits established by the Constitution and can't assert any authority beyond those limits. The Preamble summarises the nation's high ideals and guiding principles. The DPSPs and the basic rights have been called the “conscience” of the Constitution.

It has been decided by the people of India, as their first action, to establish their nation as a Sovereign Democratic Republic. The first thing that comes to mind is whether or not Art. 368's use of the word “amendment” or “amended” may be interpreted to grant the amending body the power to do away with any of these three pillars of our democracy.

Since India is a Sovereign Democratic Republic, its constitution guarantees its citizens a republican system of governance and a set of fundamental rights that must remain unchanged throughout time. Therefore, the authority to modify does not include the ability to change or eliminate the Constitution's most fundamental characteristics, parts, or principles.

Art. 368's ability to modify is broad enough to allow for the insertion, change, or repeal of any and all articles of the Consti so long as the Consti's essential parts are not compromised or stripped of their identity.

The Constitution's fundamental principles govern the unchecked authority of legislators. All branches of government, whether legislative, executive, or judicial, swear allegiance to and draw their powers from the Constitution. By including a judicial check, we have secured the Rule of Law. One of the most prominent aspects of the constitution is universal adult suffrage.

The Constitution's foundational structure is not some nebulous idea that can't be grasped. The following may be considered as the essential aspects of the Constitution's structure if the historical context, the Preamble, the complete schemes and provisions of the Constitution, including Art. 368 are remembered. (These are not enumerable but may be shown as examples).

- “The Constitution's absolute authority”
- “The supremacy of the United States and its Republican and Democratic systems of government”

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- "The Constitution's federal and secular nature"
- "The separation of powers among the legislative, executive, and judicial branches"
- "The judicial protection of people's rights to privacy and other personal freedoms (as outlined in Section III) and the obligation to establish a welfare State (as outlined in Section IV)"
- "The strength and stability of the country"

- **Hegde and Mukherjea, JJ. observed :**

Every Constitution being the primary law of a nation, tends to be continued for a very long period. So, considering only the need of the present generation confine the society in a straight jacket is not possible. No generation can dictate the workings of future generation. Society has been developing with its changing needs. It could be necessary to amend the Consti to meet those demands.

The Constitution's preamble is serious and dignified, serving as a perfect summary of the document as a whole. The broad concepts of the Constitution's essential principles or fundamental aspects are portrayed clearly. As a result, identifying the Constitution's most essential aspects is less of a challenge. The FRs promised by our Consti are crucial, but the DPSPs outlined in Section IV are just as crucial. The Constitution of India is primarily a social constitution. Most of its provisions are designed to bring about a social revolution by creating the enabling environment of a strong central government. Parts III and IV, the Fundamental Rights and the DPSPs, respectively, reflect the devotion to the social revolution at its heart. The Constitution's conscience may be found in these.

Even if the authority to alter the Constitution is not explicitly bestowed, the power is implicit in the Constitution's design, and this can be seen in Art. 368, which prescribes the form and method of amending the Constitution.

First impressions suggest that the framers of our Constitution differentiated between the general right to alter and the specific powers to add to, change, or do away with provisions. They are men of experience and strong political understanding, so they can see that the Constitution has to be flexible enough to accommodate the inevitable social, economic, and political changes that will occur over time.

Our Constitution is more than just a political instrument; its foundation is a social concept that rests on two pillars: the fundamental and the incidental. Change is the only constant, therefore it's best to roll with the punches when the going gets tough. The superstructure of the

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constitution remains constant with the modification of elevation.

The Consti cannot be used for illegal self-destruction. Any changes made to the Constitution according to Article 368 shall be preserved in their entirety. It is impossible for the Constitution to retain its original meaning if its core principles are changed or eliminated, and new provisions that run counter to those principles are added.

For the sake of argument, let's say that you're a member of the Indian Parliament, and you're trying to convince your colleagues that you're right about something. You're probably not going to convince them that you're right, though. Once again, Parliament has the authority to cancel the mandate to establish a Welfare State and a more equitable society. Understanding these constraints requires explanations that are illuminating rather than thorough.

However, the authority to modify is broad, and may be used to change any Article or any element of the Constitution in order for the State to meet its commitments and for the Constitution to be consistent with modern realities. However, it is not essential to stifle people's autonomy in order to establish a Welfare State, and it may be used for both good and evil.

- **A N Ray, J., remarked**:

Without strong evidence to the contrary, it might be challenging to maintain the view that the Constitution's architects intended for basic rights to be immune from modification. while Article 368's language is broad enough to allow Parliament to make any kind of constitutional change.

Improving upon the premise of an amendment is an impossibility. Constitutional amendment, as defined by Art. 368, is any modification to the current Constitution by the addition, revision, replacement, or deletion of certain sections. This strength might serve as a stopgap in the event of a violent uprising, allowing development to continue peacefully. Under Article 368, the Constitution may be altered in its entirety.

There should have been an explicit provision for the same if the basic right secured under Part III had been totally beyond the purview of Art. 368. The meaning of basic does not go beyond the rights guaranteed by the Consti.

The Consti can only be considered legitimate if it is adopted by the individuals it was written to protect. The Constitution is the foundational legislation from which all other laws flow. All of the articles of the Constitution are fundamental since the Constitution's norms constitute the foundation of the legal system. The Constitution is the supreme law of the land and its own infallibility guarantee. However, the Constitution was the source of authority for Ordinary law.

A constitutional amendment is a formal and legally binding modification to the Constitution.

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The Constitution has changed throughout time due to the weight of precedent and judicial interpretation.

It's worth noting that-

First, the Constituent Assembly did not differentiate between necessary and optional components.

Second, hardly one in the Constituent Assembly thought that the Constitution's protections for basic liberties were absolute.

Third, throughout the First Amendment debate, no one questioned the viability of altering or revising basic rights.

The very idea of inherent and implied constraints on the amending authority rests on and promotes the view that the Constitution's fundamental or essential qualities and its democratic republican nature are inviolable.

Framed by the separation of mightiness between the legislative, executive, and judicial branches, a Constitution also includes any additional provisions are deemed to be of paramount significance by the Constitution's authors. All of the Constitution's provisions are therefore necessary, and it is impossible to distinguish between necessary and optional sections for the purposes of amendment. If a wall of restriction designed between the non-amendable essential and the amendable non- essentials it would be nothing but a mockery of the constitution which may beget the alternative revolutionary actions of the citizens.

The objective of the legislature is revealed in the wording of the legislation itself, and there is no rational basis for interpreting the text to contravene that goal. The authority is presumed to have the power to do whatever is required in order to achieve the ultimate goal when a statute is passed to enable something to be done but does not specify the terms in detail which are of great importance to the proper performance of the work.

When the Constitution fails to make a clear distinction between necessary and optional characteristics. Finding answers to the following pertinent questions will be quite challenging: Who gets to decide what's necessary and what's not? Who gets to decide what the most important aspects are? What standard will be used to evaluate the most crucial aspects? Can it be measured against anything? How much of this is absolutely necessary, and how much may be left out? What criteria may be used to zero down on the most crucial aspects?

The majority ruling in the Golak Nath case refused to rule on the validity of the FRs, which were argued to be essential elements. The consensus was that basic rights, by their very nature,

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could not be changed. The argument of implicit restriction was correctly rejected by Wanchoo, J., for himself and two other distinguished Judges, and Ramaswami, J.

These are the three justifications offered by Wanchoo, J. To begin, there would be more doubt brought about by the idea of essential and non-essential qualities. Second, there can be no limiting implicit provisions on the constituent power of amendment. Third, there can be no inferred constraint if there isn't even a stated one.

If Article 368 does not explicitly exclude amendments, then its authors did not intend to impose any such bar by omission. Clear and unambiguous statutory text must be given effect, regardless of the results.

In the absence of a concrete indicator regarding the fundamental characteristics in the constitution, the task of amending the Constitution becomes uncertain and ambiguous. In order for Parliament to make constructive and successful amendments to the Constitution in conformity with the period and necessity, there must exist an objective criterion of predication of the necessities and nonessentials. But with the non-availability of any standard if changes are made by Parliament, a court will finally decide whether the change contradicts or reduces the essence of essential features. Above all, it will be up to the Court to decide whether or not the alteration is allowed. This approach necessarily deny Parliament the ability to modify laws.

- **G. Palekar, J, observed :**

Politicians who construct a Constitution only care about the practical reasons of orderly governance, while jurists and theoretical jurists speculate that the Constitution may be amended all the way to its abolition. The Constitution was sensibly written to provide for the most extensive amendments feasible to resist the pressure of future changes. It is perfectly possible to edit any provision by adding to it, changing it, or getting rid of it altogether.

The Constitution's framers spent years crafting it not with the expectation that it would be overturned by the officials charged with drafting amendments to it; rather, they wanted it to stand the test of time and remain in effect in some form or another forever.

Allot repeal seems inconceivable, but the founders of the Constitution expressed their trust and confidence that the document they had crafted thanks to their intimate understanding of the American people and their history could withstand any challenge that may be thrown at it. However, sufficient room must be left for adjustments as time and circumstances dictate. Arguing about the precise definition of “amendment” and whether or not it implies the complete repeal of the Constitution is a waste of time.

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Our Constitution's authors did not create the term "amendment of the Constitution" It has been used in the context of the constitution as were included in other constitutions of various nations around the world as the process of alteration, addition and repeal of the existing provisions.

Article 368's sweeping authority is absolute and unrestricted. The ability to alter is not limited either explicitly or implicitly. The repercussions of careless use of the authority are political in nature and beyond the purview of the courts. In case of clear and unambiguous dictum of the constitution courts have nothing to do but to implement the same regardless good or bad, just or unjust consequences.

The natural rights idea, developed by philosophers over many centuries as a tool to combat political and social tyranny, has become increasingly irrelevant in modern times. Similarly the doctrine of lasseize fare in the economic field have lost its flavour in the fast changing world. These concepts only exist in organized society as a token of respect. The rights of the people are a gift of the Constitution because they are bestowed to the people by the people via our Constitution.

It's not a good idea to say that the "Grundnorm" protects everyone's right to life, liberty, and the pursuit of happiness, together with the freedom to own property. There is no existence of reserved rights in our constitution. All the constitutional rights are the gift of constitution and thus, there is every right of the constitution to withdraw it what is conferred by itself.

Despite of each and every provision is amendable under Art. 368.It's safe to believe that Indians won't be so foolish as to change the Preamble's illustrious language. To go where we need to go, we need a constitution, and the Preamble is the Constitution's steering wheel. However, the essential rights are only an expansion of these aims into a cartoonish form.

It's not easy to pin down who has the last say over which parts of a fundamental construction are necessities and which may be left out without compromising the integrity of the building. If the legislature passes a legislation that is not in accordance with the Constitution in any way, even a minor one, the law will be null and invalid. The question then returns to what standard should be used if an essential provision is changed to create a more vital provision.

Scope of amendment with its boundary not to be determined by the intension of constituent body but by the Judiciary prescribing its proper limits. And these limits, trend to vary with individual Judges, a bench of judges or by bigger majority judges.

Any provision enacted according to the Constitution is to be evaluated in accordance with its terms, but the Constitution itself does not include criteria for its own revision. Without an explicit or implicit provision limiting the authority to change the basic rights, it is difficult to

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set any constraints on the amending power. It is not a viable foundation to deny legislative authority simply because of the risk that it would be used unwisely, injuriously, or even misused. The Constitutions grant power to create laws on a number of topics.

- **Khanna, J observed:**

Constitution provides two pillars-

- "the administration of Country"
- "Good Governance"

Essentially, it's a middle ground between two opposites that can't exist together. It is beyond the wit of any one generation to foresee and solve all of the issues that might arise in the course of a Constitution's operation as it moves forward. A Constitution may be a vehicle for a nation's advancement because interpretation by the courts can broaden its scope and provide teeth to its bare provisions. It is possible that the founders of a Constitution intended that a particular provision of the Constitution would be articulated by the courts. Without the ability to alter the Constitution, the people would be left without a way to update it to reflect modern realities.

Constitution constitutes people's goals and hopes. A Constitution is a manifesto containing general guidelines for highlighting the path the country will go forward in the future in addition to setting the standards for the operation of various organs. It is the constitution that points out the way of life of a of a progressive nation. A Constitution is a dynamic process, not a static or stagnant one. A constitution is an instrument for ordering people's lives, not a text for precise dialectics.

lt has tradition as well as historical roots, that quite relevance and active at present and boosted towards the unpredictable future. The mechanism of amendment should function like a safety valve to maintain a balance between the exploration machine's excessive facilities and the force accumulation necessary to set it in motion (in the form of growth and conservation needs). The context of the Constitution should neither be used as a political plaything or altered or degraded nor be worshipped as a sacred instrument by that misguided conservatism.

Our Constitution's authors were not ignorant to the fact that they would have to strike a balance between the competing demands of progress and stability. They were aware that chaos may result from a lack of continuity, progress can be made with the help of continuity, and stagnation can be avoided with change alone. That is why the makers of the constitution make a compromise between the non-amendable and the easily amendable document.

When it comes to shaping the institutions of government and the laws, no one generation has a

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monopoly on knowledge or the authority to impose its will on subsequent generations. The future government's form and function may be created by reading between the lines of history and understanding the significance of the resulting impacts, standards for legislative activity may be prescribed, without being so rigid or unbending as to prevent future generations from changing, altering, or supplanting them, which would intrude on the future exercise of the people's sovereign will. The framers of our constitution with their best intention gave the Indian citizens a long lasting or permanent constitution with the basic freedoms and polity of government.

The allocation of amendment power rests on the premise that there are no absolutes and that the human intellect can never come to terms with itself to restrict its pursuit for a better order of things. The need to rebel is proportional to the degree to which one is restrained by ideas of absolute and ultimate.

Amendment of the Constitution should necessarily be used to modify or change any provision thereof not for abrogation.The concept behind amendment is to keep and continue old Consti even after changes have been made without losing its original meaning. The original Constitution cannot be destroyed and to be preserved in force with its revised version after the amendment.

The prerequisite to maintain the old or original constitution is to preserve the fundamental frameworks, not keeping just a few of its sections would not qualify as maintaining the old Constitution. The amendment permits substantial changes necessary to adapt the system to the requirements of evolving situations without affecting the underlying and core institutional architecture. It is not within the jurisdiction even in broad scope and amplitude, of amending power conferred by the Constitution to erase or eradicate the fundamental framework of the constitution.

Article 368, which deals with constitutional amendments, does not engrave a pretext for undermining the Constitution's framework and cannot be interpreted as embossing a desire to do away with the Constitution. Any attempt at subversion or destruction of the Constitution in violation of Art. 368 cannot be ratified as a constitutional amendment.

- **K.K. Mathew, J, observed:**

To make it clear that “amend implies change, the word change” is added as a proviso to Article 368. That's the authority to make changes to the Constitution, or alter it. The term change was originally used to indicate an upgrade. The word “amendment” is a euphemism. In addition to these euphemisms, the term “amendment” refers to the modification of legal statutes.

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Even if the Constitution were completely abolished, without any replaced provisions, it may not be legitimately labelled in law an amendment, as pointed out by Murnaghan, J. However, despite the significance of some Articles of the Constitution, the term "amendment" is broad enough to allow for their repeal. When trying to make sense of a word change in a constituent act like the Indian canon law, the basic rule of construction should be used.

The words that must be construed are merely containers into which all sorts of constrained of different perspectives may be poured. However, society is more than simply a collection of problems and solutions expressed in platitudes. A civilization that is forced to remain strictly within its existing framework risks becoming unstable.

The term "amendment" has a wide range of use. But to give it the finest meaning possible, one that fits the role it will play in an instrument that seems certain to last for centuries and weather the many crises that might arise in a body politic. While The Constitution certainly has historical precedents, it was written largely with the future in mind. The Constitution is not a transient document, but rather one that will last for the foreseeable future and includes the rules by which a country must operate. A generation from the past may be unaware of the necessities of the present, and a generation from the present may be unaware of the demands of the future. So, it makes sense to let each succeeding generation look out for itself.

The founders of our country saw that, like natural rights, the Fundamental Rights were not absolute, and so they allowed for legal restraints to be placed on their use. Since it was impossible to predict how much money would be required to fulfil a society's ever-evolving demands, they wrote a blank check instead.

Each generation must determine whether or not a certain Fundamental Right should be limited or eliminated in the sake of social progress. To expect a single generation to design a government that will implement all the necessary revolutionary reforms simultaneously is unrealistic.

It's widely acknowledged that the Court has no tools at its disposal other than its own honed judicial vision to determine what aspects of the Constitution are most fundamental to a certain right.

All the apparent golden concepts may not withstand in the passage of time with an enchanting vision like laissez faire tradition in economic policy.

The Fundamental Rights themselves are not any solid predetermined eternal concept. Most of them are just blank canvases into which new ideas from new generations might be poured. This suggests the need for possible limitations, reductions, and perhaps repeal. At some points in the

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country's history, a claim to primacy or precedence may be overcome. Each succeeding generation will have the weighty responsibility of deciding whether or not a certain Fundamental Right should take priority above the moral obligation enshrined in Section IV. Parliament's authority to alter the Fundamental Rights in a manner that undermines their very foundation is not limited in any way by any stated or implicit constraints. Again, the language of the Constitution makes it abundantly clear that no other there is implied restriction on the power of amendment.

- **M.H.Beg J observed:**

Our Constitution's Preamble and Articles III and IV are a reflection of this idea. The people of India established a sovereign democratic republic with the motto “Solus Populi Seprema Lex” which means "for the common good of the people." This motto is found in the Constitution's preamble, also known as the key which lists the “pursuit of justice” “social welfare” “economic prosperity” and “political liberty” as the document's first four goals.

Even though the present democratic Constitution is a collection of the people's sovereign will, it was written by a Constituent Assembly that was not selected by universal adult suffrage.

The road our Parliament and State Legislatures were to take towards the goals illuminated in the Preamble was to follow the Directive Principles. The Directive Principles and the Basic Rights are essentially the same tools for the job. It is more appropriate to see basic rights as the targets of the people of India's efforts to advance in keeping with the DPSP's recommendations.

Directive Principles outline the precise responsibilities of State institutions, whereas the FRs impose duties on people. In drafting detailed instructions for State bodies, the demands of social welfare were prioritised, despite the fact that fundamental rights were sought to guarantee the freedom of individual people.

Our Constitution designates the judicature, in its role as protector of the Constitution, as the last arbiter in determining the constitutionality of ordinary legislation. However, the Constitution's Article 368 grants the legislature limited influence over the judiciary in the event that the core fundamental law of the Constitution requires change. As a whole, the Constitution envisions the United States making strides towards greater equality and wealth. The intent of the modifying clause is to serve as a tool for enacting fundamental and progressive reform in the future. The whole Constitution was written with the intention of improving the lives of all Indians. Abrogation or sacrifice of certain basic rights is possible along the path to development in order to enable the enjoyment of any fundamental rights at all. The ability to alter the Constitution must not be so broad that it would leave the door open to a chaotic process of replacing the

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current document with something else.

- **Chandrachud J observed :**

While the nuanced meaning of "amendment" may shift depending on the situation, when used to Article 368, it conveys a clear and distinct sense. The proviso to Article 368 contains language that strongly suggests the term "amendment" is meant to have the broadest possible meaning. There are no obvious restrictions placed by Article 368. The essence and practical purpose of amendment power is to make the original meaning more clear in light of the limits of language and experience, and to adapt the aim as stated to new circumstances. Once a country's fate is decided, new opportunities and threats will present themselves, necessitating the development of innovative approaches to existing problems. It is next to impossible to address the new and unexpected needs using a document that developed in a setting that may have largely lost its relevance. Considering its real nature and purpose, the ability to alter may be seen as a safety valve and should only be used in extreme circumstances.

- **N. Dwivedi, J, observed:**

Parliament was established by and is charged with upholding the Constitution's basic core principles. As the Constitution is a representation of God, it can in no way usurp God's authority. This basic rule ensures that it can never be damaged or destroyed by other laws.

Consequently, the Articles must be interpreted, without resorting to linguistic juggling, in the tune of the prevailing phase of sentiments in the country in which the Constitution is supposed to operate, as the genius peoples of our heritage have expressed the national life of people reflecting the tendencies of the age. The Constitution's item 368 is the lone item of Chapter XX. The only thing being accounted for is the method by which Parliament may alter the Constitution, and this should rightfully go under the term "Legislative procedure" in Chapter V of the Constitution. Part XX's header, "Amendment of the Constitution" does not refer to the process by which the Constitution may be changed. Art. 368's header will include both the substantive and procedural phrase amendments to this Constitution. It's a measure of the scope of one's modifying power and a barometer of one's dominance. A constitutional amendment cannot be used to change a single provision of the Constitution. The Preamble and Section III are no different.

With judicial scrutiny of constitutional changes in place, the people's vigilance, articulateness, and efficacy will be unmasked. Social, economic, and political concerns are best resolved by public debate and the active vote of the people's elected representatives, not by judicial opinion in a true democracy or republic.

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Art. 368's use of the phrases "amendment of this Constitution" and "The Constitution shall stand amended" illustrates that the existing Constitution is being changed, and that what emerges as a result of the amendment is not a new and different Constitution but rather the existing Constitution, albeit in an amended form. That one cannot abolish and replace the current Constitution while acting under Art. 368 is supported by the text of that Article.

There would be no clause in the Constitution allowing for a new Constitution to be written with a completely different framework or fundamental structure.

Any proposed change to the Constitution would have to enhance its current state in some way. Euphemism may be found in almost every proposed change.

A constitutional amendment that follows the method outlined in Art. 368 cannot be overturned by the courts on the grounds that it is a bad idea. If the court were to rule against the amendment on that basis, it would be the equivalent of the court replacing the will of Parliament with its own.

When it comes to implied constraints, there are two sides to the issue. They are restrictions that follow directly from express Constitutional requirements under the first facet. The Constitution, it is argued in the second part, contains restrictions that must be interpreted whether or not they derive from express provisions, on the basis of certain higher values that are very important to people and are generally regarded as necessary characteristics of a civilised existence.

Values like as freedom, equality, and democracy are said to be intrinsic to the idea of natural are. It is argued that such rights are inalienable and hence cannot be changed by a constitutional amendment.

Some of the natural rights are objectives towards which mankind have laboured for centuries, and they express deeply held beliefs. However, the natural rights have been seen as subject to specific constraints rather than absolute rights. The rights of the individual have been sacrificed to the public weal because man is a social creature whose rights are controlled by his duty to his fellow beings and to society. No one's rights have been exercised in a way that violates the rights of others. Outside of the framework provided by the Constitution and the laws of the state, natural rights have no existence. Natural rights must be incorporated by the state.

Those who don't buy into the natural rights theory yet see the need of upholding certain principles and meeting some minimum standards for human flourishing. They also do not deny the existence of values that have motivated people throughout history, as well as goals and aspirations for which people have fought and given their lives. They are aware of the aspirational nature of human nature, the desire to see the world improved to the point where the

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best ideals may triumph and be universally embraced.

It might be argued that the elements of the Preamble that are not related to the Constitution's core structure or framework are just as open to amendment as the rest of the Constitution according to Art. 368.

- **Dr. Ambedkar observed:**

"Without Article 32, the rest of the Constitution is meaningless" It is the Constitution's fundamental essence.In the end, the Supreme Court's decision to uphold the legality of gay marriage was a landmark decision that reaffirmed the importance of marriage equality. The constitutionality of a legislation is ultimately assessed by the Supreme Court and the High Courts, and they have the power to strike down the aforementioned provisions of the act if they are found to be in violation of any Constitutional Article.

- **Justice Jaganmohan observed:**

There are certain essential basic rights which are guaranteed to the people of India and which cannot be subject to the whim of the legislators, and this has given the people of India enormous hope and inspiration. Part III rights were meant to stand on their own with the right to remedy provided by Art. 32.

The definition of the phrase "amendment" will determine whether or not various implicit constraints on the authority to modify under Art. 368, and whether or not an amendment under that Art. may harm or knock down the fundamental characteristics of the Constitution.

The rights listed in Article III were ones the founders believed to be sacred, inalienable, and immune to infringement.

No utopia can replace the actual world, as Milton put it. By using generally acknowledged norms of construction, a correct understanding of constitutional provisions may be attained.

The trend has been to rely increasingly on the opinions of Judges in judging Constitutional concerns, notwithstanding the essential requirement to give importance to the will of the people which the Legislatures and the Governments represent and for exercising judicial self-discipline.

Everything related to the Constitution that touches on political, social, or economic issues. The builders of the Constitution gave the Court extensive JR authority and described it as "the heart and soul of the Constitution" Whether or whether the law is constitutional may have an impact on the underlying political or social policies. Unless there are compelling and substantial grounds for determining that it interferes with the Constitutional mandate, the Legislature has

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the sole ability to decide the policy and to convert it into legislation, in compliance with Constitutional validity.

If a mistake is made by any of the three branches, it must be fixed in the way and by the means specified in the Constitution.

As an independent branch of government, the court is not bound by any particular political ideology and does not make decisions based on popular biases or moral standards.

When a court issues a ruling, it does not do so at the expense of future generations. Neither would their effects stay forever, nor do they remain in effect forever.

In the past, legislation reflected the consensus of society and the prevailing economic and social norms of the time. If such rulings aren't going to work for future generations or the demands of society, they'll have to be amended via the legal system, either by legislative or judicial action.

To ensure that the law is consistent with the "socio-ecoomic" changes and the jurisprudential outlook of the generation in which it was in effect, the Courts have a mission, and indeed the authority, to reexamine and restate the law within the limits of its exegetical function in the fullness of occurrence during which it was in enforcement. This goal is very unlikely to be accomplished without some flexibility and playfulness on the part of the interpreter.

Regarding whether it is desirable to substantially borrow from or depend on the provisions of foreign Constitutions. It cannot be disputed that the "political", "social", and "economic" worldview "of the people" for whom other nations constitutions were established informed the contents of those constitutions. It planted the ideology in a specific soil, and the characteristics of that soil and the local climate will decide the extent to which it flourishes and the kind of life it brings to its inhabitants. You can't take a seed that was designed for one temperature and soil type and expect it to thrive in another. There are regional and temporal differences in the application of the law. As a result, justice is no longer a universal principle but rather one that varies from culture to culture and from economic climate to climate.

According to my interpretation of Article 368, Parliament may not abolish, harm, or destroy any basic right, but it may restrict such rights to the degree that doing so does not violate those rights.

It is a well-established principle that the broad language of a legislation should be interpreted in light of the powerfulness of the legislature that enacts it, and that the legislature does not intend to go beyond its authority.

It is not necessary to come into a conclusion whether the leading majority judgement in

"Golaknath's case" is right in finding the capacity of adaption in the residuary "entry 97 of List I of Schedule VII", nor is it called for, having regard to the majority decision therein that the power of amending is found in the residuary "entry 97 of List I of Schedule VII".

Article 368's definition of "amendment" excludes repeal. While the forcefulness to make new sway the Constitution is extensive, it cannot be used to eliminate, dilute, or otherwise undermine the Constitution's core protections, guarantees, or identity. Parliament has the power to change any contentions of the Constitution, within specified limits.

Article 368 does not give Parliament the ability to amend the Constitution in a way that would give it the authority to "repeal" or "abrogate" the Constitution, or to harm or pull down any of the basic rights or essential elements of "the basic structure" or image of the Constitution.

The Preamble cannot be changed because no one in the present or the future, regardless of how strong they may be, can pretend to alter the facts of the past. The Preamble contains some enlightening ideas and concepts about the past, like a firefly. Permanent and prestigious recognition for FRs is granted in the Constitution, as is the status of DPSPs. I'm confident in what I've stated. Our Constitution guarantees "equality", "justice", and "freedom from social", "economic", and "political tyranny to all its citizens" with the stated goal of establishing India as a "Sovereign" "Democratic" "Republic", as stated in "the Preamble". Part III's conferral and guarantee of FRs unquestionably comprise the articles of the Construction, and without them, no man's aspirations may ever beyond his reach. The DPSPs' importance to the nation's administration, however, cannot be overstated. What is essential to a nation's governance can't be less crucial than what is essential to an individual's existence.

It is not simple to fulfil the ambition of the Father of "*the Nation to wipe every tear from every eye*" and we are all aware that our large nation has tremendous challenges. If, however, the social goals turn out to be a landfill of feelings, then woe betide those in whom the people has so much trust despite the substantial powers currently provided to the Parliament.

The longest period was spent by the biggest Bench, which deliberated on matters of "grave moment" for the future of the nation and democracy. As a matter of fact, it's no secret that the majority of the population is in agreement with this statement. According to ten different judges, the amendment does not qualify as a instruction under Article 13 of the Constitution. The seven-judge panel reached a consensus that the amendment process is unrestricted and may be used to change any provision of the Constitution, including the FRs. No inherent or implied limits on the right of amendment under Art. 368 were found by seven judges. A majority of the Supreme Court agreed, ruling 7-2 that the ability to make adjustments to the Constitution cannot extend

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to fundamentally altering its structure or character. On April 24, 1973, the court delivered its illustrious verdict in the landmark case of "Kesavananda", shining the light of a novel idea called the "Basic Structure Doctrine" onto the world.

IV. Critical analysis of the post-kesavananda bharati case with case laws

The Fabricated Structure Doctrine, is an outcome of the SC of India's innovative thinking in this case, has come under fire. One of the most significant is that the Constitution itself is silent on the issue, which runs counter to the will of the Constituent Assembly. The connection between the doctrine and the codified Consti may speak more correctly to the spirit than to the text, yet some have maintained that the judgement supports textual structures.

Apart from this, the judgment has been claimed for its length and has been criticized on the ground that it comprises the opinions of thirteen judges. The risk of ambiguity stems from the fact that each judge's decision is based on their own individual notion and preference, which has been the subject of what has been termed "an outstanding study on the lack of consensus" Further, it was pointed out that the doctrine is nothing but a process whereby the amending power gets vested in the judges.There has been much criticism of the ideology for its alleged anti-majoritarian tendencies that is to say, it resulted in a democratic imbalance since it gave the SC the power to lay down CA.

The doctrine, as a consequence, preferred judicial power over legislative authority. Such a conclusion was inconsistent in that situation. An examination of "The Basic Structure Doctrine" was attempted. The then-angry government, muzzling judiciary independence, superseded those three judges who ruled for the doctrine, namely, Justice Shelat, Justice Grover, and Justice Hedge. Appointed A.K. Ray as the Chief Justice instead of the retiring then Chief Justice S.M. Sikri. The principle of seniority in the Court of Justice was overturned by the government.

To uphold the Constitution's underlying theory, the Indian Supreme Court has issued a number of rulings. In this right-up, a summary of the important judgments is briefly discussed:

- **Indira Nehru Gandhi**[8]

The court ruled in this instance that the 39th Amendment Act of 1975 was unconstitutionally vague. As the old saying goes, "If you can't beat them, join them" In this case, the old saying holds true. The Principal Court ruled that Art. 368 of the Constitution does not allow for the amendment act at issue since it alters the Constitution's fundamental structure. All persons shall

[8] Indira Nehru Gandhi v. Raj Narain, 1975

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be correspondingly entitled to liberation of "conscience" and the "right freely to profess", "practice", and "propagate religion"; the state shall have "no official religion and the nation shall be "governed by a government of laws".

- **Minerva Mills Limited**[9]

The court ruled that the 42nd CAA, 1976, is invalid because it undermines the document's fundamental structure and exceeds Parliament's authority to make such changes. The amendment declared that no court shall consider invalid any modification to the Constitution enacted according to Article 368 of the Constitution. The Court ruled that Parliament could not turn its limited authority to modify the Constitution into an absolute one by using that power beyond its original scope. The Constitution's provision for a limited amendment authority is an essential component that cannot be eliminated. Parliament does not have the authority under Article 368 to use its amending powers to abolish the Constitution or remove its fundamental provisions.

- **In the case Bhim Singhji**[10]

The Supreme Court ruled in this instance that the concept of a benefitting based state on social and economic fairness is fundamental to the concept at hand.

- **Satyapat Kumar (S.P.)**[11]

The court ruled that JR is a necessary and fundamental provision, and hence Parliament cannot abolish it.

- **Delhi Judicial Service Association**[12]

Based on Articles 32, 136, 141, and 142 of the Constitution, the court ruled that it plays a crucial role in the administration of justice.

- **In KihotoHollohan**[13]

A substantive constraint was found to be inherent in the authority to modify such that the amendment does not change or destroy the fundamental structure, even though no such limitation is stated explicitly in Art. 368.

- **In the case of R. Bommai**[14]

[9] Minerva Mills Limited v. Union of India, 1980
[10] In the 1981 case Bhim Singhji v. Union of India
[11] Satyapat Kumar (S.P.) v. (the) Union of India (1987)
[12] State of Gujarat v. Delhi Judicial Service Association, 1981
[13] 1992's -KihotoHollohan V. Zachhilu
[14] R. Bommai v. Union of India (1994)

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In this case, the highest court ruled that "secularism" should be understood as both a constitutional aim and a component of it. Similarly, it was believed that "Federalism" and "Judicial Review" are the fundamental elements.

- **All India Judges Association**[15]

It was determined that one of the fundamental components is a fair and impartial judicial system. A lack of judges would undermine this fundamental element since the public would not have access to justice.

- **I.R. Coelho**[16]

It was decided that the Constitution might be broken by a statute that nullified or diminished protections provided by Article III. If Article III of the Ninth Schedule is amended, the Court will have to nullify that statute under its judicial review authority. When deciding whether or not a legislation is destructive of the structure, it is important to consider how the law really affects the rights granted under Part III.

- **Waman Rao**[17]

The Head Court's seminal 1973 ruling on the concept's application declared that all prior judgements were null and invalid. One of these principles is called "retrospective effect" and it must be observed.

The beginning of a new age in which India experienced yet another dominance follows the most contentious case in the history of the extreme court of law. Judicial review is final and binding on matters of constitutional law. After various attempts at reviewing the case, The Doctrine outlived all the shortcomings.

The grand judgment affirmatively impacted numerous judgments and each judgments has further impacted for the development and progression of its subjects. However, the list is exhaustible and shall add on in future cases to come.

V. CONSTITUTIONAL PHILOSOPHY FROM PRE- AND POST-KESAVANANDA BHARTI CASES

After a long-term power struggle through the creative role played by the Supreme Court, The Doctrine came as a neutral head where the Constitution was held supreme. After a number of philosophical graphs—"Parliamentary Supremacy", "Constitutional Supremacy", and

[15] Union of India v. All India Judges Association (2002)
[16] 2007's R. Coelho v. State of Tamil Nadu
[17] Waman Rao v. Union of India (1981)

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"Constituent Assembly Supremacy—the Constitution", which is the document that formulates the rules of all its organs and "a protector of individuals dignity and their FRs", was held supreme. In a number of judgments, quite a multiple features have been identified as basic through various judgments :

1. "Elections free and fair"[18]
2. "The principle of equality, not every feature of equality, but the quintessence of equal justice" [19]
3. "Judicial Review" [20]
4. "Rule of Law" [21]
5. "Sovereign, Democratic, Republic Structure" [22]
6. "Power of the Supreme Court under Art.s 32, 136, 141, and 142 of the Delhi" [23]
7. "The theory of basic structure"
8. "FRs are a part of the basic structure" [24]
9. "The dignity of the individual is secured by the various freedoms and basic rights contained in Part III of the Constitution, and their protection is the basic feature of the Constitution" [25]
10. "The Unity and Integrity of the Nation" [26]
11. "The Constitution does not change the basic structure or essential features of the Constitution" [27]
12. "The Constitutional Scheme excludes the scope of absolute power in any one individual" [28]
13. "The jurisdiction conferred on the SC of India under Art. 32 of the Constitution is an important and integral part of the Constitution" [29]

[18] Held in KihotaHollohan v.s Zachilhu, AIR 1993
[19] Held inRaghunath Rao Ganpath Rao v.s Union of India, AIR 1993/Minerva Millsvs.UOI
[20] Held in Subesh Sharma v.s Union of India, AIR 1991/Minerva Mills v. Union of India, 1980
[21] Held in Indra Swahney v.s Union of India AIR 1993
[22] Held in KihotaHollohan v. Zachhilhu, AIR 1993, Kesavanand Bharativs. State of Kerala, Indira Gandhi Vs. Raj Narain
[23] Held in Delhi Judicial Service Association Constitution v. the State of Gujarat, AIR 1991
[24] Held in Indira Nehru Gandhi vs. Raj Narain
[25] Pronounced by CJI, S.M. Sikri, in Namith Sharma vs. Union of India.
[26] Pronounced by justices Shelat and Grover in Kesavanada Bharati v. State of Kerela, AIR 1973
[27] Result of the 26th Amendment Act in the case of RaghunathraoGanpatraov. Union of India, AIR 1993.
[28] Held in S.C. Advocates on Record, Association Union of India, AIR 1994.
[29] Held in I.R. Coehlo V. State of Tamil Nadu, AIR 2007

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14. "Independent and efficient judicial system as the basic structure" [30]
15. To alter the "Preamble" to the mother law, "Supremacy of the Constitution" means "supremacy of the principle of separation of powers" "Secularism" "Creating a welfare state" based on the principle of "social and economic fairness", "Government based on a parliamentary system" "Part III deals with the FRs" whereas Part IV lays out the "guiding principles for state policy". In a parliamentary democracy[31]
16. "Federalism" [32]
17. "The 'essence', of other FRs is discussed in Part III" [33]
18. "Effective access to justice" [34]
19. "Art. 368's modifying authority is subject to the following limitations"
20. "Judiciary autonomy"
21. "A constitutional framework for democracy and multi-party systems"

The before and after 1973 can be notably seen in the following difference the 1976 amendments to Art. 368:

Prior to 1949, the President's signature on a bill for amendment was not required by law. The right to veto additional laws is preserved after 1976 according to Article 368 Clause (2), as revised by the 24th Amendment Act of 1971.

The dialect of Article 368 as it appeared in the 1949 Amendment was not clarified. The 24th Amendment Act of 1971 clarified the meaning of "by the addition, variation, or repeal of any provision of this Constitution" which is now Article 368 as amended in 1976 by the inclusion of Clause (1).

Up to 1949, a principal revision Act enacted in the exercise of the authority provided by Art. 368 was considered to be a law subject to Art. 13 (2) in the Golakhnath Case, which relied on the term bill.

After 1976, the 24th Amendment Act of 1971 removed this interpretation from Art. 368 by putting Clause 4 into Art. 13.

Article 368 as it existed in 1949: although the amending power conferred by Art. 368 was not

[30] Held in Kuldeep Nayar v. Union of India
[31] Held in Kesavananda Bharati vs. State of Kerala/Minerva Mills v. Union of India, AIR 1980/S.R. Bommai vs. Union of India 1994
[32] Held in Golaknath vs. State of Punjab (Bachawat, Justice)
[33] Held in Waman Rao vs. Union of India, AIR 1981.
[34] Held in Central Coal Fields vs. Jaiswal Coal Company

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subject to any express limitations, it was held in Bharati[35] and Indira[36] cases that it was subject to the procedural processes and to the implied limitation and has no power to alter the fundamental features or make a new Constitution.

Finally, in 1976, Clause (5) was added to Art. 368, thereby nullifying this argument. Clause (4) provides that a CAA should be immune from judicial scrutiny, and there are no constraints on the powers provided.

Many regions of India have been affected by and embraced the Basic Structure Doctrine. The borne of the comparative study, our mother law has also been benefitted. With such research and study with comparisons, it have been learned that the doctrine is quite beneficial with Countries having their own Constitution at large.

- In the 1989 decision of Answar Hossain Choudhury v. Bangladesh, the Supreme Court of Bangladesh interpreted the people's republic of constitution as follows: used this theory to do away with the eighth amendment, limiting the jurisdiction of the high court.
- In Lahore HC and Baluchistan HC have also followed this doctrine, as held in DarweshAnbey v. Federation of Pakistan and Suleman v. President, respectively, the Pakistan SC used this doctrine to do away with down some martial law and establishing a federal Shariat court by adding art. 203(C).
- The spirit of the Preamble, which embodies the basic features cannot be amended, enshrined in Dieter Conrad's art. On “Basic Structure” published in law and justice journal, was included into the 1990 constitution for the country of Nepal, then a monarchy.
- However, a majority in Sri Lanka ruled that the Constitution's phrasing in Articles 51 and 82 meant that the theory did not apply there.

The modern Constitution, they say, has influenced the field inside and outline of the state, making evident that this very judgment has drawn scopes and hopes in the minds of his subjects for the greater good. This very judgment enlightened and broadened the scope of the new constitutional philosophy, which is held in the hands of the protector of the Constitution, the judiciary. This very case has brought about a better image of the judiciary in our country. This very case cites an example of Incredible India, in the form of creativeness, which overthrows tyranny and sows seeds for democracy. The guaranteed over view of the instances of the World has been truly inspiring in forming documents so sacred so mandatory for the ruling of a

[35] Kesavananda Bharati vs State of Kerala,1973
[36] Indira Nehru Gandhi vs Raj Narain

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civilized society. The evidence that has been collected from throughout the World is an example of unity with diversity. Such diversity can only be possible with a document that is not too rigid not to flexible in its own sense. Every document thathas been overreached till now shows how much it is important to work in accordance with the document in stating and governing the machinery alongwith its subject.

VI. CONCLUSION AND SUGGESTIONS

It is suffix to say that the "theory of fundamental Structure" is a judicial innovation as well as a savior to the judiciary to uphold the sanctity of our precious and malleable Constitution, unbridling, ambivalent and nebulous concepts and implicating the credence through the lexicon of ethnography and pragmatism along with the prismatic glow of our rich heritage and philosophy and thereby cradling the edifice of the Constitution from dismantle and ruination within the jaws of majorititarian Parliamentary dictum tantamount to ultimate totalitarianism as in the history of Germany in the reign of Adolf Hitler, when the democratic Weimer constitute on transformed into the dictatorial dogma.

Several other nations throughout the world have embraced the theory of basic structure, a constitutional principle that was first established in India. It maintains that, even if the amendment process complies with the legally mandated procedures, some basic aspects of a constitution cannot be changed by the legislature. These fundamental principles could include the preservation of individual rights, the supremacy of the Constitution, the "separation of powers", the "democratic" and "republican forms of governance", and the "democratic form of government".

The "basic structure" theory is likely to remain a crucial idea in constitutional law in the future. One explanation for this is that by barring revisions that would fundamentally change a constitution's nature, it aids in maintaining the constitution's integrity. This is particularly significant in nations where the constitution is regarded as a marker of national identity and when there is a chance that political players may attempt to use the constitution to further their own agendas.

The idea of "basic structure", however, is also susceptible to future criticism. One of these difficulties is the potential for conflicting definitions of what a "basic feature" of a constitution is. New interpretations of what ought to be regarded as basic to a constitution may emerge when constitutional ideals change over time. Determining which aspects are covered by the "doctrine of basic structure" and which ones are not could result in conflicts.

The risk of the notion of "basic structure" being abused presents another difficulty. Judges may

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utilise the concept to reject amendments that they disagree with on the basis of policy if it is applied too broadly or frequently, which might turn it into a tool for judicial activism or even tyranny. The democratic process might be harmed, and the constitutional system might become unstable and unpredictable as a result.

In general, maintaining constitutional integrity while also respecting democratic procedures and allowing for constitutional growth will likely require striking a careful balance, which will likely determine the future of the "doctrine of basic structure" The notion of fundamental structure will continue to be a crucial guideline for courts as constitutional law develops and new problems are faced.

It is generally accepted that the meta-norms were avoided in favour of brevity in order to distil the philosophy and inscribe it permanently for the benefit of future generations. The doctrine is the "*North Star, an unfailing guide that shows the way when the path appears convoluted*" as Chief Justice D.Y. Chandrachud put it.The range of the theory has not only brought coherence to the nation's legal system, which is quite evident in numerous judicial verdicts,but also stepped into the courtrooms of foreign courts with flying colors.

Denunciations:

Despite the venture of eloquent articulation in the midst of the turbulent tussles between the wing of the judiciary and Despite the unstoppable chamber's effort to change the body of law to the point where it encompasses it's fundamental essence, the basic structural concept has not been able to avoid the ring of dispute.

Vague:

It is criticized that the doctrine is not conducive to clarity and is embroiled with presumptive ramifications lacking the conclusive boundary of definition and "could take on varying forms depending on context"

Judicial Activism:

It has been pointed out that the authority to establish a new proposition of law and to decide its validity should not vested in one and the same authority, namely the judiciary. It seems anti-democratic due to the highly discretionary nature of the judiciary.

Judicial override:

It is the interference with proper functioning by the Executive and the Legislature that seems to surpass the limitation of judicial intervention, and thus, the Supreme Court becomes a self-constituting body.

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Judicial Review:

On certainty, it has been said that all laws and its amendments are now subjected to JR, in the opinion of judges, they transgress it, and are likely to be abolish them by the apex court, which is the final arbiter.It is considered a serious impediment to constitutional reform.

(A) Suggestions:

- My vote goes to the judiciary above the legislature as the best institution to safeguard the Constitution.
- Despite its detractors, I believe that the Kesavananda case was the most ingenious rescue effort by the court that freed India from the despotism of the one-party period and preserved the country's democracy.
- The argument on Judicial Review has been extensive. In my opinion, it shall go on to vitiate structural changes with the intact of citizen's FRs in this dynamic World.
- In popular sayings "Precaution is better than Prevention", it will not be irrelevant to remind ourselves that "*History may repeat itself"* therefore, The Doctrine should be maintained as a kind of safety valve to ensure the survival of "Indian democracy"
- The SC shall always be this effective and creative when it is necessary for a democratic country to work harmoniously yet with utter progression.
- It is suggested that judiciary and legislative shall work harmonious for the sake of its subject.
- The doctrine is like ray of sunshine, it gave hope for betterment, progression and delimited derogative intentions.
- In this theory, the ideas and intentions of the makers of our scared document is duly been highlighted which shall be restored and preserved for it is essential to prioritize its subject for whom it all is.
- According to the idea of the principle structure, certain Constitutional clauses cannot be changed by the parliament if they would alter the Constitution's esssential principles. Here are some ideas about the doctrine
- Clarify the cardinal structure's scope: To remove any ambiguity, the structure, it needs a scope to be made clear. The judiciary should formally describe the components that make up the principle rudimentary parameter.
- Blitz a balance between the strength of the land of justice and the land of law makers.

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The thesis should a egalitarianism between those capacities. Both the parliament and the judiciary should respect each other's deliverance. The judiciary should not expropriate the authority of the law makers.

- Apply the concept sparingly: The doctrine should only be used thriftily and only when there is a blatant infraction of the Constitution's core values. The notion must not be employed as a means of thwarting lawful constitutional amendments.
- In conclusion, the essential structure concept is a crucial judicial precept that aids in safeguarding the fundamental tenants of the Constitution. However, it should be used wisely and with proper regard for the senate's authority and the shifting demands of society.

Thus,the doctrine can be expressed compendiously to mitigate the repudiation from all corners. Jagdeep Dhankar, our Vice President,once opined that Constitutional ideals and the aspirations of the people can only be realised when the "legislative" branch, the "judicial branch", and the "executive" branch work together in harmony.

(B) Conclusion:

The Constitution is not just a bunch of feel-good cliches; it can be argued against down to its fundamental principles. The misnomer cannot help pondering the need to overhaul the celebrated basic structure doctrine.

It is quite a time reminded by numerous jurists that because some out of a lot thinks that the doctrine should not prevail in future will be same as throwing the baby out alongwith the bath water.

The features which are basic is not only legitimately vital but also deeply enrooted in the history of the text by the framers. It holds moral values which perhaps enlightens the way to strengthen Country's democracy by limiting the powers of the government and not letting it be a playing.Whenever, there has been need of the Supreme Court, it has played its role very diligently and mostly creatively. The very essence of the SC is its feature to review and come into conclusion with utter wider scopes and never narrowing down an issue.

In a Country with such independent and responsible judiciary acting effectively for the benefit and welfare of the Country. A Country which has witnessed all forms of brutality, politics and such ways of interference in the workings of this institution, it is quite a proud moment for all of us to go back to history and as early as 1973 to see reform in forms which is appreciated and shall remain with us, to safeguard and protect of Constitution for it is of sheer importance for

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India to not maintain its democratic and welfare form but so to keep the "trinity- the preamble, FRs and the DPSP" as they the tools for such reforms and for such up gradation. To work harmonious, there must be the basic rules to obey and work according without any violation thereon.As in a welfare state progress has always been its first and foremost priority and that has been always enshrined through the judgments in the SC. With the forwarding World, changes are inevitable and with changes comes new challenges. It is quite a moment of applauds to witness SC coming up with such modern and progressive judgments to-day. The play of SC was very evidently seen the past in various judgments that shall prevail in history for good. The guardian that is our SC, guarding our basic rights from derogation. The protector that is the apex court is protecting our rights from being derogated by other wings of our governance system is truly appreciated as it is the very essential element for democracies to remain democratic.

It is thrilling to have a document so scared yet changeable according to changing needs of time, so changeable that the basic rights of its subject is stated as basic feature of it, so basic rights that powerful leaders have had issues with it and so important at every step to derogate it, the judiciary is protecting it.

I do conclude with caution,recapitulating the words of Byron:

"A state takes far longer to build than a century; an hour might leave it in the dust"

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