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# SOVEREIGN AUTHORITY VS FUNDAMENTAL LAW- DELVING INTO PARLIAMENTARY SOVEREIGNTY AND CONSTITUTIONAL SUPREMACY

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**ABSTRACT**

The Constitution of India is a paramount legal document that provides a clear framework for the functioning of all three branches of government at both the central and state levels. No branch of government holds supreme authority, and all must operate within the boundaries set by the Constitution. The Constitution explicitly outlines the criteria for assessing the validity of each branch's actions and justifying their decisions. The author has examined the philosophical origins of the concept of Constitutional Supremacy, which stems from Popular Sovereignty and establishes a trust-based relationship between citizens and the state. Unlike Parliamentary Sovereignty, which has transformed legal positivism into a tangible reality, Constitutional Supremacy bestows a higher status upon Fundamental Rights and ensures that legal validity cannot be divorced from considerations of political and social morality. The presence of the Constitution as the supreme law necessitates an approach that recognizes the inherent connection between matters of law and matters of morality. In a democratic country, the concept of Constitutional Supremacy can only be safeguarded by an active and independent judiciary. The absence of judicial review would result in a system of Parliamentary Sovereignty under both the American and Indian constitutional systems.

## INTRODUCTION

The constitution of India, in its original form, establishes India as a sovereign democratic republic. It possesses both internal supremacy and external independence, thereby signifying its sovereignty. The democratic nature of the constitution is evident through the expression of the people's sovereign will through voting, as well as the parliamentary form of the executive branch, which is accountable to an elected legislature. Additionally, India is a republic since its head of state is an elected official rather than a hereditary monarch.

The Indian constitution is the most comprehensive document worldwide, as it outlines the three main pillars of parliamentary democracy: the legislature, executive, and judiciary. Similar to a living organism, the constitution must adapt to emerging needs and future circumstances. Consequently, it has undergone numerous amendments within the relatively short period of 74 years since its commencement. These constitutional amendments and the enactment of ordinary laws aim to ensure social, economic, and political justice.

The duty of the parliament necessitates the formulation of legislative policy and the enactment of binding rules of conduct. On the other hand, the judiciary is responsible for reviewing legislative acts that are inconsistent with the provisions of the constitution or exceed legislative competence. This has led to disputes between the legislature and judiciary regarding questions of legislative supremacy. Pandit Jawaharlal Nehru recognized the potential need for parliament to amend the constitution and considered the role of the Supreme Court and high courts in interpreting fundamental rights. He emphasized that these judicial bodies were not intended to function as super legislatures. He observed in the constituent assembly *"No Supreme Court and no judiciary can stand in judgement over the sovereign will of the parliament representing the wheel of the entire community. If we go wrong here and there, it can point it out, but in all in the ultimate analysis, but the future of the community is concerned, no judiciary comment the way. And if it comes in the way ultimately the whole constitution is a creature of the parliament. it is obvious that no court, no system of judiciary can function in the nature of the third house, as a kind of third House of correction. So it is important that with with this limitation the judiciary suit function. Ultimately the fact remains that the legislature must be supreme and must not be interfered with by the court of law in such measures of social reform. Of course, one of the one is the method of changing the constitution full step the other is that which we have seen great countries across the seas; That the executive which is appointing authority of the judiciary, begin to appoint judges of its own liking for getting distance in its own favour, but that is not a very good method"*[1].

The concept of parliamentary supremacy was once again emphasized by Sri Jawaharlal Nehru prior to the deliberation on the Fourth Amendment Bill, when he raised a query, *"why should eight judges in the Supreme Court be permitted to outlaw the Acts passed by elected legislators or the actions of their Ministers or of the officers controlled by the Ministers? Why should this undemocratic process be permitted in the name of judicial review? Why should one have more faith in the Court than in the Parliament?"*

In the realm of constitutional amendments, the Supreme Court of India has encountered numerous instances involving parliamentary supremacy. In the case of ***Shankari Prasad v. Union of India***[2], the Supreme Court held that article 368 grants Parliament sufficient authority to amend the Constitution, regardless of article 13(2). This decision was subsequently affirmed

[1] 9 Govt. of India, C.A.D., 1195-96.
[2] AIR 1951 SC 458.

by a 3:2 majority in the case of ***Sajjan Singh v. State of Rajasthan***[1]. However, the minority opinion expressed reservations regarding this ruling. It is noteworthy that the concept of implied limitations, specifically the unamendability of the fundamental aspects of the Constitution, was first introduced in the dissenting opinion of Mr. Justice Mudholkar in this particular case. He observed,

*"Ours is a written Constitution. The Constituent Assembly which was the repository of sovereignty could well have created a sovereign Parliament on the British model. But instead it enacted a written Constitution, created three organs of State, made the Union Executive responsible to Parliament and the State Executive to the State Legislatures; erected a federal structure and distributed legislative power between Parliament and the State Legislatures, recognised certain rights as funda- mental and provided for their enforcement prescribed forms of oaths of office or affirmations which require those who subscribe to them to owe true allegiance to the Constitution and further require the members of the Union Judiciary and the higher judiciary in the States, to uphold the Constitution. Above all, it formulated a solemn and dignified Preamble which appears to be an epitome of the basic features of the Constitution. Can it not be said that these are indicia of the intention of the Constituent Assembly to give a permanency to the basic features of the Constitution"*[2]

Mr. Hidayatullah, Chief Justice of India, observed in his dissenting judgement, *"the power to make amendments ought not ordinarily to be a means of escape from absolute constitutional restrictions"*[3]. In the renowned case of ***Golak Nath v. State of Punjab***[4], the Court strongly argued that the constituent power was subject to certain limitations as implied by its nature. However, this argument was ultimately not upheld as it was deemed unnecessary for the resolution of the specific case at hand. However, Justice Hidayatullah dwelt on the problem in these words, *"It is the duty of the Court to find the limits which the Constitution has set on the amendatory power and to enforce these limits"*[5]. Though the observation of Justice Hidayatullah did not clarify whether he had express or implied limitations in his mind, in any case, he opened the way for importing limitations.

The Golak Nath case, decided by a narrow majority of 6:5, effectively restricted Parliament's authority to curtail or infringe upon any of the fundamental rights. This decision sparked intense national debates and ultimately led to the enactment of the Constitution Twenty Fourth Amendment Act. This Act reaffirmed Parliament's supremacy in the realm of constitutional amendments, including those pertaining to Part III of the Constitution.

In the case of ***Keshavananda Bharti v. State of Kerala***[6], the appellant forcefully argued for implied limitations on Parliament's power to amend the Constitution before a bench of 13 Supreme Court judges. Seven judges (Sikri C.J., Shelat, Grover, Hegde, Mukherjee, Jaganmohan Reddy, and Khanna JJ.) identified certain limitations on the constituent or amending power, while six judges (Ray, Palekar, Mathew, Beg, Dwivedi, and Chandrachud JJ.) recognized no such limitations. Although the Court overturned the Golak Nath case, it imposed a new limitation stating that Parliament could not alter or destroy the "basic structure" of the Constitution.

The concept of the basic structure of the Constitution was further elucidated by the Supreme Court in subsequent cases: ***Indira Nehru Gandhi v. Raj Narain***[7]***, Minerva Mills v. Union of India***[8]***, and Waman Rao v. Union of India***[9].

Following the Golak Nath and Indira Nehru Gandhi cases, the Indian Parliament passed the 42nd Constitution Amendment Act[10] to affirm the doctrine of Parliamentary Supremacy. This Act placed constitutional amendments beyond the reach of judicial review and established special procedures for determining the constitutionality of Central laws. During the Janta Government's rule, the Act was modified by the 43rd and 44th constitutional amendments to address certain distortions. However, these amendments did not alter the portion of the 42nd Amendment Act that barred judicial challenges to the validity of constitutional amendments. The Supreme Court of India declared this portion (Sections 4 and 5) of the Act invalid in the Minerva Mills case of 1980. These sections were deemed invalid on the grounds that they sought to destroy an essential feature or "basic structure" of the Constitution by removing all limitations on Parliament's power to amend the Constitution and preventing judicial review of such amendments on any grounds.

## THE CONCEPT OF SOVEREIGNTY

Sovereignty, a doctrine that emerged during the late Middle Ages, aimed to empower the secular state and challenge the authority of the church[11]. This concept was first introduced by Bodin, who defined it as the "supreme power over citizens and subjects, free from legal constraints." Bentham, on the other hand, is recognized as the founder of legislative science. Sovereignty became a fundamental principle of the legislative reform movement, which sought to transform the laws governing society from the feudal era to the industrialized England of the early 19th century[12].

The notion of sovereignty, as conceptualized by Bodin, Hobbes, Austin, and Salmond, is characterized by three significant elements: (i) the essentiality of sovereignty within the state, (ii) the indivisibility of sovereignty, and (iii) the illimitability of sovereignty.

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[1] AIR 1965 SC 845.
[2] *Id* at 864.
[3] *Id* at 862.
[4] AIR 1967 SC 1643.
[5] *Id* at 1718.
[6] AIR 1973 SC 1461.
[7] AIR 1975 SC 2299.
[8] AIR 1980 SC 1789.
[9] (1980) 3 SCC 587.
[10] Indian Constitution (Amendment) Act, 1976.
[11] Ivor Jennings, The law and the constitution 147 (2021).
[12] 1 Roscoe Pound, Jurisprudence, 308 (1959).

While jurists unanimously agree on the essentiality of sovereignty within the state, the element of indivisibility has been challenged by the emergence of federal states, where power is divided between the national government and the governments of constituent units. The element of illimitability is also restricted by the increasing prevalence of written constitutions. The traditional concept of unlimited sovereignty is gradually being replaced by the idea of limited government. The old concept of unlimited sovereignty is giving place to the new concept of limited government. Moreover, in modern age, it is a very difficult task to ascertain as to where the sovereignty resides. It was easy to locate it in the 18th century which conceived uncontrolled law-making power in the British Parliament and legal unaccountability of the king or those who acted in his name. This trend led to the conclusion that sovereignty rested in "some person or body of persons". Hence Blackstone observed, "there is and must be in all (governments) a supreme, irresistible, absolute, uncontrolled authority, in which the *Jura Summi Imperior* the rights of sovereignty reside"[1]. This idea of determinate body is negatived in modern times.

Where does the sovereignty reside in the Indian federal system? In the Indian federal polity, sovereignty does not rest with Parliament, as it is a product of the supreme Constitution. It is also questionable whether sovereignty resides in the Constitution itself, as it is enacted by the people of India. Locating sovereignty within the people poses further challenges. Consequently, the concept of sovereignty is now understood in a dynamic sense, adaptable to the evolving structure of society.

### A. EXPOSITION OF PARLIAMENTARY SUPREMACY IN U.K.

Popularly speaking, British constitutionalism is associated with the parliamentary supremacy premise. The supremacy or sovereignty of Parliament, as stated by Dicey, is the fundamental characteristic of the British Constitution. Parliament is made up of the Queen, the House of Lords, and the House of Commons. This body has the ability to make laws on its own. The principle of parliamentary sovereignty, in the words of Dicey, "means neither more nor less than this, namely, that Parliament thus defined has, under the English Constitution, the right to make or unmake any law whatever, and further, that no person or body is recognized by English law as having a right to override or set aside the legislation of Parliament."[2]

The absence of any legal restrictions on Parliament's legislative authority, as in England, is commonly understood to be the definition of the sovereignty of Parliament. The absence of legal constraints has both beneficial and harmful features. The favorable side suggests that Parliament has the authority to enact laws on any topic. The drawback is that after Parliament has passed legislation, no court or other authority may rule on the law's legality.[3] It is quite evident that the Dician exposition of unquestionable parliamentary supremacy is false. Hobbes, Bentham, and Austin's definition of sovereignty has lost all relevance in English legal thought today. If sovereignty is the highest power, then Parliament is not sovereign, as Jennings rightly points out.

Additionally, according to Prof. Laski, no Parliament would dare to deny Roman Catholics their right to vote or forbid the establishment of unions. Dicey also appeared to be having some second thoughts about England being as the seat of political as well as legal sovereignty.[4] According to him, legal sovereignty was merely an idea, and it simply meant that a body had the authority to make laws without being constrained by the letter of the law, as long as that body was politically the most powerful in the State and its population ultimately submitted to its will. As a result, while the electorate was the political sovereign, the Parliament was the legal sovereign, prompting Jennings to observe that "if this is the case, legal sovereignty is not sovereignty at all." Thus, in England, the notion of parliamentary dominance had been altered.

This necessitates a thorough examination of the extent to which the principles of parliamentary supremacy have a foundation in a federal India with a detailed written constitution.

### B. APPROACHES TOWARDS PARLIAMENTARY SUPREMACY IN INDIA

The argument for parliamentary supremacy in India has been approached from two different angles. People who want to create parliamentary supremacy over the judiciary are in charge of the first strategy. The Congress Party holds this opinion as well. The C.P.I. stated on February 13, 1976, that the judiciary, including the Supreme Court, should not have the authority or jurisdiction to interpret the Constitution or determine any issue of constitutional law validity.[5] It advocated for the creation of a constitutional committee endowed with such authority and chosen by Parliament.

The concept of parliamentary supremacy over the Judiciary can be categorized into two aspects: (i) the exemption of ordinary legislation from general judicial review, and (ii) the placement of constitutional amendments beyond the jurisdiction of the Judiciary. The argument for the immunity of ordinary legislation from judicial review has already been abandoned. However, it was never intended for the courts to function as a third chamber.[6] There was, however, a strong and consistent plea for safeguarding the constituent power from judicial scrutiny. In a statement made in the Lok Sabha on April 2, 1976, Mr. H.R. Gokhale, the then Union Law Minister, emphasized that Parliament's authority to make laws and amend the Constitution was supreme and that any erosion of its supremacy would not be tolerated.[7] Dr. Gajendragadkar, the Chairman of the Law Commission, echoed this sentiment in his inaugural Motilal Nehru Memorial Lecture on "Law, Lawyers and Social Change." He expressed the view that no limitations should be imposed on the provisions of Article 368 based on the basic features of the Constitution.[8] Therefore, it is argued that constitutional amendments should not be subject to judicial review, as the power of judicial review has already been relinquished. However, it is important to note that the judiciary was not intended to serve as a

[1] Blackstone, Commentaries on the laws of England, 1765, pp. 49.
[2] Dicey, An Introduction to the study of the law of the Constitution, 39-40 (10th ed.).
[3] J.D.B. Mitchell, Constitutional Law, 64 (2nd ed., 1968).
[4] *Supra* note 14, at 251-55.
[5] The Times of India, 4 (June 12, 1976),
[6] *Id.*
[7] The Times of India, 1 (April 04, 1976) .
[8] The Times of India, 1 (May 8, 1976).

third chamber of government. Nevertheless, there has been a consistent demand to shield the constituent power from judicial scrutiny. This sentiment was echoed by Mr. H.R. Gokhale, the then Union Law Minister, who stated in the Lok Sabha on April 2, 1976, that Parliament's constituent power to create laws and amend the Constitution was supreme and would not tolerate any encroachment on its supremacy. Dr. Gajendragadkar, the Chairman of the Law Commission, further emphasized this point in his inaugural Motilal Nehru Memorial Lecture on "Law, Lawyers, and Social Change", stating that there should be no limitations imposed on the provisions of Article 368 based on the fundamental features of the Constitution. Therefore, it is argued that constitutional amendments should not be subject to review by the judiciary.

The opposing viewpoint argues that the notion of parliamentary supremacy is an enduring misconception. According to Mr. N.A Palkhivala, the elimination or restriction of judicial review would effectively eradicate the rule of law in the nation.[1] Delivering the inaugural Tej Bahadur Sapru Memorial Lecture on March 26, Mr. Justice K.K.Mathew discussed "Democracy and Judicial Review" and asserted that it is an oversimplification to claim that a society can only be democratic if the legislature possesses absolute power. Additionally, Mr. Justice V.R. Krishna Iyer of the Supreme Court emphasized the importance of preserving lasting constitutional values during the process of constitutional amendment. The learned judge advocated for the retention of the "Supremacy of Court in the assigned sphere"[2]

## RATIONALE BEHIND THE PLEA OF PARLIAMENTARY SUPREMACY OF INDIA

The argument for the omnipotence of Parliament is grounded in the assumption that, in a parliamentary democracy, all powers originate from the people. The expression of the people's will is manifested through votes, and thus, Parliament holds ultimate authority. This line of reasoning formed the basis of the second All India State Bar Council Convention on March 28, 1976, where the prevailing sentiment was that the Constitution should always align with the will of the people. Furthermore, it was believed that Parliament, as the representative of the people, should have the final say in determining the objectives of the Constitution.[3]

In terms of modern constitutionalism, two approaches can be observed. The British system places a distinct emphasis on parliamentary supremacy. However, the effectiveness of the British Government's functioning relies on a vigilant public opinion. Additionally, the British system's ability to maintain stability lies in its ability to balance strong governance with a robust opposition.[4] This ensures that there is always a check on the potentially irresponsible behavior of the majority. On the other hand, critics argue that India's situation is less favorable. They contend that the executive can enact legislation solely based on their own preferences, even bypassing sufficient deliberation. This is exemplified by the hasty passing of the Constitution 40th Amendment Act, which incorporated 64 enactments into the 9th Schedule in one swift motion. The Constitution 42nd Amendment Act is also cited as evidence of the executive's wantonness, particularly that of the Cabinet.

American constitutionalism prioritizes balance over representative democracy. The framers of the American Constitution were not proponents of popular sovereignty and sought to control it through various means:

(a) through the establishment of a written constitution;

(b) through the doctrine of separation of powers;

(c) through the federal principle;

(d) through the creation of a strong Senate as a check on the House of Representatives; and

(e) through the establishment of the Supreme Court.

The Constitution of India strikes a harmonious balance between the British system of parliamentary supremacy and the American system of constitutional supremacy. On one hand, it establishes a parliamentary executive, and on the other hand, an independent judiciary serves as the final arbiter and interpreter of the Constitution. In England, Parliament is supreme and its legislative powers are not limited. Therefore, a law duly passed by Parliament cannot be challenged in any court. The role of English courts is to interpret and apply the law; they do not have the authority to declare a law illegal or unconstitutional.

In contrast, the Constitution of the United States holds supremacy over all three branches of government. For a law passed by Congress to be valid, it must conform to the provisions of the Constitution. If it does not, the Supreme Court can intervene and declare the law unconstitutional and void. Under the leadership of Chief Justice Marshall, the U.S. Supreme Court established its own supremacy over the Executive and Congress by assuming the power to declare any law unconstitutional on the grounds of it not being in "due process of law" of the Constitution.

In India, the position of the judiciary lies somewhere between the courts in England and the United States. While our Parliament and State Legislatures are generally supreme in their respective legislative fields, the Constitution places certain limitations on them through specific articles. If a complaint is made regarding a legislative transgression of these limitations, the court scrutinizes and determines whether the limitation has been exceeded. If there has been a transgression, the court will declare the law unconstitutional, as it is bound by its oath to uphold the Constitution. However, beyond the constraints imposed on legislative powers, the Indian Parliament and State Legislatures possess supreme authority in their respective legislative domains. The judiciary lacks the power to question the wisdom or policy behind laws duly enacted by the appropriate legislature. While the Indian Constitution acknowledges the judiciary's supremacy over legislative authority, this supremacy is limited in scope, applying only to areas where constitutional limitations restrict legislative power. Within this confined sphere,

[1] The Times of India, 4 (April 8, 1976).
[2] The Times of India, 1 (January 5, 1976).
[3] The Times of India, (March 30, 1976)
[4] Bernard Crick, The Reform of Parliament, 260 (1970).

the Court has the prerogative to declare laws void if they are found to have violated constitutional boundaries. However, unlike the American Constitution, the Indian Constitution does not confer absolute supremacy on the judiciary over the legislative authority in all aspects. In the broader legislative realm, outside the realm of constitutional limitations, the Indian Parliament and State Legislatures hold supreme authority. Consequently, the Indian judiciary does not have the capacity to assume the role played by the Supreme Court of the United States.

**CONSTITUTIONAL SUPREMACY**

*"The aim of every political Constitution is, or ought to be, first to obtain from rulers men who possess most wisdom to discern, and most virtue to pursue, the common good of the society; and in the next place, to take the most effectual precautions for keeping them virtuous whilst they continue to hold their public trust."*[1]

The opinions put forth by Sir Edward Coke in Dr. Bonham's Case[2], although not officially adopted in British Constitutional Law, were referenced in the Writs of Assistance Case in 1761 and likely had some influence in convincing the colonies to include provisions for judicial review in the United States Constitution[3]. The Supreme Court of the United States, through Justice Samuel Chase, established the Constitution as a higher level of law that preempts and surpasses the authority of the legislative branch. This was made evident in the case of ***Calder v Bull***[4] in 1798, where Justice Chase explicitly stated:

*"I cannot subscribe to the omnipotence of a state legislature or that it is absolute and without control. An Act of legislature contrary to the great first principles of the social compact can not be considered a rightful exercise of legislative authority."*

The Constitution is said to be a law of superior obligation; and consequently that if it were to come into collision with an Act of the legislature, the latter would have to give way.[5] In order to understand the philosophical roots of the notion of Constitutional Supremacy it is pertinent to mention the words of Chief Justice Marshall in ***Cohens v Virginia***[6]. He observed[7]:

*"The people made the Constitution and the people can unmake it. It is the creature of their will and lives only by their will."*

Constitutional Supremacy is the derivative of popular sovereignty, which is the fundamental principle from where the state and the federal institutions acquire their legitimacy[8]. It reflects the notion of social compact of a population, which is engaged in the political process and upon whose license the continued existence of the institutions of government depends and it also invokes the idea of participatory democracy[9].

CONSTITUTION AS SUPREME LAW OF THE LAND

Constitutional Supremacy, as an offshoot of popular sovereignty, is a well-established concept. The Constitution of India derives its legitimacy from the citizens themselves, as evident from the explicit declaration in the Preamble that the Constitution has been enacted by 'the People of India'. Unlike the Constitution of the United States, the Constitution of India does not explicitly state that it is the supreme law of the land. However, there are two provisions, namely Article 13(2) and Article 254(1), which clearly stipulate that any law made by the legislature inconsistent with the express provisions of the Constitution shall be deemed invalid. Despite this, there is no explicit mention of terms such as 'Supreme Law' or 'Paramount Law' in the Constitution.

However, the Supreme Court in the case of ***A.K. Gopalan v State of Madras***[10] clearly stated that even in the absence of express provisions, the same result would have been reached, and the court would have been obligated to deem such inconsistent laws unconstitutional and void. This is because the Constitution serves as the paramount law of the land and imposes legal limitations on the powers of the legislature, which it is the duty of the court to enforce. The need for any explicit provision declaring the Constitution as the Supreme Law of the land has been eloquently explained by Justice Das in the A.K. Gopalan[11] case in the following manner:[12]

*"The written Constitution of India holds supremacy over all three branches of government, and therefore, any laws enacted by the legislature must conform to the provisions of the Constitution in order to be valid. If they do not, the Supreme Court will intervene and declare such laws to be unconstitutional and void."*

It is worth mentioning the observation made by Justice Bhagwati in the case of ***State of Rajasthan v Union of India***[13], where he referred to the Constitution as the supreme lex. He stated:[14]

"*The Constitution is the suprema lex, the paramount law of the land, and no department or branch of government is above or beyond it. Every organ of Government, be it the Executive, Legislature, or Judiciary, derives its authority from the Constitution and must act within its limits."*

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[1] James Madison, The Federalist papers 1788.
[2] 8 Co. Rep. 114.
[3] Lord Irvine of Lairg, *Sovereignity in Comparative Perspective ; Constitutionalism in Britain and America*, 76NYU L.R. 5 (2001).
[4] 3 US (3 Dall.) 386 (1798).
[5] *Eakin v Raub* 12 Serg and Rawle 330 (1825).
[6] 19 U.S. 264.
[7] *Id.*
[8] *Supra* note 16 p 9.
[9] *Supra* note 16 p 10.
[10] (1950) SCR 88.
[11] *Id.*
[12] *Id* pp. 99,100.
[13] AIR 1977 SC 1361 (1413-14).
[14] *Id.*

Chief Justice Beg, in the case of ***A.D.M. Jabalpur v Shukla***[1], also affirmed the Constitution of India as the supreme law of the land. The concept of Constitutional supremacy was firmly established in India in the landmark case of ***Kesavananda Bharti v Union of India***[2], where the "Supremacy of Constitution" was recognized as a fundamental aspect of the Constitution's basic structure. This opinion of the court has been followed in subsequent cases such as the Reference Case[3] and ***Indira Gandhi v Raj Narain***[4].

## COEXISTENCE OF PARLIAMENTARY SOVEREIGNTY AND CONSTITUTIONAL SUPREMACY

The framers of the Constitution took great care in providing the best Constitution for the citizens. However, they did not include an explicit clause under Article 368 to limit the amendment power of Parliament. As a result, Parliament added the Ninth Schedule to accommodate agrarian reforms and exclude judicial review. Over time, the Ninth Schedule transformed the controlled Constitution into an uncontrolled one. In 1973, the Supreme Court introduced the doctrine of "Basic Structure" to impose implied limitations on Parliament's amendment power[5]. However, the Court failed to establish clear criteria for what constitutes the basic structure. This gave individual judges the power to make implied amendments, which goes against the principle of separation of powers, a basic structure of the Indian Constitution. Additionally, the Judiciary did not specify that the subject matters of the basic structure should be decided by a Constitutional Bench.

The doctrine of the "basic structure of the Constitution"[6] has become controversial and ambiguous. It lacks a textual basis and there is no provision stating that the Constitution has a basic structure that is beyond the reach of amending power. Therefore, the limitation on the amending power through the basic structure of the Constitution lacks positive legal validity. Furthermore, since the concept of the basic structure does not originate from the text of the Constitution, it cannot be defined clearly.

### EVOLUTION OF BASIC STRUCTURE THEORY IN INDIA

The basic structure theory is often argued among academics as the result of a long struggle and conflict between the Parliament and Judiciary. However, the author suggests that this doctrine emerged not due to a confrontation between the Judiciary and Parliament, but rather because of the framers' passive approach, where they did not provide any room for agrarian reforms in the original Constitution. Another contributing factor to the birth of this doctrine was the inclusion of the right to property as a fundamental right in the Constitution, which was addressed by the Supreme Court in 1973.

If the framers had not included the right to property under Part-III of the Indian Constitution, we would not have seen the ***Kameshwar Singh v. State of Bihar***[7] case. In response to this case, Prime Minister Jawaharlal Nehru introduced the Ninth Schedule, along with Article 31-B[8], in the first amendment to prioritize agrarian reforms, which was a priority for the Indian Congress before independence. Without this first amendment, the *Shanakri Prasad's*[9] case would not have emerged. Following the Shankari Prasad's case, the basic structure doctrine was first conceived in the *Sajjan Singh*[10] case. In these two cases, the Supreme Court respected and upheld the Parliament's decision to provide scope for agrarian reforms through the Ninth Schedule.

Subsequently, the Supreme Court, in the *Golak Nath's*[11] case, declared that amendments also fall under the definition of 'Law'. As 'law' has limitations under Article 245 of the Constitution, amendments too have limitations. To date, there is no specific provision in the Indian Constitution to restrict the amendment power of Parliament. However, for the first time in this case, the Supreme Court imposed an implied limitation on the amending power of Parliament by including the word 'amendment' in the definition of 'law' according to Article 13(3)(a). The petitioner, Golak Nath, spent money on this case without receiving relief, but it played a role in developing the doctrine of prospective overruling.

In response to this verdict, Parliament introduced the 24th amendment[12], which clearly stated in clause 3 of Article 368 and clause 4 of Article 13 that Parliament possesses the power to amend the Constitution as a constituent power, not as a law-making power. The constitutional validity of the 24th Amendment was then challenged in the *Keshavananda Bharati* case. A constitutional bench consisting of 13 judges[13] (6:1:6) upheld the 24th Amendment and declared that Parliament, under Article 368, can amend any

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[1] AIR 1976 SC 1207.
[2] AIR 1973 SC 1461.
[3] AIR 1965 SC 745 (762).
[4] AIR 1975 SC 2299 (571-75).
[5] Keshavanand Bharathi v. State of Kerala, AIR 1973 SC1473.
[6] [T]he doctrine of "basic structure" is introduced into India by a German scholar.
Dietrich Conrad, Limitation of Amendment Procedures and the Constituent Power, 15-16 Indian Year book of International Affairs 375 (1970).
[F]or the D. Conrad's influence on the Indian Supreme Court,
A. G. Noorani, *Behind the Basic Structure Doctrine: On India's Debt to a German Jurist, Professor Dietrich Conrad,* Frontline (May 11, 2001), available at http://www.hinduonnet.com/fline/ fl1809/18090950.html.
[7] AIR 1951 Pat.91, SB.
[8] [A]rticle 31-B: Validation of certain Acts and Regulations- Without prejudice to the generality of the provisions contained in Article 31-A, none of the Acts and Regulations specified in the Ninth Schedule nor any of the provisions thereof shall be deemed to be void, or ever to have become void, on the ground that such Act, Regulation or provision is inconsistent with, or takes away or abridges any of the rights conferred by any provisions of this Part, and notwithstanding any judgment, decree or order of any court or tribunal to the contrary, each of the said Acts and Regulations shall, subject to the power of any competent Legislature to repeal or amend it, continue in force.
[9] Sankari Prasad Singh v. Union of India, AIR 1951SC 458.
[10] Sajjan Singh v. State of Rajasthan, AIR 1965 SC 845.
[11] Golak Nath v. State of Punjab, (1967) 2 SCR 762; AIR 1967 SC.
[12] [A]rticle 13(4) and 368(3) were inserted through 24th Amendment.
[13] [T]hese Seven Judges were, Chief Justice Sikri, Justices Shelat, Hegde, Grover, Mukherjea, Jaganmohan Reddy, and Khanna. The minority consisting of Justices Ray, Mathew, Beg, Dwivedi, Palekar and Chandrachud held that Parliament had unlimited power of constitutional amendment.
[H].M. Seervai, in his analysis of the case in his magnum opus, "Constitution of India" states that six out of the seven majority judges held that there were implied and inherent limitations on the amending power of the Parliament, which precluded Parliament from amending the Basic Structure of the Constitution. However Khanna J. rejected this theory of implied limitations but held that the Basic Structure could not be amended away. All Seven judges gave illustrations of what they considered Basic Structure comprised of.

provisions of the Indian Constitution, including fundamental rights, but not the basic structure. This is how the Supreme Court introduced the basic structure doctrine to restrain the unchecked power of Parliament.

WHAT CONSTITUTES BASIC STRUCTURE?

In India, the concept of the basic structure doctrine has been accepted by the people, similar to how Americans accepted the Supreme Court's power of judicial review in ***Marbury v. Madison***[1]. The Court must consider the national consensus when determining what constitutes the basic structure. It is not possible to provide an exhaustive list of the elements that make up the basic structure, as it must be determined on a case-by-case basis. In recent years, the Supreme Court has invoked the concept of basic structure to intervene in constitutional amendments in five cases[2].

In the case of Kesavananda Bharati, the majority of judges acknowledged the existence of the basic structure of the Constitution, but did not agree on a definitive list of principles that fall under this concept. Each judge had their own interpretation of the basic structure. This leads to a situation where the validity or invalidity of a constitutional amendment depends on the personal preference of each judge. This gives the judges the power to amend the Constitution, which is not explicitly granted to them under the Constitution, but is given to the Parliament under Article 368. This has led some authors to argue that the basic structure doctrine represents a "*vulgar display of usurpation of constitutional power by the Supreme Court of India.*"[3] As shown in the case law of the Indian Supreme Court, when there are no clear substantive limitations on the amending power, the review of constitutional amendments by a constitutional court can be dangerous for a democratic system, where the power to amend the Constitution belongs to the people or their representatives, not the judges.

SUBJECT MATTER OF BASIC STRUCTURE THEORY

The Supreme Court, in a series of cases, has considered the subject matters of the basic structure that cannot be altered or amended by the Parliament under Article 368 of the Indian Constitution. These subject matters include the supremacy of the Constitution, republican and democratic form of government, secular character of the Constitution, separation of powers between the legislature, executive, and judiciary, as well as the federal character of the Constitution.[4]

The Court has also recognized the mandate to build a welfare state contained in the Directive Principles of State Policy, the unity and integrity of the nation, and the sovereignty of the country. Additionally, the democratic character of the polity, the essential features of individual freedoms secured to citizens, and the mandate to build a welfare state are considered part of the basic structure.[5]

Furthermore, the Court has emphasized the importance of the unity and integrity of the nation, the equality of status and opportunity, and the principles of a sovereign democratic republic, justice (social, economic, and political), and liberty of thought, expression, belief, faith, and worship. The democratic character of the polity, the essential features of individual freedoms secured to citizens, and the mandate to build a welfare state are also part of the basic structure.[6]

The Indian Constitution guarantees equality of status and opportunity and upholds the rule of law as the basic structure, as stated in the Preamble.[7] The doctrine of equality enshrined in Article 14 of the Constitution, which is the basis of the rule of law, is also considered a basic feature of the Constitution.[8] The independence of the judiciary is recognized as a basic feature of the Constitution and is essential for democracy.[9] Moreover, secularism, democracy, and federalism are considered essential features of the Constitution and part of its basic structure.[10]

Judicial review is an integral part of the basic constitutional structure and one of the fundamental features of the Indian Constitution.[11] Various articles in the Constitution, such as Articles 32, 136, 226, and 227, guarantee judicial review of legislation and administrative action. The unity and integrity of the nation[12] and the parliamentary system[13] are also important subject matters within the basic structure.

By adding numerous subject matters to the basic structure, the judiciary has significantly limited the power of the Parliament. As a general rule, the judiciary has included various aspects in the basic structure and directed parliamentarians not to alter or change the above-mentioned subject matters.

EFFECTS OF BASIC STRUCTURE THEORY ON AMENDMENT POWER OF THE PARLIAMENT

The "Basic Structure" doctrine is a judicially created principle that establishes certain aspects of the Constitution of India as being beyond the scope of Parliament's amending powers. While the Court recognized that the power of Parliament to amend the

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[1] I. Cranch 137 : 2 L.Ed. 60.
[2] Kesavananda Bharti v. Kerala, AIR 1973, SC 1461; Indira Gandhi v. Raj Narain, AIR 1975 SC 2299; Minerva Mills v.Union of India, AIR 1980 SC 1789; S.P. Sampat Kumar v. India, AIR 1987 SC 386; Sambamurthy v. A.P, AIR 1987 SC 663.
[3] Anuranjan Sethi, Basic Structure Doctrine: Some ReÀections, http://ssrn.com/abstract=835165, p. 6-8, 26-27 [S]imilarly, S. P. Sathe concluded that "the Court has clearly transcended the limits of the judicial function and has undertaken functions which really belong to… the legislature.
[4] [K]eshavananda Bahrathi Case Sikri, C.J. explained the concept of basic structure.
[5] [S]helat, J. and Grover, J. added three more basic features to the list.
[6] [H]egde, J. and Mukherjea, J. identified a separate and shorter list of basic features.
[7] Indira Gandhi v. Rajnarain AIR 1975 SC, 2299 (1975) 3 SCC 34; Kihoto Hollohon AIR, 1993, SC 412.
[8] Ashwini Shivram v. State of Maharashtra, AIR 1998 Bom 1; Raghunath Rao v. Union of India, AIR 1993 SC 1267.
[9] Bhagwati, J. Union of India v. Sankal Chand, Himmatlal Sheth, AIR 1977 SC 2328 : (1977) 4 SCC 193. and The Gupta Case, AIR 1982 SC 149 at 197, 198, Kumar Padma Prasad v. Union of India, AIR 1992 SC 1213 : (2000) 4 SC 640, State of Bihar v. Bal Mukund Shah, AIR 2000 SC 1296, Supreme Court Advocates-records- Association v. Union of India, (1993) 4 SCC 441; AIR 1994 SC 268.
[10] S.R. Bommai v. Union of India, AIR 1994 SC 1918, at 1976; Poudyal v. Union of India, (1994) Supp.1 SCC 324.
[11] L.Chandrakumar v. Union of India, AIR 1997 SC 1125; Waman Rao v. Union of India, AIR 1981 SC 271.
[12] Raghunath Rao v. Union of India, AIR 1993 SC 1267.
[13] *Id* at 1535, 1603, 1628 and 1860.

Constitution is implicitly limited by the basic structure doctrine, it did not clearly define or explain what exactly constitutes this basic structure.[1]

According to Professor Upendra Baxi[2], the impact of the decision in the Keshavananda Bharathi case on Parliament's amendment power suggests the following limitations:

- Completely repealing the Constitution would violate the basic structure.

- Expanding Article 368 in an effort to achieve a total repeal would similarly violate the basic structure.

- Any attempt to deprive the Court of its power to review Constitutional amendments would also transgress the basic structure.

- The freedoms guaranteed by Articles 14, 19, and 21 serve as limitations on the power to amend.

- Abrogating Part IV of the Constitution may violate the basic structure.

- The democratic nature of the Constitution cannot be validly transformed through the use of Article 368.

## INSERTION OF CLAUSE 4 AND 5 OF ARTICLE 368 (42ND AMENDMENT)

Following the Supreme Court decisions in *Keshavnand Bharati and Indira Gandhi*[3] cases, the Constitution (42nd Amendment) Act, 1976, was enacted. This amendment added two new clauses, 4 and 5, to Article 368[4] of the Constitution, which explicitly prohibited the review of Constitutional amendments. The purpose of the 42nd Amendment was to counter the implications of the Kesavananda Bharathi case.

However, in the case of ***Minerva Mills Ltd. v. Union of India***[5], a question arose regarding whether the amendments introduced by Sections 4 and 55 of the Constitution (42nd Amendment) Act, 1976, violated the basic structure of the Constitution by undermining its essential features. The Supreme Court concluded that clauses (4) and (5) of Art. 368, inserted by the 42nd Amendment, were unconstitutional as they damaged and destroyed the basic structure of the Constitution. This landmark ruling in *Minerva Mills*[6] provided clarity to the doctrine of basic structure, ensuring that the Indian Constitution and legal system could maintain their integrity even in the face of attempts to alter them for social revolution through legislation[7].

Following this case, the Supreme Court once again applied the doctrine of basic features of the Constitution in ***Waman Rao v. Union of India***[8]. In the *I.R. Coelho* case[9], the Constitution Bench observed that amendments made to the Constitution on or after April 24th, 1973, which amended the Ninth Schedule by including various Acts and regulations, could be challenged if they damaged the basic or essential features of the Constitution or its basic structure, as established in the *Waman Rao and Ors. v. Union of India and Ors.* case.

## THE CONSTITUTION FORTY-FIFTH AMENDMENT BILL, 1978

It is not possible to fully list all the aspects of the basic structure of the Constitution. The Constitution (Forty-Fifth) Amendment Bill, 1978 (CB 45)[10] attempted to do so during the short rule of the Janatha Government. This bill identified certain features that required a special referendum process for amendment. These features included: (i) The secular or democratic nature of the Constitution; (ii) Rights of citizens under Part III; (iii) Free and fair elections to the House of the People or the Legislative Assemblies of states based on adult suffrage; (iv) The independence of the Judiciary; and (v) Amendment of the provision for the entrenchment of the above basic features and the requirement for the referendum. Any amendment to the Constitution related to these matters had to be approved by the people through a referendum. The referendum would be conducted as a poll and all eligible voters for Lok Sabha elections would participate. At least fifty-one percent of eligible voters needed to vote in the poll, and the amendment would be considered approved if it received a majority of the votes cast. Opposition to the amendment was seen as an acknowledgment of the basic structure doctrine. The opposition was not due to the entrenchment of the basic structure, but rather because it allowed for the potential destruction of the basic structure through a referendum. There were doubts about whether such matters should be left to popular will[11].

The adoption of a referendum in India was seen as ill-advised and ill-conceived given the conditions at the time. Amendments to the Constitution cannot be formulated as simple "yes" or "no" questions. The basic structure doctrine gained legitimacy due to the abuse of constituent power by the ruling elite and subsequent acceptance by major political participants.[12] Unfortunately, the

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[1] V.R. Jayadevan, *Basic Structure Doctrine and its Widening Horizons*, 27, CULR p. 333 (March 2003).
[2] [S]ee article on 'Amendment of the Constitution in Constitutional Law of India,' VOL.II, (Bar Council of India Trust).
[3] AIR 1975 SC 2299.
[4] [C]lause (4) Art. 368 stipulated that "No constitutional amendment (including the provision of Part III) or purporting to have been made under Art.368 whether before or after the commencement of the Constitution (42nd Amendment) Act, 1976 shall be called in any court on any ground." Therefore in India, as of 1976, the Supreme Court was precluded from reviewing constitutionality of Constitutional amendments. There is no doubt on this issue because clause (4) of Art.368 explicitly prohibits the judicial review of constitutional amendments. Moreover, clause 5 of the same Article states that "there shall be no limitation whatever on the constituent power of Parliament to amend by way of addition, variation or repeal of the provisions of the Constitution under this Article." This clause also provides that constitutional amendments cannot be judicially reviewed because Indian Constitution does not impose any limitations on the power of Indian Parliament to amend the Constitution.
[5] (1981) 1 SCR 206.
[6] *Id.*
[7] *Supra* note at p.349.
[8] AIR 1981 SC 271.
[9] AIR 2007 SC 137.
[10] [C]B 45 is the abbreviation used in the text for the Constitution (Forty-Fifth Amendment) Bill, which later became the Constitution (Forty-Fourth Amendment) Act.
[11] 2 H.M. Seervai, 2 Constitutional Law, 2702 (2015 4th ed.).
[12] S.P. Sathe, "Limitation on Constitutional Amendment: Basic Structure Principle Reexamined" in Trends and Issues, p. 179 (Indian Law Institute, 1978).

Rajya Sabha, where the Congress Party had a majority, did not approve these proposals, despite them being passed by the Lok Sabha with the required majority.[1]

## BASIC STRUCTURE DOCTRINE AND THEORY OF SEPARATION OF POWER

In 1948, Lord Montesquieu proposed the theory of separation of powers, which asserts that each branch of government should operate autonomously without interference from the others. The Indian Constitution recognizes this principle as one of its fundamental foundations and clearly delineates the separation of powers among the three branches of government.

The Supreme Court, in the Golaknath's case, imposed limitations on the amendment power of the Parliament. Traditionally, this power was seen as the authority to make laws, but the Court restricted it through the introduction of the doctrine of basic structure. Some argue that the Court overturned the decision in Golaknath's case in the Keshavananda Bharathi's case. However, the author contends that both cases imposed similar limitations on the amendment power of the Parliament. In Keshavananda's case, the Court partially overturned Golaknath's decision by accepting the constitutional amendment as law and upholding the constitutional validity of the 24th Amendment. Overall, the differences between the two decisions are minimal.

Critics such as R Dhavan[2] and A Shourie[3] have accused the Court of exceeding its constitutional boundaries by expanding the scope of judicial review, encroaching on the powers of the executive and legislature. They argue that upholding the basic structure theory would require every amendment made by the Parliament to be subject to judicial approval. This would effectively grant the Supreme Court the final say in validating or invalidating amendments, giving the Court more power than the Parliament. This has raised concerns about the Court assuming the role of the de facto governing body, rather than leaving routine matters to be handled by the elected representatives.[4]

P.K. Tripathi echoes similar concerns, suggesting that the Court's role in interpreting the Constitution may overshadow the role of the people and the Parliament. He proposes that the Court may not only critique proposed legislation concerning socio-economic policies but also nullify laws that it deems unfavorable. This would effectively allow the Court to govern the country in matters that should be left to the Parliament and the Cabinet.

Hence, there are legitimate criticisms of the Supreme Court's role in interpreting and applying the Constitution, especially regarding the basic structure theory. These concerns revolve around the potential for the Court to exceed its intended powers and usurp the authority of the elected branches of government.[5]

### Article 13(2) and Article 254(1) the Very Basis of the Notion of Constitutional Supremacy

Article 13(2) and Article 254(1) are the very basis of notion of Constitutional Supremacy in Indian Constitution. Article 13(2) of the Constitution reads as follows:

*"The State shall not make any law which takes away or abridges the rights conferred by this Part and any law made in contravention of this clause shall, to the extent of the contravention, be void*"

And Article 254(1) of the constitution reads as follows:

"(1) *If any provision of a law made by the Legislature of a State is repugnant to any provision of a law made by Parliament which Parliament is competent to enact, or to any provision of an existing law with respect to one of the matters enumerated in the Concurrent List, then, subject to the provisions of clause ( 2 ), the law made by Parliament, whether passed before or after the law made by the Legislature of such State, or, as the case may be, the existing law, shall prevail and the law made by the Legislature of the State shall, to the extent of the repugnancy, be voi*d"

The provisions mentioned above are the only provisions in the Constitution of India that require the Courts of Justice to declare a law unconstitutional if it goes against the specific provisions stated in these Articles. The Supreme Court has invalidated several legislations and declared them to be in violation of either Article 13(2) or Article 254(1). However, it is important to note that just because the Constitution only uses the term 'void' in two instances, it does not mean that the outcome would be different if the Legislature violates other mandatory provisions of the Constitution outside of the Fundamental Rights in part III.

## ROLE OF JUDICIAL REVIEW IN MAINTAINING AND UPHOLDING THE SUPREMACY OF CONSTITUTION

In India, the doctrine of judicial review is enshrined in Article 13 of the Constitution, specifically pertaining to the provisions guaranteeing Fundamental Rights in Part III. According to Clause 1 and 2 of this Article, any law enacted by any Legislature in India, regardless of whether it was passed before or after the Constitution came into effect, will be deemed invalid if it violates any of the Fundamental Rights outlined in Part III.[6] It is worth noting that Indian Courts have recognized the Marshillian doctrine, which posits that the Constitution is the supreme law of the land. The judiciary has been entrusted with the important responsibility of safeguarding and interpreting the provisions of the Constitution. Chief Justice Kania eloquently captures this concept with the following statement: "The Constitution is the higher or paramount law, and the

[1] M.P. Jain, Indian Constitution Law, 1926 (5th ed. 2003).
[2] R. Dhavan, Supreme Court and Parliamentary Sovereignty' New Delhi Sterling Publisher, 1976 cited in Sudhir Krishnaswamy 'Democracy and Constitutionalism in India: A Study of the Basic Structure Doctrine, Oxford University Press, p. xvi.
[3] A. Shourie, Courts and their judgments; Promises, Prerequisites, Consequences, New Delhi: Rupa &Co., 2011, pp 399-421 cited in Sudhir Krishnaswamy 'Democracy and Constitutionalism in India: A Study of the Basic Structure Doctrine, Oxford University Press, p. xvi
[4] *Id* at 440.
[5] Cited by Prasad Anirudh, "Dynamic of the Basic Structure Theory", Law 1978, Vol.10, No.10. 199 (October, 1978).
[6] Mahendra v State of U.P. AIR 1963 SC 1019 (1029-30).

judiciary is tasked with protecting and interpreting its provisions.":[1]

*It is difficult upon any general principles, to limit the omnipotence of the sovereign legislative power by judicial interposition, except so far as the express words of a written constitution give that authority. But it is only in express constitutional provisions limiting legislative power and controlling the temporary will of majority by a permanent and paramount law settled by the deliberate wisdom of the nation that one can find a safe and solid ground for the authority of the Court of Justice to declare void any legislative enactment."*

In contrast to the Constitution of the United States of America, the Constitution of India boasts explicit provisions that establish the practice of judicial review. The Constitution of India contains numerous provisions that stipulate that the Acts of the Legislature or any other body are subject to the provisions of the Constitution. As Dr. M.P. Jain wisely observed: *"The doctrine of judicial review is firmly ingrained in India and is explicitly authorized by the Constitution."* Within the framework of a Constitution that safeguards individual Fundamental Rights, distributes power between the Union and the States, and clearly defines and restricts the powers and functions of every body of the State, including the Parliament, the Judiciary assumes a pivotal role through its powers of judicial review. The power of judicial review of legislation is bestowed upon the judiciary both by the political theory and the text of the Constitution. The Indian constitution contains several specific provisions that allow for the judicial review of legislation, such as Act 13, 32, 131-136, 143, 226, 145, 246, 251, 254, and 372.

Article 372 (1) establishes the judicial review of pre-constitutional legislation, while Article 13 explicitly declares that any law that violates any provision of the part of Fundamental Rights shall be null and void. Even our Supreme Court has observed that, even without the specific provisions in Article 13, the court would have the authority to declare any enactment that violates a Fundamental Right as invalid. The Supreme and High Courts are established as the safeguard and guarantor of Fundamental Rights under Articles 32 and 226. Articles 251 and 254 state that in case of inconsistency between union and state laws, the state law shall be null and void.

## CONCLUSION

Upon a thorough examination of the provisions of the Constitution and the key judgments of the Supreme Court, it is evident that the Constitution of India holds the highest authority in our legal system. The concept of Constitutional Supremacy is derived from Popular Sovereignty, establishing a relationship of trust between citizens and the state. Unlike Parliamentary Sovereignty, which has transformed legal positivism into reality, Constitutional Supremacy grants a superior status to Fundamental Rights and prevents the separation of legal validity from considerations of political and social morality. The existence of the Constitution as the Supreme Law necessitates an approach that recognizes an inherent connection between matters of law and matters of morality.

The role of the judiciary in upholding and maintaining the Supremacy of the Constitution has been extensively discussed in the article. In a democratic nation, the preservation of Constitutional Supremacy can only be achieved with the assistance of an active and independent judiciary. While the Constitution provides a framework, it is the judiciary that breathes life into its provisions, transforming it into a living document for both present and future generations. The ultimate objective of the Constitution is the welfare of the people, and the judiciary has been entrusted with the responsibility of ensuring that the other two branches of government, namely the Legislature and Executive, work towards achieving this welfare.

Unfortunately, the power of judicial review in India has faced significant criticism without any viable alternative being proposed to uphold and maintain the Supremacy of the Constitution. Some scholars have labeled judicial review as judicial overreach or judicial terrorism, yet they fail to anticipate the severe consequences that would arise if the judiciary were stripped of its power of judicial review. The absence of this power would result in Parliamentary Sovereignty, as seen in the American and Indian Constitutional systems.

In the context of the Indian Constitution, a political party with the required majority in both houses of Parliament can easily amend most provisions of the Constitution, posing a imminent threat to its Supremacy. If the amendment power under the Indian Constitution is not exercised in a justifiable and prudent manner, the Constitution could become an excessively flexible document. However, after the development of the doctrine of Basic Structure in the case of *Keshavanand Bharti v Union of India*, the Supreme Court has largely restricted the amendment power of Parliament. Nonetheless, it is important to remember that amendment provisions are integral to the Constitution, as they enable it to adapt to the civil, political, social, and economic changes in society. Therefore, provisions allowing for amendment are indispensable in any Constitution to ensure that its provisions align with the needs and demands of the people. It is the utmost duty of all three branches of government, the Legislature, Executive, and Judiciary, to exercise their power and perform their functions in a manner that prioritizes welfare and justice. While exercising their power and performing their functions, each branch must refrain from making decisions that could jeopardize the Supremacy of the Indian Constitution.

[1] A.K. Gopalan v State of Madras (1950) SCR 88 (100).