

- It is an **illegitimate infringement** of judiciary on principal of majority rule.
 - The attempt by a constitutional court to review the substance of the constitutional amendments would be dangerous for a democratic system in which the amending power belongs to the people or its representatives, not to judges.
- What constitutes basic structure is **matter of subjectivity**.
 - Each judge defines the basic structure concept according to his own subjective satisfaction. This leads to the fact that the validity or invalidity of the Constitution Amendment lies on the personal preference of each judge and the judges will acquire the power to amend the Constitution
- Translates judiciary into **third decisive chamber** of parliament.
 - Amending the Constitution is the duty of the two houses of the Parliament. But by invoking the basic structure doctrine the Judiciary acts as the third house and thereby renders the work done by the Parliament meaningless.
- Amending the Constitution even to **change the original intention** of the Constitution framers,
 - An amendment to a Constitution in present times may be necessary even to change the original intention of the Constitution framers, which may not augur well for the subsequent generation which is to work with the Constitution. Therefore to hold that an amendment not falling in the line with the original intention of the founding fathers is not valid.

SIGNIFICANCE & ARGUMENTS IN FAVOUR OF BASIC STRUCTURE

- The Basic Structure doctrine is **one of the biggest contributions of Indian Judiciary** to theory of constitutionalism.
- The doctrine has **helped in maintaining supremacy** of the Constitution and **has prevented its destruction** by a temporary majority in Parliament.
- Seeks to **preserve constitutional principles and basic ideals** envisioned by founding fathers.
- **Privileges uncertain democracy over certain tyranny**.
 - It acts as a limitation upon the constituent power and has helped in arresting the forces which may destabilize the democracy. Parliament does not and should not have an unlimited power to amend the Constitution. This basic structure doctrine, as future events showed, saved Indian democracy.
- In the absence of the doctrine, India would most certainly have **degenerated into a totalitarian State** or had **one-party rule**. For example, the amendments that were made during the Emergency would have derailed the democratic set up of our Constitution.
- Judiciary **applied doctrine responsibly and threshold has set very high**.
 - 99th CAA 2015 of NJAC had struck down on grounds of violation of basic structure of constitution, doctrine applied almost gap of 35 years.

WORLD EXAMPLES

- **SC of Bangladesh** applied same doctrine in 1989 to Bangla constitution. **Art. 79 (3) of basic law of Germany** also speaks of certain fundamental principles being non-amendable.

