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Amendment by Other Means: Informal Change and the Replacement Boundary in Indonesia, Colombia, and India

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ABSTRACT

Comparative scholarship draws the boundary between constitutional amendment and constitutional replacement almost exclusively around formal amendment, while treating judicial interpretation, conventions, organic statutes, and desuetude as separate and largely benign channels of informal change. This article examines Indonesia, Colombia, and India through a normative-comparative analysis of their constitutional texts, constitutional court and supreme court decisions, implementing legislation, and parliamentary practice from 1973 to 2025. It finds that the amendment–replacement boundary is policed asymmetrically. Indonesia has not used its amendment procedure since 2002, and the resulting amendment atrophy has displaced the work of constitutional change into the Constitutional Court, the legislature, and the practice of state organs, culminating in a 2025 decision that separated national and local elections in terms the text does not easily bear. Colombia’s Constitutional Court polices the boundary rigorously against Congress through its replacement doctrine but applies no comparable discipline to its own interpretive transformations. India has gone further, entrenching a judge-made appointments practice against a formal amendment adopted through the prescribed amendment procedure. The article advances the concept of informal dismemberment: a change produced outside the amendment procedure whose effect, if pursued formally, would require constituent rather than amending power. It proposes a channel-neutral test built on three criteria—textual displacement, cumulative aggregation, and self-regarding authorship—and argues that the replacement boundary protects constitutional identity only when it binds every author of change, courts included.

Keywords: *informal constitutional change; constitutional dismemberment; constitutional replacement; constitutional conventions*

JURISDICTIONAL STATEMENT

This article examines Indonesia, Colombia, and India. All three possess constitutional courts or apex courts that have transformed their constitutions outside the amendment procedure, yet they differ sharply in how often they amend formally: Indonesia not since 2002, Colombia more than fifty times, and India more

than one hundred times. The comparison isolates amendment frequency as a variable and shows that informal change approaches the replacement boundary in each, whatever the rate of formal amendment.

1. Introduction

Constitutions change far more often than they are amended. The observation is familiar in comparative constitutional law, and the literature on informal change has become rich enough to classify its principal channels: judicial interpretation, constitutional conventions and practice, organic and constitutional statutes, and desuetude.¹ A parallel literature has examined the outer limit of formal change, asking when an amendment ceases to be an amendment and becomes the unmaking of the constitution it purports to modify.² Yet the two literatures rarely meet. The boundary between amendment and replacement has been drawn, defended, and judicially enforced almost entirely against formal amendment, while informal change has been studied as a question of legitimacy, method, or institutional compliance rather than as a potential route across that boundary.³

This separation leaves a structural blind spot. If a constitution can be dismembered by amendment, it can in principle be dismembered by the accumulation of interpretive rulings, statutes, and practices that achieve the same result without passing through the procedure designed to test it. The problem is not merely theoretical. Indonesia has not amended its Constitution since 2002, yet its electoral architecture, the composition of its presidential nomination process, and the timing of its national and local elections have been reconfigured repeatedly over the past decade, most dramatically by a 2025 decision of the Constitutional Court that separated national from local elections in terms the constitutional text does not easily bear.⁴ Colombia, by contrast, amends its Constitution constantly, and its Constitutional Court has built one of the most elaborate doctrines anywhere for identifying amendments that amount to replacement.⁵ India amends more often still, and its Supreme Court has used the basic structure doctrine not only to strike down amendments but to protect a judicially constructed method of appointing judges against a formal amendment that sought to replace it.⁶

This article contends that the amendment–replacement boundary is policed asymmetrically, and that the asymmetry is itself a source of constitutional risk. It advances the concept of *informal dismemberment*: a change produced outside the

¹ Oran Doyle, 'Informal Constitutional Change' (2017) 65 Buffalo Law Review 1021; Xenophon Contiades and Alkmene Fotiadou, 'Models of Constitutional Change' in Xenophon Contiades (ed), *Engineering Constitutional Change: A Comparative Perspective on Europe, Canada and the USA* (Routledge 2013).

² Richard Albert, *Constitutional Amendments: Making, Breaking, and Changing Constitutions* (Oxford University Press 2019).

³ Ming-Sung Kuo, 'Disaggregating Dismemberment: Nullity, Natality, and the Hollowing of Constitutional Renewal in Designed Written Constitutionalism' (2020) 7 Revista de Investigações Constitucionais 773.

⁴ Constitutional Court of the Republic of Indonesia, Decision No 135/PUU-XXII/2024 (26 June 2025), pt 3 (Pertimbangan Hukum [Legal Considerations]) and pt 5 (Amar Putusan [Operative Part]).

⁵ Carlos Bernal, 'Unconstitutional Constitutional Amendments in the Case Study of Colombia: An Analysis of the Justification and Meaning of the Constitutional Replacement Doctrine' (2013) 11 International Journal of Constitutional Law 339.

⁶ *Supreme Court Advocates-on-Record Association v Union of India* (2016) 5 SCC 1.

amendment procedure whose effect, if pursued formally, would require the exercise of constituent rather than amending power. Informal dismemberment is not a claim that every interpretive innovation or unwritten practice is suspect. Most informal change specifies, adapts, or implements the text, and the capacity to do so is a condition of constitutional endurance rather than a threat to it.⁷ The concept identifies a narrower class of changes that displace textual commitments, accumulate across channels, or benefit the institution that authors them, and it asks why constitutional orders that guard the replacement boundary against legislatures so rarely guard it against courts, statutes, and practice.

Three jurisdictions are compared. Indonesia supplies the paradigm of amendment atrophy: a constitution that was transformed through four rounds of amendment between 1999 and 2002 and has since remained textually frozen, so that the work of change has migrated elsewhere.⁸ Colombia supplies the paradigm of a court that guards the replacement boundary against the legislature. India supplies the paradigm of a court whose own informal constructions have come to outrank formal amendment. The three cases vary on the frequency of formal amendment while holding constant the presence of a powerful apex court, and this variation allows the article to test whether informal change approaches the replacement boundary irrespective of how easily or often a constitution is amended.

The article pursues three questions. First, through which channels has constitutional change occurred outside the amendment procedure in each jurisdiction, and how do those channels interact? Second, does the doctrine or practice of each jurisdiction apply the amendment–replacement boundary to informal change, and if not, why not? Third, what criteria would allow a constitutional order to identify informal change that crosses the boundary without condemning the ordinary and necessary work of interpretation, convention, and implementing legislation? The argument proceeds as follows. Section 2 sets out the method. Section 3 reconstructs the theory of informal change and the dismemberment literature and shows why they have remained apart. Section 4 examines Indonesia across the four channels. Section 5 turns to Colombia and India. Section 6 develops a channel-neutral test for informal dismemberment and considers objections. Section 7 concludes.

The contribution is twofold. Doctrinally, the article extends the dismemberment framework from the formal to the informal domain, and in doing so corrects the assumption that the replacement boundary concerns only what legislatures and constituent assemblies do to the text. Comparatively, it shows that the risk of informal dismemberment does not depend on the rigidity of the amendment rule: it arises where amendment has atrophied, as in Indonesia, and where amendment is frequent, as in Colombia and India. The replacement boundary does not lose its relevance when the

⁷ David A Strauss, *The Living Constitution* (Oxford University Press 2010).

⁸ Stefanus Hendrianto, 'The Indonesian Constitutional Court and Informal Constitutional Change' in Melissa Crouch (ed), *Constitutional Democracy in Indonesia* (Oxford University Press 2023).

text stands still; it becomes more important, because the pressure to change finds other outlets.

2. Method

The article employs a normative-comparative constitutional methodology. The comparison is functional rather than purely formal: it asks what work each channel of change performs in each system, not whether the systems use the same labels. The method is not merely descriptive but evaluative and reconstructive, in that it uses the comparative material to build criteria that can be applied beyond the three jurisdictions examined.

The primary materials are the Undang-Undang Dasar Negara Republik Indonesia Tahun 1945 [Constitution of the Republic of Indonesia 1945] as amended between 1999 and 2002; the Constitución Política de Colombia 1991 [Political Constitution of Colombia 1991]; and the Constitution of India 1950. Indonesian decisions were obtained from the official database of the Mahkamah Konstitusi [Constitutional Court] at mkri.id, Colombian decisions from the relatoría of the Corte Constitucional [Constitutional Court] at corteconstitucional.gov.co, and Indian decisions from the Supreme Court Cases reporter. Online sources were last accessed on 15 September 2026. Indonesian statutes, decisions, and parliamentary regulations were read in Bahasa Indonesia and Colombian decisions in Spanish; all translations are the author's own unless otherwise indicated. Indian materials were read in English.

The decisions and instruments were selected purposively rather than exhaustively. For each jurisdiction, the analysis identifies the episodes that the secondary literature and the courts themselves treat as the principal instances of change outside the amendment procedure, and then traces each episode through the four channels identified in Section 3. The period covered runs from *Kesavananda Bharati v State of Kerala* in 1973 to the Indonesian Constitutional Court's follow-up ruling of August 2025 on the separation of elections. Where the analysis relies on commentary for the political reception of a decision, the footnote attributes the account to its author.

The analysis has three limits. It is doctrinal and does not measure public attitudes towards the changes it examines. It relies on the published text of decisions and cannot account for deliberations that are not recorded. It treats the three jurisdictions as illustrative of distinct configurations rather than as a representative sample, so its claims about other systems are offered as propositions for testing rather than as generalisations.

3. The Replacement Boundary beyond Formal Amendment

3.1 Four channels of informal change

Informal constitutional change refers to alterations in the meaning, operation, or allocation of constitutional authority that occur without a change to the constitutional text through the prescribed amendment procedure.⁹ The literature typically distinguishes four channels. The first is judicial interpretation, through which courts attribute new meaning to existing provisions. Its legitimacy has been defended where it protects the material constitution and its principles, and contested where it substitutes the preferences of unelected judges for those of the constituent power.¹⁰ The second is constitutional convention and practice: unwritten rules that constitutional actors regard as binding, that rest on precedent, and that serve a recognisable constitutional rationale.¹¹ Although conventions were long regarded as a feature of Westminster systems, recent comparative work has shown that they operate in civil law systems as well, often under other names and often in the governance of courts themselves.¹²

The third channel consists of organic or constitutional statutes: ordinary or specially enacted legislation that constitutes, organises, or regulates the principal institutions of the state and that courts treat as having a status above other legislation.¹³ In the United Kingdom, the category was recognised judicially as a class of statutes immune from implied repeal.¹⁴ In systems with written constitutions, organic statutes complete the text by filling the spaces it leaves to the legislature, but they can also be used to alter what the text appears to settle. The fourth channel is desuetude: the loss of a constitutional provision's force through sustained non-use combined with a shared understanding among political actors that the provision should no longer be used.¹⁵ Desuetude is the most elusive of the four, because it changes the constitution by subtraction and leaves no single act that can be reviewed.

Two features of this classification matter for what follows. The channels are analytically distinct but practically interdependent: a judicial ruling may require an organic statute for its implementation, a statute may codify a practice, and a practice may develop because a formal power has fallen into disuse. Accordingly, the unit of analysis for assessing informal change should not be the single decision or statute but the configuration that the channels produce together. The second feature is that the

⁹ Doyle (n 1).

¹⁰ Hanna Berchenko, 'Judicial Interpretation as Informal Constitutional Changes: Questions of Legitimacy in the Aspect of the Doctrine of Constituent Power' (2024) 7(2) Access to Justice in Eastern Europe 39.

¹¹ Joseph Jaconelli, 'Do Constitutional Conventions Bind?' (2005) 64 Cambridge Law Journal 149; Farrah Ahmed, Richard Albert and Adam Perry, 'Judging Constitutional Conventions' (2019) 17 International Journal of Constitutional Law 787.

¹² David Kosař and Attila Vincze, 'Constitutional Conventions Concerning the Judiciary beyond the Common Law' (2023) 24 German Law Journal 1503; David Kosař and Attila Vincze, 'Exploring Constitutional Conventions in Central Europe and Their Relevance to the Comparative Debate' (2026) 74 American Journal of Comparative Law 98; Scott Stephenson, 'Constitutional Conventions and the Judiciary' (2021) 41 Oxford Journal of Legal Studies 750.

¹³ Farrah Ahmed and Adam Perry, 'Constitutional Statutes' (2017) 37 Oxford Journal of Legal Studies 461; William N Eskridge Jr and John Ferejohn, 'Super-Statutes' (2001) 50 Duke Law Journal 1215.

¹⁴ *Thoburn v Sunderland City Council* [2002] EWHC 195 (Admin), [2003] QB 151 [62]–[63] (Laws LJ).

¹⁵ Richard Albert, 'Constitutional Amendment by Constitutional Desuetude' (2014) 62 American Journal of Comparative Law 641.

literature evaluates each channel by its own internal standards—interpretive fidelity for courts, rationale and acceptance for conventions, entrenchment for statutes, and shared understanding for desuetude. What it lacks is a common external standard that asks whether the aggregate change remains within the authority of any constituted power.

3.2 Dismemberment without amendment

The dismemberment literature supplies such a standard, but only for formal change. Albert defines constitutional dismemberment as a change that is incompatible with the existing framework of the constitution because it seeks to transform the identity, the fundamental values, or the architecture of the constitution while preserving its legal continuity.¹⁶ Dismemberment is thus neither amendment nor replacement: it is a change that uses the amendment procedure to achieve what only a new constitution-making process could legitimately accomplish.¹⁷ The theory of unconstitutional constitutional amendment rests on a comparable intuition, holding that the amendment power is a delegated and therefore limited power that cannot be used to destroy the constitutional order from which it derives.¹⁸

Both frameworks locate the limit in the character of the power exercised rather than in the procedure followed. That is precisely why they should extend to informal change. If what makes a dismembering amendment illegitimate is that a constituted power exercises what is in substance constituent power, then the same objection applies with greater force to a constituted power that achieves the same substantive result without even passing through the amendment procedure, which is at least designed to require broad consent. A court that transforms a constitutional pillar by interpretation, or a legislature that does so by organic statute, is not exercising a power more capacious than the amending power. It is exercising a narrower one.

Nevertheless, the literature has largely declined to draw this conclusion. Kuo's critique of the dismemberment framework expressly confines itself to formal change,¹⁹ and studies of the Colombian replacement doctrine analyse it as a limit on congressional amendment rather than as a principle binding on the Court itself.²⁰ Where scholars have addressed judicial transformation of the constitution, they have done so through the vocabulary of abusive judicial review, which focuses on courts that attack the democratic minimum at the behest of incumbents,²¹ or through the vocabulary of responsive judicial review, which justifies judicial intervention to correct democratic

¹⁶ Richard Albert, 'Constitutional Amendment and Dismemberment' (2018) 43 *Yale Journal of International Law* 1.

¹⁷ Albert (n 2).

¹⁸ Yaniv Roznai, *Unconstitutional Constitutional Amendments: The Limits of Amendment Powers* (Oxford University Press 2017).

¹⁹ Kuo (n 3).

²⁰ Luisa Fernanda García López, 'Constitutional Interpretation and Constitution Substitution: Oscillating between the Juridical and the Political' (2020) 7 *Revista de Investigações Constitucionais* 755.

²¹ David Landau and Rosalind Dixon, 'Abusive Judicial Review: Courts Against Democracy' (2020) 53 *UC Davis Law Review* 1313.

blockages.²² Neither vocabulary asks whether the change produced, whatever the court's motive, exceeds the authority of a constituted power.

The concept of informal dismemberment is proposed to close this gap. It does not replace the existing theory of informal change, but completes it. It does not presume that courts, statutes, and practices act illegitimately, but insists that their legitimacy be measured against the same boundary that applies to amendment. The concept operates on three levels. At the level of the single act, it identifies changes that contradict rather than specify a textual commitment. At the level of the configuration, it identifies changes whose cumulative effect across channels alters a constitutional pillar even though no single act does so. At the level of authorship, it identifies changes that benefit the institution that makes them, where the absence of an external check is most acute. These three levels become the criteria developed in Section 6. Before they can be stated precisely, however, they must be observed in operation.

4. Indonesia: Amendment Atrophy and the Displacement of Change

4.1 From transformation to textual stillness

The four amendments adopted by the Majelis Permusyawaratan Rakyat [People's Consultative Assembly] (MPR) between 1999 and 2002 rewrote the overwhelming majority of the 1945 Constitution. They introduced direct presidential elections, a bicameral legislature, a Constitutional Court, an extensive bill of rights, and a new relationship between the centre and the regions.²³ Whether this process amounted to amendment or to replacement conducted under the form of amendment remains contested. The MPR itself signalled continuity by adopting five basic agreements at the outset of the process: the Preamble would not be changed, the unitary state would be preserved, the presidential system would be strengthened, the normative content of the Elucidation would be moved into the articles, and all changes would be made by addendum rather than by replacement of the text.²⁴ Yet the Fourth Amendment also provided that the Constitution consists only of the Preamble and the articles, thereby abolishing the Elucidation that had shaped interpretation for half a century.²⁵ Horowitz has described the result as a constitution produced by insiders through incremental negotiation rather than by a constituent moment, which enabled a profound transformation without an explicit break.²⁶

The five basic agreements are themselves an instance of informal constitutional change. They are recorded in no constitutional provision, yet they functioned as binding

²² Rosalind Dixon, *Responsive Judicial Review: Democracy and Dysfunction in the Modern Age* (Oxford University Press 2023).

²³ Denny Indrayana, *Indonesian Constitutional Reform 1999–2002: An Evaluation of Constitution-Making in Transition* (Kompas 2008).

²⁴ Sekretariat Jenderal MPR RI, *Panduan Pemasyarakatan Undang-Undang Dasar Negara Republik Indonesia Tahun 1945 dan Ketetapan Majelis Permusyawaratan Rakyat Republik Indonesia* [Guide to the Dissemination of the 1945 Constitution and the Decrees of the People's Consultative Assembly] (Sekretariat Jenderal MPR RI 2012).

²⁵ Undang-Undang Dasar Negara Republik Indonesia Tahun 1945 [Constitution of the Republic of Indonesia 1945] Aturan Tambahan [Additional Provisions] art II; author's translation.

²⁶ Donald L. Horowitz, *Constitutional Change and Democracy in Indonesia* (Cambridge University Press 2013).

constraints on the amending body and are still invoked as the framework within which any future amendment must operate. Only one of them was later given textual form, when Article 37(5) declared that the unitary form of the state may not be amended.²⁷ The Indonesian amendment process was therefore constrained from the beginning by a convention that set the boundary between amendment and replacement. That boundary was drawn by political agreement, not by a court, and it has never been judicially tested.

Since 2002, the text has not changed. Article 37 requires that a proposal be submitted by at least one-third of the members of the MPR, that the session be attended by at least two-thirds, and that the decision be approved by an absolute majority of all members.²⁸ These thresholds are demanding but not exceptional. What has prevented amendment is the political understanding that reopening the text risks unravelling the settlement of 1999–2002. Proposals to strengthen the Dewan Perwakilan Daerah [Regional Representative Council] (DPD), to restore a state policy framework, or to return to the original 1945 text have recurred, but none has reached the formal stage.²⁹ Hendrianto has characterised the resulting condition as constitutional atrophy, in which a constitution designed to be amendable has ceased to be amended in practice, and has identified the Constitutional Court as the principal agent of the informal change that has followed.³⁰ This article extends that diagnosis by tracing the displacement across all four channels and by asking whether it has approached the replacement boundary.

4.2 Judicial interpretation: from specification to displacement

The Constitutional Court's electoral jurisprudence illustrates the movement from interpretation that specifies the text to interpretation that displaces it. Article 22E(1) provides that general elections are held directly, generally, freely, secretly, honestly, and fairly once every five years, and Article 22E(2) lists the offices to be filled at such elections: the members of the House of Representatives (DPR), the DPD, the President and Vice-President, and the regional legislatures (DPRD).³¹ The text does not say whether these elections must occur on the same day. In 2014 the Court held that presidential and legislative elections must be held simultaneously from 2019, reading Article 22E together with the original intent of the amending body.³² In 2020, after the burdens of the five-ballot election of 2019 had become apparent, the Court identified six constitutionally permissible models of simultaneity and left the choice among them to the legislature.³³ Both decisions specified the text. They chose among readings that the words could bear.

²⁷ UUD 1945 (n 25) art 37(5).

²⁸ UUD 1945 (n 25) art 37(1)–(4).

²⁹ Horowitz (n 26); Hendrianto (n 8).

³⁰ Hendrianto (n 8).

³¹ UUD 1945 (n 25) art 22E(1)–(2).

³² Constitutional Court of the Republic of Indonesia, Decision No 14/PUU-XI/2013 (23 January 2014), pt 3 (Pertimbangan Hukum [Legal Considerations]).

³³ Constitutional Court of the Republic of Indonesia, Decision No 55/PUU-XVII/2019 (26 February 2020), pt 3 (Pertimbangan Hukum [Legal Considerations]).

The 2025 decision moved beyond specification. Reviewing provisions of the General Elections Law and the Regional Elections Law, the Court held that national elections, for the DPR, the DPD, and the presidency, must be separated from local elections for the regional legislatures and regional heads, with the local elections to be held between two years and two and a half years after the national ones, beginning after 2029.³⁴ The Court justified the separation by reference to the weakening of party institutionalisation, the burden on election administrators, voter fatigue, and the overshadowing of regional issues by national campaigns. These are reasons of electoral design, and they may well be sound. The difficulty is textual and structural. Article 22E(2) lists the DPRD among the offices elected at the general election held every five years, while Article 18(3) requires regional legislators to be elected through general elections and Article 18(4) requires regional heads to be democratically elected.³⁵ If local elections are held in 2031, the regional legislators elected in 2024 must either serve for approximately seven years, be replaced by appointees, or face an election that falls outside the five-year cycle. Butt has described this as a constitutional Catch-22, since each of the available options appears to breach one of the provisions the Court was interpreting.³⁶

The decision is therefore not merely an instance of the Court acting as a positive legislator, the charge most commonly levelled against it in Indonesian scholarship. It is an instance of textual displacement: the Court selected an electoral design that the text, read as a whole, appears to exclude, and it left to the legislature the task of reconciling the conflict. The legislature did not do so promptly. In August 2025, the Court dismissed a follow-up petition as premature precisely because the lawmakers had not yet enacted the transitional arrangements that the separation requires.³⁷ Whatever solution is eventually adopted, whether an extension of terms, an interim appointment scheme, or a statutory reinterpretation of the five-year cycle, will be a further informal change built upon the first. The Court's interpretation thus generates a demand for organic legislation that must itself strain the text.

Two other decisions show that textual displacement is not confined to the separation of elections. In October 2023, the Court added to the statutory minimum age of forty for presidential and vice-presidential candidates an alternative qualification for persons who hold or have held elected regional office, a ruling that permitted the candidacy of the President's son and that led the Court's ethics council to remove the

³⁴ Decision No 135/PUU-XXII/2024 (n 4) pt 5 (Amar Putusan [Operative Part]); Mahkamah Konstitusi, 'Pemilu Nasional dan Pemilu Lokal Diselenggarakan Terpisah Mulai 2029' [National and Local Elections to Be Held Separately from 2029] (26 June 2025) <<https://www.mkri.id/berita/pemilu-nasional-dan-pemilu-lokal-diselenggarakan-terpisah-mulai-2029-23414>> accessed 15 September 2026.

³⁵ UUD 1945 (n 25) arts 18(3)–(4), 22E(2).

³⁶ Simon Butt, 'Court's Strange Elections Ruling Leaves Indonesia in Constitutional Catch-22' (*Indonesia at Melbourne*, 7 July 2025) <<https://indonesiaatmelbourne.unimelb.edu.au/courts-strange-elections-ruling-leaves-indonesia-in-constitutional-catch-22/>> accessed 15 September 2026.

³⁷ Constitutional Court of the Republic of Indonesia, Decision No 124/PUU-XXIII/2025 (28 August 2025); Mahkamah Konstitusi, 'Putusan MK soal Pemisahan Pemilu Nasional dan Lokal Belum Ditindaklanjuti DPR-Pemerintah' [Constitutional Court Decision on the Separation of National and Local Elections Not Yet Followed up by the DPR and Government] (28 August 2025) <<https://www.mkri.id/berita/putusan-mk-soal-pemisahan-pemilu-nasional-dan-lokal-belum-ditindaklanjuti-dpr-pemerintah-23693>> accessed 15 September 2026.

Chief Justice, the President's brother-in-law, from his leadership post.³⁸ In January 2025, after upholding the presidential nomination threshold in dozens of earlier petitions, the Court declared it unconstitutional and issued guidelines for what it called constitutional engineering by the legislature.³⁹ The first decision altered a qualification that the Constitution delegates to statute; the second reversed a long line of holdings that the threshold fell within the legislature's open legal policy. The former raised questions of self-regarding authorship; the latter showed that the Court's reading of Article 6A(2) could shift without any change in the text.⁴⁰ Taken together with the separation of elections, these decisions have reshaped the architecture of presidential and legislative elections more thoroughly than any amendment since 2002.

4.3 Conventions and practice: the unwritten frame

Indonesian constitutional scholarship has long recognised the category of *konvensi ketatanegaraan* [constitutional convention], understood as practices that are repeated, accepted, and observed by state organs as binding even though unwritten.⁴¹ Beyond the five basic agreements of 1999, the most visible contemporary example is the *Sidang Tahunan MPR* [Annual Session of the MPR], held every August since 2015, at which the President delivers a state address and reports on the performance of state institutions are presented to a joint sitting of the DPR and the DPD. The amended Constitution no longer makes the President accountable to the MPR, and the session rests only on the MPR's internal rules; the MPR's Secretary-General has described it expressly as a constitutional convention.⁴²

The Annual Session is benign in itself, but it illustrates a broader tendency. By creating a regular forum in which state institutions report to the MPR, the practice partially restores a coordinating role that the amendments deliberately removed when they ended the MPR's status as the highest organ of the state. It also supplies the institutional setting in which proposals to restore a binding state policy framework, the *Pokok-Pokok Haluan Negara* [Principal Directions of State Policy], have been advanced. A practice that began as a ceremony of transparency thus carries the latent capacity to re-establish, by accretion, a hierarchy that the formal text abolished. Conventions change the constitution most effectively when they are least contested, and the Annual Session has never been contested.

³⁸ Constitutional Court of the Republic of Indonesia, Decision No 90/PUU-XXI/2023 (16 October 2023), pt 5 (Amar Putusan [Operative Part]); Majelis Kehormatan Mahkamah Konstitusi [Constitutional Court Honour Council], Decision No 2/MKMK/L/11/2023 (7 November 2023).

³⁹ Constitutional Court of the Republic of Indonesia, Decision No 62/PUU-XXII/2024 (2 January 2025), pt 3 (Pertimbangan Hukum [Legal Considerations]); Titi Anggraini, 'A Surprise Victory for Democracy? Why the Constitutional Court Scrapped the Presidential Nominations Threshold' (*Indonesia at Melbourne*, 14 January 2025) <<https://indonesiaatmelbourne.unimelb.edu.au/a-surprise-victory-for-democracy-why-the-constitutional-court-scrapped-the-presidential-nominations-threshold/>> accessed 15 September 2026.

⁴⁰ UUD 1945 (n 25) art 6A(2).

⁴¹ Bagir Manan, *Konvensi Ketatanegaraan* [Constitutional Conventions] (Armico 1987).

⁴² Peraturan MPR No 1 Tahun 2019 tentang Tata Tertib Majelis Permusyawaratan Rakyat [MPR Regulation No 1 of 2019 on the Rules of Procedure of the People's Consultative Assembly]; 'Sekjen MPR: Sidang Tahunan adalah Konvensi Ketatanegaraan' [MPR Secretary-General: The Annual Session Is a Constitutional Convention] (*Antara*, 15 August 2021) <<https://www.antaranews.com/berita/2328534/sekjen-mpr-sidang-tahunan-adalah-konvensi-ketatanegaraan>> accessed 15 September 2026.

4.4 Organic statutes: the legislative absorption of constitutional questions

The Indonesian Constitution delegates an unusually large number of matters to statute, using the formula that further provisions shall be regulated by law. The legislature has used this delegation not only to implement the Constitution but to settle questions that the text leaves open or appears to have closed. Three examples show the range. The Law on the Making of Legislation restored the Decrees of the MPR to the formal hierarchy of legal norms in 2011, placing them immediately below the Constitution, even though the amendments had removed the MPR's power to issue regulating decrees and the MPR had itself reviewed the status of its earlier decrees in 2003.⁴³ A statute thus determined the rank of a source of law whose authority the Constitution no longer supplies.

The second example concerns the Constitutional Court itself. In 2020, the legislature amended the Constitutional Court Law to abolish the five-year renewable term of the justices and to allow them to serve until the age of seventy, subject to a maximum of fifteen years, and it applied the change to sitting justices.⁴⁴ The Constitution specifies the number of justices and the institutions that nominate them but leaves their tenure to statute.⁴⁵ An organic statute therefore restructured the independence of the institution that reviews organic statutes, and it did so in a manner that benefited the justices who would later review it. The third example is the legislative response to the Court's 2021 ruling that the Job Creation Law was conditionally unconstitutional, in part because the omnibus technique was unknown to Indonesian law-making. The legislature amended the Law on the Making of Legislation to recognise the omnibus method, and the government subsequently re-enacted the substance of the Job Creation Law by emergency regulation, which the legislature then approved.⁴⁶

Butt and Murharjanti have shown that Indonesian legislative responses to the Constitutional Court frequently take the form of evasion or re-enactment rather than compliance.⁴⁷ The organic statute is the instrument of this dialogue. It is the channel through which the legislature absorbs, deflects, or reverses judicial change, and in the absence of formal amendment it has become the principal site at which the meaning of the Constitution is contested between the two branches. The dialogue is not inherently illegitimate. Its risk lies in the fact that neither participant is required to show that the resulting configuration remains within the authority of a constituted power. The episode of August 2024 made the stakes visible: when the legislature moved to override within a day the Court's ruling on the thresholds for regional-head candidacies, mass

⁴³ Undang-Undang No 12 Tahun 2011 tentang Pembentukan Peraturan Perundang-undangan [Law No 12 of 2011 on the Making of Legislation] art 7(1)(b); Ketetapan MPR No I/MPR/2003 [MPR Decree No I/MPR/2003].

⁴⁴ Undang-Undang No 7 Tahun 2020 tentang Perubahan Ketiga atas Undang-Undang No 24 Tahun 2003 tentang Mahkamah Konstitusi [Law No 7 of 2020 on the Third Amendment to Law No 24 of 2003 on the Constitutional Court] arts 23.

⁴⁵ UUD 1945 (n 25) art 24C(3)–(6).

⁴⁶ Constitutional Court of the Republic of Indonesia, Decision No 91/PUU-XVIII/2020 (25 November 2021); Undang-Undang No 13 Tahun 2022 tentang Perubahan Kedua atas Undang-Undang No 12 Tahun 2011 [Law No 13 of 2022 on the Second Amendment to Law No 12 of 2011]; Undang-Undang No 6 Tahun 2023 tentang Penetapan Peraturan Pemerintah Pengganti Undang-Undang No 2 Tahun 2022 tentang Cipta Kerja menjadi Undang-Undang [Law No 6 of 2023 on the Enactment of Government Regulation in Lieu of Law No 2 of 2022 on Job Creation].

⁴⁷ Simon Butt and Prayekti Murharjanti, 'What Constitutes Compliance? Legislative Responses to Constitutional Court Decisions in Indonesia' (2022) 20 *International Journal of Constitutional Law* 428.

protests forced it to abandon the attempt.⁴⁸ What settled the question was not a constitutional rule but a mobilised public.

4.5 Desuetude: the dormant powers

The fourth channel operates by subtraction. The most significant instance is Article 37 itself. An amendment procedure that has not been used for more than two decades, and whose use is widely regarded as politically dangerous, has not been repealed, but its capacity to function as the constitution's primary mechanism of change has diminished. Albert has argued that an amendment rule can fall into a condition resembling desuetude when political actors come to share the understanding that it should not be used, even though it remains formally valid.⁴⁹ Indonesia approximates this condition. The practical consequence is that every change the political system requires must travel through the other channels.

Other powers have also fallen into disuse. The impeachment procedure of Articles 7A and 7B has never been invoked since its adoption in 2001. The DPD's constitutional role in legislation, confined by the text to proposing and discussing bills on regional matters, was so marginalised in practice that the Court had to restore its participation in legislative deliberation in 2013.⁵⁰ Desuetude in Indonesia does not so much remove powers as redistribute them. When the MPR ceases to amend, the Court interprets; when the DPD is excluded, the DPR legislates alone; when impeachment lies dormant, accountability migrates to elections and to the Court. The result is a constitution whose formal architecture remains that of 2002 but whose operative architecture has been reassembled through the other three channels.

The Indonesian case therefore displays all four channels interacting in a single configuration. The Court displaces the text; the legislature absorbs and redirects the displacement through organic statutes; conventions supply unwritten frames that partly restore what the amendments removed; and desuetude ensures that none of these changes is tested through the procedure designed for constitutional change. No single act crosses the replacement boundary. The question is whether the configuration does.

5. Colombia and India: Guarding the Boundary, Crossing It Informally

5.1 Colombia: the replacement doctrine and its asymmetry

Colombia presents the inverse of the Indonesian configuration. Its Constitution of 1991 has been amended with great frequency; by the end of 2019 Congress had adopted fifty-two legislative acts amending it, many of them concentrated on the same institutional

⁴⁸ Constitutional Court of the Republic of Indonesia, Decision No 60/PUU-XXII/2024 (20 August 2024), pt 5 (Amar Putusan [Operative Part]).

⁴⁹ Richard Albert, 'Constitutional Disuse or Desuetude: The Case of Article V' (2014) 94 Boston University Law Review 1029.

⁵⁰ Constitutional Court of the Republic of Indonesia, Decision No 92/PUU-X/2012 (27 March 2013), pt 3 (Pertimbangan Hukum [Legal Considerations]); UUD 1945 (n 25) arts 7A–7B, 22D.

questions of budget, electoral rules, and the composition of Congress.⁵¹ The Constitution confines the Constitutional Court's review of legislative acts to defects of procedure.⁵² From this narrow textual basis the Court constructed the doctrine of constitutional replacement, reasoning that the power to reform the Constitution is a power of the constituted order and therefore does not include the power to replace it; a reform that substitutes an essential element of the Constitution with an opposing one is procedurally defective because it has been adopted by an organ without competence to adopt it.⁵³

The doctrine has been applied with notable consequence. In 2005 the Court upheld an amendment permitting one immediate presidential re-election but struck down the part of it that empowered the Council of State to legislate in default of Congress.⁵⁴ In 2010 it invalidated the law convening a referendum on a second consecutive re-election, holding both that the procedure was defective and that a third consecutive term would replace the principles of alternation, checks and balances, and equality that define the constitutional order.⁵⁵ In 2016 it struck down the provisions of the Equilibrium of Powers reform that abolished the Superior Council of the Judiciary and replaced it with a new governance structure, holding that the reform had suppressed the principle of judicial self-government as an expression of the separation of powers and judicial independence.⁵⁶ Landau has read this jurisprudence as a response to the weakness of Colombian political institutions: the Court substitutes for the representative checks that a fragmented party system fails to supply.⁵⁷

The asymmetry lies in the Court's own interpretive practice. The same Court that guards the replacement boundary against Congress has transformed the Constitution through interpretation on a scale that rivals any amendment. It constructed the *bloque de constitucionalidad* [constitutional block], which incorporates human rights treaties and international humanitarian law into the constitutional parameter of review.⁵⁸ It developed the doctrine of the *estado de cosas inconstitucional* [unconstitutional state of affairs], through which it supervises the design and execution of public policy for years at a time.⁵⁹ It extended civil marriage to same-sex couples despite the reference in Article 42 to the decision of a man and a woman to marry, after first exhorting Congress to legislate and waiting for it to fail to do so.⁶⁰ Many of these changes are defensible, and several are admirable. The point is structural rather than evaluative: the

⁵¹ Manuel Fernando Quinche Ramírez, 'Las reformas a la Constitución: Presidencialismo, circularidad y regresión' [Reforms to the Constitution: Presidentialism, Circularity and Regression] (2020) 69 *Universitas* 1.

⁵² Constitución Política de Colombia 1991 [Political Constitution of Colombia 1991] arts 241(1), 379; author's translation.

⁵³ Corte Constitucional de Colombia, Sentencia C-551/03 (9 July 2003); Bernal (n 5).

⁵⁴ Corte Constitucional de Colombia, Sentencia C-1040/05 (19 October 2005).

⁵⁵ Corte Constitucional de Colombia, Sentencia C-141/10 (26 February 2010).

⁵⁶ Corte Constitucional de Colombia, Sentencia C-285/16 (1 June 2016).

⁵⁷ David Landau, 'Substitute and Complement Theories of Judicial Review' (2017) 92 *Indiana Law Journal* 1283.

⁵⁸ Corte Constitucional de Colombia, Sentencia C-225/95 (18 May 1995).

⁵⁹ Corte Constitucional de Colombia, Sentencia T-025/04 (22 January 2004).

⁶⁰ Corte Constitucional de Colombia, Sentencia C-577/11 (26 July 2011); Corte Constitucional de Colombia, Sentencia SU-214/16 (28 April 2016); Constitución Política de Colombia 1991 (n 52) art 42.

replacement doctrine binds the author of formal amendment, while interpretive change of comparable magnitude is governed only by the Court's own conception of its role. García López has observed that the Court's approval of the fast-track procedure for implementing the 2016 peace agreement shows the doctrine oscillating between legal principle and political pragmatism.⁶¹

The other Colombian channels confirm the pattern. Statutory laws regulating fundamental rights, the administration of justice, political parties, and states of exception must be adopted by an absolute majority within a single legislative term and are subject to automatic prior review, which gives them the character of organic statutes supervised by the Court.⁶² The emergency power of internal commotion, used repeatedly in the 1990s and early 2000s, became nearly dormant after the Court subjected it to exacting substantive review and invalidated a declaration in 2009; when the government invoked it again in the Catatumbo region in January 2025, the Court upheld the declaration only in part, excluding the chronic and structural problems on which the government had relied.⁶³ Judicially induced desuetude thus reshaped the distribution of emergency power without any amendment to Article 213. In Colombia, in short, the Court is simultaneously the guardian of the replacement boundary and the principal author of informal change, and it has not applied the first role to the second.

5.2 India: when informal change outranks formal amendment

India has amended its Constitution more than one hundred times under Article 368, most recently to reserve seats for women in the national and state legislatures.⁶⁴ The frequency of formal amendment has not reduced the significance of informal change. The basic structure doctrine was itself an interpretive creation that limited the amending power without any textual basis, and it has been applied to protect judicial review, free and fair elections, and the balance between fundamental rights and directive principles.⁶⁵ The doctrine is India's version of the replacement boundary, and like its Colombian counterpart it binds Parliament.

The history of judicial appointments shows what happens when informal change and the replacement boundary collide. Article 124(2) provides that judges of the Supreme Court are appointed by the President after consultation with such judges as the President deems necessary, and that the Chief Justice shall always be consulted. In 1981 the Court read this provision as conferring primacy on the executive.⁶⁶ In 1993 it reversed itself and read consultation as requiring the concurrence of the Chief Justice acting on the advice of senior colleagues, and in 1998 it formalised the collegium of the

⁶¹ Corte Constitucional de Colombia, Sentencia C-699/16 (13 December 2016); García López (n 20).

⁶² Constitución Política de Colombia 1991 (n 52) arts 151–153.

⁶³ Corte Constitucional de Colombia, Sentencia C-070/09 (12 February 2009); Corte Constitucional de Colombia, Sentencia C-148/25 (29 April 2025); Constitución Política de Colombia 1991 (n 52) art 213.

⁶⁴ Constitution of India 1950, art 368; Constitution (One Hundred and Sixty Amendment) Act 2023.

⁶⁵ *Kesavananda Bharati v State of Kerala* (1973) 4 SCC 225; *Indira Nehru Gandhi v Raj Narain* 1975 Supp SCC 1; *Minerva Mills Ltd v Union of India* (1980) 3 SCC 625; Sudhir Krishnaswamy, *Democracy and Constitutionalism in India: A Study of the Basic Structure Doctrine* (Oxford University Press 2009).

⁶⁶ *SP Gupta v Union of India* 1981 Supp SCC 87.

Chief Justice and the four most senior judges.⁶⁷ The collegium is a product of interpretation supplemented by convention: its operative criteria, including seniority, regional representation, and the practice of elevating Chief Justices of High Courts, are nowhere written in the Constitution and have been reconstructed from practice.⁶⁸

In 2014 Parliament, with the ratification of the required number of states, adopted the Ninety-ninth Amendment to replace the collegium with a National Judicial Appointments Commission composed of judges, the Law Minister, and eminent persons. In 2015 the Supreme Court struck down the amendment by a majority of four to one, holding that the primacy of the judiciary in appointments forms part of the basic structure.⁶⁹ The consequence is remarkable. A method of appointment created by judicial interpretation of a text that appears to confer the final decision on the executive was placed beyond the reach of the amendment procedure itself. Informal change did not merely approach the replacement boundary; it was elevated above it. Abeyratne has described the judgment as an assertion of judicial supremacy that finds few parallels among constitutional democracies.⁷⁰ Whatever the merits of the collegium, the case satisfies all three markers of informal dismemberment identified in Section 3: textual displacement, accumulation across interpretation and convention, and self-regarding authorship.

India also illustrates informal change by the political branches. The reading of Article 356 in *SR Bommai v Union of India* subjected the imposition of President's rule in the states to judicial review and sharply reduced its use, producing a form of judicially induced desuetude comparable to the Colombian experience with internal commotion.⁷¹ Conversely, the 2019 abrogation of the special status of Jammu and Kashmir under Article 370 was accomplished not by an amendment under Article 368 but by presidential orders, one of which operated by altering the interpretation clause of the Constitution, together with a reorganisation statute; the Supreme Court upheld the abrogation in 2023 while holding the use of the interpretation clause to amend Article 370 impermissible.⁷² Khaitan has argued that Indian constitutional democracy has been weakened less by any single dramatic act than by an accumulation of incremental measures, each defensible in isolation.⁷³ His diagnosis is, in the vocabulary of this article, a diagnosis of aggregation.

⁶⁷ *Supreme Court Advocates-on-Record Association v Union of India* (1993) 4 SCC 441; *In re Special Reference No 1 of 1998* (1998) 7 SCC 739.

⁶⁸ Abhinav Chandrachud, *The Informal Constitution: Unwritten Criteria in Selecting Judges for the Supreme Court of India* (Oxford University Press 2014); Kosař and Vincze, 'Constitutional Conventions Concerning the Judiciary beyond the Common Law' (n 12).

⁶⁹ *Supreme Court Advocates-on-Record Association v Union of India* (n 6); Constitution (Ninety-ninth Amendment) Act 2014.

⁷⁰ Rehan Abeyratne, 'Upholding Judicial Supremacy in India: The NJAC Judgment in Comparative Perspective' (2017) 49 *George Washington International Law Review* 569.

⁷¹ *SR Bommai v Union of India* (1994) 3 SCC 1.

⁷² *In re Article 370 of the Constitution* 2023 INSC 1058 (11 December 2023).

⁷³ Tarunabh Khaitan, 'Killing a Constitution with a Thousand Cuts: Executive Aggrandizement and Party-State Fusion in India' (2020) 14 *Law & Ethics of Human Rights* 49.

Table 1. Channels of informal change and the reach of the replacement boundary in three jurisdictions

Dimension	Indonesia	Colombia	India
Formal amendment since adoption	Four amendments, 1999–2002; none since	Fifty-two legislative acts by 2019	More than one hundred amendments
Judicial interpretation	Electoral redesign (2014, 2020, 2025); candidacy rules (2023, 2025)	Bloque de constitucionalidad; unconstitutional state of affairs; same-sex marriage	Basic structure; collegium of judges
Conventions and practice	Five basic agreements (1999); MPR Annual Session (2015–)	Judicial self-government treated as constitutional pillar	Unwritten criteria for judicial appointment
Organic statutes	MPR decrees restored to hierarchy (2011); judicial tenure (2020); omnibus method (2022)	Statutory laws with prior automatic review	Reorganisation statute for Jammu and Kashmir (2019)
Desuetude	Article 37; impeachment; DPD legislative role	Internal commotion after 2009	President's rule after 1994
Replacement boundary applied to informal change	No doctrine; boundary set by 1999 convention and art 37(5)	Applied to Congress, not to the Court	Applied to Parliament; used to entrench a judicial construction

Source: author's compilation from the constitutional texts, decisions, and statutes cited.

Table 1 summarises the comparison. It shows that the three jurisdictions differ in the frequency of formal amendment by two orders of magnitude, yet in each of them the principal transformations of the past two decades occurred outside the amendment procedure. It also shows that none of them applies the replacement boundary to informal change in a consistent way. Indonesia has no doctrine of amendment limits beyond Article 37(5) and the 1999 convention. Colombia and India possess sophisticated doctrines, but they direct them at the legislature and, in India's case, have used them to protect the product of judicial interpretation from formal amendment. The comparison therefore disconfirms the intuition that informal change is primarily a response to rigid amendment rules. It is a constant feature of constitutional orders with powerful courts, and the risk it poses to the replacement boundary does not diminish when amendment is easy.

6. A Channel-Neutral Test for Informal Dismemberment

6.1 Three criteria

If the replacement boundary protects constitutional identity against the misuse of constituted power, it must apply to every constituted power, whatever the channel through which it acts. This article proposes a channel-neutral test composed of three criteria. The test does not ask whether a change is good or bad, nor whether its author acted in good faith. It asks whether the change remains within the authority of the organ that made it.

The first criterion is *textual displacement*. A change displaces the text when it produces an arrangement that the constitutional provisions, read together, exclude rather than merely fail to mandate. Specification chooses among readings the text can bear; displacement adopts a reading the text forecloses and then requires other actors to resolve the resulting conflict. The Indonesian separation of elections, the Indian reading of consultation as concurrence, and the Colombian extension of marriage each involve some degree of displacement. Displacement alone, however, is not sufficient. Constitutions contain provisions that are outdated or that conflict with their own principles, and interpretive change that corrects such conflicts is a familiar and often necessary judicial function.

The second criterion is *cumulative aggregation*. A change aggregates when, together with other changes across the four channels, it alters a constitutional pillar: the separation of powers, the democratic character of the state, the protection of fundamental rights, or an arrangement that the constitution declares unamendable. Aggregation directs attention from the single act to the configuration. In Indonesia, the separation of elections combines with the organic statute that must implement it, with the dormancy of Article 37, and with the practice that has restored a coordinating role to the MPR. The pillar at stake is the democratic periodicity of representation guaranteed by Articles 18 and 22E. In Colombia, by contrast, the extension of marriage aggregates with no change that threatens a pillar; it expands rights within an architecture that remains otherwise intact.

The third criterion is *self-regarding authorship*. A change is self-regarding when it confers power, tenure, or protection on the institution that makes it, or on persons closely connected to its members. Self-regarding change is the point at which the absence of external review is most dangerous, because the ordinary check on each channel is exercised by another channel: courts review statutes, legislatures respond to courts, and practice is disciplined by contestation. When an institution changes the rules that govern itself, that circuit is broken. The Indian collegium, the Indonesian extension of judicial tenure by statute, and the Indonesian age-qualification ruling each display this feature, as does, in a different register, the Colombian protection of judicial self-government against congressional reform.

A change amounts to informal dismemberment when it displaces the text and either aggregates to alter a constitutional pillar or is self-regarding in its authorship. The Colombian marriage ruling displaces the text but neither aggregates nor benefits its author; it falls outside the concept. The Indian NJAC judgment displaces, aggregates, and is self-regarding; it falls squarely within it. The Indonesian separation of elections displaces the text and aggregates with other changes to alter the periodicity of representation, although it is not self-regarding; it falls within the concept, and it does so in a system in which no procedure exists to test it.

6.2 Consequences and objections

The test does not require that informal dismemberment be prohibited, which would be impossible to enforce against apex courts. It requires that such change be remitted to the procedure designed for it. For courts, remittance means declaring that the constitutional problem identified cannot be resolved by interpretation without displacing the text, and that its resolution requires amendment. The Indonesian Court's 2020 decision on the models of simultaneous elections is an example of the posture the test recommends: it identified the constitutional constraint, set out the permissible options, and left the choice to the political branches.⁷⁴ Its 2025 decision departed from that posture by choosing one design and leaving the political branches to reconcile it with the text. For legislatures, remittance means that organic statutes altering the tenure, composition, or jurisdiction of apex institutions should not apply to incumbents, and should be treated by the courts as constitutional questions rather than as matters of open legal policy. For political actors, remittance means that the amendment procedure must be restored as a usable instrument. An amendment rule that is never used does not protect the constitution; it merely ensures that the constitution is changed by other means.

Three objections may be anticipated. The first is that informal change is precisely what allows constitutions to endure when formal amendment is blocked, so that the test would undermine the adaptability it seeks to protect. Yet the test leaves the great majority of informal change untouched. It captures only change that displaces the text and either reaches a pillar or benefits its author, and for that narrow class adaptability is not an adequate justification, because the same argument would justify dismembering amendments. The second objection is that constitutional pillars are indeterminate and that the aggregation criterion invites the same judicial discretion it seeks to discipline. The objection has force, but it applies equally to the basic structure and replacement doctrines, which have nevertheless developed workable criteria through comparative reasoning and incremental elaboration.⁷⁵ The test adds no new indeterminacy; it redistributes the existing indeterminacy so that it applies to courts as well as legislatures.

The third objection is that no institution can review the apex court's own informal changes, so that the test is unenforceable against the actor most likely to violate it. This is correct as a matter of formal jurisdiction, but constitutional limits are not enforced by courts alone. They are enforced by the arguments available to legislatures, to scholars, and to the public, and by the internal discipline that courts adopt when they know their decisions will be measured against an articulated standard. The Indonesian episode of August 2024, in which public mobilisation defeated a legislative attempt to override the Court, shows that constitutional publics can act as a check. A channel-neutral test supplies such publics, and the courts themselves, with a vocabulary for distinguishing

⁷⁴ Decision No 55/PUU-XVII/2019 (n 33).

⁷⁵ Roznai (n 18); Bernal (n 5).

the ordinary work of informal change from the replacement of the constitution by other means.

7. Conclusion

This article has argued that the boundary between constitutional amendment and constitutional replacement, developed to discipline formal amendment, must extend to informal change if it is to protect constitutional identity at all. Comparative scholarship has studied the channels of informal change and the limits of formal amendment as separate subjects, and the separation has allowed courts, legislatures, and political practice to achieve through informal means what the replacement boundary forbids to the amending power.

In answering the research questions, the article concludes, first, that in Indonesia, Colombia, and India the major transformations of recent decades occurred outside the amendment procedure through interacting channels of judicial interpretation, convention, organic statute, and desuetude, and that this is so whether formal amendment is atrophied, as in Indonesia, or frequent, as in Colombia and India. Second, none of the three jurisdictions applies the replacement boundary consistently to informal change: Indonesia lacks any doctrine beyond Article 37(5) and the convention of 1999, Colombia directs its replacement doctrine at Congress alone, and India has used its basic structure doctrine to entrench a judicial construction against a formal amendment. Third, informal dismemberment can be identified through a channel-neutral test that asks whether a change displaces the text and either aggregates to alter a constitutional pillar or confers power on its own author.

The implications reach beyond the three cases. The comparative literature on constitutional change should treat the replacement boundary not as a limit on a procedure but as a limit on constituted power as such. It does not abandon the study of informal change, but completes it. It does not diminish the role of courts, but subjects them to the discipline they apply to others. For Indonesia in particular, the analysis suggests that the path from textual stillness to constitutional renewal lies not in further judicial redesign but in restoring the amendment procedure as a usable instrument, so that the questions the Constitutional Court has been compelled to answer by interpretation can be answered by the authority to which they belong. The replacement boundary is then neither a doctrine reserved for exceptional amendments nor a slogan against judicial activism; it becomes a principle of constitutional authorship that binds every institution capable of changing the constitution.

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