
DOES THE BASIC STRUCTURE DOCTRINE HAVE A LIMITING PRINCIPLE?

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ABSTRACT

The Basic Structure Doctrine is one of the most important and controversial principles of Indian Constitutional Law. A principle evolved by the Supreme Court in *Kesavananda Bharti v. State of Kerala* which limits the Parliament's power to amend the Constitution by preventing alterations to its 'basic structure'¹. This article examines whether the doctrine contains a coherent limiting principle to constrain judicial discretion. The paper traces the development of the doctrine from *Golak Nath* to recent decisions. It argues that the doctrine has been developed by judicial assertion and not by a clear and consistent methodology. It examines various tests employed by the Court and shows their inability to provide objective criteria to determine basic features. Drawing on textual models of constitutional unamendability in Germany and South Africa, the article argues that there is no textual support for the doctrine in the Indian constitution. It concludes that, absent textual anchoring or substantial reform, the doctrine will continue to function as an exercise of judicial discretion, not as a determinate rule of constitutional law.

¹ AIR 1973 SC 1461

INTRODUCTION

The most important power a sovereign legislature can exercise is the power to amend a constitution. It is the power to rewrite the rules under which political authority is organized and restrained. In systems governed by written constitutions, that power has traditionally been located in the amending clause a textual provision which specifies who may amend, by procedure, and what may not be amended at all. The amending power under the Indian Constitution is found in Article 368², which on its face imposes procedural restrictions, but no substantive ones. However, since the Courts' decision in *Kesavananda Bharati* it has been asserted that a power which the text does not confer is the power to identify and enforce unamendable features of the Constitution – features which even the Parliament acting by special majority with state ratification, cannot touch. This is the basic structure doctrine.

The doctrine is often justified as a necessary safeguard against constitutional self-destruction – a device to prevent a temporary parliamentary majority from dismantling the constitutional order out of which it derives its authority. The defence has intuitive appeal. However, it conceals a prior and more fundamental question: what, precisely, is the basic structure? Fifty years of jurisprudence failed to provide a satisfactory answer. The Court has offered a range of formulations, employed diverse sets of features and used different tests in different contexts, without ever arriving at a stable, principled criterion which might constrain future decisions. The doctrine is a power without a principle.

ORIGINS AND EARLY AMBIGUITY: FROM GOLAK NATH TO KESAVANANDA

The basic structure doctrine did not emerge in a fully formed stated. Its intellectual roots lie in a series of confrontations between Parliament and the Supreme Court over the amenability of Fundamental rights, a conflict shaped as much by the politics of land reform and nationalism as by constitutional theory. The trajectory from *Golak Nath* to *Kesavananda* shows a Court in search of a doctrine rather than applying one.

In *Golak Nath v. State of Punjab*³, a bare majority of six to five in an eleven-judge bench held that Parliament could not amend the fundamental rights provisions of the Constitution. The majority's reasoning was that the power to amend was a statutory power conferred by the

² The Constitution of India, art. 368

³ AIR 1967 SC 1643

Constitution and was thus subject to its limitations, including fundamental rights. The judgement was intellectually weak, it confused legislative and constituent power while ignoring the special procedure under Article 368, leaving the Parliament with no clear guidance on what it may or may not do. But it had the merit of at least placing a definable constraint on the amending power: fundamental rights⁴.

The Parliament responded with the Twenty-Fourth Constitutional Amendment which expressly empowered Parliament to amend any provision of the Constitution including fundamental rights. The stage was ready for a comprehensive reappraisal. In *Kesavananda Bharati*, thirteen judges, the largest bench ever constituted in India, sat for sixty-eight days and gave eleven separate opinions. The result was a divided majority, seven judges affirmed the Twenty-Fourth Amendment and overruled *Golak Nath*, but at the same time held that Article 368 did not empower Parliament to alter the 'basic structure or essential features' of the constitution⁵. The critical problem was that there was no consensus on what the basic structure was.

Justice Sikri noted some features, supremacy of the Constitution, republican and democratic form of government, secular character, separation of powers, federal character, however, this was his list, not a list by a majority of the bench⁶. Other judges had their own formulations, some broader, some narrower. The six dissenting judges, led by Chief Justice Ray, made the case that the majority could not reconcile their view with the law, and amending power was unlimited⁷ as long as the amendment does not abrogate the Constitution itself. In summary, a single sheet signed by nine judges shortly before the bench rose, capture this incoherence without resolving it.

INCREMENTAL EXPANSION OF BASIC FEATURES

If the doctrine was vague at birth, in its subsequent development vagueness was transformed into a structural feature. Jurisprudence post-*Kesavananda* was characterized by steady, largely unchecked, accretion of constitutional features claimed to be beyond the reach of Parliament. Each addition has been announced rather than derived, the Court identifies a feature as basic

⁴ H.M. Seervai, *Constitutional Law of India* 3035-3040 (Universal Law Publishing, New Delhi, 4th edn., 1996).

⁵ Supra note 1, at 1

⁶ Anmol Jain, 50 Years of *Kesavananda Bharti*, *Verfassungsblog* (9 June, 2026), <https://verfassungsblog.de/50-years-of-kesavananda-bharti/>

⁷ Rudrajyoti Nath Ray, *THE DOCTRINE OF BASIC STRUCTURE*, *The Last Word* (9 June, 2026) <https://rudrajyotinathray.com/2019/10/15/the-doctrine-of-basic-structure-i/>

by asserting its importance, not by application of any prior criterion that would have generated the same result⁸.

The first major post-Kesavananda ruling was *Indira Nehru Gandhi v. Raj Narain*. Here, the Court struck down the Thirty-Ninth Amendment, which placed the election of the Prime Minister beyond judicial review⁹. Justice Chandrachud held that ‘free and fair’ elections and ‘democracy’ were part of the basic structure, adding two more features to an already uncertain list without articulating a principled basis for inclusion. In the same decision, the Court invalidated a retrospective validation of an election, making it the first time the doctrine was used to invalidate a constitutional amendment in practice¹⁰.

In *Minerva Mills Ltd. v. Union of India*, the Court struck down the provisions of the Forty-Second Amendment which tried to protect the directive principles from the scrutiny of fundamental rights and had said no amendment could be challenged in any court. Writing for the majority, Chief Justice Chandrachud held that ‘the limited amending power itself’, the very power Kesavananda left untouched was part of the basic structure and so a provision making it unlimited could be struck down¹¹. The circularity in this reasoning is conspicuous; the basic structure doctrine protects itself from being amended away. The doctrine is thus constitutionally self-entrenching in a way not mandated by the text.

Expansion continued, in *S.R. Bommai v. Union of India*, the Court held that federalism and secularism are basic features of capable of constraining not merely constitutional amendments but presidential proclamations under Article 356¹². This was an extension of the doctrine’s scope, from regulating Parliament’s constituent power to regulating normal executive action, a development which does not sit well with the doctrine’s initial justification as a limit on constitutional amendment.

The widest application was in *I.R. Coelho v. State of Tamil Nadu*, where a nine-judge bench held that even laws placed in the Ninth Schedule; a constitutional device to insulate land reform legislative from scrutiny of fundamental rights, could be judicially reviewed if they damaged

⁸ Krishnaswamy S, *Democracy and Constitutionalism in India: A Study of the Basic Structure Doctrine* (Oxford University Press 2009)

⁹ AIR 1975 SC 2299

¹⁰ Venkatesh Nayak, *The Basic Structure Doctrine of the Indian Constitution*, constitutionnet (10 June, 2026), <https://constitutionnet.org/vl/item/basic-structure-indian-constitution>

¹¹ Ibid.

¹² AIR 1994 SC 1918

the basic structure¹³. Chief Justice Sabharwal's opinion laid down the 'rights test' as the operative criterion, a law even if scheduled could be struck down if it violated fundamental rights which themselves were basic-structural¹⁴. This effectively subordinated the Ninth Schedule, a conscious constitutional choice of the framers, to a doctrine with no textual basis.

The accumulated list includes, at minimum: Secularism, Supremacy of the Constitution, sovereign, democratic and republican nature, independence of judiciary, federalism, unity and integrity of nation, freedom and dignity of individual, welfare state, rule of law, powers of High Court and Supreme Court, principle of equality, free and fair elections, harmony between fundamental rights and DPSPs, limited power to amend, separation of powers, parliamentary system¹⁵. No judgement has laid down a test to show whether further features may be added or whether any of these may be removed, or how conflicts between two features recognized as basic are to be resolved.

THE STRUCTURAL DEFICIT: WHY NO TEST HAS HELD

The biggest intellectual objection to the basic structure doctrine is not that it exists but that it cannot be applied in a principle way. This part examines three such tests, then compares them to doctrines of constitutional unamendability that has limiting principles.

The first test, known as the 'Essence test' was laid in the Kesavananda Bharti case. The Supreme Court held that though the Parliament has vast powers to amend the constitution under Article 368, it cannot alter or destroy the basic structure of the Constitution¹⁶. The test is for courts to find the core of a constitutional principal and then decide whether the amendment injures or destroys the core. However, this test is inherently subjective since judges can disagree on what is the 'essence' of a constitutional feature.

The second test was the 'rights test' articulated in I.R Coelho v. State of Tamil Nadu. The Court held that even laws in the Ninth Schedule are subject to judicial review if they infringe upon

¹³ AIR 2007 SC 861

¹⁴ Sunil Ambwani, I.R. Coelho (Dead) by L.Rs. v. State of Tamil Nadu & Others: The Nine Judges' Decision by Supreme Court (The 9th Schedule Case) – *A Case Study*, Lecture delivered at the Advocates' Association organised by Samvaad, on 9 February 2007 (11 June, 2026)

https://www.allahabadhighcourt.in/event/case_study_on_I.R._Coelho.doc

¹⁵ Basic Structure Doctrine, Meaning, Significance, Evolution, Vajiram & Ravi (11 June, 2026), <https://vajiramandravi.com/upsc-exam/basic-structure/>

¹⁶ Supra note 1, at 1

the fundamental rights which are part of the basic structure¹⁷. Instead, the amendment is judged by the impact it has on constitutional rights. The Court looks at whether the amendment or law violates rights integral to basic structure principles such as equality, judicial review or the rule of law. This test provides a more concrete framework but still leaves room for the judiciary to decide which right is part of the basic structure.

The third and most structured approach is the ‘width & identity’ test developed in *M. Nagraj v. Union of India*. The Court explained the two steps that constitutional amendments must be looked at: the ‘width test’ considers the boundaries of the amending power to see if the Parliament has gone beyond its constitutional power. Second, the ‘identity test’ asks whether the amendment maintains the identity of the constitution itself. If an amendment is so wide that it alters the basic structure of the constitution, it may be held invalid¹⁸. This test offers a more principled basis for judicial review by invoking constitutional identity rather than abstract values, however it still requires judges to define the Constitution’s identity.

The contrast with the German eternity clause is instructive. Article 79(3) of the Basic Law expressly rules out amendments which alter the division of the federation into states, the basic cooperation of states in legislation or the principles set out in Articles 1 and 20, safeguarding human dignity, the democratic and social federal state and constitutional supremacy¹⁹. These are text anchors. The German Federal Constitutional Court, when it examines the constitutionality of constitutional amendments under Article 79(3), and does so by reference to a finite, expressly enumerated set of provisions.

Section 1 of the South African Constitution similarly entrenches a specific list of founding values; human dignity, equality, non-racialism, non-sexism, the supremacy of the Constitution and the rule of law and universal adult suffrage which can only be amended by seventy-five per cent majority²⁰. Again, the restriction is textual and specific. Procedural super-majority requirements measure the political difficulty of an amendment relative to the importance of

¹⁷ Supra note 13, at 4

¹⁸ AIR 2007 SC 71

¹⁹ Basic Law for the Federal Republic of Germany in the revised version published in the Federal Law Gazette Part III, classification number 100-1, as last amended by the Act of 22 March 2025 (Federal Law Gazette 2025 I, No. 94, art. 79(3))

²⁰ The Constitution of the Republic of South Africa, 1997, art. 1 & 74(1)

what is being changed²¹.

The Indian basic structure doctrine has neither: no textual anchor and no agreed enumeration. The result is that its scope is, in principle, whatever the Court says it is at a given moment. Such a doctrine is not a rule of constitutional law, it is an invitation to judicial legislation. The point is not that the Court has exercised this discretion irresponsibly, rather that the doctrine provides no institutional mechanism to prevent irresponsible exercise, and therefore no rule of law at all.

JUDICIAL SUPREMACY IN CONSTITUTIONAL GARB

The concern about democratic legitimacy that arises from the basic structure doctrine is different from, but related to its, analytic indeterminacy. Allowing an unelected court to veto constitutional amendments passed by Parliament, the body which Article 368 expressly gives the power to amend, is a departure from constitutional order.

Sometimes the answer given is that judicial supremacy in matters of constitutional amendment is itself one of the things that the basic structure projects. That is, the independence and authority of the judiciary are among the features that Parliament cannot take away. This was part of the reasoning in *Supreme Court Advocates-on-Record Association v. Union of India*, where the Court struck down the National Judicial Appointments Commission Act which would have changed the process of appointment of judges by bringing in the executive and legislature into a collegium-like body²². The Court held that the Ninety-Ninth Amendment damaged the basic feature of 'judicial independence' and 'separation of powers'²³.

Here the circularity is complete. The Court claims it has the power to invalidate constitutional amendments. It then argues that this very power is part of the basic structure and hence cannot be taken away. Any attempt to change the amending power or the judicial appointment process can be described as an attack on basic structure itself. The doctrine has developed a self-insulating character which makes it impervious to any democratic correction short of a

²¹ Yaniv Roznai, *Unconstitutional Constitutional Amendments: The Limits of Amendment Powers* 35-58 (Oxford University Press, Oxford, 2017).

²² AIR 2016 5 SCC 1

²³ *Ibid.*

revolutionary break²⁴.

The defence of the doctrine is to invoke the notion of transformative constitutionalism: that the purpose of the Constitution; social transformation, substantive equality, protection of minorities require a judicial guardian with the power to enforce core values against temporary parliamentary majorities. So, the basic structure doctrine is used as a tool to counter-majoritarian, and to serve deeper democratic values²⁵.

This argument has much normative weight but does not save the doctrine from indeterminacy. Even if one accepts the premise that courts should be guardians of core constitutional values against encroachment by the majoritarian political process, the question remains: which values? The argument of transformative constitutionalism states that courts should protect important things, but it does not tell us what things are important enough to be immunized from democratic deliberation. Without an answer to that earlier question, the doctrine cannot be applied, it can only be invoked to justify whatever result a bench happens to prefer²⁶.

The omission of an eternity clause was a conscious choice, unlike the German framers, for whom the trauma of the constitutional disintegration of Weimar was a direct and proximate lesson, the Parliament's responses to *Golak Nath* and *Kesavananda* in the form of Twenty-Four²⁷ and Forty-Second Amendments²⁸ respectively, are a continued political judgement that the amending power should be substantively unlimited. One might think that the judgement is wrong, however, a court which overrides its without textual warrant is substituting its own constitutional vision for that of the body which the Constitution allocates the amending function.

CONTEMPORARY CONSEQUENCES

The issues of indeterminacy and illegitimacy discussed in the previous sections are not just

²⁴ Pratap Bhanu Mehta, "India's Unlikely Democracy: The Rise of Judicial Sovereignty," *Journal of Democracy* 18, no. 2, 71-72 (2007)

²⁵ T.R. Andhyarujina, *Judicial Activism and Constitutional Democracy in India* 143 (N.M. Tripathi, Bombay, 1992).

²⁶ Raju Ramachandran, "The Supreme Court and the Basic Structure Doctrine" in B.N. Kirpal et al. (eds.), *Supreme but not Infallible: Essays in Honour of the Supreme Court of India* 107-132 (Oxford University Press, New Delhi, 2000)

²⁷ Constitution 24th Amendment Act, 1971, GKToday (12 June, 2026) <https://www.gktoday.in/constitution-24th-amendment-act-1971/>

²⁸ 42nd Amendment Act, 1976, Drishtiias (12 June, 2026) <https://www.drishtijudiciary.com/to-the-point/ttp-constitution-of-india/42nd-amendment-act-1976>

theoretical. The practical implications are more readily apparent when the basic structure doctrine is invoked in a politically charged setting, the very context in which a doctrine's limiting principle matters most.

The 2015 NJAC judgement is the most striking recent example. The National Judicial Appointments Commission, established by constitutional amendment with overwhelming parliamentary backing, laid down a process for judicial appointments which ensured a judicial majority on the appointments body while also including the Law Minister and two distinguished persons from civil society²⁹. Whether wise or not, the NJAC model was a deliberated legislative judgement about the balance between judicial independence and democratic accountability in the appointments process. The Court's use of basic structure to strike it down without an agreed textual standard for what 'judicial independence' means in this context effectively closed off democratic deliberation on the design of judicial institutions

The consequences of the Ninth Schedule Jurisprudence are different. Laws in the Ninth Schedule have been protected from judicial review under fundamental rights since the First amendment. In *I.R Coelho*, the Court held that this protection itself is subject to basic structure review³⁰, a self-conscious constitutional mechanism to protect redistributive legislation is now subject to review by the Court under a doctrine with no textual support. The practical effect is that the ambit of parliamentary authority over its own constitutional instruments is uncertain and variable, not determined by the text of the Constitution but by the composition and pre-dispositions of the bench.

In *Association for Democratic Reforms v. Union of India*, the Court struck down the electoral bonds scheme, partly on the ground that it violated the right to information, which was treated as linked to the basic structural value of 'free and fair elections'³¹. The decision might have been right on other grounds, but the route through basic structure shows how the doctrine functions as an all-purpose constitutional override which can be deployed against almost any measure the Court finds objectionable. A doctrine that is broad enough to include whatever the Court believes is constitutionally important is not a legal limitation, but a blueprint for judicial policymaking.

²⁹ Supra note 22, at 7

³⁰ Supra Note 13, at 4

³¹ (2024) SCC OnLine SC 135

Related to this inconsistent application of the doctrine. The basic structure has been robustly deployed in some periods and quietly shelved in others. It has been used to strike down constitutional amendments that the Court found politically objectionable but has not been used to address constitutional changes that raised equally serious structural concerns. The selective application is difficult to explain on doctrinal grounds but is completely explicable if the doctrine is understood as a vehicle of judicial preferences rather than a principled constraint.

POSSIBLE PATHS FORWARD

If the above analysis is correct, then the basic structure doctrine as it is now constituted cannot be sustained. The question is, what should replace it? There are three broad possibilities, though each faces significant difficulties.

The first possibility is doctrinal reform; the Court could attempt to define the basic structure with greater precision either by providing a closed list of protected elements or by enunciating a general tests capable of generating principled answers. The issue is that such a move is itself a form of constitutional legislation, and there is no guarantee that a future bench would consider itself bound by a list drawn by its predecessors. Constitutional law is based on judicial precedent and is susceptible to doctrinal revision and a doctrine that has resisted principled systemization for fifty years is unlikely to do so now.

The second possibility is formal amendment. Parliament could insert an eternity clause into the Constitution, setting out in explicit terms what cannot be changed and ideally how that list could be amended. This would give a textual grounding, much as in the German model. The political hurdles are formidable, any list would be disputed and drawing it up would require kind of constitutional consensus which has proved elusive since 1950, but it is the only reform which would really provide the limiting principle the doctrine lacks³².

The third, most radical possibility is to reject the doctrine and replace it with a more conservative approach to constitutional interpretation one which enforces the text and its structural implications without asserting the power to identify unwritten and unamenable essentials. This would force the Court to give up a power it has exercised for fifty years and

³² Krishnaswamy S, *supra* note 8, at 3

one that has become a cornerstone of its institutional identity. This seems unlikely without a wider political and constitutional settlement.

In absence of these reforms, the doctrine will persist as it has functioned, a reserve power, selectively deployed, instrumentally defined, and post hoc justified a constitutional principal in name alone.

CONCLUSION

The basic structure doctrine has been part of Indian constitutional law for more than fifty years. Having been cited in numerous judgments and being adopted by constitutions across South Asia, it is defended as a necessary protection for constitutional democracy. However, none of this prestige answers the question posed in this article: what is the limiting principle? An examination of the doctrine's origins, its development, and the tests supporting it reveal that there is none. There is no limiting principle in text, in case law, or scholarly literature. The basic structure is defined by the Supreme Court and its rulings on this matter are not subject to any outside constraints which could produce a different answer.

The point bears emphasis, the objection is not that the Court has identified the wrong basic features, or that judicial review of constitutional amendments inherently illegitimate. The objection is that a doctrine which has such profound power must, if it is to operate as law, be able to give determinate answers from ascertainable criteria. The doctrine of basic structure cannot do this. It offers no criterion for what is basic, no mechanism for resolving conflicts between competing basic features, and on principle for excluding putative features that a future Court might want to add.

It does not tell us what it protects, or why, or when protection is triggered, or how competing protections are to be reconciled. It is not a rule of law. It is judicial discretion dressed up in constitutional garb. Till the doctrine of basic structure is either textually anchored or honestly repudiated, it will remain an exercise of power which the constitutional order of India has not authorized and which the rule of law cannot tolerate.