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Constitutional Identity and the Limits of Amendment: Reassessing India's Basic Structure Doctrine

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Abstract

The basic structure doctrine subjects constitutional amendments in India to substantive judicial review notwithstanding the breadth of Parliament's amending power under article 368. Its central proposition is not that constitutional change is forbidden, but that an amending institution cannot lawfully abolish the foundational commitments from which its authority derives. This article examines the doctrine's emergence from disputes over property rights and constitutional amendment, its fractured formulation in Kesavananda Bharati, and its subsequent application to electoral democracy, judicial review, constitutional supremacy, federalism and judicial independence. It distinguishes review of constitutional amendments from ordinary fundamental-rights review, analyses the contested relationship between judicial supremacy and democratic legitimacy, and considers whether an open-ended conception of constitutional identity is sufficiently determinate. The article argues that the doctrine is most defensible when courts identify the relevant structural principle with precision, demonstrate the amendment's destructive effect, and provide transparent reasons for preferring invalidation to constitutionally permissible interpretation. Its continued legitimacy depends on judicial restraint, reasoned constitutional method and an equally serious commitment to preserving Parliament's genuine power to reform.

Keywords: constituent power; article 368; constitutional identity; implied limitations; judicial independence; constitutional amendment; transformative constitutionalism; Ninth Schedule.

1. Introduction: can a constitution be amended out of existence?

India's Parliament can amend almost every constitutional provision, but it cannot use article 368 to destroy the Constitution's basic structure.[1] That is the enduring rule of Kesavananda Bharati v State of Kerala, decided by thirteen judges in 1973. The rule creates a paradox: the written

1. *His Holiness Kesavananda Bharati Sripadagalvaru v State of Kerala & Anr* (1973) 4 SCC 225 (Supreme Court of India) <https://judgments.ecourts.gov.in/KBJ/?p=home>.

amendment provision contains no exhaustive list of unamendable clauses, yet the Court has inferred substantive limits from the nature of the Constitution and the amending power it creates.

A simple analogy clarifies the distinction. The constitution of a university may permit its governing body to change admissions rules, departments and examination arrangements. That authority does not necessarily include a power to abolish the university and replace it with a private club while claiming to have merely amended the same institution. The analogy is imperfect—constitutional sovereignty and democratic authority cannot be reduced to private organisational rules—but it captures the doctrine's concern with change of rules versus destruction of constitutional identity.

The doctrine remains controversial. Defenders see it as protection against authoritarian constitutional amendments enacted through formally correct procedures. Critics question how unelected judges can invalidate amendments passed by constitutionally specified legislative majorities without a textual catalogue of entrenched provisions. This paper takes both objections seriously.

Research question: On what legal and normative grounds can the Indian Supreme Court police the substantive limits of article 368 without transforming the basic structure doctrine into an unbounded judicial veto?

Thesis: The doctrine is justified as a narrow limit on constituted amending power, but its application requires a demonstrable connection between a specific constitutional feature and the amendment's destructive or identity-altering effect; broad references to constitutional values alone are insufficient.

2. Method, scope and conceptual framework

The article uses doctrinal legal research: textual interpretation of the Constitution and amendment Acts; analysis of controlling Supreme Court judgments; and critical engagement with scholarship on constituent power, constitutional identity and judicial review. The principal cases are treated according to the propositions they actually decide, not as interchangeable endorsements of judicial supremacy. Comparative scholarship is used to clarify conceptual questions, not to import foreign constitutional rules into Indian law.

The scope is the validity of constitutional amendments, rather than the full range of challenges to ordinary legislation, executive action or judicial appointments. These categories intersect but must remain analytically distinct. In particular, an ordinary statute can be invalid for violating a fundamental right without any need to establish that it damages the basic structure. Similarly, a decision concerning the democratic process may illuminate a constitutional value without itself being a basic-structure holding.

3. The constitutional text and the early amendment controversy

Article 368 sets out the constitutional amendment process, ordinarily requiring a majority of the total membership of each House and at least two-thirds of members present and voting, with ratification by at least half the states for specified federal matters.[2] Article 13(2) prohibits the State from making laws that abridge fundamental rights. The early controversy asked whether a constitutional amendment counted as 'law' for article 13 purposes.

In Shankari Prasad Singh Deo v Union of India, the Supreme Court upheld the First Amendment and distinguished constitutional amendment from ordinary law under article 13.[3] Sajjan Singh v State of Rajasthan reaffirmed that approach, although separate opinions registered concerns about the reach of amendment power.[4] In IC Golak Nath v State of Punjab, the Court reversed course, holding prospectively that Parliament could not amend fundamental rights through article 368 as then understood.[5]

The Twenty-fourth Amendment responded by expressly affirming Parliament's constituent power and specifying that article 13 would not apply to constitutional amendments made under article 368.[6] The dispute thus moved beyond whether rights could be amended at all to the more fundamental question of whether the power of amendment had any inherent limit.

4. Kesavananda Bharati: a powerful holding, a fractured rationale

In Kesavananda Bharati v State of Kerala, a thirteen-judge bench upheld the possibility of amending fundamental rights while recognising that Parliament cannot alter or destroy the Constitution's basic structure.[7] The result was famously divided, seven to six, but it is misleading to treat all seven judges as adopting an identical list of protected features or the same theory of implied limitations.

The doctrine emerged from overlapping but not identical judicial opinions. Different judges emphasised constitutional supremacy, republican democracy, the secular character of the State, separation of powers, federalism, and the essential features of individual freedom. The judgment did not establish a complete statutory-style schedule of protected clauses. Subsequent benches have therefore had to reason by analogy from the foundational decision and from later applications.

Three propositions should be kept separate. First, the amendment power is extensive and reaches even provisions dealing with fundamental rights. Secondly, amendment is not legally equivalent to unlimited constitutional replacement. Thirdly, the content and application of the

2. Constitution of India 1950, art 368.
3. Shankari Prasad Singh Deo v Union of India AIR 1951 SC 458.
4. Sajjan Singh v State of Rajasthan AIR 1965 SC 845.
5. IC Golak Nath v State of Punjab AIR 1967 SC 1643.
6. Constitution (Twenty-fourth Amendment) Act 1971, ss 2–3.
7. Kesavananda Bharati Sripadagalvaru v State of Kerala (1973) 4 SCC 225; Supreme Court of India, ‘The Basic Structure Judgment’ <https://judgments.ecourts.gov.in/KBJ/?p=home> accessed 28 October 2026.

basic structure limit require reasoned identification in the context of a challenged amendment. Treating the third proposition as self-evident obscures the central jurisprudential difficulty.

4.1 Constituent power and constituted power

The principal theoretical defence is that article 368 confers a constituted power: it is an authority created by the Constitution, not the original political authority to create an entirely new constitution. If the constituted institution could erase every condition of its own legitimacy, the distinction between amendment and replacement would collapse. This argument has explanatory force, but does not itself tell a court precisely which constitutional features are unalterable or how much modification counts as destruction.

4.2 The problem of judicially identified essentials

A constitutional value may be important without every institutional arrangement supporting it being immutable. Judicial independence, for example, is basic; it does not follow that every existing feature of judicial appointments must remain unchanged. The relevant question is whether the challenged amendment damages the indispensable constitutional function, not merely whether it changes a familiar institutional mechanism.

5. Development through the major decisions

5.1 Electoral democracy: Indira Nehru Gandhi v Raj Narain

The Thirty-ninth Amendment attempted to insulate specified high constitutional elections from ordinary judicial adjudication. In Indira Nehru Gandhi v Raj Narain, the Court invalidated the relevant constitutional protection, with reasoning stressing democracy, free and fair elections and the rule of law.[8] The decision demonstrated that the doctrine could restrain an amendment that altered the institutional conditions of electoral accountability. The separate judicial opinions should not be flattened into one uniform ratio.

5.2 Limited amendment power and constitutional balance: Minerva Mills

The Forty-second Amendment sought to enlarge the protection given by article 31C and inserted clauses into article 368 purporting to exclude judicial review and deny any limit on the amendment power. In Minerva Mills Ltd v Union of India, the Supreme Court invalidated the relevant changes, affirming that limited amending power and the balance between Parts III and IV form part of the constitutional scheme.[9] This is not a rule that directive principles are unimportant; it is a rejection of constitutional reconstruction through the total subordination of fundamental rights.

8. Indira Nehru Gandhi v Raj Narain 1975 Supp SCC 1.
9. Minerva Mills Ltd v Union of India (1980) 3 SCC 625.

5.3 Ninth Schedule immunity: Waman Rao and IR Coelho

Article 31B and the Ninth Schedule were designed to shield listed enactments from specified constitutional attacks. In Waman Rao v Union of India, the Court drew a line at 24 April 1973 for evaluating amendments adding enactments to the Ninth Schedule.[10] IR Coelho v State of Tamil Nadu confirmed that post-Kesavananda Ninth Schedule insertions are reviewable where their protective constitutional amendments damage the basic structure, applying a rights-based impact inquiry rather than treating every violation of any right as automatically fatal.[11]

The important conceptual distinction is between the validity of a statute on ordinary rights grounds and the validity of a constitutional amendment granting that statute special immunity. Coelho addresses the latter through the doctrine of constitutional identity.

5.4 Federalism and constituent authority: SR Bommai and Kuldip Nayar

SR Bommai v Union of India articulated the centrality of federalism and secularism in Indian constitutionalism, but concerned the exercise of power under article 356, not the invalidation of a constitutional amendment.[12] It is therefore best cited for its analysis of constitutional structure, not misdescribed as a direct article 368 holding. Kuldip Nayar v Union of India similarly illustrates that recognition of federalism as basic does not freeze every existing electoral or institutional detail.[13]

5.5 Judicial independence and the NJAC decision

In Supreme Court Advocates-on-Record Association v Union of India (the NJAC case), the Court invalidated the Ninety-ninth Constitutional Amendment and the associated statutory arrangement, finding that the challenged design compromised judicial independence.[14] The judgment is a leading contemporary example of the doctrine's application to institutional design. It is also a focal point of criticism: opponents argue that the Court inadequately distinguished judicial independence from judicial primacy and insufficiently respected democratically enacted reform. Defenders contend that a constitutional appointments mechanism must be assessed for its vulnerability to political capture, not simply for the breadth of legislative consensus behind it.

The correct methodological lesson is neither that the collegium system is forever constitutionally mandatory nor that any proposed alternative must be accepted. Each design requires close evaluation of whether it preserves the independent exercise of judicial functions.

10. Waman Rao v Union of India (1981) 2 SCC 362.
11. IR Coelho (Dead) by LRs v State of Tamil Nadu (2007) 2 SCC 1 <https://indiankanoon.org/doc/1906027/> accessed 28 October 2026.
12. SR Bommai v Union of India (1994) 3 SCC 1.
13. Kuldip Nayar v Union of India (2006) 7 SCC 1.
14. Supreme Court Advocates-on-Record Association v Union of India (2016) 5 SCC 1.

6. What exactly counts as basic structure?

The cases support a cluster of principles—constitutional supremacy, republican and democratic government, secularism, federalism, rule of law, separation of powers, judicial review and judicial independence—without yielding a single exhaustive list.[15][16][17][18] This open texture is sometimes an advantage: constitutional threats can take unforeseen forms. But it also presents a risk of circularity if a judge declares a feature basic because it is important and then declares an amendment invalid because it changes that feature.

A more disciplined inquiry should ask: (1) what specific structural feature is alleged to be basic; (2) which constitutional text, design and precedents establish that feature; (3) what institutional function does it protect; (4) what exactly does the amendment do to that function; and (5) is the effect a permissible adjustment or a genuine destruction or fundamental alteration? This proposed sequence is an analytical recommendation, not a judicially enacted five-part test.

The distinction between alteration and destruction is especially important for federalism. The Indian Constitution already permits substantial asymmetry, emergency intervention and changes to state boundaries. The basic structure principle protects a meaningful federal distribution of authority; it does not make every existing intergovernmental arrangement untouchable.

7. Democratic legitimacy: the strongest case against the doctrine

The democratic objection has real force. Article 368 prescribes unusually demanding legislative majorities and, for certain subjects, state ratification. When judges override an amendment that satisfies those conditions, they displace a choice made through a constitutionally authorised representative process. A doctrine lacking an exhaustive textual definition may also create uncertainty and invite strategic litigation.

The response cannot merely be that courts are guardians of the Constitution. That proposition begs the question of the proper limits of judicial guardianship. A more persuasive defence is that constitutional democracy involves both majority decision-making and stable conditions that make democratic competition meaningful: political equality, fair elections, institutional checks, and access to independent adjudication. An amendment that abolishes these conditions can undermine the democratic legitimacy on which its enactment relies.

Even on this account, courts must acknowledge institutional fallibility. The judiciary has its own incentives and blind spots. Transparent reasons, careful attention to amendment design, and recognition of alternative constitutionally valid arrangements are necessary to avoid converting constitutional protection into institutional self-entrenchment.

15. Kesavananda Bharati Sripadagalvaru v State of Kerala (1973) 4 SCC 225; Supreme Court of India, ‘The Basic Structure Judgment’ <https://judgments.ecourts.gov.in/KBJ/?p=home> accessed 28 October 2026.
16. Minerva Mills Ltd v Union of India (1980) 3 SCC 625.
17. SR Bommai v Union of India (1994) 3 SCC 1.
18. Supreme Court Advocates-on-Record Association v Union of India (2016) 5 SCC 1.

8. Constitutional change without constitutional destruction

The doctrine should not be presented as hostility to constitutional reform. Parliament has enacted numerous constitutional amendments that reshape governmental institutions and rights. The legal question is not whether a change is major or politically controversial, but whether it removes an essential constitutional condition. A reform that changes the mechanism of judicial appointments, for instance, should be evaluated against the independence it secures, not dismissed solely because it differs from an existing system.

Nor does the doctrine eliminate political responsibility. Constitutional endurance depends on electoral competition, legislative scrutiny, public participation, an independent press and professional legal institutions. Judicial review is a last institutional safeguard, not a substitute for those democratic practices.

9. Contemporary relevance and the need for doctrinal precision

Recent constitutional litigation illustrates the importance of distinguishing the legal basis of review. The Supreme Court's 2024 electoral-bonds judgment invalidated a statutory scheme and legislative provisions under fundamental-rights analysis; it should not be presented as an article 368 basic-structure invalidation.[19] Similarly, the 2024 nine-judge decision in Property Owners Association v State of Maharashtra revisited article 31C and the interpretation of article 39(b), and is relevant to the continuing legacy of Minerva Mills, but it was not simply another instance of striking down a constitutional amendment under Kesavananda.[20]

These distinctions matter for scholarship. Treating every prominent constitutional decision as a basic-structure case inflates the doctrine and obscures the actual grounds of decision. The doctrine's authority is strengthened, not weakened, by stating its limits accurately.

10. A framework for principled application

Three institutional disciplines follow from the analysis. First, courts should articulate the alleged basic feature at a functional level, rather than elevate every existing constitutional arrangement to permanent status. Secondly, they should explain the causal connection between the amendment and the impairment of that function, including whether the impairment is substantial enough to amount to constitutional destruction or identity alteration. Thirdly, remedies should be carefully tailored: where severability or a narrower interpretation is

19. Association for Democratic Reforms v Union of India 2024 INSC 113; see Supreme Court Observer, 'Constitutionality of the Electoral Bond Scheme' <https://www.scobserver.in/cases/association-for-democratic-reforms-electoral-bonds-case-background/> accessed 28 October 2026.

20. Property Owners Association v State of Maharashtra 2024 INSC 835; Supreme Court of India, 'Landmark Judgment Summaries (2024)' <https://www.sci.gov.in/landmark-judgment-summaries/?judgment_year=2024> accessed 28 October 2026.

genuinely available, courts should explain why those options do or do not preserve the constitutional scheme.

Scholarly disagreement remains productive. Sudhir Krishnaswamy treats the doctrine as a distinctive account of constitutional interpretation and judicial review, while broader comparative scholarship by Yaniv Roznai explores the limits of constitutional amendment through theories of constituent power.[21][22] These perspectives illuminate the doctrine but cannot substitute for precise readings of Indian case law.

11. Conclusion

The basic structure doctrine is best understood as a limit on constitutional self-destruction, not as a licence for judges to preserve every preferred institutional arrangement. Kesavananda Bharati reconciled broad amendment authority with the proposition that the Constitution remains a legally continuous constitutional order. Later cases made that limit effective against attempts to eliminate electoral accountability, judicial review and judicial independence. Yet the doctrine's openness also imposes an unusually demanding duty of explanation on the Court.

Its future legitimacy will depend on a disciplined distinction between foundational commitments and contingent institutional forms. Parliament must retain meaningful power to change the Constitution; the judiciary must retain power to prevent an amendment from abolishing the constitutional conditions that make such change legitimate. Neither institution serves constitutional democracy by treating its own authority as unlimited.

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Author contributions

Yuvraj is the sole author and was responsible for conceptualisation, research design, methodology, investigation, collection and analysis of constitutional and legal materials, critical evaluation, drafting, revision, and final approval of the manuscript.

Originality and related publications

This manuscript is based on and substantially revises my earlier article titled “Essence of Indian Constitution: 50 Years of Basic Structure Doctrine,” published on 31 March 2022.

The present manuscript, titled “Constitutional Identity and the Limits of Amendment: Reassessing India's Basic Structure Doctrine,” has been substantially restructured, expanded, revised, and updated. It incorporates further doctrinal analysis, critical engagement with the development of the basic structure doctrine, examination of subsequent Supreme Court decisions, and a more focused assessment of constitutional identity, judicial legitimacy, and the limits of constitutional amendment.

The earlier publication is disclosed transparently. The present manuscript is submitted as a substantially revised scholarly work and is not concurrently under consideration elsewhere.

Methods and legal currency

This article adopts a doctrinal and critical constitutional-law methodology. It analyses the text and structure of the Constitution of India, constitutional amendment legislation, leading Supreme Court judgments, and selected academic scholarship on constituent power, constitutional identity, and judicial review.

The analysis focuses on the development and application of the basic structure doctrine in India. The legal position has been reviewed as of 28 October 2026. The article is based on legal and scholarly materials and does not claim empirical findings or rely on interviews, surveys, or original statistical research.

Limitations

The article is confined to the Indian constitutional framework and the judicial review of constitutional amendments under Article 368. It does not provide an exhaustive comparative study of basic structure or unconstitutional constitutional amendment doctrines in other jurisdictions. Its conclusions are doctrinal and normative and do not rely on empirical research into judicial behaviour, political institutions, or public opinion. The analysis is also limited to the constitutional principles and decisions examined in the manuscript.

Ethics and participant protections

This is desk-based doctrinal constitutional research based on publicly accessible legal instruments, judicial decisions, and published academic materials. It does not involve human participants, interviews, surveys, personal records, identifiable private data, or animal research. Institutional ethical approval and participant consent were therefore not applicable.

Data and materials availability

The research relies on publicly accessible constitutional provisions, constitutional amendment legislation, Supreme Court judgments, and published academic literature, identified through citations and references. No original dataset was generated. Access to third-party materials remains subject to applicable copyright, licensing, and database terms.

AI and writing assistance

Generative AI tools were used for editorial assistance, language refinement, organisation, and writing support during the revision of the manuscript.