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BASIC STRUCTURE AND THE FEDERAL CHARACTER OF INDIA

~ Pal Meena

ABSTRACT

The Constitution of India is the supreme law of the country. It is a written document that lays down the framework demarcating the fundamental basic code, structure, procedures, powers, and duties of the government and its organisations and the rights & duties of the citizens.[1] It is the grundnorm through which "We, the People of India" constituted the Republic, created government institutions, guaranteed rights, and imposed limits through separation of powers across various vertical and horizontal levels, striking a perfect balance of power using the method of checks and balances. The text replaced colonial constitutional arrangements with a supreme, written framework of democratic self-government and now serves as a tool for the functioning of the government.

India is described in Article 1[2] as a "Union of States", but the Constitution creates autonomous State governments as well as a powerful Union. It gives Parliament an extensive amendment power under Article 368[3], yet makes the Constitution, not Parliament, supreme. The Supreme Court's basic-structure doctrine emerged to resolve this second tension. The doctrine holds that Parliament may amend every provision of the Constitution but may not alter its essential constitutional identity.

This paper argues that the basic-structure doctrine is the central judicial mechanism by which the Supreme Court has preserved the Constitution's character against both formal amendment and institutional overreach. The doctrine also frames the debate on federalism: India is

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[1] Parliament of India, https://sansad.in/ls/about/introduction (last visited Sep. 28, 2026).

[2] India Const. art. 1, cl. 1.

[3] India Const. art. 368.

neither conventionally federal nor simply unitary. It is a constitutionally federal, centrally weighted, and crisis-responsive Union whose balance is protected by judicial review.

THE CONSTITUTION: CHARACTER AND ESSENTIAL FEATURES

The Indian Constitution was made by the Constituent Assembly that was established under the Cabinet Mission Plan of 1946. The Constituent Assembly, with Dr Rajendra Prasad as its President and Dr B.R. Ambedkar as the Chairman of the Drafting Committee, held intensive deliberations in the Central Hall of Parliament House for a long period of 2 years, 11 months and 17 days, spread over eleven sessions, and gave an outstanding parchment, an ideal for a resurgent India. Thereafter, the Constitution was adopted by us, the People of India, on 26 November 1949, and the members of the Constituent Assembly appended their signatures to it on 24 January 1950. The Constitution, which came into force on 26 January 1950, had 395 Articles and 8 Schedules and the distinction of being the lengthiest constitution in the world. Ever since, the nation has been guided by the ennobling ideals laid down in the Constitution, which has turned out to be one of the finest republican constitutions.[4]

The Constitution is both enabling and limiting. It establishes Parliament, State legislatures, executives, courts, election institutions, and emergency powers. At the same time, it restrains those institutions through fundamental rights, constitutional procedures, judicial review and a division of powers. Its essential features include constitutional supremacy, popular sovereignty, parliamentary democracy, the rule of law, republicanism, secularism, judicial review, separation of powers, equality, individual liberty and federalism.

The Constitution's amendment clause reflects the framers' rejection of both rigidity and unrestricted majoritarianism. A constitution incapable of amendment becomes unable to respond to social change; a constitution amendable without substantive limits can be transformed by a temporary political majority. The basic-structure doctrine supplies the equilibrium: change is permitted, constitutional destruction is not.

II. From Amendment Power to the Basic-Structure Doctrine

The doctrine did not appear suddenly in *Kesavananda Bharati* v. *State of Kerala*[5]. Its immediate background lay in disputes over land reform and fundamental rights. In *Shankari*

[4] Press Information Bureau, https://www.pib.gov.in/PressReleasePage.aspx?PRID=1489909&lang=2&reg=3 (last visited Sep. 28, 2026).
[5] His Holiness Kesavananda Bharati Sripadagalvaru v. State of Kerala [1973] Supp SCR 1.

Prasad v. *Union of India*[6] and *Sajjan Singh* v. *State of Rajasthan*[7], the Supreme Court treated Parliament's power under Article 368 as sufficient to amend fundamental rights. In *I.C. Golak Nath* v. *State of Punjab*[8], however, the Court held that some features of the Constitution lay at its core and required much more than the usual procedures to change them. Consequently, Parliament responded through the Twenty-Fourth Amendment, expressly widening its constituent power to amend the fundamental rights provided in the Constitution by adding clause 3 to Article 368.

The phrase "basic structure" was first introduced by M.K. Nambiar and other counsel while arguing for the petitioners in the Golaknath case. However, it was only in the landmark case of Kesavananda Bharati, which was decided on 24 April 1973 by a thirteen-judge Bench, that the concept surfaced in the text of the apex court's verdict.

The case arose from challenges to Kerala land reform laws and to the Twenty-Fourth, Twenty-Fifth, and Twenty-Ninth Amendments. By a narrow 7–6 majority, the Court held that Parliament's power to amend under Article 368 is broad but not unlimited: it cannot damage or destroy the Constitution's "basic structure".

Each judge laid out separately what he thought were the basic or essential features of the Constitution. There was no unanimity of opinion within the majority view either.

Sikri, C.J. explained that the concept of basic structure included:

- Supremacy of the Constitution
- Republican and democratic form of government
- Secular character of the Constitution
- Separation of powers between the legislature, executive and the judiciary
- Federal character of the Constitution

Shelat, J. and Grover, J. added two more basic features to this list:

- The mandate to build a welfare state contained in the Directive Principles of State Policy
- Unity and integrity of the nation

[6] Shankari Prasad v. Union of India, AIR 1951 SC 458.
[7] Sajjan Singh v. State of Rajasthan, AIR 1965.
[8] I.C. Golak Nath and Ors. v. State of Punjab and Anrs., AIR 1967 SC 1643.

Hegde, J. and Mukherjea, J. identified a separate and shorter list of basic features:

- Sovereignty of India
- Democratic character of the polity
- Unity of the country
- Essential features of the individual freedoms secured to the citizens
- Mandate to build a welfare state

Jaganmohan Reddy J. stated that elements of the basic features were to be found in the Preamble of the Constitution and the provisions into which they translated, such as 'sovereign, democratic republic'.

Only six judges on the bench (therefore a minority view) agreed that the fundamental rights of the citizen belonged to the basic structure and Parliament could not amend it.

In summary, the majority verdict in Kesavananda Bharati recognised the power of Parliament to amend any or all provisions of the Constitution provided such an act did not destroy its basic structure. But there was no unanimity of opinion about what amounts to that basic structure. Though the Supreme Court very nearly returned to the position of Sankari Prasad (1952) by restoring the supremacy of Parliament's amending power, in effect it strengthened the power of judicial review much more.[9]

The doctrine is therefore best understood as a doctrine of constitutional continuity. It permits amendment of text, institutions and policy but prevents amendment from becoming a legal route to replacing the constitutional order itself.

EXPANSION AND ENFORCEMENT OF THE DOCTRINE

The basic-structure doctrine became practically meaningful through later decisions. It evolved into a standard for examining whether constitutional change preserves the basic constitutional settlement.

In *S.R. Bommai* v. *Union of India*[10], the Supreme Court examined proclamations under Article 356 that dismissed state governments and imposed President's Rule. The Court held that Article 356 is not beyond judicial review; the President's satisfaction can be examined by

[9] The Basic Structure of the Indian Constitution, https://azgaralimd.blogspot.com/2012/11/the-basic-structure-of-indian.html (last visited Sep. 28, 2026).
[10] S.R. Bommai v. Union of India, (1994) 3 SCC 1.

courts on grounds of mala fide or being based on wholly irrelevant or extraneous material, also known as the Wednesbury principle of reasonableness. Secularism and federalism were also declared part of the basic structure, and a state government indulging in anti-secular activities could be dealt with under Article 356[11]. The Court also held that the majority of a ministry must ordinarily be tested on the floor of the House, not by the governor's subjective assessment, and that the two Houses of Parliament must approve a proclamation before the State Legislative Assembly can be dissolved.

S.R. Bommai is crucial because it moved the doctrine beyond the amendment cases. It was the single most important check on the historic misuse of Article 356 by the Union to unseat opposition-ruled state governments. It linked the federal principle to democratic accountability and made clear that emergency power must operate within, rather than above, the Constitution. The exceptional power became judicially reviewable and normatively constrained.

Moving on, in *I.R. Coelho* v. *State of Tamil Nadu*[12], a nine-judge Bench considered the Ninth Schedule, into which Parliament had placed laws in an effort to immunise them from ordinary judicial review. The Supreme Court held that all amendments to the Constitution made on or after 24 April 1973, the date of the Kesavananda Bharati judgement, by which the Ninth Schedule is amended by the inclusion of various laws, are open to challenge on the ground that they destroy or damage the basic structure. Even if a law is placed in the Ninth Schedule, it must be tested against the 'rights test', whether it violates the basic structure, particularly Articles 14, 19 and 21[13], applying the doctrine of 'essence of the right' test.

Coelho carried the logic of Kesavananda to its natural conclusion. It reaffirms and extends the basic structure doctrine, closing a loophole that Parliament had exploited for decades. It confirms that judicial review itself is part of the basic structure and cannot be excluded by clever legislative drafting.

Together, Kesavananda, Bommai, and Coelho show three stages in the doctrine's development:

1. Kesavananda limited the constituent power to amend.

2. Bommai protected federal democracy against the misuse of emergency power.

[11] India Const. art. 356.
[12] I.R. Coelho v. State of Tamil Nadu, (2007) 2 SCC 1.
[13] India Const. arts. 14, 19 & 21.

3. Coelho prevented the use of the Ninth Schedule to shield laws that damage constitutional fundamentals.

IS INDIA FEDERAL, UNITARY, OR HYBRID?

India's constitutional structure has generated a longstanding classification debate. Classical federations normally rest on an agreement among coordinate, constitutionally autonomous states. India differs in important respects. The States do not possess a right to secede; Parliament may by law alter State boundaries under Articles 2, 3 and 4[14]; residuary legislative power belongs to Parliament; there is single citizenship; Governors are appointed by the Union; and emergencies can centralise power. These are significant unitary features.

Yet the Constitution also has certain federal elements: two levels of government, a written and supreme Constitution, a distribution of legislative authority under the Seventh Schedule, independent constitutional courts, representation of states in the Rajya Sabha, and constitutionally protected state executive and legislative spheres.

In *State of West Bengal* v. *Union of India*[15], the Supreme Court held that the Indian Constitution is not truly 'federal' in the classical sense; it is primarily unitary in nature with certain federal features, sometimes described as 'quasi-federal'. States in India are not sovereign entities in the manner of American states, and Parliament has plenary legislative power under the Union and Concurrent Lists, which extends to acquisition of state property. It stressed that the Constitution had adopted a federal structure "with a strong bias towards the Centre". However, the case does not completely deny federalism. It establishes that Indian states derive their authority from the Constitution, rather than retaining an independent sovereignty antecedent to it.

Rai Sahib Ram Jawaya Kapur v. *State of Punjab*[16] reaffirmed the scope and source of 'executive power' under Article 162[17]. The Supreme Court held that the executive power of the State extends to matters on which the State legislature can make laws and that the Executive can act even without a law having already been passed, so long as it does not infringe fundamental rights or the rights of others and does not require statutory authority for every executive act (unless the Constitution or a law otherwise requires it, e.g., taxation). However, since the scheme in this case restricted the petitioners' existing trade, it needed to

[14] India Const. arts. 2, 3 & 4.
[15] State of West Bengal v. Union of India, AIR 1963 SC 1241.
[16] Ram Jawaya Kapur v. State of Punjab, AIR 1955 SC 549.
[17] India Const. art. 162.

be tested against Article 19(1)(g)[18]; the Court eventually upheld the scheme as a reasonable restriction. The case matters because it shows that Indian constitutionalism relies on functional separation and accountability rather than watertight institutional compartments, a design choice also visible in India's federal structure.

The federal question was directly addressed in *Kuldip Nayar* v. *Union of India*[19]. The petition challenged the amendments to the Representation of the People Act, 1951, that removed the requirement that a candidate for the Rajya Sabha must be an elector in the state from which he seeks election and also introduced open (rather than secret) ballot voting for Rajya Sabha elections, both of which were argued to be violative of the federal principle underlying Rajya Sabha representation of states and as undermining free and fair elections through loss of secrecy.

The Supreme Court upheld both amendments. It held that the residence requirement was not a basic feature of federalism, and Parliament, being competent to prescribe qualifications under Article 84[20] and the Representation of the People Act, could validly remove it. Open Ballot voting for Rajya Sabha elections was also upheld as a permissible legislative choice to curb defection and corrupt practices (cross-voting), since the right to vote in indirect elections such as this is not a fundamental right but a statutory one.

Hence, not every feature associated with an institution is part of the basic structure; only features that are truly foundational and essential to the constitutional scheme qualify. And that Parliament has wide discretion to design electoral procedures for indirect elections such as the Rajya Sabha and Presidential elections.

In *State of Haryana* v. *State of Punjab*[21], the dispute arose from the construction of the Sutlej-Yamuna Link (SYL) Canal meant to share river waters between Punjab and Haryana under an interstate agreement. Punjab enacted the Punjab Termination of Agreements Act, 2004 (in later related proceedings) to unilaterally terminate its water-sharing agreements; even before that, Punjab had stalled construction of the canal on its territory despite a Supreme Court decree, under Article 131[22], directing completion.

[18] India Const. art. 19, cl. 1(g).
[19] Kuldip Nayar v. Union of India, (2006) 7 SCC 1.
[20] India Const. art. 84.
[21] State of Haryana v. State of Punjab, (2002) 2 SCC 507.
[22] India Const. art. 131.

The Supreme Court directed the Union of India and the State of Punjab to complete the construction of the SYL Canal, holding that a state cannot refuse to implement a binding interstate agreement or a decree of the Supreme Court and that legislative attempts to nullify judicial decisions without removing their basis are constitutionally impermissible (this principle was reaffirmed and elaborated when the 2004 Punjab Act was struck down in the subsequent Presidential Reference case, In re: The Punjab Termination of Agreements Act, 2004, (2004) 12 SCC 668). The dispute illustrates that Indian federalism includes reciprocal obligations between states and a constitutional role for the Union in securing interstate arrangements. It demonstrates the practical need for cooperative federalism: neither state autonomy nor union power can alone resolve disputes involving shared resources and statutory commitments.

THE BASIC STRUCTURE DOCTRINE AND FEDERALISM

The strongest account of India’s constitutional identity is that it is a hybrid, but not an incoherent one. India is federal in normal governance and can assume unitary features under constitutionally prescribed conditions. The Union is indestructible, but the constitutional allocation of state power is not merely administrative delegation. States are constitutionally created governments, not departments of the Union.

This distinction explains why Bommai is so important. If the Centre could freely dismiss state governments under Article 356, the federal distribution of power would become illusory. By subjecting the power to judicial review and treating federalism as a basic feature, the Court protected the practical reality of state autonomy.

The basic-structure doctrine thus operates as a safeguard against two distinct dangers. First, it prevents Parliament from using Article 368 to remove the federal principle altogether. Second, through doctrines of judicial review and constitutional accountability, it constrains ordinary exercises of Union power that would make federalism nominal rather than real.

The doctrine has, however, attracted criticism. Critics argue that it gives unelected judges excessive authority to invalidate constitutional amendments and that its open-ended language lacks predictable limits. It was seen most recently in the National Judicial Appointments Commission Act, 2014, established alongside the Ninety-ninth Amendment, passed to replace the judge-led Collegium System with a mixed commission for appointing and transferring judges in India's higher courts. However, the Supreme Court struck down the act as unconstitutional in October 2015. These concerns are serious because constitutional

amendment is itself a democratic process. Yet the alternative is equally troubling: if a constitutional majority may legally abolish judicial review, free elections or federalism, then constitutional supremacy becomes dependent on the political will of the very institutions it is meant to restrain.

The better view is that the doctrine does not establish judicial supremacy over the Constitution. It establishes constitutional supremacy over every institution, including Parliament and the judiciary. Courts must apply the doctrine cautiously and justify any finding of constitutional damage with close attention to text, structure, history and precedent.

CONCLUSION

According to the Constitution, Parliament and the state legislatures in India have the power to make laws within their respective jurisdictions as provided in the various lists of the Seventh Schedule. However, this power is not absolute in nature. In fact, the power to adjudicate upon the constitutional validity of all laws is vested in the judiciary by the Constitution itself. If a law made by Parliament or the state legislatures violates any provision of the Constitution, the Supreme Court has the power to declare such a law invalid or ultra vires, i.e., in its exercise of judicial review. This check notwithstanding, the founding fathers wanted the Constitution to be an adaptable document rather than a rigid framework for governance. Hence, Parliament was invested with the power to amend the Constitution so as to be consistent with the needs of the time and contemporary society. Article 368 of the Constitution gives the impression that Parliament's amending powers are absolute and encompass all parts of the document. But the Supreme Court has acted as a brake on the legislative enthusiasm of Parliament ever since independence. With the intention of preserving the original ideals envisioned by the constitution-makers, the apex court pronounced that Parliament could not distort, damage or alter the basic structure of the Constitution under the pretext of amending it. The phrase 'basic structure' itself cannot be found in the Constitution. The Supreme Court recognised this concept for the first time in the historic Kesavananda Bharati case in 1973. Ever since, the Supreme Court has been the interpreter of the Constitution and the arbiter of all amendments made by Parliament.

The evolution from Kesavananda Bharati to S.R. Bommai and I.R. Coelho shows why the basic-structure doctrine is arguably the most consequential judge-made principle in Indian constitutional law. It transformed Article 368 from a source of unlimited, unchecked power of constitutional amendment into a power exercised within the Constitution’s continuing

identity. It protects not individual provisions as untouchable, but the framework that makes democratic, rights-based and federal constitutional government possible.

India should therefore not be classified as simply unitary or as a conventional federation. It is a constitutionally federal Union with substantial centralising mechanisms, designed to preserve national unity while recognising regional self-government. State of West Bengal, Ram Jawaya Kapur, Kuldip Nayar, and the state of Haryana reveal the Constitution's central bias, parliamentary character, and cooperative features. Bommai confirms that this central bias does not permit the destruction of state autonomy. The basic-structure doctrine supplies the final constitutional assurance: unity may be strengthened, institutions may be reformed, and the Constitution may be amended, but its essential democratic and federal character cannot be destroyed.

Authorities and references

1. Parliament of India, https://sansad.in/ls/about/introduction (last visited Sep. 28, 2026).

2. India Const. arts. 1, 368, 356, 14, 19, 21, 2, 3, 4, 162, 84 and 131.

3. Press Information Bureau, https://www.pib.gov.in/PressReleasePage.aspx?PRID=1489909&lang=2&reg=3 (last visited Sep. 28, 2026).

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