

Criticisms of Basic Structure Doctrine

The Basic Structure Doctrine is one of the most important topics in polity and governance for the UPSC exam. Even though on many occasions, the courts have upheld this doctrine, there have also been criticisms of the Basic Structure Doctrine from many quarters. It is important to understand the criticisms also as this helps one give a well-rounded opinion on the topic, which is of utmost importance in the [UPSC exam](#).

Basic Structure Doctrine - Backdrop

Indians became independent in 1947 but they are still suffering from the colonial inferiority complex. Relying heavily on foreign judgements has become the order of the day. An impression is being created that the judge who is delivering justice on the banks of the River Thames is always correct and appropriate and the judges who are delivering at Banaras are weak and less exposed.

Know all about the [Basic Structure Doctrine](#) and related cases, in the linked article.

- The Doctrine of Basic Structure is one such instance that has shaped the constitutional sketch from April 24, 1973, though it was less known, rather unknown till that date. But the doctrine was already in practice in Germany.
- The sapling of this doctrine was taken from there and planted in the barren lands of constitutional law which kept every right-thinking man across the country guessing as to what actually the basic structure is, how it will be nourished and what would be its framework.
- The Supreme Court of India has invoked and applied this principle in several cases but often experienced difficulty with the true scope and extent of this principle.
- Lanes and by-lanes are being created to implement the values of the basic structure whereas the origin and resource are unknown.
- As Mathew J. in *Indira Nehru Gandhi V Raj Narain* has said, “the concept of a basic structure as brooding omnipresence in the sky, apart from the specific provisions of the Constitution, is too vague and indefinite to provide a yardstick for the validity of an ordinary law”.
- Though the principle was laid in 1973, it is yet not clear what the basic structure is? In [I.R. Coelho V State of Tamil Nadu](#), the Constitutional Bench has attempted to lay down the concrete criteria for application of basic structure principle but still, there are misgivings regarding the law.

The fractured judgement delivered by Sikri J. in [Kesavananda Bharti's case](#) is conspicuous by its (basic structure) presence.

- In that case, Ray J. observed that all provisions of the Constitution are essential and no distinction can be made between essential and non-essential features from the point of view of the amendment unless the makers of the Constitution make it clear in the Constitution itself.
- The division into essential and non-essential parts is fraught with the greatest mischief and will leave to such inseparable difficulties that, if permitted they will open a Pandora's Box of endless litigation creating uncertainty about the provisions of the Constitution which were supposed to be clear and certain.
- Every single provision embodies a concept, a standard, norm or rule which the framers of the Constitution thought was so essential that they included it in the Constitution. **Read [Constituent Assembly debates for IAS exam](#) in the linked article.**
- Every amendment thereof will be liable to be assailed on the ground that an essential feature or basic principle was seriously affected.
- Palekar J. opined this when he said that all provisions in the Constitution must be conceded the same character and it is not possible to say that one is more important and the other is less important. He

said that it is not the function of the court to invent limitations when there are none; Article 368 is clear to that extent.

Doctrine of Implied Limitations

The concept of implied limitation on the power of amendment of the Constitution is essentially nebulous. The concept has no definite contours and its acceptance has necessarily introduced elements of uncertainty and vagueness in a matter of so vital importance as that pertaining to the amendment of the Constitution. Whatever might be the justification for invoking the concept of implied limitation, so far as the [Constitution of India](#) with all its detailed provisions is concerned, there is hardly any scope or justification for invoking this concept. What was intended by the framers of the Constitution was put in express words and, in the absence of any words which may expressly or by necessary implications point to the existence of limitations on the power of amendment, one cannot read such limitations when there are none.

The quest for things not said, but which were to be as effective as things said, would take us to the realm of speculation and theorising and must bring in its wake the uncertainty which inevitably is there in all such speculation and theorising. All the framers of the Constitution did to make its provisions to be definite and precise would be undone. We, in doing so, are not merely ignoring, but setting at naught what must be regarded as a cardinal principle, that a Constitution is not a subject of fastidious and abstract dialectics but has to be worked on a practical plane so that it may be a real and effective vehicle for the nation's progress.

The Basic Structure theory is a "vague and undefined concept". Herein lies the judiciary's 'limitless power'. This theory propounded by the [Supreme Court](#) in the Kesavananda Bharati case has deflected the balance of power decisively in favour of the judiciary at the cost of Parliament. Noted jurist Fali S. Nariman agrees with the criticism that, having propounded the basic structure theory, the guardians of the Constitution have become guardians *over* the Constitution.

[Judicial review](#) is fundamental to rule of law. However, while reviewing the constitutionality of the law, the court should not consider itself as a "super legislature" and sit in judgement on the wisdom of the policies adopted by the legislature.

Laws are like metals in the crucible of time and circumstances; they melt, they gradually solidify in different shapes, they re-melt and assume diverse forms. This process of evolution is co-terminus with the human society. Nothing is static except that which is dead and lifeless, law can never be static. Our Constitution is an organic document.

The creation of myths like that of basic structure creates apprehensions and aspersions. It should be the collective conscience of the nation to observe laws more in obedience than in breach. Many civilised nations are running without a constitution, they have no basic structure because they know how to conduct themselves into a law-abiding nation.

