

The Doctrine of Basic Structure: Constitutional Constraint or Judicial Overreach?

Syeda Mina Faisal	Associate Professor, MA Raoof college of law the University of Lahore, Pakistan, mina.faisal@law.uol.edu.pk
Urooj Bashir	Assistant Professor, MA Raoof college of law the University of Lahore, Pakistan, urooj.bashir@law.uol.edu.pk
Faisal Shahzad Khan	Assistant professor, department of sharia and law Islamia college Peshawar, Pakistan, faisal.shahzad@icp.edu.pk

Abstract: *The doctrine of basic structure, first articulated by the Indian Supreme Court in Kesavananda Bharati v. State of Kerala 1973, imposes substantive limits on the constitutional amendment powers of the legislature by identifying certain foundational principles that cannot be abrogated. This research investigates whether the doctrine functions as a constitutional safeguard or whether it signifies judicial overreach that undermines democratic legitimacy. The study adopts a doctrinal and comparative legal methodology, analysing key judgments from India, Pakistan, and Bangladesh, alongside theoretical critiques concerning separation of powers and constitutional supremacy. It explores the evolving judicial interpretation of basic structure elements such as the rule of law, secularism, and judicial independence and evaluates the legitimacy of courts intervening in constitutionally sanctioned legislative processes. The findings reveal a paradox: while the doctrine acts as a necessary check against authoritarian constitutional amendments, it also centralizes interpretive authority in the judiciary, raising concerns of democratic imbalance. The article concludes that the doctrine is a double-edged sword essential in preserving constitutional identity, yet vulnerable to overextension. Future legal frameworks must strive for clearer definitional contours and procedural safeguards to reconcile constitutional supremacy with democratic governance. The Basic Structure Doctrine BSD, as evolved by constitutional courts most notably in India and later adopted or considered in jurisdictions like Pakistan, Bangladesh, and Malaysia represents a judicially constructed limitation on the power of constitutional amendment. At its core, the doctrine preserves essential features of a constitution from legislative tampering. However, its judicial origins and elastic interpretation raise foundational questions about separation of powers, democratic legitimacy, and judicial overreach. This article explores the theoretical underpinnings of the BSD, its judicial evolution, key case law, comparative perspectives, and critiques. It concludes by assessing whether the doctrine acts as a necessary constitutional constraint or an instrument of judicial overreach undermining democratic will.*

Keywords: Judicial review, Constitutional identity, Amendment power, Rule of law, Separation of powers, Constitutional supremacy, Democratic legitimacy, Legal interpretation, Constitutional courts, Juridical restraint.

Introduction

The interpretation and preservation of constitutional principles lie at the heart of constitutional democracies. While constitutions typically provide mechanisms for amendment, the extent to which

such amendments can alter foundational values without undermining constitutional identity remains a subject of profound legal and political debate. In this context, the judicially evolved doctrine of basic structure represents a pivotal development in constitutional theory and practice, particularly within South Asian jurisdictions. Originally crafted by the Indian Supreme Court in *Kesavananda Bharati v. State of Kerala* 1973, the doctrine asserts that certain fundamental principles such as the rule of law, democracy, and judicial independence form the essential core of the Constitution and are therefore immune from abrogation, even by constitutional amendments. The central purpose of this study is to critically assess whether the basic structure doctrine functions as a constitutional constraint that protects democratic order and legal continuity or whether it constitutes an act of judicial overreach that challenges legislative sovereignty. The research questions guiding this inquiry include: What are the legal foundations and theoretical justifications for the doctrine? How has it evolved and been interpreted across different jurisdictions? Does the doctrine enhance or diminish democratic legitimacy? This study employs a doctrinal and comparative legal methodology, focusing on landmark judicial decisions from India, Pakistan, and Bangladesh. It also integrates theoretical critiques concerning the separation of powers, constitutional supremacy, and the legitimacy of judicial intervention in amendment processes. The outcome reveals that while the doctrine serves as a crucial safeguard against unconstitutional constitutional amendments, it also raises concerns regarding the concentration of interpretive authority in the judiciary (Patil, 2025).

The article proceeds as follows: Section two traces the doctrinal origins and judicial evolution of the basic structure doctrine. Section three explores its comparative development in other jurisdictions. Section four analyses its role as a constitutional constraint. Section five critiques the doctrine from the lens of judicial overreach. Section six discusses the broader paradoxes and challenges associated with its application. Finally, Section seven presents concluding reflections and suggests directions for reform and future inquiry. The architecture of a constitution reflects the foundational principles that govern the legal and political life of a nation. While constitutions often contain mechanisms for amendment to reflect societal change, they also require safeguards to prevent their core identity from being dismantled. The BSD seeks to balance these two objectives. First articulated by the Indian Supreme Court in *Kesavananda Bharati v. State of Kerala* 1973, BSD restricts the amending power of the legislature by identifying certain constitutional principles as inviolable (Hiralal, 2025). The adoption and adaptation of this doctrine by other courts, notably in South Asia, has provoked an enduring debate: does the BSD protect constitutional democracy, or does it enable the judiciary to act as a supra-constitutional authority?

2. Research Methodology (Methods and Materials):

This research adopts a qualitative doctrinal methodology, primarily relying on the analysis of constitutional texts, landmark judicial decisions, and scholarly commentary to explore the evolution, application, and implications of the basic structure doctrine. The study involves comparative legal analysis, drawing on case law from jurisdictions such as India, Pakistan, Bangladesh, Germany, and South Africa to assess the doctrine's versatility and limitations across different constitutional systems. Primary sources, including constitutional provisions and court judgments, were examined to trace the judicial reasoning and identify patterns of interpretation. Secondary sources such as academic journals, legal commentaries, and comparative constitutional law literature provided the theoretical framework and critical perspectives necessary to evaluate the doctrine's impact on democratic governance and judicial legitimacy. This method enables a comprehensive understanding of how the doctrine operates both as a constitutional constraint and a potential instrument of judicial overreach.

3. Doctrinal Foundations and Judicial Evolution

The doctrine of basic structure represents a significant departure from traditional constitutional interpretation, particularly in systems that had previously embraced the idea of parliamentary

sovereignty. Its conceptual foundation lies in the recognition that while the Constitution permits amendments, such power is not absolute or unbounded. Rather, it is derived and must be exercised within the framework and spirit of the Constitution itself. The origin of the doctrine can be traced to the landmark Indian case of *Kesavananda Bharati v. State of Kerala* 1973, in which a thirteen-judge bench of the Supreme Court deliberated on the extent of Parliament's amending power under Article 368 of the Indian Constitution. While the Court upheld the validity of the 24th and 25th Constitutional Amendments, it simultaneously ruled that Parliament could not alter the "basic structure" of the Constitution. This term was deliberately left open-ended but was interpreted to include principles such as the supremacy of the Constitution, rule of law, separation of powers, independence of the judiciary, and the democratic and secular character of the state. The doctrine gained strength through subsequent cases. In *Indira Nehru Gandhi v. Raj Narain* 1975, the Court invalidated a constitutional amendment that attempted to shield the Prime Minister's election from judicial review, citing the violation of the basic structure. Later, in *Minerva Mills Ltd. v. Union of India* 1980, the Court further refined the doctrine, emphasizing a balance between Fundamental Rights and Directive Principles as essential components of constitutional identity (Gul, et al., 2025).

In *I.R. Coelho v. State of Tamil Nadu* 2007, the Supreme Court reinforced the supremacy of the basic structure doctrine by holding that even laws placed under the Ninth Schedule which had previously enjoyed immunity from judicial review could be struck down if they violated basic structure elements. Through these cases, the doctrine transitioned from a tentative judicial formulation to a deeply entrenched principle of Indian constitutional law. The strength of the doctrine lies in its flexibility and adaptability. It has allowed the judiciary to respond to shifting political realities and prevent majoritarian or authoritarian attempts to undermine constitutional integrity. However, its very flexibility has also been a source of critique, as courts have often refrained from clearly defining what constitutes the "basic structure," leaving its application to judicial discretion. Thus, the evolution of the basic structure doctrine underscores a complex judicial effort to strike a balance between constitutional continuity and democratic adaptability. It has also become a touchstone for constitutional adjudication in other jurisdictions, which have selectively adopted or debated its relevance within their own constitutional frameworks. The BSD emerged in India against the backdrop of parliamentary supremacy and increasing tension between the executive and judiciary during the post-colonial period. In *Kesavananda Bharati*, the Indian Supreme Court held that while Parliament may amend the Constitution, it cannot alter its "basic structure." This nebulous but powerful doctrine includes elements such as the supremacy of the Constitution, secularism, federalism, rule of law, judicial review, and the separation of powers. In subsequent judgments *Indira Nehru Gandhi v. Raj Narain* 1975, *Minerva Mills v. Union of India* 1980, and *I.R. Coelho v. State of Tamil Nadu* 2007 the Indian judiciary not only reaffirmed but expanded the scope of BSD. The judiciary granted itself the authority to review even constitutional amendments on the touchstone of this doctrine, positioning itself as the ultimate guardian of constitutionalism (Rao, 2024).

4. Comparative Constitutional Perspectives

The doctrine of basic structure, while originally developed in the Indian constitutional context, has reverberated across several jurisdictions, particularly in South Asia. Its reception, however, has been mixed—embraced by some courts, cautiously examined by others, and outright rejected in jurisdictions that adhere more strictly to the principle of parliamentary sovereignty. In India, the doctrine has become a central feature of constitutional jurisprudence, evolving through successive rulings into a powerful check on legislative and executive power. The Indian judiciary has consistently invoked the doctrine to protect principles such as secularism, democracy, federalism, and the independence of the judiciary. This constitutional culture has allowed the courts to act as defenders of constitutional morality, particularly during times of political turbulence. Bangladesh followed India's lead in adopting the basic structure doctrine in *Anwar Hossain Chowdhury v. Bangladesh* 1989, where the Supreme Court

declared that the Constitution's foundational features could not be altered even by Parliament. The Court reaffirmed this position in later cases, particularly in *Secretary, Ministry of Finance v. Masdar Hossain* 2000, asserting that the separation of powers and judicial independence form part of the unamendable core of the Constitution (Ganguli, 2025).

In Pakistan, the doctrine faced judicial ambivalence for several decades. The Pakistani Supreme Court initially maintained that the power to amend the Constitution under Article 239 was unrestricted, provided the procedural requirements were met. However, in *District Bar Association Rawalpindi v. Federation of Pakistan* 2015, the Court acknowledged, though cautiously, that there may exist an implied limitation on the amendment power if a proposed change would destroy the Constitution's salient features. While not as robustly developed as in India or Bangladesh, this emerging jurisprudence indicates a shift towards recognizing substantive constitutional constraints. In contrast, Malaysia has resisted the basic structure doctrine. In *Phang Chin Hock v. Public Prosecutor* 1980, the Federal Court upheld the supremacy of Parliament's amendment power, provided procedural conditions were satisfied. The courts have thus opted for a strict textualist approach, aligning with the Westminster tradition. Similarly, in Sri Lanka, courts have not explicitly embraced the doctrine, relying instead on the express limitations within the Constitution itself, such as the requirement of referenda for certain amendments. Beyond South Asia, the idea of unamendable constitutional principles finds resonance in Germany, where Article 79(3) of the Basic Law protects the federal structure, democratic order, and fundamental rights from amendment. This illustrates that the idea of limiting amendment powers to preserve constitutional identity is not unique to India but has analogues in other systems committed to substantive constitutionalism (Agu, et al., 2025).

5. Constitutional Constraint: A Guardrail Against Authoritarianism

The doctrine of basic structure operates fundamentally as a constitutional constraint designed to protect democratic governance and rule of law from authoritarian encroachments. In post-colonial and politically volatile states particularly in South Asia this judicially crafted limitation has acted as a safeguard against majoritarian excesses and the erosion of constitutional norms under the guise of formal legality. At its core, the doctrine affirms that certain foundational principles such as separation of powers, judicial independence, federalism, fundamental rights, and the integrity of democratic processes are not subject to legislative override. In countries like India and Bangladesh, where episodes of constitutional subversion have occurred through the manipulation of amendment powers, the basic structure doctrine serves as a defensive mechanism. It empowers courts to strike down amendments that, although passed through proper procedures, undermine the core identity of the constitution. For example, during India's Emergency period 1975–1977, the judiciary relied on the doctrine to invalidate constitutional amendments that sought to suspend democratic checks and shield political leaders from accountability, as seen in *Indira Nehru Gandhi v. Raj Narain* and *Minerva Mills v. Union of India*. In Bangladesh, the judiciary similarly used the doctrine to strike down amendments that diluted secularism and judicial autonomy (Hristovska, 2025).

The doctrine thus performs a counter-majoritarian function. It ensures that constitutionalism is not equated merely with procedural compliance but with the preservation of deeper structural values. This is particularly vital in systems where weak institutions, executive dominance, or military interventions have historically threatened democratic continuity. By enforcing substantive limits on constitutional change, courts act as stabilizing agents, deterring authoritarianism masked as constitutional reform. Furthermore, the doctrine enhances legal predictability and the rule of law by creating an entrenched set of principles immune from political manipulation. It strengthens public confidence in the judiciary and underscores the idea that a constitution is not merely a political instrument but a normative document with enduring values. In this sense, the basic structure doctrine represents a form of "constitutional patriotism" that defends the moral and institutional foundations of a nation. While not infallible or uniformly applied, it serves as an indispensable guardrail in contexts where formal

amendment processes can be exploited to entrench power and dismantle democratic institutions under a veneer of legality (Farjam, 2024).

Supporters of BSD argue that it functions as a constitutional constraint vital for the protection of democracy and rule of law. In societies with fragile democratic institutions or majoritarian tendencies, courts serve as a bulwark against constitutional dismantling. By invoking BSD, courts can prevent transient political majorities from altering the Constitution's identity, such as through the removal of secularism, imposition of emergency powers, or weakening of judicial independence. BSD thus embodies what legal theorist Ronald Dworkin would call a "principled adjudication" where courts uphold moral and structural commitments over political expediency. Furthermore, it aligns with global trends in constitutionalism that emphasize *entrenched values*, *unamendable clauses*, and *transcendent norms* as essential to democratic resilience.

6 Judicial Overreach: A Democratic Deficit?

While the doctrine of basic structure has been hailed as a constitutional safeguard, it has also attracted significant criticism for fostering judicial overreach and generating a democratic deficit. Critics argue that by asserting the power to invalidate constitutional amendments even those passed with overwhelming legislative consensus courts overstep their adjudicatory role and encroach upon the domain of democratic lawmaking. At the heart of this critique lies the principle of popular sovereignty. In representative democracies, elected legislatures are presumed to reflect the will of the people. When courts invalidate constitutional amendments enacted through prescribed procedures, they risk substituting judicial preferences for democratic deliberation. This concern is heightened by the fact that the elements constituting the "basic structure" are not exhaustively defined and often evolve through judicial discretion, leading to unpredictability and opacity. Moreover, the doctrine grants the judiciary a quasi-constituent power, enabling unelected judges to determine the permissible scope of constitutional change. This raises legitimacy concerns, especially in jurisdictions where judicial independence is vulnerable to political pressures or where courts have historically lacked institutional credibility. In Pakistan, for instance, the judiciary's oscillation between deference and activism particularly under military regimes has fanned scepticism regarding its neutrality in applying doctrines like basic structure (Chauhan, 2025).

Another dimension of the critique concerns the doctrine's vagueness. Courts have failed to clearly demarcate the limits of the doctrine, leaving open-ended what constitutes a violation of the basic structure. This indeterminacy can invite subjective reasoning, allowing courts to cloak policy preferences in constitutional language and inhibit progressive reforms. For example, in *Minerva Mills*, the emphasis on a balance between Fundamental Rights and Directive Principles curtailed Parliament's ability to pursue socioeconomic restructuring through redistributive legislation. Furthermore, the doctrine may impair constitutional adaptability. As societies evolve, constitutions must be capable of transformation. By freezing certain principles as immutable, courts may hinder democratic innovation or necessary institutional reform. The resulting tension between constitutional rigidity and democratic responsiveness exemplifies the fragility of relying solely on judicial gatekeeping to preserve constitutional identity. Thus, while the basic structure doctrine aspires to safeguard constitutionalism, it must be applied with caution. Unchecked judicial supremacy can undermine the very democratic ethos it seeks to protect. A balanced approach where courts act as constitutional guardians without usurping constituent power is essential to maintain both the legitimacy and the effectiveness of the constitutional order (Mercescu, 2025).

Despite its normative appeal, critics argue that BSD represents a profound form of judicial overreach. Since the doctrine is judge-made and lacks express constitutional endorsement, its application effectively transfers ultimate constitutional authority from elected representatives to unelected judges. This may erode the doctrine of separation of powers and democratic legitimacy. Moreover, the indeterminate nature of "basic structure" invites subjective interpretations, allowing judges to invalidate

constitutional amendments based on philosophical or political preferences. This discretion risks transforming courts into political actors, contradicting their role as neutral arbiters (Sambhav, 2025).

7 The Paradox of Constitutional Supremacy

The basic structure doctrine is grounded in the principle of constitutional supremacy that the Constitution stands above all state organs and political actors, including the legislature. However, this elevation of constitutional authority generates a profound paradox: the doctrine defends constitutional supremacy by allowing unelected judges to override actions taken by constitutionally empowered, democratically elected bodies. This raises critical tensions between legal continuity and democratic legitimacy. On one hand, the doctrine seeks to prevent the Constitution from being hollowed out through procedural compliance alone. It asserts that constitutional amendments, however valid in form, must respect substantive principles that define the legal and moral identity of the polity. In doing so, it affirms that the Constitution is not a mere political instrument but a foundational social contract, grounded in enduring norms such as justice, liberty, and equality. On the other hand, by vesting the judiciary with the ultimate authority to define and enforce these foundational norms, the doctrine risks marginalizing democratic processes. Courts become the final arbiters of what is constitutionally sacred, even in cases where the Constitution itself does not explicitly impose such limits. This transforms the judiciary into a supra-constitutional body, effectively subjecting constitutional sovereignty to judicial interpretation (Flassy, et al., 2025).

The paradox deepens when one considers that constitutional supremacy traditionally implies a hierarchy of laws, with the Constitution at the top and all institutions, including the judiciary, subordinate to it. Yet under the basic structure doctrine, it is the judiciary that determines which parts of the Constitution are inviolable even when those parts are silent on their own immunity. In effect, constitutional supremacy becomes judicial supremacy. This tension reflects a deeper philosophical conflict between procedural constitutionalism, which focuses on how laws are made, and substantive constitutionalism, which emphasizes what values a constitution must preserve. The basic structure doctrine attempts to reconcile these traditions by maintaining that only amendments consistent with substantive constitutional values can be validly enacted. However, the ambiguity and judicial discretion inherent in this approach raise questions about transparency, consistency, and the democratic distribution of constitutional power. Ultimately, the paradox of constitutional supremacy underscores the delicate balance that must be struck between protecting foundational norms and preserving the legitimacy of democratic institutions. While the doctrine may be necessary to shield the Constitution from internal decay, its legitimacy depends on the judiciary exercising this power with restraint, clarity, and accountability (Waseh & Mubarak, 2025).

The core dilemma BSD presents is this: How can the supremacy of the Constitution be protected if constitutional amendments, made by the designated process, are considered invalid by the judiciary? This paradox underscores the tension between procedural constitutionalism (following the rules of amendment) and substantive constitutionalism (protecting certain values). BSD attempts to resolve this by asserting that amendment powers are not absolute but derived and therefore subordinate to constitutional identity (Basheska & Kochenov, 2025).

8. Challenges and Implications

The practical application of BSD raises several challenges:

8.1 Legitimacy Crisis:

The invocation and application of the basic structure doctrine has led to a growing legitimacy crisis that strikes at the core of judicial authority and democratic governance. While the doctrine was initially celebrated as a principled stand against constitutional abuse, its continued use especially in politically sensitive contexts has raised concerns over the judiciary's institutional legitimacy, impartiality, and

accountability. At the heart of this crisis lies the perceived judicial aggrandizement. By asserting the power to invalidate constitutional amendments on the basis of vague and evolving "basic features," courts assume a role beyond traditional adjudication they become arbiters of constitutional identity without a clear textual mandate. This judicial discretion, while theoretically justified in the name of preserving constitutionalism, often lacks transparent benchmarks, inviting accusations of subjectivity and politicization. In fragile democracies, such as Pakistan, the legitimacy of the judiciary is often tied to its historical complicity or resistance to authoritarian regimes. When courts employ the basic structure doctrine selectively or inconsistently at times validating military-led constitutional changes and at others resisting civilian legislative amendments they risk appearing politically motivated rather than principled. This instrumental use of the doctrine deepens public scepticism and erodes judicial credibility. Moreover, in India, where the judiciary is often celebrated as the guardian of the Constitution (Musslick et al., 2025).

the unchecked expansion of judicial power under the basic structure rubric has begun to provoke democratic anxieties. The doctrine's increasing application to diverse matters ranging from electoral reform to judicial appointments raises concerns that the judiciary is entrenching its supremacy by elevating policy preferences to constitutional status. The lack of democratic accountability in such decisions can fuel resentment among legislators and citizens who view the judiciary as overstepping its mandate. The absence of clear procedural safeguards in the application of the doctrine further compounds the legitimacy deficit. There is no fixed methodology for identifying or testing a violation of the basic structure. Consequently, decisions can appear arbitrary, eroding public confidence in the objectivity and neutrality of constitutional adjudication. Additionally, the democratic deficit created by judicial negation of constitutional amendments passed by elected representatives fosters institutional friction. It challenges the legitimacy of parliament and undermines the principle of popular sovereignty. This inter-institutional tension can hinder cooperative constitutional governance and reduce the effectiveness of constitutional reform processes. To restore and preserve legitimacy, courts must adopt a measured and transparent approach in applying the basic structure doctrine. This includes articulating clear standards, respecting legislative intent where possible, and recognizing the pluralistic and evolving nature of constitutional values. Without such restraint, the doctrine, despite its noble origins, risks devolving into a tool of judicial domination, thereby undermining the very constitutional order it was meant to protect (Amin, et al., 2025).

8.2 Unclear Boundaries:

One of the most persistent criticisms of the basic structure doctrine lies in its conceptual and operational vagueness. While the doctrine is premised on the protection of a constitution's core identity, it suffers from a lack of definitional clarity regarding what exactly constitutes the "basic structure." This ambiguity has led to inconsistent judicial interpretations and an expanding list of supposedly immutable constitutional features, thereby weakening the doctrine's coherence and predictability. Unlike codified constitutional limitations or entrenched clauses that explicitly delineate unamendable provisions, the basic structure doctrine is judge-made and inherently abstract. Courts have identified a range of features as part of the basic structure such as secularism, democracy, judicial independence, rule of law, separation of powers, and even socio-economic justice without providing a unified or exhaustive list. This indeterminacy creates interpretive elasticity, allowing judges to expand or contract the scope of the doctrine based on shifting political and legal contexts. The absence of fixed criteria for determining a violation of the basic structure further complicates its application. There is no doctrinal framework or standard test such as proportionality or necessity to assess whether a constitutional amendment crosses the doctrinal threshold. This lack of methodological transparency raises due process concerns and undermines the legitimacy of decisions invalidating democratically enacted amendments (Holloway, 2025).

Moreover, the evolving nature of constitutional interpretation means that what is considered "basic" can

change over time. For instance, while the early cases focused on democracy and judicial independence, later rulings brought in federalism, judicial review, and even environmental protection as possible elements of the basic structure. Such evolution, while contextually understandable, introduces legal uncertainty, especially for lawmakers seeking to navigate constitutional amendments without judicial confrontation. In addition, the doctrine's boundaries are unclear not only in terms of content but also in terms of scope. Does it apply only to formal constitutional amendments, or can it be invoked to strike down ordinary legislation that indirectly undermines the basic structure? Indian jurisprudence, particularly after *I.R. Coelho v. State of Tamil Nadu* (2007), suggests that even laws placed under the Ninth Schedule may be subject to basic structure scrutiny thereby blurring the line between constitutional amendment review and legislative review. This conceptual ambiguity also complicates comparative transplant ability. Jurisdictions that have contemplated adopting the doctrine, such as Malaysia, Sri Lanka, or Kenya, often struggle with its undefined nature, questioning its utility in the absence of clear constitutional or institutional parameters. In sum, while the flexibility of the basic structure doctrine allows it to adapt to changing threats against constitutionalism, its unclear boundaries render it susceptible to judicial overreach, selective application, and diminished legal certainty. For the doctrine to remain a credible tool of constitutional protection, courts must articulate clearer thresholds, develop consistent jurisprudence, and acknowledge the limits of their interpretive authority (Hiralal, 2025).

8.3 Comparative Caution:

While the basic structure doctrine has proven to be a formidable judicial innovation in certain jurisdictions, especially India and Bangladesh, its applicability and relevance must be assessed with caution in comparative constitutional contexts. Not all constitutional systems share the same historical experiences, legal traditions, or institutional structures that justify such a robust form of judicial constraint on constitutional amendment powers. In India, the adoption of the doctrine responded to a unique confluence of post-colonial constitutional engineering, centralised political authority, and a written constitution without an entrenched bill of rights. The doctrine emerged during a time when Parliament was perceived to be encroaching on civil liberties and judicial independence. It was shaped by repeated attempts to manipulate the Constitution for short-term political gain circumstances that may not be present or as pronounced in other legal systems. By contrast, Westminster-style democracies, such as the United Kingdom and Australia, maintain the doctrine of parliamentary sovereignty and place constitutional amendment within the hands of political processes rather than judicial review. In these systems, unwritten conventions, evolving traditions, and political accountability act as primary constraints on legislative power. Attempts to judicially entrench unwritten constitutional values would not only conflict with the separation of powers but could also undermine democratic legitimacy (Adler, 2024).

Even in countries with written constitutions and strong judicial review powers, such as South Africa or Germany, constitutional design often includes express "eternity clauses" or detailed amendment procedures that obviate the need for a judicially implied basic structure doctrine. Germany's *Grundgesetz*, for example, explicitly protects human dignity, federalism, and democratic order from amendment Article 79(3). Judicial restraint is thus built into the constitutional text itself, reducing the need for an expansive interpretive doctrine. Bangladesh, while adopting the basic structure doctrine, has experienced fluctuating judicial commitment to it due to shifts in political climate and judicial independence. Pakistan, though gradually warming to the idea, has historically resisted a firm embrace of the doctrine, reflecting concerns about judicial credibility and separation of powers in a system frequently disrupted by military interventions and judicial complicity. The comparative hesitation is also rooted in concerns about judicial legitimacy and institutional capacity. In jurisdictions where the judiciary lacks public trust, consistency, or insulation from political influence, empowering courts with the authority to define and enforce fundamental constitutional features may result in greater institutional

instability rather than protection of constitutionalism. Therefore, while the doctrine of basic structure offers a powerful conceptual framework to guard against authoritarian regression and legislative overreach, its transplant ability requires sensitivity to context. Courts must consider their own constitutional architecture, political history, and public legitimacy before adopting or expanding such a doctrine. What serves as a constitutional lifeline in one jurisdiction may emerge as a source of institutional imbalance or democratic distortion in another. Caution, therefore, is not just prudent it is essential. In countries with parliamentary sovereignty or weak judicial traditions, BSD may be seen as foreign or intrusive. Yet, in pluralistic societies with histories of constitutional abuse, BSD can serve as a vital check on authoritarian drift, especially when backed by a strong civil society and an independent judiciary (Kirst, 2024).

8. Conclusion and Future Directions

The doctrine of basic structure occupies a critical yet contentious position within modern constitutional jurisprudence. It evolved as a judicial response to safeguard constitutional identity from the risk of legislative overreach, especially in jurisdictions where democratic institutions have historically faced fragility and authoritarian tendencies. As demonstrated through comparative experiences, the doctrine acts as both a constraint on unbridled political power and a source of potential judicial overreach, highlighting the delicate balance between preserving constitutionalism and upholding democratic legitimacy. This research has argued that while the basic structure doctrine serves as a necessary guardrail against constitutional erosion, its open-ended nature and judicially expansive interpretations have contributed to legitimacy concerns, democratic deficits, and doctrinal ambiguity. Its effectiveness depends significantly on the institutional credibility of the judiciary, the clarity of constitutional texts, and the political maturity of legislative organs. In systems with weak rule-of-law cultures, the doctrine may be misapplied or weaponized, undermining its very purpose. Going forward, the doctrine must be refined rather than abandoned. Courts should strive for greater doctrinal consistency, transparency in reasoning, and restraint in application. Codifying certain foundational principles or establishing clearer thresholds for review could help minimize arbitrary or politically motivated uses. Comparative constitutional scholars should continue to explore whether hybrid approaches such as integrating express “eternity clauses” or procedural safeguards for amendments can offer a more balanced alternative. Future research may further examine how the doctrine functions in transitional democracies, how it interacts with doctrines like constitutional identity and living constitutionalism, and whether regional or international legal frameworks can help standardize or inform its application. Ultimately, the continued relevance of the basic structure doctrine will depend not just on its theoretical foundations, but on its capacity to evolve in a manner that reinforces both constitutional fidelity and democratic resilience.

The Basic Structure Doctrine is both a constitutional safeguard and a site of intense jurisprudential debate. It highlights the dynamic tension between law and politics, and between constitutional flexibility and permanence. While it undoubtedly empowers the judiciary, its normative foundations and historical necessity in countries like India and Bangladesh make it difficult to dismiss as mere overreach.

References

- Adler, J. (2024). Climate Change and Constitutional Overreach.
- Agu, O. C., & Ezewudo, V. C. (2025). JUDICIAL ACTIVISM IN NIGERIA: A CATALYST FOR LEGAL DEVELOPMENT OR AN OVERREACH OF POWER?. *Nnamdi Azikiwe University Journal of Private and Property Law*, 2(1), 213-223.
- Amin, M. R. M., Ismail, I., & Sivakumaran, V. M. (2025). Revolutionizing education with artificial intelligence (AI)? Challenges, and implications for open and distance learning (ODL). *Social Sciences & Humanities Open*, 11, 101308.

- Arora, A. (2025). CONSTITUTIONAL DEMOCRACY AND LIMITATIONS OF JUDICIAL. *JUDICIAL*, 301.
- Basheska, E., & Kochenov, D. (2025). The True Show of Unity: Supremacy Rule of Law at the Service of Eurowhiteness Solidarity. *Laulhé Shaelou & Marcou (eds) Springer*.
- Chauhan, K. (2025). The Legitimacy of Unconstitutional Constitutional Amendments: Can a Constitution Invalidate Itself?. *Authorea Preprints*.
- Farjam, S. (2024). Legal Indicators of Overreach in Emergency Decrees: A Case Study of Three States. *Journal of Human Rights, Law, and Policy*, 2(4), 1-9.
- Flassy, M., Idris, U., & Muttaqin, M. Z. (2025). IMPLEMENTING CONSTITUTIONAL COURT DECISIONS: REVISING INDONESIA'S 2024 REGIONAL HEAD ELECTION LAW—A CASE STUDY. *PETITA: JURNAL KAJIAN ILMU HUKUM DAN SYARIAH*, 10(1), 435-448.
- Ganguli, T. (2025). THE DYNAMICS OF JUDICIAL ACTIVISM AND OVERREACH IN INDIA'S SOCIAL JUSTICE JURISPRUDENCE. *JUDICIAL*, 211, 285.
- Gul, S., Ahmad, R., & Rahman, S. U. (2025). Constitutional Dualities: Reconciling Islamic Normativity with Common Law Principles in Hybrid Legal Systems. *Indus Journal of Social Sciences*, 3(2), 674-693.
- Hiralal, S. M. (2025). Global Trends in Judicial Overreach. *JUDICIAL*, 179.
- Hiralal, S. M. (2025). Global Trends in Judicial Overreach. *JUDICIAL*, 179.
- Holloway, S. (2025). Exploring the Ethical Implications of Big Data Analytics in Information Systems Management. *Available at SSRN 5121821*.
- Hristovska, J. T. (2025). SEVERAL LEGAL PRESUMPTIONS AS THEORETICAL FOUNDATIONS FOR CONSTITUTIONAL STABILITY IN MODERN FEDERALISM. *Iustinianus Primus Law Review*, 16(1).
- Kirst, N. (2024). *The rule of law crisis within the European Union: constitutional challenges in transatlantic perspective* (Doctoral dissertation, Dublin City University).
- Mercescu, A. (2025). The Romanian Constitutional Court doing “militant democracy”(twice and more to come). *Journal of Contemporary Central and Eastern Europe*, 1-11.
- Musslick, S., Bartlett, L. K., Chandramouli, S. H., Dubova, M., Gobet, F., Griffiths, T. L., ... & Holmes, W. R. (2025). Automating the practice of science: Opportunities, challenges, and implications. *Proceedings of the National Academy of Sciences*, 122(5), e2401238121.
- Patil, H. (2025). Reconciling Constitutional Ideals: A Contemporary Reassessment of the Basic Structure Doctrine. *GLS KALP: Journal of Multidisciplinary Studies*, 5(2), 43-53.
- Rao, S. A. (2024). Judicial Oversight in Fiscal Policymaking: Balancing Economic Discretion and Constitutional Mandates. *Jus Corpus LJ*, 5, 267.
- Sambhav, A. (2025). A Critical Review of the Multi-Party Interim Appeal Arbitration Arrangement (MPIA).
- Waseh, J., & Mubarak, M. (2025). The Amendment Process of the Constitution of Pakistan: Political Dynamics & Legal Implications. *ASSAJ*, 3(02), 965-973.