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Doctrine of Basic Structure and Its Relevance to Pakistan's 26th Constitutional Amendment

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Pakistan's constitutional framework relies on "salient features" to prevent arbitrary amendments, yet recent legislative changes threaten this institutional balance. This study evaluates the 26th Amendment through the lens of the Basic Structure Doctrine, examining whether parliamentary power can legally dismantle core constitutional pillars, such as judicial independence. Using qualitative legal analysis and a comparative review of Pakistani and Indian jurisprudence, the study assesses the amendment's impact on institutional autonomy. The analysis indicates that by restructuring judicial commissions and abolishing seniority rules, the amendment politicizes the judiciary and erodes the separation of powers. The study concludes that the amendment risks institutional erosion and suggests that formalizing the Basic Structure Doctrine is vital to preserving Pakistan's democratic identity against transient political majorities.

Keywords: Basic Structure Doctrine, 26th Amendment, Judicial Independence, Separation of Powers, Pakistan Constitution.

Author:

Abida Hassan: (Corresponding Author)

Assistant Professor (Law), Dr. Muhammad Iqbal Law School, Government College University, Lahore, Punjab, Pakistan.
(Email: dr.abidahassan@gcu.edu.pk)

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Doctrine of Basic Structure and Its Relevance to Pakistan's 26th Constitutional Amendment

Authors:

Abida Hassan: (Corresponding Author)

Assistant Professor (Law), Dr. Muhammad Iqbal Law School, Government College University, Lahore, Punjab, Pakistan.

(Email: dr.abidahassan@gcu.edu.pk)

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Abstract

Pakistan's constitutional framework relies on "salient features" to prevent arbitrary amendments, yet recent legislative changes threaten this institutional balance. This study evaluates the 26th Amendment through the lens of the Basic Structure Doctrine, examining whether parliamentary power can legally dismantle core constitutional pillars, such as judicial independence. Using qualitative legal analysis and a comparative review of Pakistani and Indian jurisprudence, the study assesses the amendment's impact on institutional autonomy. The analysis indicates that by restructuring judicial commissions and abolishing seniority rules, the amendment politicizes the judiciary and erodes the separation of powers. The study concludes that the amendment risks institutional erosion and suggests that formalizing the Basic Structure Doctrine is vital to preserving Pakistan's democratic identity against transient political majorities.

Keywords:

[Basic Structure Doctrine](#), [26th Amendment](#), [Judicial Independence](#), [Separation of Powers](#), [Pakistan Constitution](#)

Introduction

Constitutions are the genetic books of contemporary states giving them a system of government and a check to arbitrary power. They establish the allocation of power between institutions of the state, codify the rights of citizens and determine the principles of national identity. Central to the idea of constitutionalism is the notion that political authority should not be excessive or unchecked and that no one institution, be it legislature, executive or judiciary, can do as it pleases.

The question of how far the powers of a parliament to amend the constitution go is one of the most controversial questions in constitutional law. Although amendments must be permissible in order that a constitution may be able to keep pace with shifting social and political facts, endless amendment power is fraught with the danger of subverting the basic principles of the constitutional order. This conflict spawned the doctrine of basic structure, a principle of judicial review which safeguards the basic characteristics of the Constitution against amending or mutilating, even



by a constitutional amendment. The doctrine stresses that, despite the flexibility of the constitution, it has some core values (democracy, federalism, judicial independence, and basic rights) that can never be altered.

The concept of basic structure has been best known to be developed in India but has also received echo in the constitutional discussions in Pakistan (Afridi, 2023). Although the Constitution of 1973 of Pakistan is silent on this doctrine, it instills in itself some principles that are generally considered as its pillars: the Islamic, the federal, the democratic, the separation of powers, and the fundamental rights (Austin, 1999). The Pakistani court has struggled over the years whether they can invalidate constitutional amendments that jeopardize these ideals resulting in a developing but unstable jurisprudence.

This discussion acquires a new significance in the light of Constitutional Amendment of 26th (2019) in Pakistan which concerned the political inclusion of the former Federally Administered Tribal Areas (FATA) in the Khyber Pakhtunkhwa. The amendment questioned the representation, inclusiveness, and parliamentary reform boundaries by changing the structure of legislative bodies. Although the amendment was generally seen as a move toward the reinforcement of democracy, some in the context of the discussion resemble the question that is more general: Should there be judicially binding limits on the power of the Parliament to amend the Constitution?

Basic Structure Doctrine: Concept

One of the most important contributions of the constitutional jurisprudence of the modern day is the doctrine of basic structure (Afridi, 2023). It was formulated as a means of resolving a dilemma that troubled many constitutional systems: it has to remain sufficiently amenable so as to adapt to changing political, social, and economic conditions but, at the same time, must maintain its basic nature to ensure that its identity cannot be eroded by transient political majorities (Faisal, 2025). The doctrine thus states that though a parliament can amend the constitution it cannot abuse the same to alter or to destroy the fundamental frame around which the constitutional order is based

Citation: 2002 A.C. 860. State of Kerala (1973)

In India, the doctrine was first introduced when the

Supreme Court passed the landmark decision of *Kesavananda Bharati v. State of Kerala* (1973). *Kesavananda Bharati*, the principal of a Hindu monastery, brought the case claiming challenges to Kerala government efforts to pass land reform legislation, which had an impact on property of religious institutions. Although the case commenced as an argument over property rights, it quickly broadened into a far greater constitutional issue: would Parliament have the power to make alterations to the Constitution in a way which would upset even the basic rights and abolish them?

The case was presented to a 13-judge bench of the Indian Supreme Court, the largest Supreme Court bench in the history of the country, which ruled in a highly divided manner (Austin, 1999). The Court by a narrow majority with Article 368 of the Constitution stated that the Parliament had significant powers to make amendments to the Constitution but they were not limitless. Ordinary amendments were allowed but anything that harmed and ruined the very fabric of the Constitution was out of the authority of Parliament. The decision was a landmark move in the Indian constitutional history as it placed substantive constraints on the amend power on the Indian constitution initially.

Other previous cases such as *Shankari Prasad and Sajjan Singh v. Union of India* (1951) also had their judgment overturned (Manhas, 2025). In *Kesavananda Bharati*, the Court had to be contentious: it had to admit that the Constitution had to be amended to become relevant, yet it did not want to go beyond regular changes in the Constitution that would have been a redefinition of the Constitution

Core Idea of the Doctrine

The crux of the doctrine is that the amendments of the constitution cannot be equated to the re-writing of the constitution (Sharma, 2024). Although Parliament, being allowed to amend or modify provisions, has no power to destroy the framework on which the Constitution is based. The principle that guides this is that a constitution is not merely a political payment in the here and now, but reflects the values and identity of a nation as time goes by. This concept makes a constitution just dynamic and enduring. Institutions can be improved; rights extended or needs of society met through

amendment but not through abolition of democracy or judicial review or annulment of fundamental rights. To permit these changes would be tantamount to deprive the constitution of its spirit in the name of amendment virtually to nullify the purpose of its existence as the ultimate law of the land.

Functions Secured by the Doctrine.

As time went on, Indian courts have determined a number of features which were inherent in the core of the Constitution. These are the supremacy of the Constitution, whereby no power may overpower its structure; separation of powers, whereby power is not concentrated in one arm; and independence of the judiciary, which entails protection of judicial system by politics to enable the judicial system to act as guarantors of the Constitution. Democracy and the rule of law are equally focal, which necessitates free elections and fair government and the right to all basic rights, which ensures liberty, equality and dignity. The virtue of the doctrine is that it is flexible: over time, such principles as secularism, federalism, free and fair elections were introduced. Such a dynamic character guarantees that the Constitution is dynamic but that nothing can be amended that can erode its core identity.

Criticism and Debate

The doctrine has not been controversy-free. Critics claim that it gives excessive authority to the judges as they are in a position to determine what is the basic structure of the constitution. Antecedent There is no explicit textual foundation of the doctrine in the Indian Constitution and therefore opponents refer to it as judicial creation and not legal interpretation. They warn the unelected judges against the powers to invalidate amendments in the constitution that were made by the elected individuals.

Proponents on the contrary argue that the doctrine is a necessary protection in a parliamentary democracy. In its absence, any aggressive majority may destroy democracy as we know it, consolidate power with the executive branch, or revoke basic rights- all by the amendment process. They say that the doctrine is not anti-democratic but is instead a more significant guarantee of democracy, that the identity of the Constitution is not sacrificed to the whims of majorities.

Doctrine in Pakistan:

Unlike India, the basic structure is not a publicly accepted doctrine of judicial principles in Pakistan. The belief was supported by the Supreme Court of India in *Kesavananda Bharati v. In State of Kerala* (1973), where it was held that even constitutional changes could not alter or destroy the very fabric of the Constitution, even Parliament could not do so. Nevertheless, as a result of the unstable constitutional history of Pakistan, the frequent constitutional abrogations, and the application of the doctrine of necessity to create extra-constitutional measures by military dictators, the courts in Pakistan have traditionally been reluctant to enforce such a rigid doctrine (Khan, 2012). Unlike India, basic structure is not a publicly accepted doctrine of judicial principles in Pakistan.

The Supreme Court of Pakistan has developed the concept of the salient features of the Constitution instead of the existence of an apparent basic structure doctrine (Munir, 2014). This, by holding on to the fact that it is impossible to undermine some of the basic elements of the Constitution, even though constitutional amendments, serves a relatively similar purpose.

Salient Features of the Constitution:

These basic ideas which define the 1973 Constitution are known as its salient features. Though the Court has not given an exhaustive or a comprehensive conclusion, the most widely stressed characteristics include:

- Parliamentary form of government
- Federalism
- Independence of the judiciary
- Islamic provisions
- Fundamental rights

The Independence of the judiciary has always been one of the most significant, non-negotiable factors of this.

Important Cases:

Zafar Ali Shah v. Pervez Musharraf (2000)

Context: This case began when the Prime Minister Nawaz Sharif was toppled in a military dictatorship by General Pervez Musharraf.

Decision: The Supreme Court applied the doctrine of necessity to approve Musharraf as the coup leader and granted him the power to amend the Constitution as much as he was needed to govern.

Importance: The Court underscored on the importance of certain salient features of the Constitution, including that of parliamentary democracy and independence of judiciary, which were not revocable, at least in the process of legitimizing military government.

Limitations: The Court was unwilling to adhere to a strict doctrine of Indian-style basic structure but nevertheless admitted limitations with an ability to make changes but said that the salient features should be maintained.

Sindh High Court Bar Association v. Federation of Pakistan (2009)

Context: This was a case concerning the 2007 Provisional Constitutional Order (PCO) by General Musharraf, which required judges to swear a new oath and ejected some of them.

Decision: The Supreme Court sentenced that PCO and emergency by Musharraf were unlawful.

Importance: The Court emphasized the independence of the judiciary as one of the major features of the Constitution. The decision represented the shift in thinking of the constitutional supremacy as the constitutional defense of the military coup. The courts in this case realized the principle that fundamental qualities cannot be undermined even by constitutional amendments or other extra-constitutional measures.

Key Salient Feature: Independence of the Judiciary

The independence of judiciary as one of the key components of the Pakistani constitutional system has been highlighted in several cases. It ensures: The rule of law, protection of the fundamentals rights, check of the legislative and executive. Courts have maintained that the remaining provisions of the Constitution like federalism and democracy are impossible to practice without a separate judiciary.

Pakistan is unlike India in the sense that it has not officially accepted the doctrine of the basic structure. To limit constitutional amendments and executive/military usurpation, the judiciary, instead,

employs the concept of salient features. Well known cases such as Sindh High Court Bar Association (2009), Zafar Ali Shah (2000) show that courts have used distinguishing features to provide a balance between political reality and constitutional dominance (Hamid, 2016). Most importantly, the independence of the judiciary has taken Centre stage, and it has been continually argued that the independence of judiciary is an essential element to the constitutional nature of Pakistan.

The 26th Constitutional Amendment of Pakistan (2019):

The 26 th Constitutional Amendment that was ratified in October 2019 brought major changes to the composition and functions of the judiciary in Pakistan (Dawn, 2024). The most notable change concerned the powers of the Chief Justice of Pakistan (CJP) and the manner in which he or she came to power. This amendment was rushed through the Parliament in secrecy, without any adequate consultation and contribution, and even lack of the legal experts, bar associations and even the judiciary in themselves, unlike the earlier ones which were a product of long deliberation. The amendment has since then been cited as one of the most controversial constitutional amendments throughout Pakistani history.

Secret and Rapid Passage Without Consultations

The hasty passage of the amendment was not very open. It was a democratic practice of free debate of constitutional matters that was not adhered to by consultations to any parliamentary committee or bar councils or any professional in legal matters. This raised the concerns that the amendment was used to pursue the political objectives in the short term or long-term changes to institutions. Many argued that because changes in the constitution should reflect national consensus, such secrecy undermines their validity and believability.

Restructuring the Judicial Commission of Pakistan (JCP): From Judicial Dominance to Political Control

The Judicial Commission of Pakistan (JCP) that existed before this change was instituted to ensure that the judges themselves were the ones who had the ultimate say as far as judicial appointments were concerned (SJBIPP Publications, 2024). They

represented the CJP, senior judges, and a few politicians and attorneys. The 26th Amendment restructured the JCP to make the judges a minority in the panel. Instead, the political figures and legislators grew stronger (Verfassungsblog, [2025](#)). This shift put the balance towards political dominance that led to the fear that people would be appointed based on their loyalty to the dominant party or government rather than independence and merit. Since the legislative branch of government (the legislature) had an unequal influence over another arm of government (the court), critics indicated that this was an apparent infringement on the separation of powers.

JCP Empowered to Form “Constitutional Benches”

Conventionally, the Chief Justice of Pakistan was at liberty to establish courts of bench that heard cases on the constitution and petitions on fundamental rights. These benches often deal with politically sensitive issues such as the Interpretation of the constitution, corruption cases and the disqualification of members of the legislature. The amendment has transferred this authority to the Judicial Commission of Pakistan (JCP), which is highly dependent on political representatives. This move was quite effective in raising the concerns of case engineering and partiality since political players, in effect, were able to affect the sitting of judges on important cases.

Appointment of the Chief Justice: From Seniority to Political Nomination

Pakistan has been following the principle on seniority which holds that the most senior judge will always have the opportunity of becoming the next Chief Justice in the country. This system was typically considered to be a fair, objective and stable method which minimized political manipulation. The 26th Amendment abolished the seniority rule and gave the Special Parliamentary Committee appointment powers. This group which was majorly composed of politicians would elect the next Chief Justice. This created a fear that any given administration would ensure that they put in place judges that are politically loyal to the Chief Justice post thereby undermining the judiciary as the protector of the Constitution.

Undermining Judicial Independence and Increasing Political Influence

The overall effect of these changes produced much criticism: These changes were perceived to be a big blow to judicial independence, which weakened the ability of the courts to check the excesses of the legislative and executive branches. The separation of powers, which is a major principle of constitutional democracy, was lost. It put the court at risk of corruption, favoritism, and politics. Bar councils, senior attorneys, and civil society organizations condemned the change saying that it was in conscious effort to politicize the judiciary and convert it into political power.

Historical Context and Comparison

To balance between the independence of the judiciary and democratic accountability, it was already through the 18th Amendment (2010) that Pakistan has altered the judiciary appointments by creating the JCP and a Parliamentary Committee. It was enhanced further with the 19th Amendment (2011) that enhanced the position of judges in appointments. However, this tendency could be switched back in 26th Amendment that made the political forces more powerful and reduced court roles. This is described by legal professionals as a reverse of the progress achieved by the earlier changes.

Criticism from Legal and Political Circles

To attract attention to the dangers of politicization in the appointment of the judicial system, bar councils and organizations of lawyers held seminars and protests against the change in a rather radical way (Business Recorder, [2024](#)). The proposal, as suggested by legal experts, would cripple judicial neutrality and causes judges to be less willing to rule against the government. The opposition parties claim that the ruling party was driven by a selfish motive to alter to take over the judiciary before big cases on corruption and constitutional matters emerged. Others referred to it as a coup against the judiciary in the constitution.

Broader Implications

Loss of trust by the populace: It leads to the loss of trust among the populace in the ability of the judiciary to administer justice in a fair manner when the people feel that such judges are appointed on political grounds. **Weakened accountability:** The role of the judiciary as a check on the governmental power can be undermined when the courts become

afraid to hold the politicians accountable. Threat to basic rights: Cases related to civil liberties and media freedom or human rights might be ruled in favor of the ruling class in case political interference is permitted in the appointment of the judges. The institutional imbalance: The amendment had a negative effect as far as it disrupted the *trias politica* (separation of powers) assumption by greatly altering the constitutional balance of power to the legislative and executive branches.

One of the landmark changes in the constitutional history of Pakistan was the 26th Amendment (2019). It came into power secretly, without consultation, and changed the procedure of appointing the Chief Justice, restructured the Judicial Commission of Pakistan and relocated the power of the judges to the politicians. Instead of strengthening judicial accountability, it jeopardized politicization of the judiciary, undermined independence of the judiciary, and hurt the separation of powers. The 26th amendment was very effective in the shift of power towards political influence though past amendments had tried to balance the powers of different institutions. Critics argue that this puts in danger the constitutionalism and rule of law in Pakistan besides judicial impartiality.

Credibility of the Doctrine of Basic Structure to the 26th Amendment.

Judicial Independence

Judicial independence in the constitutional jurisprudence of Pakistan has been established as one of the salient characteristics of the Constitution many times. As it has been mentioned above, Supreme Court in both *Zafar Ali Shah v. Pervez Musharraf* (2000) v. *Sindh High Court Bar Association*. The issue of judicial independence has been noted by the Federation (2009) as a component that is essential to the constitutional set up. The other assurances of democracy, federalism and of fundamental rights will be rendered meaningless without it.

The 26th amendment, however, introduced a direct politicization of the processes which assure independence of the judiciary. It essentially gave the executive and legislature control of judicial appointments by bench formation as well when it allowed the politicians to dominate the Judicial Commission of Pakistan. This compromised the

independence of judiciary and also provided room which could be used to politically influence the judicial results.

Worst still, when the Chief Justice appointment rules were not based on seniority, favouritism and partisans were welcomed. In this situation present in Pakistan, where institutions are already faced with the challenges of credibility and being accused of bias, such a change might blow a serious dent through the trust people have in the judiciary. Under the doctrine of basic structure, this constitutes an assault on a doctrine that has been judicially found with regard to the identity of the Constitution.

Separation of Powers

The 26th Amendment also troubled the harmonious balance of powers amongst the three arms of the state. Separation of powers is traditionally done to facilitate the making of laws by people in legislature, implementation by people in the executive, and interpretation by them in the judiciary. The branches have set limits of operation to avoid the problem of power concentration that would result from unchecked powers.

The 26th Amendment obscured these margins because Parliament and the executive were accorded decisive power and authority in deciding who should become a judge and the database of whom should be included in the constitution benches. Rather than having a kind of independent judiciary that was able to check the political arms and branches, the amendment stood to turn the judiciary into a continuation of the will of the political sphere. This is more dangerous to a system such as that of Pakistan whose history of executive domination has already undermined institutional balance.

The cabinet principle of separation of powers, which appeared on the list of such salient features in the 1973 Constitution, was in breach in this regard. This reverberates the issue that is tackled by the basic structure doctrine: the amendments cannot be allowed to dismantle the core of the setup of governance that constitutionalism relies upon.

Rule of Law

The rule of law stipulates that all citizens must be subjected to equal laws, and that no citizen is over the law and the courts must be independent in the rendition of justice in a non-biased manner. This is not just an aspirational principle; it has been

incorporated into the constitutional guarantees of Pakistan by not only having good provisions of fundamental rights under the speed of its constitution however; the Preamble.

By emboldening the politicalized commissions of selecting judges to the constitutional benches, the 26th Amendment provided an opening to biased adjudication in the cases that require least adversarial approaches the ones involving constitutional rights and state accountability. When it is possible to adjust or modify benches so that they yield positive consequences to the government of that day, then principle of rule of law would be subject to serious abuse.

Therefore, to the prism of language of basic structure/salient features doctrine, the 26th Amendment is no ordinary procedural modification. It is right at the core of unbiased justice, and it would be emptying one of the most basic tenets of the Constitution.

The Position of Doctrine about the 26th Amendment.

Oppositional Relationship

The abacuses of basic structure as put forward in Pakistan, or rather, the jurisprudence of salient features is the direct opposite to the 26th Amendment of the Constitution of Pakistan. The amendment widow-goose collides directly with the judicial independent decision, which is perhaps the most generally accepted signature characteristic of the Constitution. It contributes to the loss of independence and therefore the erosion of separation of powers as well as erosion of the rule of law.

This resistance is not coincidental but hidden. It is the intention of the basic structure doctrine to assist in ensuring that such amendments do not destroy constitutional essentials. In that way, the 26th Amendment offers their textbook example of why such doctrines are necessary: left unbridled, the power of parliamentary amendments may be used to radically change the constitutional condition of things in a manner that weakens democracy and accountability.

Corruption at the Judicial Level

The whole body of this clash has judicial independence. In the case that judges are nominated or allotted cases by institutions where the political powers are dominant, then the judiciary can no

longer depict itself as an independent arbitrator. Rather, it will be subservient to the executive and legislature. The autonomy of judiciary does not solely concern institutional pride but must come wireless to provide assurances that the rights are safeguarded, governments are answerable and the Citizens can have confidence over the fairness of the justice system. The 26th Amendment is thus a compromise of this invaluable promise.

Legal Consequence had it been done in Pakistan.

Even in the case where the reasoning behind the basic structure or salient features doctrine was consistent applied to the case of Pakistan, the 26th Amendment would be on very weak grounds. The courts may pronounce it to be unconstitutional grounding on the fact that the decision will remove the independence of adherence to judiciary, infringing the doctrine of division of powers, and contravening the rule of law.

In spite of the fact that Pakistani Supreme Court has not defeated in so far a constitutional amendment based on this reason, jurisprudence in the case of Zafar Ali Shah and the Sindh High Court Bar Association is effectively established. Provided the judicial independence is one of the salient features, then an amendment that undermines it can be pregnant. This would not be the first instance in comparative constitutional law; it would look back to the example of India adopt the basic structure as a tool to safeguard judicial independence against the encroachment of the parliament.

Saving the Constitution Administration Act.

In its essence, the discussion regarding the 26th amendment emphasizes the significance of the doctrine such as basic structure or salient features. The constitutions are not documents which operate by themselves, they require mechanisms that can guard against slow erosion by the ruling elites (Mate, [2010](#)). In the absence of limits that can be enforced at the judiciary, there is always the potential of having a parliamentary majority, in the best interest of advancing their interests change the Constitution in a manner that undermines democracy, accountability or protection of rights.

The judiciary repels such amendments by doing their role as constitution guardians. The odder the case of the 26th Amendment, the stakes are high since the changes do not only regard the procedure

in administration but the ability of the judiciary as an independent institution as well. In that regard, the use of logic of basic structure to Pakistan displays the significance of considering doctrines of constitutional limitation as the abstract theories but the practical needs of constitutional regulation of democratic government.

Criticism and Counterparts

The doctrine of basic structure with its influence has never been without criticism. The most prevalent criticism against it is that it puts more power in the hands of unelected judges, and leaves elected representatives behind. The sovereignty in a parliamentary democracy is alleged to be vested in the people by the elected representatives (Choudhry, 2008). By letting judges vote down constitutional changes, critics say, one runs the danger of alienating democratic accountability. Judicial review of constitutional amendments may also be understood as a check on the popular will by an elite, thus creating the charge of judicial supremacy. This issue is especially acute in such a situation as Pakistan, when the role of courts was sometimes justification of military actions, sometimes the defender of constitutionalism. Skeptics warn that giving too much power to the judiciary would cause an imbalance in the democratic legitimacy. Proponents of the doctrine, however, retort that in the absence of any judicially enforceable restriction, the Constitution will be destroyed internally. Temporary political interests might lead a parliamentary majority to amend the Constitution in a manner that weakens democracy, undermines rights or institutional independence. Under that, the Constitution would cease to be a system of checks and balances that safeguard the citizens against power abuses but would become an instrument in the possession of those who already enjoy such power. To its followers, then, the doctrine does not constitute an insult to democracy but its protection: it assures that some of the fundamental principles are outside the reach of political majorities that change. The dilemma of Pakistan is none other than striking the balance between these two ideologies. On the one hand,

parliamentary sovereignty is one of the principles of the 1973 Constitution, and elected officials need to have extensive powers to influence laws and policies. Constitutional supremacy, on the other hand, is such that even Parliament cannot perform a re-write of the very fabric of the system. The dilemma is how to avoid abuse of power of amendments yet not have judicial activism. This tension can be explained by the fact that the Pakistani courts preferred to frame the issue as a feature of salience and not as a basic structure. When the judiciary talks of salient features, it is an indication that the judiciary has substantive limits but does not say that it has the power to strike out amendments on this basis. The 26th amendment shows why this discussion is still urgent. It attempted to intimidate the independence of the judiciary by reorganizing the Judicial Commission of Pakistan and changing how the Chief Justice should be appointed and this was destined to kill the independence of the judiciary, which has been identified by the jurisprudence of Pakistan as being a fundamental trait of the Constitution. In this case, the doctrine itself--or the Pakistani version of it--is a critical shield. When applied on a regular basis, it would make the 26th Amendment unconstitutional in the abstract, thus securing the judiciary against political capture as well as the separation of powers.

Conclusion

Basic structure doctrine is eventually one of maintaining the very nature of the Constitution. Its salient features version has already been accorded express judicial recognition in Pakistan, although not in form. The doctrine is applied to the 26th Amendment, where it serves as a protection against judicial appointments being politicized and the undermining of judicial independence. And the last question is whether now Pakistan has to officially embrace the doctrine to strengthen its constitutional order. This would serve as a greater protection against further efforts to erode the law in a way that would grant the Constitution a living, breathing wall of defence of democracy, not as a flexible instrument of political convenience.

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