



Sonargaon University (SU)
Research Monograph
on
Judicial Power and Basic Structure Doctrine: An
Appraisal from the Perspective of Bangladesh Constitution

Submitted To
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Declaration

I am **Mst. Yesmin Akter LL.B.1802014002** a student of Department of Law, hereby solemnly declare that, this Research Monograph has been prepared and submitted by me. And the Research Monograph has not been submitted anywhere earlier. I also affirm that this research paper does not breach any copyright provisions prevailing in Bangladesh.

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Date: 19-05-2022

Preface

I am grateful to benevolent almighty, who has been given me enough ability to let me complete this Research Monograph successfully.

would like to acknowledge my gratitude to **Deedarul Bhuiyan**, Honorable Research Supervisor, for permitting me to take my Research Monograph under her. I also like to express my gratitude to her for her constructive suggestion regarding this Research Monograph.

Lastly I express my thanks to authors, whose writing I have quoted in this Research Monograph.

Mst. Yesmin Akter

Signature

Certification by the Research Advisor

This is to certify that the research Monograph titled "**Judicial Power and Basic Structure Doctrine : An Appraisal From The Perspective of Bangladesh Constitution**" : Bangladesh Perspective" submitted by **Mst. Yesmin Akter LL.B.1802014002** in fulfillment of the requirements for the award of the graduate degree in Law from Sonargaon University, under my active supervision and guidance and that no part of this paper has been submitted anywhere earlier, to the best of my knowledge.

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Letter of transmittal

To,

Deedarul Bhuiyan

Assistant professor & Head of the Department of Law

Sonargaon University, Dhaka.

Subject: Submission of research Monograph titled “**Judicial Power and Basic Structure Doctrine : An Appraisal From The Perspective of Bangladesh Constitution**”

Dear sir,

It is a great pleasure for me to submit the research monograph titled “**Judicial Power and Basic Structure Doctrine : An Appraisal From The Perspective of Bangladesh Constitution**”

"While doing this Dissertation, I have tried my level best to keep the required standard. I hope, this dissertation will fulfill your expectation and make you happy. I hope that you would be kind enough to go through this dissertation for evaluation.

I am always available for any clarification of any part of this dissertation at your convenience.

Thanking you

Mst. Yesmin Akter

LL.B.1802014002

Table of Contents

Chapter I	<ol style="list-style-type: none"> 1. Abstract 2. Introduction 	Page 01
Chapter II	<ol style="list-style-type: none"> 3. The origin and Development of the concept of “Basic Structures” of the constitution in South Asia <ol style="list-style-type: none"> 3.1. Structure or framework of the constitution. 3.2. Bangladesh 3.3. Judicial Power 3.4. Judicial System in Bangladesh 	3-14
Chapter III	<ol style="list-style-type: none"> 4. ANWAR HOSSAIN CHOWDHURY VS. BANGLADESH <ol style="list-style-type: none"> 4.1. Case introduction 4.2. The fact of the case 4.3. Basic Structure of the Constitution is Broken by the Parliament. 4.4. The Judicial decision of this case 4.5. Significance Of The Case To Public Law 	15-18
Chapter IV	<ol style="list-style-type: none"> 5. Type of the basic structure <ol style="list-style-type: none"> 5.1. Basic structure principle in general sense or Numerable sense: 5.2. Structure principle in real or Substantive sense: 5.3. The Basic structure of the constitution of Bangladesh: 	19-20
Chapter V	<ol style="list-style-type: none"> 6. The Supreme Court of Bangladesh <ol style="list-style-type: none"> 6.1. The Subordinate Courts and Tribunals 6.2. The Civil court 6.3. The Criminal court 6.4. Jurisdiction of court 	21-23
Chapter VI	<ol style="list-style-type: none"> 7. Jurisdiction of the Appellate Division <ol style="list-style-type: none"> 7.1. Jurisdiction of the High Court Division <ol style="list-style-type: none"> 7.1.1. Subordinate Court: 	24 - 25

	<p>7.2. 7.2.2. Civil Court: Jurisdiction of Civil Court</p> <p>7.3. Criminal Court:</p> <p>7.4. International Crimes Tribunal-</p>	
Chapter VII	<p>8. Another controversial amendments:</p> <p>8.1. The Fourth Amendment:</p> <p>8.2 judgment of the AD in this case also declared—</p> <p>9. Conclusion</p> <p>10. Reference</p>	25-31

Chapter I

Judicial Power and Basic Structure Doctrine : An Appraisal From The Perspective of Bangladesh Constitution ¹

1. Abstract

Judicial power is the power “of a court to decide and pronounce a judgment and carry it into effect between persons and parties who bring a case before it for decision.” Constitution is the main directive in Bangladesh. The constitution of Bangladesh has the supreme power over all legislation in Bangladesh. It was approved by the Assembly of Bangladesh on November 4, 1972; it was exercised from December 16, 1972². The constitution stands as the most powerful evidence to state Bangladesh as a unitary, independent and Republic, founded on a struggle for national liberation, and that is how we achieve the People’s Republic of Bangladesh. It lays a strong foundation of nationalism, secularity, democracy and socialism as the essential ethics that stands for the Republic and declares the quest of a society that gives its citizens- the rule of law, fundamental civil rights and independence as well as fairness and even handedness, political, economic and social.

Keywords: Judicial power, Basic Structures, Doctrine, Constitution, Bangladesh

2. Introduction

Judicial power is the power “of a court to decide and pronounce a judgment and carry it into effect between persons and parties who bring a case before it for decision.”¹³⁹ It is “the right to determine actual controversies arising between diverse litigants, duly instituted in courts of proper jurisdiction.”¹⁴⁰ The terms “judicial power” and “jurisdiction” are frequently used interchangeably, with “jurisdiction” defined as the power to hear and determine the subject matter in controversy between parties to a suit¹⁴¹ or as the “power to entertain the suit, consider the merits and render a binding decision thereon.” Constitution is the main directive instrument in every democratic country. It gives the various fundamental rights to its citizens and also contains the provisions in relation to state policy. The Constitution of Bangladesh is Supreme over the legislations in Bangladesh. It represents Bangladesh as a democratic

²The constitution of the people Republic of the Bangladesh constitution basic structure part I-,III.

republic nation where all the power is in the hands of Bangladeshi people and characterizes basic political principles of the state and stands for the fundamental rights of citizens. It was approved by the Assembly of Bangladesh on November 4, 1972; it was exercised from December 16, 1972. The constitution stands as the most powerful evidence to state Bangladesh as a unitary, independent and Republic, founded on a struggle for national liberation, and that is how we achieve the People's Republic of Bangladesh. It lays a strong foundation of nationalism, secularity, democracy and socialism as the essential ethics that stands for the Republic and declares the quest of a society that gives its citizens- the rule of law, fundamental civil rights and independence as well as fairness and even handedness, political, economic and social.' Firstly, we have to know that, what the basic structure of the constitution is. This doctrine is not a settled principle of constitutional law. It is a growing principle of Constitutional Jurisprudence. The basic structure doctrine is the judge made doctrine whereby certain features of a constitution are beyond the limit of the powers of amendment of a parliament. This doctrine also applies only to the constitutionality of amendments and not to the ordinary Acts of the parliament which must conform to the entirety of the constitution.

Chapter II

3. The origin and Development of the concept of “Basic Structures” of the constitution in South Asia:

The concept of the basic structure of the constitution can be found in the sub-continent in the case of Pakistan Supreme Court in -FAZLIL QUDER CHOWDHURY Vs. ABDUL HAQUE³. It was held that Franchise and form of government are fundamental features of a constitution. The power conferred upon the presidency by the constitution of Pakistan to remove difficulties does not extend to making an allegation in a fundamental feature of the constitution. The development of the Basic structure of the constitution in INDIAN jurisdiction. The first formal judicial formulation of this doctrine came out in the KESEVANANDA'S CASE⁴. Before the Kesevananda's case the issue of the basic structure came to be applied indirectly in GOLAK NATH'S⁵ case'. In Golak Nath's case the court held that- Parliament had no power to amend fundamental rights as to take away or abridge any of them. C.J Subba Rao said that-Fundamental rights are assigned transcendental place under our constitution. They are kept beyond the reach of parliament.

But this judgment gave rise to acute controversy. It was apprehended that the fundamental rights in the constitution would become static creating hindrances in the way of enactment of socio-economic legislation required to meet the needs of a developing society. To get over this problem, Indian parliament passed the 24th constitution Amendment Act, 1971 which laid down that, the parliament might in the exercise of its constituent power amend any provision of the constitution be it of fundamental rights or of any other one. The validity of 24th constitution Amendment Act, 1971 and the 25th amendment Act which curtailed the power of judicial review was challenged in KESEVANANDA CASE. By majority the court overruling the GOLAK NATH'S case. It was held that-The parliament had the power to amend any or all the provisions of the constitution including those relating to fundamental rights. But this power of amendment of the constitution was subject to certain implied and inherent limitations. Parliament could not amend those provisions of the constitution which affect .

3.1. Structure or framework of the Constitution.

³ FAZLIL QUDER CHOWDHURY Vs. ABDUL HAQUE

⁴ KESEVANANDA'S CASE

⁵ GOLAK NATH'S

The Supreme Court of INDIA also apply the principle of Kesevananda's case in the INDIRA GANDHI Vs. RAJ NARAYAN.⁶ IN the judgment of INDIRA GANDHI case there was involved the question of the validity of the 39th Amendment Act,1975 of the Indian constitution. It took away the power of any court. The Supreme Court to decide any doubts and disputes arising in connection with the election of the Four high officials of the state,that is: President, vice-president, prime minister and the Speaker.

3.2.Bangladesh

The basic structure doctrine was adopted by the Supreme Court of Bangladesh in 1989, by expressly relying on the reasoning in the Kesavananda case, in its ruling on **Anwar Hossain Chowdhary v. Bangladesh (41 DLR 1989 App. Div. 165, 1989 BLD**⁷. However, Bangladesh is the only legal system to introduce this concept through constitutional provisions. Article 7B of the Constitution of Bangladesh Introduced some parts of it as basic provisions of the constitution and referred to some others (which are not properly defined) as basic structure of the constitution and declares all of these as not recognized.

The basic structure doctrine is a common law legal doctrine that the constitution of a sovereign state has certain characteristics that cannot be erased by its legislature. The doctrine is recognized in India, Bangladesh, Malaysia, Pakistan, Kenya, and Uganda. In Kenya, it was noted during the delivering of the judgement for constitution change through the building bridges initiative (BBI). It was developed by the Supreme Court of India in a series of constitutional law cases in the 1960s and 1970s that culminated in **Kesavananda Bharati v. State of Kerala**, where the doctrine was formally adopted. Bangladesh is perhaps the only legal system in the world which recognizes this doctrine with an expressed, written and rigid constitutional manner through Article 7B of its Constitution⁸.

The case of **Anwar Hussain Chowdhury Vs. Bangladesh** commonly known as 8th amendment case is an important judgment in the constitutional history of independent Bangladesh. This is the first decision whereby the Supreme Court of Bangladesh overruled an amendment to the constitution by the parliament. In this case, the supreme court of Bangladesh in a 1989 famous decision case recognized the basic structure doctrine or the idea of 'unconstitutional constitutional amendment' ruling that parliament lacks authority to amend the Constitution in a system that would abolish its basic structure. I The case which

⁶INDIRA GANDHI Vs. RAJ NARAYAN.

⁷ Anwar Hossain Chowdhary v. Bangladesh (41 DLR 1989 App. Div. 165, 1989 BLD

⁸ The Bangladesh constitution Article 7B of its 8th amendment of Constitution.

judicial review is shown in sub article 5 of article 100 is inconsistent with articles 44 and 114. However, Mohammad Moin Uddin and Rakiba Nabi, who said that “While judicial review itself is a debated phenomenon in democratic countries, its use in constitutional amendments adds further complexity to the debate”. ii Because the amending power of the parliament does not extend to that which can change the basic structure of the constitution. This case is in relation to changing six benches of high court division outside of the Dhaka, which is contradictory to Bangladesh constitution. The aim of this paper is to maintain the basic structure of the constitution, which the parliament eliminated through their amendment powers. Nevertheless, this paper will firstly the fact of the case and then will do critical analysis what was the problem in the 8th amendment of independence Bangladesh which goes against public laws.

3.3 Judicial power

The judiciary (also known as the judicial system or court system) is the system of courts that interprets and applies the law in the name of the state.

The judiciary also provides a mechanism for the resolution of disputes.

Under the doctrine of the separation of powers, the judiciary generally does not make law (that is, in a plenary fashion, which is the responsibility of the legislature) or enforce law (which is the responsibility of the executive), but rather interprets law and applies it to the facts of each case.

This branch of the state is often tasked with ensuring equal justice under law.

It usually consists of a court of final appeal (called the "Supreme court" or "Constitutional court"), together with lower courts.

In many jurisdictions the judicial branch has the power to change laws through the process of judicial review.

Courts with judicial review power may annul the laws and rules of the state when it finds them incompatible with a higher norm, such as primary legislation, the provisions of the constitution or international law.

Judges constitute a critical force for interpretation and implementation of a constitution, thus de facto in common law countries creating the body of constitutional law.

In the US during recent decades the judiciary became active in economic issues related with economic rights established by constitution because "economics may provide insight into questions that bear on the proper legal interpretation."

Since many countries with transitional political and economic systems continue treating their constitutions as abstract legal documents disengaged from the economic policy of the state, practice of judicial review of economic acts of executive and legislative branches have begun to grow.

Budget of the judiciary in many transitional and developing countries is almost completely controlled by the executive.

The latter undermines the separation of powers, as it creates a critical financial dependence of the judiciary. The proper national wealth distribution including the government spending on the judiciary is subject of the constitutional economics. It is important to distinguish between the two methods of corruption of the judiciary: the state (through budget planning and various privileges), and the private.

The term "judiciary" is also used to refer collectively to the personnel, such as judges, magistrates and other adjudicators, who form the core of a judiciary (sometimes referred to as a "bench"), as well as the staffs who keep the system running smoothly.

Current Judicial System

The judiciary of Bangladesh currently consists of the apex court and the subordinate courts. The apex court is known as the Supreme Court of Bangladesh, which comprises of the Appellate Division and the High Court Division. There are two sets of subordinate courts which are the civil courts and the criminal courts. There are however, some special courts created by virtue of various special laws such as the small causes court, family court, financial loan court, special tribunal, court of special judge and administrative/administrative appellate tribunal, etc.

Supreme Court of Bangladesh

The Supreme Court of Bangladesh is the highest court of the land which comprises of the Appellate Division and High Court Division, respectively.⁹ It was established under the Constitution of Bangladesh with Chapter I of Part VI of the Constitution dealing with the

⁹The Constitution of Bangladesh, 1972 Art 94 (1)

Supreme Court.¹⁰ It is important to understand that these two Divisions are ‘distinct and separate’ from each other and separate appointments are made for each Division.¹¹ The Supreme Court must always have a Chief Justice, who shall be known as the ‘Chief Justice of Bangladesh’ and the President may appoint to each Division as many judges as he sees fit.¹² Upon the advice of the Prime Minister, the President fixes the number of judges of the Supreme Court.¹³ The Supreme Court shall have its permanent seat at the capital (i.e. Dhaka); however, sessions of the High Court Division may be held at such other place or places as the Chief Justice may appoint from time to time, subject to the approval of the President.[38] As of December 2019, the Appellate Division has 7 judges including the Chief Justice and the High Court Division consists of 101 judges.[39]

Appellate Division

The jurisdiction of the Appellate Division of the Supreme Court of Bangladesh is to ‘hear and determine appeals’ against the ‘judgments, decrees, orders or sentences’ passed by the High Court Division. They has the power in any cause or matter pending before it, to issue directions, orders, decrees and writs as may be necessary for doing complete justice. It has been empowered to review any judgment pronounced or order made by them. They also has an advisory jurisdiction, where it appears to the President that a ‘question of law’ has arisen or is likely to arise, the nature of which is of such public importance that it is ‘expedient’ to take the opinion of the Supreme Court, he may refer it to the Appellate Division that ‘after such hearing as it thinks fit, reports its opinion thereon to the President’.

High Court Division

The jurisdiction of the High Court Division can be divided in four major heads – Civil Jurisdiction, Criminal Jurisdiction, Constitutional or Writ Jurisdiction and Special Statutory Jurisdiction, respectively.¹⁴ By virtue of the special original jurisdiction, the High Court Division has the authority to enforce fundamental rights of the citizens and has been empowered to issue certain orders or directions in the nature of writs of prohibition, mandamus, certiorari, habeas corpus and quo warranto. They exercise special and statutory

¹⁰The Constitution of Bangladesh, 1972 Part VI

¹¹Supra note 2, 74

¹²The Constitution of Bangladesh, 1972 Art 94 (2)

¹³M Jashim Ali Chowdhury, An Introduction to the Constitutional Law of Bangladesh (Book Zone Publication, 3rd ed, 2017) 439

¹⁴The Constitution of Bangladesh, 1972 Art 101

original jurisdiction, appellate jurisdiction, revisional jurisdiction, admiralty jurisdiction and miscellaneous jurisdiction under several other laws.

Subordinate Courts

There are various subordinate courts and tribunals which have civil, criminal and special jurisdiction below the High Court Division of the Supreme Court of Bangladesh. It is important to note that after the landmark decision of the Masdar Hossain case¹⁵ and the subsequent amendment of the Code of Criminal Procedure 'the lower judiciary was separated from the clutches of the executive'. However, the term 'executive magistrate' still appears in the Code of Criminal Procedure it has been argued that as their function is only administrative in nature, they are no longer given any judicial functions. Another imperative issue in this regard is that the executive magistrates were still vested with some judicial powers by virtue of the Mobile Court Act 2009. The High Court Division has very recently declared it unconstitutional, mentioning that the Act is 'directly in conflict with the spirit of the judgment' in the Masdar Hossain case. However, the Appellate Division has stayed the order of the High Court Division and the matter is pending before the Appellate Division.

After 2007, the laws for the lower judiciary in regards to the separation of judiciary and the newly formed Judicial Service Commission are Bangladesh Judicial Service Commission Rules 2007; Bangladesh Judicial Service Commission (Pay-Commission) Rules 2007; Bangladesh Judicial Service (Service, Constitution, Appointment to the Service, Suspension, Dismissal and Removal) Rules 2007; Bangladesh Judicial Service Commission (Posting, Promotion, Grant of Leave, Control, Discipline and other Condition of Service) Rules 2007; Code of Criminal Procedure (Amendment) Act 2009; and the Mobile Court Act 2009.¹⁶

The current nature of the courts and structure of the subordinate judicial system, with reference to the above mentioned laws that are currently predominant in the country are outlined below.

Ordinary Courts of Civil Jurisdiction

Suits of civil nature are generally adjudicated in the civil courts. These courts are concerned with deciding rights disputed between a subject and the state or between one individual and

¹⁵Secretary, Ministry of Finance vs. Masdar Hossain & Ors 25 DLR (AD) 82

¹⁶Supra note 2, 76

the other. The civil courts subordinate to the High Court Division, according to section 3 of the Civil Courts Act 1887, are classified as the Court of the District Judge, the Court of the Additional District Judge, the Court of the Joint District Judge, the Court of the Senior Assistant Judge and the Court of the Assistant Judge.¹⁷

Court of District Judge

The Court of District Judge is the principal court that exercises the administrative control over all civil courts at the district level, that is, within the local limit of its jurisdiction. The Court of District Judge has original, appellate and revisional jurisdiction, in respect of all suits within the district.¹⁸

However, it does not usually try original suits but by virtue of Special Acts, it is the only competent court to try few cases relating to insolvency, guardianship, probation, administration, etc.¹⁹

In the appellate jurisdiction, a District Judge hears and determines some appeals against the judgments, decrees and orders of the Joint District Judge where the original suit shall not exceed the limit of Five core Taka. The District Judge, however, is empowered to hear and determine appeals against all judgments and orders of both the Senior Assistant Judges and Assistant Judges within the limit.²⁰ The limit was increased to Fifty Million Taka in the year 2017 which was stayed by the High Court Division. As a result, the limitation has remained to Five Hundred Thousand Taka till the disposal of this matter before the court.

The District Judge has the revisional jurisdiction to any decision of his subordinate courts where there is no scope of appeal, and that the subordinate courts have committed an error of law. The District Judge has the authority to call for the records and make order as he thinks fit in this regard.

Court of Additional District Judge

In spite of receiving appeal from the inferior courts, the jurisdiction of the Court of Additional District Judge is similar to that of the Court of District Judge. Generally, Additional District Judge tries cases that are transferred to him from the Court of District

¹⁷Civil Courts Act, 1887 s3 (As amended by the Civil Courts (Amendment) Act, 20017)

¹⁸Supra note 2, 77

¹⁹Ibid

²⁰Civil Courts Act 1887 s21 (2)

Judge. The Additional District Judge exercises the same power as the District Judge in discharging such functions.²¹

Court of Joint District Judge

The Court of Joint District Judge exercise both original and appellate jurisdiction. Where the limits of the pecuniary jurisdiction of Court of Senior Assistant Judges are crossed, such cases are filed in the Court of Joint District Judge. The Joint District Judge's jurisdiction extends to all original suits without any pecuniary limit.²² The Joint District Judge is empowered to hear and determine appeals against judgments, decrees or orders of the Senior Assistant Judges and Assistant Judges when such appeals are transferred to them by the District Judge.

Court of Senior Assistant Judge

The court of Senior Assistant Judge is a court of original jurisdiction and revisional jurisdiction. The cases are filed in the Court of Senior Assistant Judge when the pecuniary jurisdiction of Assistant Judge exceeds. The maximum limit of pecuniary jurisdiction of Senior Assistant Judge is Twenty five lakh Taka. The pecuniary jurisdiction of this court was amended in 2017 to Twenty Five Hundred Thousand, which has been stayed by the High Court Division.] This has resulted to keep the limitation to Four Hundred Thousand Taka till the matter is resolved

Court of Assistant Judge

The Court of Assistant Judge is the lowest grade of the subordinate civil courts and has the original jurisdiction and Revisional jurisdiction. Civil suits are generally filed in the Court of Assistant Judge unless barred by the pecuniary jurisdiction. The pecuniary jurisdiction extends to the suits of which value does not exceed to fifteen lakh Taka. The amendment in 2017 made the pecuniary limit to Fifteen lakh Taka that was stayed by the High Court Division. AS such the limitation is Fifteen lakh Taka till the matter is resolved. The Court of Assistant Judge has recently been authorized with revisional powers in petty civil matters coming from village courts and dispute resolution boards.

Ordinary Courts of Criminal Jurisdiction

²¹Civil Courts Act 1887 s8

²²Civil Courts Act 1887 s18

The criminal cases are tried in the criminal courts and there are two types of criminal courts – the Court of Sessions and the Magistrate’s Court.

Courts of Sessions

There are 64 session divisions having a Court of Sessions in every district for administering the criminal justice system of Bangladesh’s Court of Sessions is presided by a Sessions Judge, Additional Sessions Judge and Joint Sessions Judge.²³ In the Metropolitan area, the Court of Sessions is called the Metropolitan Court of Sessions. Practically, the appointment of the Sessions Judge, Additional Sessions Judge and Joint Sessions Judge are made to the persons who act as the District Judge, Additional District Judge and Joint District Judge of the civil courts.

The Sessions Judge

In the Court of Sessions, the Sessions Judge can exercise four types of jurisdiction – original, appellate, revisional and transferred jurisdictions. For criminal cases, the Sessions Judge is the principal Judicial Officer in the district concerned.²⁴ Generally, the Sessions Judge has the power to impose full range of penalties subject to law, including the death penalty. However, when a penalty of death is passed by a Sessions Judge, it shall be confirmed by the High Court Division.

The Additional Sessions Judge

The power and role of the Additional Sessions Judge is similar to the power of the Sessions Judge. However, it is important to note that the Assistant Sessions Judges are not empowered by themselves to hear cases or receive or admit appeal or revision from an inferior court. They can only try cases or hear appeal or revise only which the government directs them or if the case had been transferred or given over to them by the Court of Sessions.

The Joint Sessions Judge

²³Code of Criminal Procedure 1898, s 9 (1), 9 (3)

²⁴Supra note 2, 80

The Joint Sessions Judge only has the original jurisdiction. They can exercise their original jurisdiction by passing any sentence authorized by law but not a sentence of death or imprisonment where the term exceeds ten years.

Court of Magistrates

According to the Code of Criminal Procedure 1898, there are two classes of magistrates – Executive Magistrates and Judicial Magistrates.²⁵ Executive Magistrates are part of the Executive organ and Judicial Magistrates are part of the Judiciary.

There are four types of Judicial Magistrates, which are Chief Metropolitan Magistrate in Metropolitan area and Chief Judicial Magistrate outside Metropolitan area; Magistrate of the First Class who shall be known as a Metropolitan Magistrate in the Metropolitan Area; Second Class Magistrate; and Third Class Magistrate.

Courts of Chief Metropolitan Magistrate and Chief Judicial Magistrate

The Chief Judicial Magistrate is the first of the four kinds of Judicial Magistrate specified under section 6 (3) of the Code of Criminal Procedure 1898, and is the equivalent of the Chief Metropolitan Magistrate in the metropolitan area, mentioned in the same provision.

This provision also explains that Chief Judicial Magistrate and Chief Metropolitan Magistrate shall include ‘Additional Chief Judicial Magistrate’ and ‘Additional Chief Metropolitan Magistrate’.[84] It means that the Additional Chief Judicial Magistrate and the Additional Chief Metropolitan Magistrate are empowered to sentence as same as the Chief Judicial Magistrate and Chief Metropolitan Magistrate.

They are empowered to try all offences not punishable with death. It is also important to note that a Magistrate specially empowered under section 29C of the Code of Criminal Procedure 1898 are authorized by law to pass any sentence, but not a sentence of death or imprisonment for a term that exceeds seven years. The Chief Judicial Magistrate hears the appeal from a sentence passed by any Magistrate of Second Class and Third Class.

²⁵Code of Criminal Procedure 1898, s 6 (2)

Courts of Metropolitan Magistrates and Magistrates of the First Class

The Metropolitan Magistrate is the Magistrate in the Metropolitan area who is equivalent to the First Class Magistrate outside Metropolitan area. They are empowered to impose imprisonment for a term not exceeding five years, solitary confinement as authorized by law and fine not exceeding ten thousand taka.²⁶ The appeals from any sentence passed by the Magistrates of First Class lies to the Court of Sessions.²⁷

Courts of Magistrates of the Second Class

There is generally no magistrate of such kind in the Metropolitan area and they are subordinate to the Court of Chief Judicial Magistrate. The Magistrates of the Second Class are empowered to impose imprisonment for a term not exceeding three years, solitary confinement as authorized by law and a fine not exceeding five thousand taka. The appeal from a sentence passed by the court of Magistrates of the Second Class lies to the Chief Judicial Magistrate.²⁸

Courts of Magistrates of the Third Class

The Magistrate of Third Class is subordinate to the Court of Chief Judicial Magistrate and there is no Magistrate of Third Class in the Metropolitan area. The Magistrates of the Third Class are empowered to impose imprisonment for a term not exceeding two years and a fine not exceeding two thousand taka.²⁹ The appeal from a sentence passed by the court of Magistrates of the Third Class lies to the Court of Chief Judicial Magistrate.³⁰

Courts and Tribunals of Special Jurisdiction

There are a number of courts and tribunals of special jurisdiction apart from ordinary courts established by different laws. Some of these special courts or tribunals are the Small Causes Court, the Family Court, the Financial Loan Court, Special Tribunal, Court of Special Judge, Administrative Tribunal/Administrative Appellate Tribunal, Labour Court, Labour Appellate Tribunal, Dispute Resolution Board, Village Court, Juvenile Court, and etc. In the year 2009, the International Crimes Tribunal was set up to prosecute the suspects of the war crimes committed in the genocide during the Bangladesh Liberation War.

²⁶ Code of Criminal Procedure 1898, s 32 (1) (a)

²⁷ Code of Criminal Procedure 1898, s 408

²⁸ Code of Criminal Procedure 1898, s 407

²⁹ Code of Criminal Procedure 1898, 32 (1) ©

³⁰ Code of Criminal Procedure 1898, s 407

Chapter III

4. ANWAR HOSSAIN CHOWDHURY VS. BANGLADESH, 1989 B.L.D.(SPL)1,41 D.L.R. (AD) 165(1989)

4.1. Case Introduction

The case of **Anwar Hussain Chowdhury vs. Bangladesh** commonly known as 8th amendment case is an important judgment in the constitutional history of independent Bangladesh. This is the first decision whereby the Supreme Court of Bangladesh overruled an amendment to the constitution by the parliament. In this case, the supreme court of Bangladesh in a 1989 famous decision case recognized the basic structure doctrine or the idea of ‘unconstitutional constitutional amendment’ ruling that parliament lacks authority to amend the Constitution in a system that would abolish its basic structure. The case which judicial review is shown in sub-article 5 of article 100 is inconsistent with articles 44 and 114³¹. However, **Mohammad Moin Uddin and Rakiba Nabi**, who said that

“While judicial review itself a debated phenomenon in democratic countries,

Its use in constitutional amendments adds further complexity to the debate”.

Because the amending power of the parliament does not extend to that which can change the basic structure of the constitution. This case is in relation to changing six benches of high court division outside of the Dhaka, which is contradictory to Bangladesh constitution. The aim of this paper is to maintain the basic structure of the constitution, which the parliament eliminated through their amendment powers. Nevertheless, this paper will firstly the fact of the case and then will do critical analysis what was the problem in the 8th amendment of independence Bangladesh which goes against public laws.

4.2. THE FACT OF THE CASE

Bangladesh Parliament amended article 100i of the constitution in 1988 incorporating the provision for six permanent benches of a High Court for, Sylhet, Rangpur, Barisal, Chittagong, Jessore, and Comilla. The fact is that one division of the Supreme Court was in the capital city Dhaka, but at the time of the 8th amendment, the parliament said that one division is not needed in only capital city Dhaka as should be outside of Dhaka also as six divisions. That’s why Anwar Hossain Chowdhury challenges that 8th amendment as viewing inconsistent of

³¹ The constitution of articles 5, 100, 44 & 114

the constitutional article 102i” because the fundamental principle cannot be changed by a political majority.

The Amendment Impaired the Rule of Law and Amending Power is LimitedI agree with the judges that they provide the right decision regarding this case.However,the permission of the amending power is given by the Constitution to Parliament, although there is an implied limitation to amend the constitution

Nonetheless, the alteration was struck down not only on the ground of doubts or irreconcilability of the existing provisions but also on the ground of the amendment’s irreconcilability with the rule of law, as envisioned in the preamble of articles 27,31,32,44,94 to 116A which are mainly incorporated in the constitution. It is noticed that unlimited power is used in the power of government and rule of law is not applied from the consent of the people. Since it is derived from the people it is supreme and absolute but cannot be unconstitutional.

According to B.H. Chowdhury, ‘the power to frame a Constitution is a prime power,where a power to amend a rigid constitution is a derivative power derived from the constitution. Vi Yet, there is no amending power limitation, except article 142³².However,Shahabuddin,J rightly .

4.3.Basic Structure of the Constitution is Broken by the Parliament

I think that the court was in right decision when certain provisions of a constitution are beyond the limit of the powers of amendment of a parliament as breaking the basic structure.xi With that, the amended sub-article (5) of 100 has disturbed the organizational stability that was cautiously initiated in Part VI of the Bangladesh constitution. The modification of this Bangladesh constitution has unswervingly violated article 44xii, 102 and disrupted Article 94. However, as I view it goes against the republic of the people of Bangladesh constitution and breaks the elementary building of the constitution.

The best example is in the case ofwoman Rao vs. Union of India 1980xii whereas the parliament cannot alter the constitution to abolish its basic features is again repeated and then applied by the Supreme Court. Similarly, in the case of **Golak Nath Vs. The state of Punjab**³³case, it is decided that parliament has no power to amend the fundamental right to

³²The constitution of article 142

³³Golak Nath Vs. The state of Punjab

take away any of them. My view is here that the basic structure is not amendable like human rights law when Dr. Kamal Hossain remarked that

“Basic structures of the Constitution mean structural pillars on which the Constitution rests and that if these structural pillars are demolished the entire constitutional framework will crumble.” It is also noticed that the basic structure is not applied in the acts of parliament. So, how the parliament wants to change the structural pillar of the constitution, the question remains here?

Nevertheless, article 100 is void because it discusses the power of the executive to describe the territorial bounds of the permanent benches which is alien to the basic structure of the Supreme Court of Bangladesh. If the parliament does this one, the judicial power is broken.

As my estimation, the doctrine of bar to variation of the basic structure is an effective guarantee against frequent alterations of the Constitution in sectarian or party interest in countries where democracy is not given any chance to develop, although the Constitution does not cover any straight provision regarding the basic structure as a theory of basic construction ultimately restricts absolute amending power.^{xv} But, Badrul Haider Chowdhury, J provided clear and a long list of ‘unique features’ which are 21 in number which cannot be desecrated. There is a case of **Hamidul Haque Chowdhury vs. Bangladesh, (1982) 34 DLR.**³⁴ **Xvi** In this case, the court decides that the basic and vital structures of the constitution are destroyed and altered, but do not declare the amendment to be invalid. From my sight, the real number of the basic structure is ambiguous, due to the absence of clear judicial authority in this regard. However, this basic structure is seriously affected in India subcontinent countries like Bangladesh.^{xvii} It is submitted that the refusal to declare the invalidity of the amendment is wrong. High court division loses its unique existence charisma as well as.

4.4. The Judicial Decision Of This Case

A division bench of high court division summarily dismissed the two petitions brought by the petitioners; upon an application to the appellate court, leave was granted for an appeal. The appeal court after considering the case held that the power of amendment of the constitution under article 142 is limited power and conflicts with the concept of the supremacy of the constitution contained in article 7. The court further held that article 7 among others, are basic features of the constitution and therefore cannot be amended and declared the

³⁴Hamidul Haque Chowdhury vs. Bangladesh, (1982) 34 DLR

amendment made by the parliament as ultra vires.^{xviii} According to Justice M.H. Rahman, J, in deciding the constitutionality of the amendment, recourse should be made in the preamble. He observed that the constitution has an entrenched provision which cannot be amended by the Parliament alone.^{xix} On the contrary, the government cannot use arbitrary power as the court decision. However, the constitutionality of this amendment was challenged over the judiciary system in the above case popularly referred to as the 8th amendment.

4.5. Significance Of The Case To Public Law

The legitimacy of a law is verified by the touchstone of the Constitution, whereas such legitimacy is inherent and as such it is unchangeable. At trial, the legitimacy of any amendment article 7 is the touchstone in this case and thus no article is unamended especially which is inconsistent the constitution. The parliament cannot use the rule of law over the judiciary body because the constitution is not ordinary legislation. It's a basic structure how a country is governed and how it reflects history, ethos, and aspirations of people of a country.^{xxi} An Open Access Journal from The Law Brigade (Publishing) 138 In this case, the basic principles are broken which must be preserved according to the Bangladesh constitution.^{xxii} As there exists an unsatisfactory relationship of power between the state and individuals and then public law is particularly important because it provides checks and balances. This means that the area of law guarantees that the government does not abuse its power over individuals as against public law^{xxiii} and they use their power in a fair and proper method. On the other hand, a constitution is the body of fundamental doctrines and rules of a nation which a constitution establishes the basis for relations between citizens and governmental bodies and all those who are vested with public authority. It guards the rights of the people and clarifies their commitments when it expressed what their powers are, and how they may use their powers. It sets the rights of the people, how Parliament and the other legislatures work, how the national, provincial executives and courts work. The Constitution is the supreme law in Bangladesh and constitutional democracy. That means that the Constitution is the highest law of the land, but parliament cannot pass a law which is contrary to public law and the constitution. Finally, no person, not even the president, can get-up-and-go against it. The courts and the government must also make sure what they do is constitutional. conclusion Last but not least, it is understandable that judicial independence should be protected from Parliament.^{xxiv} If the judiciary is controlled by the executive body, the rule of law must immune to their impacts. I think that parliament can do a modification of the error of commission or omission or alters the system without fundamentally changing its

nature because it operates within the theoretical parameters of the existing constitution. Additionally, People can get a brief instance of constitutional supremacy through this historical decision Constitutional amendment. The yardstick to justify a constitutional modification is not only a basic structure but also public interest according to the Bangladesh constitution. However, the supreme court of Bangladesh faces some real and convincing challenges in this case relating to it's.

Chapter IV

5.Types of Basic Structure:

On the basis of treatment given by the Judges over “Basic Structure” principle in Bangladesh. It would be appropriate to use this doctrine in Two sense⁶.

- i) Basic Structure principle in general sense or Numerable sense and
- ii) Basic Structure principle in real or Substantive sense.

5.1.Basic structure principle in general sense or Numerable sense:

Most of the judges so far have treated this doctrine from Numerative point of view. Some Judges says that there are 21 basic structures, some are says for 6 and some are says for 3.No unanimity can be found among the judges as to the substance of this doctrine. If this doctrine is meant from this general or numerable sense then there are some dangers:

Firstly, The judiciary may be applying any provision of the basic structure principle, reduce or narrow down the justifiable scope of amending power of the parliament. The absolute judicial dictation, the whim of judiciary may take the place of constitutional limit in respect of amending power of the constitution. Secondly, The judiciary may, by applying any provision under the basic feature principle, reduce or narrow down the justifiable scope of amending power of the parliament. Thirdly, In some cases the judgment of the court will be reduced into nullity, reducing the dignity and institutional value of the judiciary. It has been seen in the judgment of the case of **BADRUL HAIDER CHOWDHURY Vs. BANGLADESH**³⁵ in the eighth amendment case.

5.2.Structure principle in real or Substantive sense:

In real or substantive sense, the doctrine of the basic structure means those fundamental Principles and objectives of the constitution which are its structural pillars. On which the whole edifice of the constitution is erected. If these principles are taken away or destroyed,the constitution will lose its original and inherent identity and character. If it is found that a constitution amendment is made by parliament and it has affected or likely to destroy any of the basic features of the constitution, then the amendment should be declared unconstitutional and void.

³⁵Badrul Haider Chowdhury vs. Bangladesh

5.3. The Basic structure of the constitution of Bangladesh:

The constitution shall be the supreme law of the land for all times. Nothing can be done which brings about a violation of the constitution and its basic features. That means the constitution of Bangladesh is the embodiment of the will of the republic of Bangladesh which is mentioned in Article 7 of the Bangladesh constitution. In the case of ANWAR HOSSAIN Vs. Bangladesh, this is also known as the eighth amendment case. Here Article 7 prevailed. This is the first case whereby the Supreme Court of Bangladesh struck down an amendment to the constitution made by the parliament. By two writ petitions the amended article 100 and the notification of the chief justice were challenged *Ultra vires*. A division bench of the High Court Division (HCD) dismissed the petition summarily. Leave was granted by the Appellate Division (AD) by a majority of 3 to 1 striking down the 8th amendment. The principle argument of the judgment is that the constitution stands on certain fundamental principles which are the structural pillars. These basic features are:³⁶

- 1). Supremacy of the constitution which states in article 7 of the constitution.
- 2). Democracy which states in the preamble.
- 3) Republican government which states in the article 1 of the constitution.
- 4) Independence of judiciary which states in article 22 of the constitution.
- 5) Unitary state which is mentioned in article 9 of the constitution.
- 6). Separation of powers which is mentioned in article 22 of the constitution.
- 7) Fundamental rights which is mentioned in from article 26 to 47A of the constitution.

These structural pillars of the constitution stand beyond any change by amendatory process. If these principles are curtailed more than one permanent seat of the Supreme court by exercising the amending power, then it destroys the unitary character of the judiciary. The amended article 100 is *ultra vires* because it has destroyed the essential limb of the judiciary by setting up rival courts to the HCD in the name of permanent Benches conferring full jurisdiction, power and function of the HCD. The amended article 100 is inconsistent with article 44, 94, 101, and 102. It also reduced article 108 to article 111 of the Bangladesh Constitution. It directly violated article 114, this amendment is illegal because there is no provision of transfer which is an essential requisite for dispensation of justice.

³⁶The constitution of articles 1, 9, 22 and 26 to 47A.

Chapter V

6. The Supreme Court of Bangladesh

The Judiciary of Bangladesh consists of a Supreme Court, subordinate courts and tribunals. The Supreme Court of Bangladesh is comprised of the Appellate Division and the High Court Division. It is the apex court of the country; other courts and tribunals are subordinate to it.

The Appellate Division shall have jurisdiction³⁷ to hear and determine appeals from judgments, decrees, orders or sentences of the High Court Division. It has rule making power for regulating the practice and procedure of each division and of any court subordinate to it.

The High Court Division³⁸, though a division of the Supreme Court, is, for all practical purposes, an independent court with its powers, functions and jurisdictions well defined and determined under the Constitution and different laws. It has both appellate as well as original jurisdiction. It hears appeals from orders, decrees, and judgments of subordinate courts and tribunals. It has original jurisdiction to hear Writ Applications under article 102 of the Constitution, which is known as extra ordinary constitutional jurisdiction. It has further original jurisdiction, inter alia, in respect to company and admiralty matters under statutes. The High Court Division, in special circumstances, also has powers and jurisdiction to hear and dispose of cases as the court of first instance under article 110 of the Constitution. The High Court Division shall have superintendence and control over all courts and tribunals subordinate to it.

6.1. The Subordinate Courts and Tribunals

There are a wide variety of subordinate courts and tribunals. Such courts and tribunals are the products of statutes. Their powers, functions and jurisdictions are also determined by the respective statutes. These are the basic courts in the system of the judiciary of Bangladesh. The major bulk of the cases, both civil and criminal, are tried and heard in such courts and tribunals. Certain tribunals are termed as administrative tribunals. Such courts and tribunals are spread all over the country at the district levels. The subordinate courts in Bangladesh can be divided into two broad classes, namely: civil courts and criminal courts.

³⁷The constitution of article 103

³⁸The constitution of articles 101& 102

6.2. Civil Courts

The civil court system is more popularly known as the subordinate judiciary. The civil courts are created under the Civil Courts Act of 1887³⁹. The Act provides for five tiers of civil courts in a district, which bottom-up are:

- i) Court of assistant judge;
- ii) Court of senior assistant judge;
- iii) Court of joint district judge;
- iv) Court of additional district judge; and,
- v) Court of district judge.

The first three are courts of first instance with powers, functions and jurisdictions in respect to subject matter, territory and pecuniary value determined by or under statutes. The remaining two are generally courts of appeal in civil matters.

6.3. Criminal Courts

Courts of Session

Courts of Metropolitan Session Judges

Special Courts/ Tribunals

Courts of Metropolitan Magistrate

Courts of Magistrate

6.4. Jurisdiction of Court

Every court of Bangladesh possesses jurisdiction over matters only to the extent granted to it by the Constitution of Bangladesh or legislation of this country. The Superior Court of Justice in Bangladesh is named as Supreme Court of Bangladesh followed by a hierarchy of civil and criminal court at the district level. Jurisdiction of all courts of Bangladesh is discussed below-
Supreme Court of Bangladesh
In exercise of powers conferred under Article 94 of the constitution the Apex Court of the country was established which consists court.

³⁹Chapter II section 3 the Civil Courts Act of 1887.

Chapter VI

7. Jurisdiction of the Appellate Division –

According to article 103 of the Constitution of Bangladesh jurisdiction of Appellate division are as follows-

The Appellate Division have jurisdiction to hear and determine appeals from judgments, decrees, orders or sentences of the High Court Division.

An appeal to the Appellate Division from a judgment, decree, order or sentence of the High Court Division shall lie as of right where the High Court Division-An Appeal from the judgments, decrees, orders or sentences of the High Court Division in a case to which clause (2) does not apply shall lie only if the Appellate Division grants leave to appeal. Parliament may by law declare that the provisions of this article shall apply in relation to any other court or tribunal as they apply in relation to the High Court Division.

7.1. Jurisdiction of the High Court Division-

The High Court Division has original, appellate and other jurisdictions, powers and functions as are conferred by the Constitution and other laws-

7.4.1. Subordinate Court:

7.4.2. Civil Court: Jurisdiction of Civil Court-

1. District Judge Court- Revisional jurisdiction⁴⁰, appeal of civil matters valuation of which is up to five crore taka, Probate matters etc.
2. Additional District Judge Court- Try cases transferred to this Court by District Judge.
3. Joint District Judge Court- i) Original Jurisdiction- hearing of civil suit of which valuation is from twenty five lac taka to unlimited,

i) Try succession matter,

ii) Revision- which case is transferred to this Court by District Judge,

iii) Appeal –which case is transferred to this Court by District judge.

4. Senior Assistant Judge Court⁴¹- try suits of civil nature of which valuation is fifteen lac to twenty five lac taka.

⁴⁰Sections 18, the civil courts Act, 1887.

⁴¹Section 19 the civil courts Act, 1887.

5. Assistant Judge Court- to try civil suits of which pecuniary jurisdiction is below fifteen lac taka.
6. Small Causes Court– A Small Causes Court shall have jurisdiction to dispose of suits of a civil nature of which the value does not exceed twenty five thousand taka.
7. Family Courts –This court try suits which are of family matters i.e.- dissolution of marriage, dower, custody and guardianship of children, restitution of conjugal rights and maintenance relating to matters.

7.3. Criminal Court:

(i) Court of Sessions:⁴² There shall be in every division the following Sessions Court

- a) Sessions Judge
- b) Additional Sessions Judge
- c) Assistant Sessions Judge

(ii)For metropolitan area- In every metropolitan area there shall be the Sessions Court

- a) Metropolitan Sessions Judge
- b) Additional Metropolitan Sessions Judge
- c) Joint Metropolitan Sessions Judge

(iii) Magistrate Court: For Metropolitan Area- Hierarchy of Magistrate Court for Metropolitan area are discussed below-All over the country other than Metropolitan Areas-

- (a) Chief Judicial Magistrate,
- (b) Additional Chief Judicial Magistrate,
- (c) Magistrate of the first Class,
- (d) Magistrate of the Second Class
- (e) Magistrate of the Third Class.

⁴² Section 6 substituted by section 5 of the code of the criminal procedure amendment Act,2009 (Act, No XXXII of 2009)

Jurisdiction of Criminal Court:

Tribunals and Special Court.

International Crimes Tribunal-

Tribunal was constituted for the purpose of trial of offences such as-

- (a) Crime against Humanity,
- (b) Crime against peace,
- (c) Genocide,
- (d) war crime,
- (e) Violation of any humanitarian rules applicable in armed conflicts laid down in the Geneva conventions, 1949,
- (f) Any other crime under the International Law.

Chapter VII

8. Another controversial amendments:

8.1. The Fourth Amendment:

This amendment was controversial because it fundamentally changed the nature and character of the constitution. There has no visible discussion or debate public resentment on Fourth amendment. After the independence of Bangladesh, it started a parliamentary form of democracy, but after the 4th amendment of the constitution it's stopped and introduced one party political system with an "all powers fall head of the state is that means to the President" in early 1975, by way of a scandalous amendment to the constitution. Though the 4th amendment Act,1975,one party dictatorial system was substituted for a responsible parliamentary system which is also known as "BAKSAL" system.

Major changes were brought into the constitution by this amendment. This 4th amendment Act,1975 amended the articles 11,66,67,72,74,76,80,88,95,98,109, 116,117,119,122,123,141A,147,148 of the constitution of Bangladesh⁴³. Substituted articles are-44,70,102,115,and 124 of the constitution. Altered the third and fourth schedule of the constitution. Extended the term of the first Sangshad. By this amendment Act,1975,it was made special provision relating to the office of the president and its incumbent and also inserted article 73A in the constitution which states that Every minister(Prime Minister and Deputy Minister) shall have the right to speak or vote in the proceedings of the Parliament only in their own ministry Unless he is a member of parliament. So, the ultimate power became on the hand of the President. Major fundamental changes were brought into the constitution by this amendment. These are:

In this amendment, there was neither separation of power nor any way for maintaining the check and balance between the three organs(Executive, Legislative and Judiciary) of the state, which is the violation of the article 22 of the constitution of Bangladesh. According to a eminent jurist Mahmudul Islam—"The parliamentary form of government was replaced by a form of government which was a apology a presidential form as the normal checks and balance of the presidential form of government were not incorporated".

⁴³This 4th amendment Act,1975 amended the articles 11,66,67,72,74,76,80,88,95,98,109, 116,117,119,122,123,141A,147,148 of the constitution of Bangladesh.

In a presidential form of government a president is directly elected by the voters. But technically Sheikh Mujibur Rahman was made a system to obtain his position as a president for an unlimited period by inserting a special provision in the 4th schedule

(b) which states-“Bangabandhu Sheikh Mujibur Rahman.....shall, as from such commencement hold office as president to Bangladesh as if elected to that office under the constitution as amended by this Act.”So, I think it is the violation of the preamble of the constitution that means the democracy. In the preamble of the Bangladesh constitution clearly mention that the Democracy is the main ideal of the constitution. But after the 4th amendment The Democracy system was destroyed because the President became the sovereign body of the state.

A one party political system has been introduced instead of multy party political system. A new part “PART VIA” with new articles inserted for this purpose. Under new arrangement,the creation of the National party was left with the subjective satisfaction of the president. It was provided that in order to give full effect to any of the fundamental principles of state policy set out in part-2 of the constitution, the president could direct that there shall be only one political party in the state. Once the president made an order for one party under article 117A which states-all political parties of the state would stand dissolved. The president would take all necessary steps for the formation of National party. In accordance with article 117A of the constitution the president was declared the national party for the country under the name of “BAKSAL” on 24thFebruary 1975. As a result all existing political parties instantly stood dissolved. Bangladesh became the one party political state.

The judiciary lost its absolute independence. According to article 95,the appointment procedure of the Apex court, the chief justice would be appointed by the president and the other judges would be appointed after the consultation with chief justice. But in 4th Amendment Act-the word consultation with chief justice was deleted. In relation to security of tenure according to the article 96(2) of the original constitution –“a judge could not be removed unless parliament passed a resolution supported by majority of not less than two third of the total number of MPs on the ground of proved misbehavior or incapacity. But in 4th amendment Act deleted this provision of impeachment through parliament. Instead that the president could remove a judge including the chief justice simply by an order on the ground of misbehavior. Such misbehavior need not to be proved. It was just president’s desire and wish. Other judges of the supreme court, he or she is not bound to act on advice of the

prime minister. There is no constitutional obligation to consult with the chief justice. So ultimately prime minister as the chief Executive of Bangladesh exercise the crucial role in appointing the judges of the Supreme court. Article 94 of the constitution demands independence of the supreme court judges .But in article 116A of the constitution enumerates that the judicial officers including the magistrates have been declared to be independent in the exercise of their judicial functions.

Besides this under article 115 and 1167 of the Bangladesh Constitution states that-the president makes the appointment and control of judges in the judicial service or as magistrates exercising the judicial duties which is conflicting each other. But finally the judiciary is now separated from the Executive by the well known case of -- MAZDER HOSSAIN CASE⁴⁴. In 1995 by a writ petition number 2424, Mazder Hossain along with 441 judicial officer who were judges in different civil court alleged that--a) Inclusion of judicial service in the name of BCS(Judicial) under the Bangladesh civil service order 1980 is ultra vires the constitution. b)Judges of the subordinate judiciary has already been separated by the constitution. Only the rules under article 115 of the constitution, if necessary, are required to be made for giving full effect to this separation of judiciary.

The court directed its historic judgment with 12 directives points on 7th may 1997.On an extensive examination of the constitutional provisions relating to the Subordinate court (article 114 to 116A) and services of Bangladesh (Article 133 to 136). The AD held that "Judicial service is fundamentally and structurally distinct and separate service from the civil Executive and Administrative service of the Republic with which the judicial service can not be placed on par on any account and that it can not be amalgated, abolished, replaced, mixed up and tied together with civil Executive and Administrative service(para 76)'It also directed that, the government for making separate rules relating to posting, promotion ,grant, leave, discipline, pay,allowance,pension and other terms and conditions of the service consistent with article 116 and 116A of the Constitution.⁴⁵

8.2Judgment of the AD in this case also declared--

The judicial service is a service of the Republic within the meaning of the article 152(1) of the constitution. Under article 133,law or rules or Executive orders having the face of rules to

⁴⁴ MAZDER HOSSAIN CASE. In 1995 by a writ petition number 2424,

⁴⁵ Article 116 and 116A of the Constitution.

posting, promotion, grant, leave, discipline, pay, allowance, pension and other terms and Conditions of the service consistent with article 116 and 116A of the Constitution, as interpreted by the court, be enacted or formed or made separately for the judicial service and magistrates exercising judicial functions keeping in view of the constitutional status of the said service.

When court also declared that to establish a separate judicial service commission. Also declared that in exercising the control of persons employed in the judicial service and magistrates exercising judicial functions under article 116 the views and opinion of the Supreme Court shall have primacy over those Executive.

Fifteenth Amendment:

In the 15th amendment of the constitution of Bangladesh there are revolutionary changes in the constitution. This amendment abolished the caretaker government system and Elections to be held under incumbent cabinet. This is not necessary for a Democratic country I think. But this is not the proper time for amending this provision. Because the opposition political parties would not obey this amendment. The reason is that the political parties in Bangladesh have no minimum level of respect and belief to each other.

Islam as State religion and 'Bismillah-Ar-Rahman-Ar-Rahim'⁴⁶ retained above the preamble. But Removal of 'Absolute Faith and Trust in Allah' from the constitution. And Revival of Article 12 to restore Secularism and freedom of religion though the State religion is "ISLAM" and Bismillah-Ar-Rahman-Ar-Rahim' retained in the Preamble. So how can it be possible? This is just politics to win in political game by the political parties.

It denies recognizing the indigenous people, will be termed as tribal and ethnic minorities.

The people of Bangladesh shall be known as "Bengalese" as a nation and citizens of Bangladesh shall be known as "Bangladeshis". But argument is that why we are known as "Bengalese" as a nation? Why the tribals are not known as their own status? Tribals in Bangladesh should be known in their own identity that is "tribal" because they are not Bengalese. So I think they (tribals) are deprived by this amendment.

Inserted articles 7A and 7B in the Constitution after Article 7 in a bid to end take-over of power through extra-constitutional means and highest level of punishment would be awarded

⁴⁶The constitution fifth amendment Act, 2011 (2011 Act no XIV) section 2. The constitution in the preamble.

for those power capturers by extra-constitutional means. In the case of a dissolution Parliament by any reason, election should be held within 90 days of such dissolution. Increasing the number of women reserve seats to 50 from existing 45.

9. Conclusion

A few Amendments ended at one time under certain situation were consequently detached by another Amendment, and also that numerous of these had a nationwide harmony. But most of the amendments were endorsed without giving the appropriate arguments. Amendments that were the consequence of unsophisticated thought, lack of esteem for democratic practices or suitability have clearly come under severe disapprovals, sometimes for suitable motives and sometimes for sectarian political ideas. Reading the doctrine of basic structure for this research proposes various models by which the doctrine may be identified and evaluated came up. The three molds used to examine the doctrine are Basic Structure and the theory of Originalism, Basic Structure acts as balancing tool, and Basic Structure as a tool of growth. The tool is used to examine some of the limitations of the basic structure doctrine in the background of weak societies and proposes a deviating and progressive approach in judicial appliances of constitutional main beliefs.

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