

Doctrine of Basic Structure and the Evolution of Indian Constitution

Shreya Mishra

Final year Student, Amity Law School, Noida

ABSTRACT

The Indian Constitution was written by its founders in order to provide a certain amount of rigidity and stability over time. Furthermore, they granted Parliament the authority to alter the Constitution in accordance with Article 368 in order to resolve any future implementation issues. A constitution can be flexible, but it must also retain its normative nature as the ultimate law that restrains parliamentary majorities that are momentary. While the Supreme Court's seminal ruling in *Keshavananda Bharati v. State of Kerala* (1973) established that Parliament cannot alter the 'Basic Structure or Framework' of the Constitution, Article 368 does not expressly limit Parliament's amending power. This theory has been strongly debated from its origin and is still a major topic of discussion in current institutional discussions about the identity and evolution of the Constitution. This paper investigates the development and extent of the doctrine of basic structure, along with its influence on the Constitution of India and its reflection in the legal systems of other nations.

KEYWORDS: Indian Constitution, Separation of Powers, Doctrine of Basic Structure, Kesavananda Bharati, Fundamental Rights, Directive Principles, Preamble, 42nd Amendment Act, S.R. Bommai Case, International Perspectives.

CHAPTER 1: Introduction

The Indian Constitution acts as the primary legal framework, providing a precise guide for the operation of all branches of the federal and state governments. Each of these branches is required to function within the constraints of the Constitution; none of them has supreme authority. Any government activity must comply with constitutional provisions in order to be considered legitimate. The judiciary may create doctrines to guarantee constitutional supremacy in the event that it becomes necessary to evaluate the validity of governmental activities. To resolve constitutional crises, however, such doctrines ought to be applied only in exceptional cases. Developing policies and doctrines on a constant basis for every circumstance would be a serious danger to democratic values and the idea of the separation of powers.

The drafters of the Constitution carefully considered every detail when drafting a constitution that would give its citizens the finest possible governance. They did not, however, insert a particular clause in Article 368 that would have limited Parliament's ability to amend the constitution. Due to this gap, Parliament was able to enact the controversial Ninth Schedule¹, protecting agrarian reforms from court scrutiny and progressively changing the Constitution from one that allowed for restricted amendments to one that did not. As a reaction, the Supreme Court established the "Basic Structure" theory in the

¹The Ninth Schedule was incorporated into the Constitution of India through the First Amendment.

Keshavananda Bharathi case² of 1973, so placing tacit limitations on Parliament's ability to amend the Constitution and giving the Constitution its supreme authority.

The doctrine of Basic Structure, developed by the Indian Supreme Court through a series of significant rulings over time, introduces a vital element of constitutionalism. This element is crucial for preserving the essence of the constitution, ensuring the maintenance of the broader concept of the rule of law. In the absence of this doctrine, the constitution would merely be a legal document devoid of practical significance.

CHAPTER 2: Doctrine of Basic Structure

The Basic Structure doctrine is a legal principle that originated in India, primarily through judicial interpretation. It states that while a constitution may be amended by the appropriate legislative authority, there exist certain fundamental principles, structures, or features, that form the core foundation of the constitution, and these are beyond the reach of amendment power. Basically, it means that the legislative body's ability to amend the constitution is restricted in order to protect the fundamental principles and structure of the document.

In the landmark case of Kesavananda Bharati v. State of Kerala, 1973, the Supreme Court of India established the Doctrine of Basic Structure. According to this doctrine, the Indian Parliament can amend the Constitution, but it cannot change its "basic structure."

The concept of the basic structure emerged in the context of a challenge to the Constitution (Twenty-Fourth Amendment) Act, 1971, which aimed to limit the Supreme Court's power to review constitutional amendments.

In its landmark decision³, the Supreme Court held that although Parliament could amend the Constitution, it could not alter the core ideas that give the constitution its basic structure. The court did not, however, define its basic framework precisely, leaving room for interpretation in later cases.

A number of rulings throughout the years have shed light on what might constitute the basic structure, including democracy, federalism, secularism, judicial review, separation of powers, and the rule of law. There isn't a comprehensive list, though, and each case's specific circumstances will determine how each interpretation should be made.

The Doctrine of Basic Structure is important because it serves as a restraint on Parliament's ability to arbitrarily amend the Constitution. It ensures that while the Constitution can evolve to meet the society's changing needs, its foundational principles remain intact. The Doctrine serves as a vital barrier against the constitution's fundamental ideals and principles being compromised by arbitrary amendments. It guarantees the constitutional framework's continuity, integrity, and stability.

CHAPTER 3: Origin and Development of the Doctrine of Basic Structure

The origin and development of the Basic Structure doctrine can be traced back to the Indian constitutional context, mainly through significant judicial interpretations and landmark cases.

Pre-Kesavananda Bharati Era (Pre-1973): Prior to the Kesavananda Bharati case, the general consensus was that the Indian Parliament possessed unrestricted plenary powers to amend the Constitution. The Supreme Court supported the Parliament's power to amend any part of the Constitution, including

²AIR 1973 SC1473

³Kesavananda Bharati v. State of Kerala, 1973

fundamental rights, in cases like *Shankari Prasad Singh Deo v. Union of India* (1951) and *Sajjan Singh v. State of Rajasthan* (1965), which helped to establish this viewpoint.

Kesavananda Bharati v. State of Kerala (1973): In this landmark case, the Doctrine of Basic Structure was clearly established. In this case, a 13-judge bench of the Supreme Court of India deliberated on the validity of the 24th Constitutional Amendment Act, which aimed to restrict the power of judicial review concerning constitutional amendments. In this landmark ruling, the Supreme Court determined that although Article 368 gave Parliament the ability to amend the Constitution, there were restrictions on this power. It held that the basic structure of the Constitution could not be altered by the Parliament. The court listed several characteristics of the basic structure—such as the supremacy of the Constitution, republican and democratic forms of government, federalism, secularism, separation of powers, and judicial review—without specifically defining what it was.

Post-Kesavananda Bharati Era (Post-1973): After the *Kesavananda Bharati* case, the Basic Structure doctrine became firmly established in Indian constitutional law. This idea was further developed and supported by later decisions rendered by the Supreme Court. Notable cases consist of:

- The court invalidated certain election-related amendments in the *Indira Nehru Gandhi v. Raj Narain* (1975) case, highlighting the importance of guaranteeing free and fair electoral procedures as essential to the basic structure.
- The court invalidated some provisions of the 42nd Amendment Act in *Minerva Mills Ltd. v. Union of India* (1980), emphasizing the crucial role that judicial review plays in maintaining basic structure.
- In *Waman Rao v. Union of India* (1981), the court upheld federalism as an essential element of the fundamental framework of the Constitution.

The Doctrine of Basic Structure has continued to develop over time as a result of numerous court rulings. Certain core principles such as secularism, democracy, federalism, and judicial review have been consistently upheld as part of the basic structure of the constitution.

CHAPTER 4: Evolution of the Indian Constitution

Pre-Independence Constitutional Developments

The Indian Constitution serves as a reminder of the country's transition from colonial domination to democratic independence. Its evolution is a narrative woven through centuries of reform, struggle, and visionary leadership. The Indian Constitution captures the hopes, values, and diversity of its people from the first traces of colonial rule to the dynamic democratic system it represents today.

The colonial era, which was characterized by British rule and incremental attempts at administrative and constitutional reforms, is where the Indian Constitution originated. The Regulating Act of 1773 and Pitt's India Act of 1784, two early legislative interventions, established basic governance structures under British authority. Indian representation in legislative councils was increased by later reforms, such as the Indian Councils Acts of 1861, 1892, and 1909, but only in the context of restricted autonomy and colonial supervision.

The Indian independence movement began to gain momentum in the late 19th and early 20th centuries, driven by figures such as Mahatma Gandhi, Jawaharlal Nehru, and Subhas Chandra Bose. Nationwide, there was a resounding cry for Swaraj, or self-rule, which found expression in the Indian National Congress and other nationalist movements. The goal of Indians' political activism, civil disobedience, and nonviolent protests was to free themselves from the colonial chains and create a democratic, sovereign nation.

Constitutional amendments and discussions with the British government provided institutional expression for the aspiration for self-governance. Incremental changes were brought about by the Government of India Acts of 1919 and 1935. These included the expansion of legislative councils, the granting of provincial autonomy, and electoral reforms. Though they weren't very successful, the Round Table Conferences of 1930–1932 gave Indian leaders a chance to discuss constitutional issues with British authorities. Future developments in the constitution were based on the foundation created by these discussions.

India's constitutional journey entered a new phase with its independence in 1947. With members representing a wide range of ideologies and backgrounds, the Constituent Assembly set out to tackle the enormous task of writing a new constitution. Under the direction of Dr. B.R. Ambedkar, the drafting committee meticulously created a document that enshrined fundamental rights, democracy, and the idea of a pluralistic society. On January 26, 1950, the Indian Constitution was adopted, marking the birth of the Republic of India.

The Indian Constitution has changed since it was adopted to address new issues and adapt to shifting sociopolitical realities. Its course has been shaped by changes in society, judicial interpretations, and amendments that have addressed injustices and inequalities while upholding democratic principles. The concept of basic structure, which outlines the constitutional bounds within which state power functions, was upheld by landmark judgments like *Kesavananda Bharati v. State of Kerala* (1973).

CHAPTER 5: Constituent Assembly Debates and Framing of the Constitution

The Constituent Assembly debates and the framing of the Indian Constitution stand as pivotal moments in the history of India, that marks the transition from colonial rule to democratic governance. From November 1946 to November 1949, the Assembly deliberated on and created a transformative document that would shape the destiny of the country. These debates were characterized by profound discussions, diverse perspectives, and visionary leadership, ultimately culminating in the adoption of one of the lengthiest and most detailed constitutions of the world.

In 1946, after the elections conducted under the Cabinet Mission Plan, the Constituent Assembly was established. The Assembly represented India's diversity and pluralistic culture, with members drawn from a range of political parties, communities, and provinces. Sardar Patel, Jawaharlal Nehru, Dr. B.R. Ambedkar, and Sarojini Naidu were among the notable figures who participated in its proceedings, and Dr. Rajendra Prasad was chosen as its president.

One of the main themes of the Constituent Assembly debates revolved around the delineation of fundamental rights and directive principles of state policy. Inspired by the ideals of equality, liberty, and justice, the Assembly engaged in extensive discussions on safeguarding individual freedoms, promoting social justice, and balancing competing interests. Dr. B.R. Ambedkar who was the Chairman of the Drafting Committee, played an important role in articulating and defending the provisions related to fundamental rights.

The Constituent Assembly deliberated extensively on the question of whether India's polity was federal or unitary. While proponents of unitarism stressed the necessity of a centralized authority to preserve national unity and integrity, federalism proponents argued for a strong federal structure with substantial powers devolved to the states. A quasi-federal structure with a strong center and substantial powers granted to the states was the outcome of the ensuing compromise.

The protection of minority rights and secularism were other issues that the Constituent Assembly debated. Acknowledging the diversity of religions and cultures in India, the Assembly upheld the secular nature of the government, guaranteeing fairness and safety for every religious group. Minority rights discussions highlighted the commitment to diversity and inclusivity, with measures designed to protect the rights of linguistic, religious, and cultural minorities.

Women leaders like Sarojini Naidu, Hansa Mehta, and Dakshayani Velayudhan played a significant role in influencing the constitutional discourse, despite the fact that men dominated the debates in the Constituent Assembly. Their advocacy for gender equality, women's rights, and representation in governance established the foundation for the Constitution's inclusion of provisions pertaining to gender justice and empowerment.

A turning point in India's democratic history was reached during the discussions held in the Constituent Assembly and during the drafting of the Indian Constitution. By means of intense discussions, cooperative problem-solving, and inspiring guidance, the Assembly produced a groundbreaking instrument that upholds the principles of democracy, liberty, equality, and justice.

CHAPTER 6: Foundational Principles of Indian Constitution

Preamble:

We proclaim India to be a SOVEREIGN SOCIALIST SECULAR DEMOCRATIC REPUBLIC⁴ in our preamble. These are not merely surface-level terms; they stand for fundamental ideas ingrained in our constitution. The fundamental ideals upon which our constitution was based would be betrayed by any attempt to change these principles or pass legislation that goes against them, making the constitution's entire purpose pointless. This is where the doctrine of the Basic Structure comes into play. It protects and preserves the fundamental elements of the Indian Constitution, preserving Indian democracy's integrity while defending the rights and liberties of the people of India.

Fundamental Rights and Directive Principles of State Policy:

The Constitution of India guarantees certain entitlements to each and every Indian citizen, collectively known as the Fundamental Rights. These rights, which are found in Part III of the Constitution, are universal and do not depend on a person's gender, color, caste, religion, or other distinctions. Their goal is to ensure that every citizen, regardless of social background, receives equal treatment and opportunities. The Fundamental Rights are delineated in Articles 12 to Article 35 of the Constitution of India.

Part IV of the Indian Constitution contains a set of principles known as the Directive Principles of State Policy, or DPSP. They serve as a guide for the government as it works to ensure the welfare of its people. Although these principles are not legally enforceable by the courts, Parliament must take them into account when drafting legislation. Rooted in the ideals of liberty, social justice, and equality, the Directive Principles aim to foster a fair and compassionate society in India.

CHAPTER 7: Emergence Of Doctrine Of Basic Structure

The origins of the Doctrine of Basic Structure can be traced back to the early years of 1950-51 when India gained independence from British colonial rule.

As part of agrarian land reforms, the Indian government passed the Zamindari Abolition Act⁵, which

⁴The term 'SOCIALIST, SECULAR and INTEGRITY' were inserted by 42nd Amendment Act.

⁵Zamindari Abolition Act, 1950

caused zamindars to lose their land holdings. Dissatisfied with this, the zamindars filed a legal challenge, claiming that Article 31⁶(which is no longer a fundamental right) violated their former Fundamental Right to Property. The Constitution (First Amendment) Act, 1951 was passed by the Union Government as a response to the problem. In order to ensure the constitutional validity of laws abolishing zamindari, this amendment introduced Articles 31(A) and 31(B).

The government was given broad authority by Article 31(A)⁷ to control property and acquire land in the public interest. Schedule IX was introduced by Article 31(B), which shields any legislation included within it from judicial review. This clause, however, went against Article 13(2) of the Constitution, which states that any law that violates a person's fundamental rights must be declared unconstitutional.

The zamindars challenged the amendment by filing a writ petition under Article 32, asserting that Articles 31(A) and 31(B) encroached upon and restricted the Fundamental Rights guaranteed by Part III of the Constitution, as well as contravened the limitations set forth in Article 13(2).

In light of the previously mentioned facts, the Shankari Prasad case (1951) marked the first occasion on which the contentious issue of Parliament's power and scope to amend the Constitution was raised.

*Shankari Prasad vs. Union of India*⁸: In this case, the Supreme Court stated that Parliament, under Article 368, possesses the authority to amend any part of the constitution, including fundamental rights.

*Sajjan Singh vs. State of Rajasthan*⁹: Reaffirming what was ruled in the Shankari Prasad case of 1951, the Supreme Court stated that Parliament retains the ability to amend any aspect of the constitution through Article 368. However, a concurring opinion by Justices Mudholkar and Hidayatullah expressed reservations regarding Parliament's unrestricted authority to amend any part of the Constitution and potentially curtail citizens' fundamental rights.

*Golak Nath vs. State of Punjab Case*¹⁰: In this case the Supreme Court of India reversed the Shankari Prasad ruling, holding that Article 368 does not give Parliament complete authority to change any part of the constitution, rather, it only specifies the procedure for amending the constitution.

*24th Constitution Amendment Act*¹¹: The 24th Amendment Act, which amended Article 368 to give Parliament the power to revoke any fundamental right, was passed by the government in order to get around the restrictions placed on it by the Golaknath ruling. It also required the President's approval of all bills pertaining to Constitution Amendments.

*Kesavananda Bharati vs. State of Kerala*¹²: The Supreme Court reviewed its ruling in the Golaknath case and upheld the constitutionality of the 24th Amendment Act in this crucial case. The Court did rule, however, that although Parliament has the authority to alter any part of the constitution, it must uphold the Basic Structure. With the introduction of the notion of the "Basic Structure of the Constitution," this ruling made constitutional amendments subject to judicial review in order to protect the basic structure of the constitution.

⁶Article 31 of the Constitution of India stipulates that no individual can be stripped of their property without the approval of an appropriate authority.

⁷The government of India has the authority to procure the property of individuals, ensuring that the fundamental rights outlined in Articles 14 and 19 of the Indian Constitution remain intact and unbreached.

⁸AIR 1951 SC 455

⁹A.I.R. 1965 1 SC 845

¹⁰AIR 1967 SC 1643

¹¹24th Constitution Amendment Act, 1971

¹²AIR 1973 SC 1461

Elements of the constitution that form the Basic Structure framework, according to Kesavanda Bharati Case-

In the KesavanandaBharati verdict, the basic framework of the Constitution were outlined individually by each judge, with no unanimous agreement within the majority view. Chief Justice Sikri explained that the concept of basic structure as¹³:

- The supremacy of the Constitution
- The republican and democratic form of government
- The secular nature of the Constitution
- The division of powers among the legislature, executive, and judiciary
- The federal character of the Constitution

Justices Shelat and Grover stated two more essential features¹⁴:

- The directive to establish a welfare state as outlined in the Directive Principles of State Policy
- The unity and integrity of the nation
- Justices Mukherjea and Hegde identified a distinct and concise list of basic features¹⁵:
- The sovereignty of India
- The democratic nature of the polity
- The unity of the country
- The essential aspects of individual freedoms guaranteed to citizens
- The directive to establish a welfare state

Justice Jagannathan Reddy stated that elements of the basic features could be found in the Preamble of the Constitution and the provisions that translated them, such as¹⁶:

- A sovereign democratic republic
- parliamentary democracy
- three organs of the State

*Indira Nehru Gandhi v. Raj Narain*¹⁷: The principle of the basic structure doctrine in India was established by the Kesavananda Bharati case, which maintained that some parts of the Constitution are unamendable. *Indira Gandhi v. Raj Narain*, a noteworthy case, surfaced merely two years later. The petitioner's election was deemed void by the Allahabad High Court on the grounds of corruption and misconduct. Parliament overruled the court's ruling in response by passing the 39th Constitutional Amendment Act. By eliminating the Allahabad High Court's decision, this amendment sought to protect the President, Vice President, Prime Minister, and Speaker of the Lok Sabha from judicial scrutiny. The constitutionality of this amendment's ability to overturn a court ruling and modify election procedures was subsequently contested.

The Supreme Court invalidated the clause, ruling that free and fair elections are essential to the basic structure doctrine. The Court further developed the doctrine by adding new components, like democracy, which includes the idea of free and fair elections. Judicial review, the rule of law, and the Supreme Court's authority under Article 32 were additional crucial elements.

¹³<https://constitutionnet.org/v1/item/basic-structure-indian-constitution>

¹⁴Id.

¹⁵Supra

¹⁶Supra

¹⁷A.I.R. 1975 SC 2299

42nd Amendment Act¹⁸: The 42nd Amendment Act was enacted in 1976 with the intention of eliminating Article 368's restrictions on Parliament's constituent power. This amendment, sometimes called the "Mini-constitution," changed the constitution significantly and made it impossible for courts to challenge amendments.

Minerva Mills vs. Union of India¹⁹: As judicial review is an integral part of the Basic Structure of the Constitution, the Supreme Court ruled in this case that certain provisions of the 42nd Amendment Act were invalid and that Parliament could not curtail this power.

Waman Rao vs. Union of India²⁰: The Kesavananda ruling established the 'Doctrine of Prospective Overruling,' which states that laws included in the Ninth Schedule prior to the ruling cannot be contested on the grounds of fundamental rights violations. Laws passed subsequent to the ruling, however, may be challenged in court. In this case, the Supreme Court restated the Basic Structure doctrine.

Indra Sawhney & Others vs. Union of India²¹: Often known as the Mandal case, the Supreme Court ruled that the Rule of Law is a fundamental component of the Constitution's Basic Structure.

KihotoHollohan Case²²: The Supreme Court enlarged the Basic Structure of the Constitution in the Defection case to include the Democratic, Republican, and Sovereign systems as well as free and fair elections.

S.R. Bommai vs. Union of India²³: Federalism, Secularism, and Democracy were upheld by the Supreme Court as essential components of the Constitution's basic structure.

CHAPTER 8: 'Basic Structure' as a Mechanism for Progress

The S.R. Bommai v. Union of India²⁴ presented a fresh interpretation of the doctrine. Three state governors gave examples of how their respective administrations were undermining secularism. This occurred after the Ayodhya Babri Masjid was demolished on December 6, 1992. Many reasons were used to defend these actions after the BJP-ruled states of Rajasthan, Madhya Pradesh, and Himachal Pradesh resigned their governments and implicitly accepted responsibility for the destruction, as well as after these states' involvement in the imposition of President's Rule in Uttar Pradesh.²⁵

The court maintained that secularism is a fundamental component of the basic structure of the constitution. A state's governing political party is deviating from its constitution if it promotes or supports measures that weaken secularism. When such anti-secular actions by a government lead to death, destruction of property, breakdown of law and order, and incapacity to protect the minority population, as stipulated by the constitution, there has been a breakdown in governance and Article 356 should be invoked.²⁶

Applying the 'Basic Structure' doctrine in this particular context deviates from its original intent, which was to limit the constituent power of the parliament to amend the constitution, instead of examining executive or administrative actions falling under the President's authority or governance practices. The

¹⁸42nd Amendment Act, 1976

¹⁹AIR 1980 SC 1789

²⁰AIR 1981 SCC 362

²¹AIR 1992

²²AIR 1993

²³AIR (1994) 3 SCC 1

²⁴AIR (1994) 3 SCC 1

²⁵https://papers.ssrn.com/sol3/papers.cfm?abstract_id=835165

²⁶Id.

Bommai case, however, is important to the development of the "Basic Structure" doctrine because it emphasizes the fundamentals of constitutionalism, namely that state and federal governments must function within the confines of the constitution and that any departure would be a violation of it.²⁷

The importance of the court's declaration of secularism as part of the 'Basic Structure' in the Indian constitutional framework is furthered in light of recent events where the actions of the BJP government have threatened this essential value. The 2002 riots in Gujarat are a sobering reminder of what happens when secular values are disregarded. The court's claim that secularism is a component of the "Basic Structure" is praiseworthy for establishing secularism as a practice in state affairs, but it also raises questions about possible ramifications, such as the potential to invoke Article 356 based on a government's anti-secular stance.²⁸

To prevent unforeseen repercussions, the court's interpretation of the "Basic Structure" needs to be carefully evaluated and kept from being unduly broad. One way to interpret the adoption of capitalist policies by state governments would be as a break from socialism, which was also considered to be a component of the 'Basic Structure'. Similarly, given that some argue India's WTO membership undermines sovereignty, the court must exercise caution when defining "sovereignty" as part of the "Basic Structure." As an institution, the court has to work through these complexities while upholding the 'Basic Structure' doctrine to protect its institutional integrity and advance India.

CHAPTER 9: Reflection Of Doctrine Of Basic Structure In The Jurisprudence Of Other Countries²⁹

The idea of unamendable clauses or principles in a constitution is reflected in the basic structure doctrine, which is practiced in many nations, including India. Several nations included such clauses in their constitutions after World War II. While other countries have taken similar measures, Germany is a notable example. Some countries, like Greece and Portugal, have long lists of unchangeable clauses in their constitutions, while others only protect a small number of fundamental ideas. For instance, republican systems of government are shielded from changes in France and Italy.

Remarkably, Pakistan has also experimented with an idea similar to the basic structure doctrine of India. The Pakistani judiciary reexamined its position in 1997, having previously rejected the idea of substantive limits on constitutional amendments in the wake of the Kesavananda Bharati ruling in India. The Pakistani Supreme Court upheld the preservation of some essential elements mentioned in the constitution's preamble, including parliamentary democracy, federalism, and Islamic provisions, in a landmark decision. Although it was only temporary, this ruling seemed to establish a basic structure doctrine in Pakistan, as subsequent rulings alternated between upholding and rejecting this doctrine. The court has not yet taken a firm position, so it is unclear where this idea will go in Pakistan.³⁰

The 2007 Constitution of Thailand places limitations on amendments that would change the state's structure or democratic system. It also gives the judiciary more authority to supervise representative bodies. By appointing half of the Senate and approving important appointments to quasi-independent bodies, the upper judiciary essentially acts as a check on the authority of the executive branch and the House of Representatives.

²⁷Supra

²⁸Supra

²⁹https://www.rajimr.com/ijrhs/wp-content/uploads/2017/11/IJRHS_2013_vol01_issue_03_07.pdf

³⁰https://www.rajimr.com/ijrhs/wp-content/uploads/2017/11/IJRHS_2013_vol01_issue_03_07.pdf

In the same way, Iran's constitution upholds the Republic's goals and its Islamic and democratic nature as unchangeable. The Guardian Council, which oversees elections and checks all laws passed by Parliament, also has a great deal of power. The council oversees Iran's representative institutions by combining the functions of an election commission, upper house of Parliament, and constitutional court. Because the head of the judiciary selects half of the Council and the Supreme Leader himself designates the other half, this judicial structure serves to uphold the authority of the Supreme Leader.³¹

A retired Chief Justice or another retired member of the higher judiciary is required by the Constitution to lead a caretaker government during elections in Bangladesh, where the two main political parties have a deep-seated mistrust of one another. In supervising the representative branches, this position constitutes a new institutional role for the judiciary, especially the retired judiciary.³²

These new institutional setups in Bangladesh, Thailand, and Iran clearly show how courts have become more powerful, frequently as a result of misgivings or mistrust toward representative institutions. Iran and, to some extent, Thailand are also prime examples of how elites can make use of the expanded roles of judiciaries to hold onto power or make sure that institutions that represent the people's interests are aligned. On the other hand, it is possible to see the basic structure doctrine in India and its recent acceptance in Pakistan as examples of courts stepping in to protect the survival and smooth operation of democratic institutions.

CHAPTER 10: CONCLUSION

In summary, the basic structure doctrine of the Constitution can be regarded as an important constitutional principle that has been formally incorporated into the document by means of judicial interpretation. This well-defined doctrine strikes a balance between the flexibility and rigidity of the Constitution. It continues to be the pillar that has preserved our Constitution's original meaning, preventing unjustified changes, defending basic rights essential to human development, upholding the rule of law, and preserving harmony between all branches of government. Thus far, the doctrine has shown to be a powerful instrument in evaluating the legitimacy of constitutional amendments by limiting Parliament's unbridled power and keeping it from becoming the exclusive arbiter of legislation. But more thought needs to be given to how much of this doctrine can be modified in the future.

However, this doctrine has undoubtedly done a great deal for the country in turbulent times when Parliament seemed eager to amend the Constitution carelessly under Article 368. There have been cases in history where legislators have misused their power to pass laws for their own benefit. Such actions by the government have come at the expense of the Constitution itself, whether it was prior to the Kesavananda Bharati verdict, during the internal emergency of 1975, or through the 42nd Constitutional (Amendment) Act of 1976, which limited the power of judicial review. Preserving Indian democracy and preventing the parliament from misusing its majority powers have been made possible in large part by the basic structure doctrine. Therefore, the basic structure doctrine ought to keep up its role as a protector of constitutional government. Discussions concerning the elements of the fundamental framework are valid and ought to be promoted. These discussions are a natural part of democratic politics and show the openness, diversity, and dynamism of our democratic system.

³¹Supra

³²Supra