Govt & UGC Apporved

Sonargaon University (SU)

we will rise up, we will shine

Research Monograph

On

"Concept of Basic Structure of the Constitution: An Appraisal from the perspective of Bangladesh and India".

This Research Submitted for the partial fulfillment of the award of the degree in LLB (Hon's) Department of Law Sonargaon University (SU), Dhaka.

Submitted To:

Deedarul Islam Bhuiyan
Assistant Professor & Head of the Department
Department of Law
Sonargaon University (SU), Dhaka.

Submitted By:

Mohammad Saifuzzaman Khan
ID No.: LL.B 1803015014
Program: LLB (Hon's)
Department of Law
Sonargaon University (SU), Dhaka.

Submission Date: 2022.

Letter of Transmittal

To

Deedarul Islam Bhuiyan
Assistant Professor & Head of the Department
Department of Law
Sonargaon University (SU), Dhaka.

Subject: Submission of Research Monograph on "Concept of Basic Structure of the Constitution: An Appraisal from the perspective of Bangladesh and India".

Dear Sir,

I do herby please to submit the Research Monograph on the topic "Concept of Basic Structure of the Constitution: An Appraisal from the perspective of Bangladesh and India". It is a great pleasure to work on such important topic. This Research work has been done according to the requirements of the Sonargaon University for the fulfilment of my LL.B (Hon's) years course under the Department of Law.

I respectfully acknowledge your guidance, leadership and help for the preparation of this paper. It is worthwhile to mention that there might be some errors and mistakes in my report due to limited time and knowledge. I am still at learning stage. So I respect that you will pardon my unintentional mistakes in preparing this paper.

Sincerely. Yours,

.....
Mohammad Saifuzzaman Khan
ID No.: LL.B 1803015014
Program: LLB (Hon's)
Department of Law
Sonargaon University (SU), Dhaka.

Solemn Affirmation

I do thereby solemnly declare that the work presented in this research has been carried out by me and has not been previously submitted to other University/College/Organization for any academic qualification, publication or a personal Degree. I hereby ensure that the work presented here not breach any existing copyright.

.....

Mohammad Saifuzzaman Khan
ID No.: LL.B 1803015014
Program: LLB (Hon's)
Department of Law
Sonargaon University (SU), Dhaka.

Supervisor's Certificate

This is to certified that the Research Monograph on **"Concept of Basic Structure of the Constitution: An Appraisal from the perspective of Bangladesh and India"** is prepared by Mohammad Saifuzzaman Khan, ID No.: LL.B 1803015014 for partial fulfillment of the requirement of the Program: LL.B (Hon's) from Sonargaon University, Dhaka. It also certified that the research work has been carried out under my supervision and intensive guidance.

It is to be certified that this research work is original and suitable in its style and contents for submission and fulfillment of his LL.B (Hon's).

.....

Deedarul Islam Bhuiyan
Assistant Professor & Head of the Department
Department of Law
Sonargaon University (SU), Dhaka.

Acknowledgement

I express my sincerest gratefulness to Almighty **'Allah'** for his kindness on me in accomplishing this research monograph. I express my heart-string gratitude to my 'Honorable' and distinguished cooperative supervisor **Deedarul Islam Bhuiyan**, Assistant Professor & Head of the Department, Department of Law, Sonargaon University, Dhaka who inspirit and guide me throughout the work. He provide me resources that I needed to carry out the work and gave me important guidelines whenever I was in a Dilemma.

I admit my debt, love and gratitude to my beloved family for their instance support, help and endless love.

Thank you.

.....

Mohammad Saifuzzaman Khan
ID No.: LL.B 1803015014
Program: LLB (Hon's)
Department of Law
Sonargaon University (SU), Dhaka.

TABLE OF CONTENTS

Particulars	Page No.
Chapter- 1 **Introduction**	
1.1. Abstract	1
1.2. Introduction	1
1.3. Objectives	2
1.4. Methodology	3
1.5. Limitations	3
Chapter- 2 **Conceptual Analysis**	
2.1 Conceptual Framework	4
2.2 Background	6
2.3 The origin of the concept of "Basic Structures" of the constitution	8
2.4 Types of Basic Structure	8
2.5 Basic Structure principle in general sense or Numerable sense	8
2.6 Basic Structure principle in real or substantive sense	8
2.7 The Basic structure of the constitution of Bangladesh	9
2.8 Basic structures Elements of our constitution	10
2.9 Unitary Parliament Bangladesh	11
2.10 Provision of fundamental rights	12
Chapter-3 **Analysis of Judicial Power and Basic Structure Doctrine of Bangladesh Constitution**	
3.1 The Emergency (1975)	14
3.2 Development	15
3.3 Implied Limitations of the Amending Power	15
3.4 Evolution of the doctrine	15

3.5 Recognition 17

Chapter- 4
Constitution of Bangladesh

4.1 Written Constitution 20
4.2 Definition of Constitution 20
4.3 Rigid Constitution 20
4.4 Constitutional of Amendment 20
4.5 Preamble 21
4.6 Supremacy of the Constitution 21
4.7 Unitary Government System 21
4.8 Unicameral Legislature 21
4.9 Fundamental Principle of State Policy 21
4.10 Fundamental Rights 22
4.11 Parliamentary form of Government: 22
4.12 Independence of Judiciary 22
4.13 Doctrine of Basic Structure of the Constitution 22
4.14 Constitutional Amendments Legislative versus Judicial 23
4.15 How Did It Amend 23

Chapter- 5
Judicial Power and Basic Structure Doctrine Appraisal of Bangladesh Constitution

5.1 Judicial Power Doctrine of Basic Structure of Bangladesh Constitution 35
5.2 Delimitation of Basic Structures 36
5.3 Independence of judiciary is a part of the basic structure 36
5.4 Philosophy Underlying the Doctrine of Basic Structure 37

Chapter-6
Constitution of Basic Structure in India

6.1 Separation of Powers: The Indian Plan 39
6.1.1 Constitutional position 39
4.2 Practical application of the doctrine in India 42
6.3 The Separation of Powers during Periods of Emergency 45
6.4 Modern Developments in India 46

Chapter- 7
Recommendation and Conclusion

7.1 Conclusion 48

7.2 Recommendation 49

Bibliography 50