

**IN THE SUPREME COURT OF BANGLADESH**  
**APPELLATE DIVISION**

**Present:**

Mr. Justice Syed Refaat Ahmed, Chief Justice

Mr. Justice Md. Ashfaqul Islam

Mr. Justice Zubayer Rahman Chowdhury

Mr. Justice Md. Rezaul Haque

Mr. Justice S. M. Emdadul Hoque

Mr. Justice A. K. M. Asaduzzaman

Mrs. Justice Farah Mahbub

**Civil Appeal No.112 of 2025 And Civil Appeal No.113 of 2025**  
**With Civil Review Petition No.282 of 2024, Civil Review Petition**  
**No.313 of 2024 And Civil Review Petition No.248 of 2025**

(From the order dated 27.8.2025 passed by this Division in Civil Review Petition Nos. 200 and 260 of 2024 and Civil Review Petition Nos. 282, 313 of 2024 and 248 of 2025 arising out of judgment and order dated 10.5.2011 passed by this Division in Civil Appeal No. 139 of 2005 with Civil Petition for Leave to Appeal No. 596 of 2005).

Dr. Badiul Alam Mojumder and others	. . . Appellants. (In C.A. No. 112 of 2025)
Mirza Fakrul Islam Alamgir, Secretary General, Bangladesh Nationalist Party, Nayapaltan, Dhaka	. . . Appellant. (In C.A. No. 113 of 2025)
Mia Golam Porwar, Secretary General, Bangladesh Jamaat-e-Islami, Bara Mogbazar, Dhaka	. . . Appellant. (In C.R.P. No. 282 of 2024)
Md. Mofazzal Hossan (Freedom Fighter)	. . . Petitioner. (In C.R.P. No. 313 of 2024)
Human Right Support Society (HRSS), represented by its Executive Director	. . . Petitioner. (In C.R.P. No. 248 of 2025)

***-VERSUS-***

Abdul Mannan Khan and others	. . . Respondents. (In C. A. Nos. 112, 113 of 2025 & C.R.P Nos. 282, 313 of 2024 & C.R.P No. 248 of 2025)
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For the Appellants (In C.A. No.112 of 2025)	:	Mr. Sharif Bhuiyan, Senior Advocate with Ms. Karishma Zahan, Advocate instructed by Mr. Md. Zahirul Islam, Advocate-on-Record.
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For the Appellant (In C.A. No. 113 of 2025)	:	Mr. Zainul Abedin, Senior Advocate with Mr. A.M. Mahbub Uddin, Senior Advocate, Mr. Ruhul Quddus, Senior Advocate and Mr. Kayser
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- Kamal, Senior Advocate instructed by Mr. A.B.M. Shamsul Alam, Advocate-on-Record.
- For the Petitioner (In C.R.P No. 282 of 2024) : Mr. Mohammad Shishir Monir, Senior Advocate instructed by Mr. A.B.M. Shamsul Alam, Advocate-on-Record.
- For the Petitioners (In C.R.P No. 313 of 2024) : Mr. Md. Bodruddozza, Senior Advocate with Mr. A.S.M. Shariar Kabir, Advocate instructed by Mr. M. Ashrafuzzaman Khan, Advocate-on-Record.
- For the Petitioner (In C.R.P. No. 248 of 2025) : Mr. Imran A. Siddiq, Senior Advocate with Mr. Osman Bin Nasim, Advocate instructed by Mr. Zainul Abedin, Advocate-on-Record.
- For the Respondent Nos. 2-5 (In C. A. Nos. 112, 113 of 2025 & C.R.P. Nos. 282 & 313 of 2024 ) : Mr. Md. Asaduzzaman, Attorney-General with Mr. Abdul Jabber Bhuiyan, Additional Attorney-General, Mr. Muhammad Arshadur Rauf, Additional Attorney-General, Mr. Mohammad Aneek R. Hoque, Additional Attorney-General, Ms. Jamila Momtaz, Deputy Attorney-General, Mr. Md. Jahirul Islam Sumon, Deputy Attorney-General, Mr. Md. Akhteruzzaman, Deputy Attorney General, Mr. Abdullah Al Mahmud, Deputy Attorney- General and Mr. Md. Asad Uddin, Deputy Attorney-General, Mr. Arif Khan, Deputy Attorney General, Ms. Fatima Akther, Deputy Attorney-General, Mr. Reza Md. Sadekin, Deputy Attorney General, Mr. Md. Zahidul Islam, Deputy Attorney General, Ms. Sadia Afrin Shapla, Deputy Attorney General, Mr. Md. Obaidur Rahman, Assistant Attorney-General, Mr. Asadullah Al Galib, Assistant Attorney-General, Mr. Ahammed Abdullah Khan (Sabit), Assistant Attorney-General, Ms. Maria Tanjimath, Assistant Attorney-General and Mr. A.S.M. Sayem Bhiyan, Assistant Attorney-General and Mr. Md. Ahidul Islam (Apu), Assistant Attorney-General instructed by Mr. Haridas Paul, Advocate-on-Record.
- For the Respondent Nos.1, 6-8 (In C. A. Nos. 112, 113 of 2025 & C.R.P. No. 313 of 2024 ) : Not represented.
- For the Respondent Nos.1, 6-7 (In C.R.P. No. 282 of 2024 ) : Not represented.
- For the Respondents (In C.R.P. No. 248 of 2025 ) : Not represented.

For the Intervener (In C. A. No. 112 2025) : Mr. Ehsan A. Siddiq, Senior Advocate with Mr. Chowdhury Ishrak Ahmed Siddiky, Senior Advocate instructed by Mr. Zainul Abedin, Advocate-on-Record.

**Date of hearing** : **21.10.2025, 22.10.2025, 23.10.2025, 28.10.2025, 29.10.2025, 2.11.2025, 4.11.2025, 5.11.2025, 6.11.2025 and 11.11.2025**

Date of judgment : 20<sup>th</sup> November, 2025

### **J U D G M E N T**

**Syed Refaat Ahmed, C.J.** : The instant Civil Appeals along with Civil Review Petition Nos. 282, 313 of 2024 and Civil Review Petition No. 248 of 2025 arise out of the judgment and order dated 10.5.2011 passed by this Division in Civil Appeal No. 139 of 2005 with Civil Petition for Leave to Appeal No. 596 of 2005 which by majority set aside the judgment and order passed by the High Court Division in Writ Petition No. 4112 of 1999.

The foundational premise of the challenge on appeal rests upon an assertion that this Court, in its earlier majority opinion, has committed an error apparent on the face of the record in its constitutional appraisal. The impugned judgment principally grounded its disapproval of the 13<sup>th</sup> Amendment on the hypotheses that the amendment infringed the basic structures of the Constitution, namely the people's sovereignty and the republican and democratic character of the state, by facilitating the assumption of running state affairs by unelected persons and it posed a threat to the independence of the judiciary by creating a scenario where a retired Chief Justice, eligible for appointment as Chief Adviser, could be perceived as compromised, thereby weakening the institutional fortitude of the judiciary.

It is now contended before this Court that the 13<sup>th</sup> Amendment was, in its essence and object, a profound reinforcement of the democratic spirit, which is itself an inviolable basic structure of the Constitution. The historical context surrounding the amendment shows that it was the product of a broad national

consensus among all political stakeholders, conceived as a vital mechanism to resolve a persistent crisis of electoral legitimacy. The preamble of the 13<sup>th</sup> Amendment Act explicitly declares its object to be the constitution of a Non-Party Caretaker Government for the purpose of aiding and assisting the Election Commission to conduct free, fair, and impartial general elections. From this point, the amendment is characterised not as a detour from democracy, but as its essential tool to secure the very integrity of the democratic process.

A pivotal strand of the legal reasoning placed before this Court challenges the judicial methodology of invalidating a constitutional provision based on its potential for abuse. It is submitted that the existence of a law and its abuse are distinct jurisprudential concepts; the former is subject to constitutional scrutiny, while the latter falls within the adjudicatory domain of the courts. To strike down a law merely on the speculative apprehension that a Chief Justice might, in future, be swayed by the allure of the office of Chief Adviser, is to engage in a form of conjectural adjudication that undermines the legislative wisdom and the corrective capacity of the judiciary itself. The argument put forth here is that the proper constitutional response to potential misuse is vigilant judicial review of specific instances, not the pre-emptive dismantling of a system.

The specific grounds urging review, as captured in common in all the review the petitions before us elaborate on the alleged error apparent on the face of the record. It is submitted that earlier, the Court failed to accord due weight to the fact that the caretaker system, born of national consensus and operationalised for over a decade, had itself become integral to the democratic functioning of the state, thereby attaining a character relatable to the basic

structure. This Court is alerted further to an apparent disconnect between the concise and the detailed versions of the Court's earlier order, suggesting an inconsistency that warrants clarification. Criticism is also leveled at the perceived mechanical application of the basic structure doctrine without a concurrent engagement with the historical imperative, the popular will, and the functional necessity that the system represented. Significant emphasis is placed on the recorded submissions of a majority of the amicus curiae, who advocated for the retention of the system, a factor the petitioner contends was not sufficiently considered.

This Court appreciates at the outset that the concept of a caretaker government did not emerge in isolation; rather, it was a product of prolonged political unrest, mistrust among major political parties, and widespread public demand for a neutral mechanism to ensure free, fair, and credible national elections. Therefore, before proceeding to a detailed analysis, it is essential to revisit the origins of the caretaker government system in order to develop a clearer and more contextual understanding of its purpose and evolution in Bangladesh.

The concept of a caretaker government is designed as a neutral, interim administration to oversee the state's day-to-day affairs during the transition from one elected government to another. Its primary function is to ensure that the incumbent government does not use state machinery to influence election outcomes, thereby guaranteeing a free and fair electoral process.

In Bangladesh, the caretaker government system transformed into a fundamental political institution, born out of a deep-rooted crisis of trust in the electoral system. Indeed, the journey of the caretaker government in Bangladesh, from a spontaneous political demand to a constitutional provision

and its eventual evolution, is a compelling narrative of the nation's struggle to uphold democratic principles amidst intense political polarization.

The demand for a neutral caretaker government in Bangladesh did not emerge in a vacuum. It was a direct response to a gradual but severe erosion of public confidence in the election process since its independence. Even in the pre-independence days of Pakistan, elections like those in 1954 and 1970 were widely acclaimed as fair and had a profound impact on popular movements. However, in post-independence Bangladesh, a series of elections were marred by alleged electoral malpractices, rendering their results a foregone conclusion with no positive effect on the political process.

This crisis of legitimacy reached its peak during the rule of General Hussain Muhammad Ershad. Under his regime, the public perceived the election system as entirely stage-managed. The restoration of democracy through a credible electoral process became the rallying cry for a united opposition movement. This movement, which began as an anti-Ershad agitation, crystallized its demand around a specific mechanism, a neutral, non-partisan caretaker government to oversee the national polls.

This demand was formally codified in the 1990 Joint Declaration of the 'Three Party Alliances'. The declaration was unequivocal i.e. the opposition alliances would participate in elections only if they were conducted by a neutral caretaker government.

Their formula was precise- first, the Ershad government must resign; second, an interim caretaker government would be formed; and third, this interim government would reconstitute the Election Commission to ensure impartiality. Faced with a massive anti-government public outburst and mass upsurge, General Ershad left the power. On 6 December 1990, power was

handed over to the opposition's nominee, Chief Justice Shahabuddin Ahmed, who became the Acting President and head of the first caretaker government of Bangladesh.

Indeed, the 1990 caretaker government was a landmark event. It was constituted without any prior constitutional amendment, a testament to the extraordinary political consensus and public support behind it. Though its legal basis was ad hoc, its legitimacy was never questioned because it reflected the will of the people. All actions taken by Justice Shahabuddin Ahmed's government were later ratified by the popularly elected 'Fifth Jatiya Sangsad' in 1991, sanctifying its distinctive place in the nation's political history.

The success of the 1990 caretaker government was seen as a one-time solution to remove a military dictator and restore democracy. The Joint Declaration of 1990 had not envisioned a permanent system for future elections. However, the return of parliamentary democracy in 1991 soon revealed that the problem was not just General Ershad, but a systemic lack of trust among political parties.

Within two years, the escalating disagreements on national issues, growing mutual intolerance, and a deep erosion of trust made it evident that the question of a neutral polls-time government would remain a persistent and unresolved concern. The opposition, led by the Awami League, began a sustained movement, employing boycotts of parliament and frequent hartals to force the ruling BNP government to institutionalize the caretaker system.

The initial phase of this movement revealed a lack of unanimity among the opposition parties themselves. Between 1991 and late 1993, three separate bills were submitted to the parliamentary secretariat by the Jamaat-e-Islami Bangladesh, Awami League, and Jatiya Party. While the essence of these bills

was similar (to establish a non-partisan interim government), they differed crucially regarding its design. For instance, the Awami League proposed amending the constitution to have the Chief Justice as the head the interim government, while the Jatiya Party suggested the President appoint a neutral person as head. On the other hand, the Jamaat-e-Islami demanded an advisory council headed by a neutral person appointed by the President.

The ruling Bangladesh Nationalist Party (BNP), however, refused to allow these bills to be tabled in parliament, citing the opposition's boycott as a reason. This intransigence pushed the three opposition parties closer together, unifying their movement. The political pressure escalated dramatically on 28 December 1994, when 147 opposition Members of Parliament submitted their mass resignation.

The political deadlock brought the country to a standstill in the second half of 1995. Civil society interventions, such as the "Group of 5 (G-5)," attempted moved back and forth between leaders of political parties to seek a mutually acceptable solution. A member of this group, the late Barrister Ishtiaq Ahmed, proposed a model designed to maintain constitutional continuity. Presented by Barrister Ishtiaq Ahmed at a seminar on 28 July 1995, the formula was a creative attempt to bridge the gap between the two sides. Its core aim was to create a neutral, non-partisan government to oversee elections, using the existing constitutional mechanisms.

The text of the proposal was published in the newspapers on 2 August, 1995 as follows:

*“Considering that the essence of the demand of the opposition parties is to hold elections under a neutral non-partisan government, and the essence of the stand of the government in this regard is that the resolution of the present political crisis has to*

*be within the framework of the Constitution, and further, in the backdrop of the declaration of the Prime Minister that she would resign by a certain stated date before the polling at the general election, I ventured to suggest a course of action at a seminar at the National Press Club on 28 July 1995, which may be more concretely elaborated as follows:*

1. *A number of neutral non-partisan persons, say ten, acceptable to the government and opposition parties, should be agreed and nominated to form a workable future Cabinet. The future Prime Minister will be designated from among them.*
2. *Upon seats in Parliament having fallen vacant, by-elections are required to be held within 90 days of the occurrence of the vacancies. This presents an opportunity for nominating the persons who are to form the agreed Cabinet under paragraph 1 above, as candidates to be elected uncontested in the by-elections. By-elections could be announced to fill all the vacant seats or only to fill the number of seats equivalent to the number of persons who are to form the agreed Cabinet.*
3. *If the schedule is announced to fill all the vacant seats, the longest possible date may be fixed as polling day and as early as possible dates may be fixed for nomination, scrutiny and withdrawal. If that is done, it might still be possible to avoid holding of by-elections in all seats, since the persons nominated to seats which will by agreement be uncontested would be declared elected immediately upon scrutiny. Once their election is notified, Parliament may be convened when the persons elected uncontested will take their seats. The holding of the by-elections in the rest of the constituencies may not be necessary, as dissolution of Parliament in accordance with the agreement could then follow.*
4. *To resolve the present constitutional problem, under the Constitution, the following matters must be covered by agreement:*
  - (a) *The names and number of neutral, non-partisan persons, who will form the new Cabinet and the name of the person from among them who will be Prime Minister;*
  - (b) *The date on which the new Cabinet, consisting of agreed neutral, non-partisan members, shall be installed;*
  - (c) *The date for dissolution of Parliament;*
  - (d) *The date for holding of general elections.”*

*(See, “Ishtiaqu’s Formula: Non-partisan men to form govt. to hold election”, The Bangladesh Observer, 2 August 1995; “Ishtiaq elaborates formula”, The Daily Star, 2 August, 1995)*

In essence, the Ishtiaq Formula was a constitutional workaround to create a de facto caretaker government by using the provisions for by-elections and uncontested seats, thereby fulfilling the opposition's demand for neutrality while adhering to the government's insistence on constitutional propriety. But even more fundamentally, it represented and manifested a national engagement at devising a way out of a political quagmire that had plagued the nation for quite sometime then. In other words, it was the outer reflection of a popular will as was crystalising in a manner that would take the ultimate form of the 13<sup>th</sup> Amendment to the Constitution.

This formula suggested a government comprising five members each from the treasury and opposition benches, headed by a mutually acceptable non-partisan person specially elected to parliament. However, like other efforts, this too failed to break the deadlock. (See, Syed Ishtiaq Ahmed, *The Ishtiaq Papers*, The University Press Limited, 1<sup>st</sup> edn, 2008)

In this regard, the mood of the time reflected in a citizen's lamentation below resonates deeply with this Court today. (See, Syed Refaat Ahmed's Prologue, *The Ishtiaq Papers*, The University Press Limited, 1<sup>st</sup> edn, 2008) :  
1994.

*“The nation awaits its deliverance. The promise of free and fair elections remains, as ever, illusory. The nation has been ill served for far too long by the culture of brute force and internecine street agitation replacing politics by robust debate and honest dialogue as vehicles for striking political bargains. The tactics of boycotting the legislature, proclivity to reckless and vituperative attacks and retorts, and the use of the well-oiled state enterprise for election engineering does not bode well for the future of democracy. The concept of a caretaker government is fundamentally one of a mechanism for extrication from this quagmire. Those lacking in political anointment and remaining politically unaffiliated may nevertheless come in aid of that process of extrication and are willing so to do even given the real prospects of facing a short shrift in that effort. In the alternative let the key political players themselves seek a resolution by*

*dialogue and compromise. It is imperative that they do so, however arduous the process. That is the demand of the day. The demand is for free and fair elections, leading to good governance, that has eluded the downtrodden and the meek for far too long. They now demand their deliverance.”*

However, with the opposition's agitation reaching a fever pitch and the economy crippled by continuous strikes, the Fifth Parliament was dissolved, and election was held on 15 February 1996, which was boycotted by all major opposition parties. The Sixth Jatiya Sangsad, constituted on 19 March 1996, moved to legalize the caretaker government by bringing the 13<sup>th</sup> Amendment to the Constitution. The amendment was raised on 21 March and passed by a 268-0 vote on 26 March 1996. The amendment incorporated Articles 58B to 58E, formally establishing the Caretaker Government as a constitutional entity.

Immediately after passing the amendment, the Sixth Parliament dissolved itself on 30 March 1996. The first formal caretaker government under the new system was formed, with former Chief Justice Muhammad Habibur Rahman as the Chief Adviser. This government successfully conducted the 7<sup>th</sup> parliamentary election on 12 June 1996. The caretaker government handed over power peacefully on 23 June 1996, fulfilling its constitutional mandate.

With the enactment of the 13<sup>th</sup> Amendment, the Caretaker Government system became an enduring institutional feature of Bangladesh's democratic framework for more than a decade. In the following years caretaker government, headed by a Chief Adviser who possessed powers equivalent to a Prime Minister (except in defense matters), successfully oversaw the general elections of 1996, 2001, and 2008. Each of these elections was widely accepted by domestic and international observers as comparatively free and fair, leading to peaceful transfers of power.

Indeed, the system represented a unique political compromise. It acknowledged the deep-rooted lack of trust between political adversaries and attempted to create a level playing field by temporarily neutralizing the advantage of incumbency. Thus, the trajectory of the Caretaker Government in Bangladesh constitutes a significant chapter in the nation's political history. It originated from a popular movement against authoritarianism in 1990, demonstrating the power of collective public will to forge temporary solutions outside the constitutional framework. However, the failure of the political class to build trust after the restoration of democracy transformed this ad-hoc solution into a permanent constitutional fixture in 1996.

Although the 13<sup>th</sup> Amendment was a product of intense political conflict, yet, it served its purpose, providing a mechanism for credible elections. The system itself was a testament to a fundamental political reality in Bangladesh that the major political parties trusted a neutral, unelected body of respected individuals more than they trusted each other to conduct a fair election.

Against this backdrop, it is now appropriate to turn to the submissions advanced by the learned counsel, which address the caretaker government system from multiple angles. These submissions examine diverse aspects of the system through the lens of constitutional jurisprudence, engaging with its legal foundations, constitutional validity, democratic implications, and practical operation within the constitutional framework.

The submissions of the learned counsel, Senior Advocate Dr. Sharif Bhuiyan, in the Civil Appeal No. 112 of 2025 present a comprehensive juridical framework challenging the doctrinal foundations and practical ramifications of this Court's earlier majority opinion concerning the 13<sup>th</sup> Amendment. At its core, the argument posits that the impugned judgment rests

upon a constitutionally untenable methodology of interpretation, one which treated the supreme law as a static statute rather than a living instrument meant to guide a nation's democratic evolution. This failure, it is contended, led the Court to disregard the essential "rule of consequence", a principle that obliges constitutional court to consider the practical outcomes of its decisions. The learned counsel meticulously documents the empirical reality following the abolition of the caretaker system, asserting that the consequent decline in public confidence in the electoral process demonstrates that the judgment, in seeking to protect abstract principles, inadvertently undermined the very democratic vitality it aimed to preserve. (See, Dr. Sharif Bhuiyan, *Revolutionary Constitutionalism*, 1<sup>st</sup> edn, The University Press Limited, 2024)

The legitimacy of the 13<sup>th</sup> Amendment itself is anchored by the learned counsel in the profound concept of popular sovereignty as the constitutive force of the constitutional order. He emphasizes that the amendment was not a mere legislative act but the product of a broad national consensus, enacted by a supermajority of the people's elected representatives. In his submission, this conscious constitutional choice to temporarily delegate executive authority to a neutral, non-partisan body is characterized as a supreme exercise of the people's constituent power. He further contended that the minority opinions of Justices Md. Abdul Wahhab Miah and Muhammad Imman Ali are extensively relied upon to fortify this view, arguing that the amendment represents not a suspension but a purposeful and conditional application of popular will, thereby reinforcing rather than diluting the foundational fabric of the Constitution.

In deconstructing the specific legal propositions underpinning the majority opinion, the learned counsel employs both textual and comparative

analysis. Against the charge that an unelected caretaker government is *ipso facto* unconstitutional, he draws parallels to established constitutional practices domestically and in comparable jurisdictions, where technocratic or interim administrations are recognized as valid mechanisms during transitional phases. He argues that democratic legitimacy in such contexts is derived from the overarching mandate and purpose granted by the sovereign people through their amending power.

Regarding the transformation of the President's role during the caretaker government, he contended that a careful reading of Articles 48(1), 58B, and other relevant provisions demonstrate that the President's constitutional position as the ceremonial head of state remains unaltered and cannot be interpreted as a structural shift to a presidential system.

A substantial and critical limb of his argument addresses the application of the basic structure doctrine. The learned counsel advances a dynamic interpretation of this doctrine, suggesting that a constitutional amendment, though a textual alteration, can itself evolve into a basic feature if its object and effect are to secure and entrench an existing fundamental principle, such as democracy. Relying on this reasoning, he argued that the caretaker government mechanism, conceived and implemented as a guarantor of genuine electoral democracy, transcended its amendatory origins to become an integral component of the Constitution's basic structure. The majority opinion, it is submitted, erred in viewing the system in isolation from its democratizing function, thereby mischaracterizing a protective and enabling mechanism as a destructive alteration.

The learned counsel presents a significant challenge on the ground of separation of powers, citing passages from the majority judgment that outlining

alternative methods for conducting elections is a clear transgression into the realm of policy formulation, a domain reserved exclusively for the legislature. He contended that this judicial foray into executive and legislative functions is portrayed not merely as overreach but as a disturbance of the constitutional equilibrium, a principle inherent in the basic structure itself. Jurisprudential support for this contention is drawn from a spectrum of authorities, including *Asif Hameed and Others vs. State of Jammu and Others* (AIR 1989 SC 1899), *Nicklinson and Another vs. Ministry of Justice* [2013] EWCA Civ 961, and *Divisional Manager, Aravali Golf Club and Others vs. Chander Hass and Others* (2007 INSC 1240), which collectively underscore the imperative of judicial self-restraint and the perils of the judiciary venturing into polycentric policy choices.

Procedural infirmities in the rendering of the impugned judgment are also brought to the fore. The learned counsel highlights alleged violations of Order X, Rule 2 of the Supreme Court of Bangladesh (Appellate Division) Rules, 1988 concerning modifications to the short order, a point expressly noted in the minority opinions. This procedural irregularity is presented as casting a shadow over the regularity of the judicial process, inviting this Court to examine the finality of a decision potentially vitiated by such impropriety.

Concerning remedial consequences, he submits that should this Court find merit in the appeal, the logical and legal consequence would be the auto-restoration of the constitutional provisions introduced by the 13<sup>th</sup> Amendment, a phenomenon evidenced in this Court's own jurisprudence in the 8<sup>th</sup> and 16<sup>th</sup> Amendment cases. His submissions demonstrate a textually grounded approach to this restoration, acknowledging that the specific timelines under Article 58C render immediate implementation inoperative. He thus prays for a declaratory

restoration to take prospective effect, applicable upon the dissolution of the Parliament succeeding the next general election, thereby ensuring constitutional continuity without creating a governance vacuum.

Finally, with respect to ancillary issues tangentially raised in other submissions, the learned counsel respectfully refers the principles of judicial economy and opined to avoid unnecessary obiter dicta. He submits that matters extraneous to the core constitutional question, such as the historical ‘July Charter’ or the practice of signing judgments after retirement, need not be adjudicated for the disposition of this case, as doing so would exceed the necessary scope of the Court’s review and potentially unsettle settled practices without due cause.

In summation, the learned counsel in Civil Appeal No. 112 of 2025 prays for this Court to set aside the majority opinion in the 13<sup>th</sup> Amendment case, to declare the said amendment intra vires the Constitution, and to hold that its provisions stand restored, thereby rectifying what is characterized as a previous error of constitutional interpretation and restoring a mechanism deemed essential for the practical realization of democracy, the supreme principle of our constitutional order.

In considering the submissions of the learned Intervener, Senior Advocate Ehsan A. Siddiq in Civil Appeal No. 112/2025, this Court has carefully examined the multifaceted legal arguments presented in defense of the constitutional character and status of the 13<sup>th</sup> Amendment. The core of his submission rests on three distinct but interrelated doctrinal pillars i.e. the nature of the power exercised in enacting the 13<sup>th</sup> Amendment, its integration into the basic structure of the Constitution, and its subsequent crystallization into constitutional convention.

The first contention indicates a distinction between the ordinary amending power under Article 142 of the Constitution and the constituent power of the people. It is argued that the 13<sup>th</sup> Amendment, born from a widespread national consensus in 1996 to address a recurring crisis of electoral credibility, transcended the scope of a procedural amendment. The learned counsel posits that the sovereign people, through their representatives, activated a residual constituent power inherent in them to introduce a mechanism deemed essential for the preservation of democratic order. He referred to comparative constitutional scholarship which suggests that constituent authority is not extinguished upon the adoption of a constitution but remains a latent force within the polity, capable of being mobilized to address fundamental challenges to the constitutional framework itself. Thus, he characterized the 13<sup>th</sup> Amendment not as a mere alteration of text but as a reassertion of foundational sovereign will, aimed at safeguarding the very conditions for democratic exercise.

His second argument asserts that the substantive content of the 13<sup>th</sup> Amendment has become part of the inviolable basic structure of the Constitution. The doctrine of basic structure, as developed in our jurisprudence, serves to protect the foundational pillars of the constitutional order from abrogation even by constitutional amendment. The learned counsel submits that an amendment which is itself enacted to protect a basic feature assumes the character of that which it protects. By establishing the caretaker government system to ensure free, fair, and impartial elections, a process integral to democracy itself, the 13<sup>th</sup> Amendment directly reinforced a core element of the basic structure, he contended. Reliance is placed on precedents i.e. the 16<sup>th</sup> Amendment case, which indicate that such a reinforcing

amendment cannot be detached from the structure it supports, and its repeal would thereby weaken the constitutional framework.

Thirdly, it is submitted that beyond its textual incorporation, the consistent practice of holding nationally accepted elections under the caretaker government system has established it as a binding constitutional convention. He emphasized that the electoral history of Bangladesh demonstrates that elections under political governments have often been marred by violence and controversy, whereas elections under caretaker governments have generally been accepted as credible by the public. Referring to *Bangladesh vs. Md. Idrisur Rahman and Others* [5 *Bangladesh Law Chronicles (AD)* 49], he observed that the Appellate Division had recognised that even a single well-founded precedent may suffice to establish a constitutional convention, and that such conventions are binding. Relying on this, he contended that multiple credible elections under caretaker governments have given rise to a binding constitutional convention in Bangladesh.

Finally, regarding the appropriate judicial remedy, the learned counsel emphasized on deciding the constitutional questions before it without venturing into the political domain by issuing directives for the restoration of a particular system, a task that resides with the sovereign Parliament. He also contended that the judiciary must discharge its function without apprehension or consideration of political consequences, focusing solely on the interpretation and vindication of constitutional principles as the permanent essence of the law, distinct from the transient winds of political necessity.

The submissions of the learned counsel, Senior Advocate Mohammad Shishir Monir, in Civil Review Petition No. 282 of 2024, refer to a series of interconnected propositions rooted in constitutional interpretation, historical

context, and contemporary political reality. The counsel premises his arguments on a foundational reassessment of the 13<sup>th</sup> Amendment Case, urging the Court to recognize the minority opinions therein as prescient articulations that have been validated by subsequent political developments. He supports the minority view by referencing the clear warnings of the *amici curiae* and by presenting a detailed chronology intended to demonstrate that the divergence between the short order and the long judgment of the 13<sup>th</sup> Amendment case was not incidental but reflective of the intense political discourse prevailing at the time. From this, he derives the principle that constitutional judgments, particularly of this magnitude, must be construed not in a vacuum but within the full factual and political matrix in which they were rendered.

The counsel further draws upon comparative constitutional jurisprudence, notably from the United States, to illustrate the doctrinal potential for minority views to attain authoritative status when later events confirm their reasoning. He applies this analogy to contend that the foresight embedded in the minority opinions of the 13<sup>th</sup> Amendment case now commands greater weight. On the substantive issue of the caretaker government system, the counsel, relying extensively on the minority opinion of Justice Muhammad Imman Ali, advances a twofold argument: first, that the system is not antithetical to the independence of the judiciary but is in fact a manifestation of public trust in that institution; and second, that it does not violate the basic structure of the Constitution or its democratic spirit, which already accommodates non-elected functionaries like technocrat ministers or reserved women MPs. He posits an indivisible link between democracy, free and fair elections, and the caretaker mechanism, asserting that in the unique

experience of this nation, no alternative has emerged to secure the same constitutional goal of a legitimate electoral transition.

Regarding the specific prayer for restoration, the counsel meticulously distinguishes the present circumstances from those in the 16<sup>th</sup> Amendment Case, which resulted in an automatic revival of the deleted provisions of the Supreme Judicial Council. He directs the Court's attention to the current constitutional moment, characterized by a dissolved Parliament and the operation of an interim government formed pursuant to a broad national consensus, as embodied in the 'July Charter'. This Charter, he emphasizes, derives its authority from the collective will of the people and proposes a reform-oriented path forward, including alternative models for a future caretaker system—a choice he submits properly resides with the next elected Parliament as the representative sovereign will.

The counsel expresses a grave apprehension that a judicial order mandating automatic restoration would not only unsettle the existing political equilibrium but also risk creating an untenable conflict between a revived constitutional provision and the reform framework currently underway. He argues that even if a technical restoration were to occur, operational impossibility under the present arrangement would render it dormant, and thus the Court should, in the interest of constitutional stability and judicial restraint, refrain from issuing any directive that could impede the ongoing process of political settlement.

Ultimately, the counsel's submissions culminate in an appeal to this Court's overarching role as guardian of the constitutional order. He invokes the principle that judicial power must at times be exercised with a measured awareness of its systemic consequences, praying that the Court, in disposing of

this matter, will adopt an approach conducive to the greater national interest and the peaceful continuity of the democratic process, without prematurely foreclosing the political domain's right to craft a lasting solution through dialogue and consensus.

The submissions advanced by the learned Senior Advocate Md. Bodruddoza in Civil Review Petition No. 313 of 2024 refer to chronological constitutional events, commencing with the short order in the matter of the 13<sup>th</sup> Amendment pronounced on 10 May 2011, followed by the enactment of the 15<sup>th</sup> Amendment by Parliament on 13 June 2011, and culminating in the publication of the full reasoned judgment of the 13<sup>th</sup> Amendment Case on 16 September 2012. (See, তত্ত্বাবধায়ক সরকারব্যবস্থা বাতিলের রাজনীতি by ড. বদিউল আলম মজুমদার, প্রথমা প্রকাশন, ২০২৩) From this sequence, a twofold proposition is urged.

Firstly, he strenuously argued that the adoption of the 15<sup>th</sup> Amendment, which abolished the caretaker government system, constituted contempt of this Court's lawful authority. The submission is that the short order of May 2011, which expressly permitted the next two general elections to be conducted under the caretaker government system, remained a binding judicial directive before the publication of the full judgment. The legislative act of abolition of caretaker system during this period is thus characterized as a willful violation of an operative order of this Court, attracting liability for contempt upon all persons instrumental in its enactment.

Secondly, it is submitted that the 15<sup>th</sup> Amendment made the final judgment of the 13<sup>th</sup> Amendment Case infructuous, as its substantive subject i.e. the caretaker government system was extinguished by the legislature in the meantime. Learned counsel impugns the bona fides of this legislative action,

contending that the political branches erroneously and improperly sought to impute the responsibility for abolition to a direction from this Court, despite the full reasoning not being available for scrutiny at the material time.

A significant subsequent development is pressed upon the Court's attention by the learned Counsel. He highlighted that the High Court Division, in its judgment dated 16 December 2024, declared the 15<sup>th</sup> Amendment to be unconstitutional and the decision is not stayed by this Appellate Division. The logical consequence urged is that this judicial pronouncement, having attained finality for want of a stay, operates to revive *ipso jure* the constitutional provisions of the 13<sup>th</sup> Amendment and the caretaker government mechanism established therein.

Besides, a distinct and antecedent legal challenge is mounted on the principle of *res judicata* by the learned counsel. He submitted that the record indicates that the constitutional validity of the caretaker government system was first invoked before the writ jurisdiction in 1996, a petition which was summarily dismissed. It is therefore contended that a subsequent petition filed in 1999, which ultimately led to the adjudication of the 13<sup>th</sup> Amendment Case, was barred by the doctrine of *res judicata*. The failure of the 13<sup>th</sup> Amendment Judgment to conclusively determine this threshold issue of maintainability is presented as a fundamental legal error vitiating the proceedings.

These core submissions are fortified by reference to several articulated grounds, including but not limited to allegations of judicial bias, the imperative of free and fair elections as an inalienable basic structure of the Constitution requiring specific mechanisms for its guarantee, and the alleged subversion of the constitutional spirit embodied in the preamble through a series of one sided elections.

In his final prayer, learned counsel prayed to allow the instant appeal and setting aside the 13<sup>th</sup> Amendment Judgment. However, he delimits the scope of the present proceeding, submitting that the broader, polycentric question of the future constitutionality and operational modalities of a caretaker government system is a matter more appropriately reserved for definitive determination in the pending appellate proceedings concerning the validity of the 15<sup>th</sup> Amendment itself.

Learned counsel, Advocate A.S.M. Shahriar Kabir, added in support of Senior Advocate Md. Bodruddoza, in Civil Review Petition No. 313 of 2024, defending the constitutional validity of the caretaker government system as introduced by the 13<sup>th</sup> Amendment. His arguments are advanced on multiple jurisprudential aspects, commencing from a historical exposition and culminating in a substantive doctrine of constitutional immutability.

The learned counsel buildings his case on the specific historical context in which the 13<sup>th</sup> Amendment was conceived. He contends that 13<sup>th</sup> Amendment was not a product of ordinary political calculus, but a necessary constitutional response to a profound and recurring crisis of confidence in the electoral process, as evidenced by the disputed national elections of 1973, 1986, and 1988. In this context, the public acclamation of the then Chief Justice, Shahabuddin Ahmed, to oversee the 1991 election is presented not as a mere personal preference, but as a societal invocation of the judiciary's institutional neutrality. This historical imperative, it is argued, culminated in the convening of the 6<sup>th</sup> Parliament with a singular mandate, to enact the 13<sup>th</sup> Amendment. The learned counsel contends that this Parliament thereby transcended its ordinary legislative role and acted as a direct conduit for the

constituent power of the people, located in Article 7 of the Constitution. Consequently, the 13<sup>th</sup> Amendment is characterized as an exercise of sovereign will, standing on a higher status than amendments enacted under the procedural framework of Article 142, and thus inherently resistant to conventional constitutional challenge.

Building upon this foundation, the learned counsel engages with the architecture of the Constitution's amendment power. He acknowledges the express limitations contained within Article 142 but places paramount emphasis on the implied limitations crystallized in the basic structure doctrine, as recognized by this Court in earlier decisions. His core contention is that the caretaker government system, born of the people's constituent power, has itself become an integral component of the basic structure of our Constitution. It is submitted that the system serves as an essential guarantor of free and fair elections, which is a fundamental precondition for democracy, a cardinal element of the basic structure. Therefore, any attempt to repeal or alter this system would constitute a violation of the implied limitations on the amending power itself.

To support the proposition that the system is compatible with the constitutional order, the learned counsel draws upon a series of analogies from submissions made by eminent Senior Advocates in the earlier proceedings concerning this Amendment. It is argued that just as a Council of Ministers may continue in office after the dissolution of Parliament without a fresh popular mandate, the time-bound tenure of a caretaker government presents no greater conceptual difficulty. Further, analogy is drawn to the mode of election of the President under Article 48(1), where the mandate is derived indirectly through elected representatives, suggesting that the legitimacy of the caretaker

government flows similarly through the political parties that constitute Parliament. The learned counsel also references comparative constitutional practice, noting that democratic governance functions effectively in politics with constitutional monarchies, thereby illustrating that a temporary, non-elected executive for a specific purpose is not incompatible with a republican democracy.

Finally, the learned counsel invokes the principle that a Constitution is a living instrument, capable of incorporating innovative mechanisms to meet evolving societal needs, as supported by precedents such as the *P.V. Narasimha Rao* case (4 SCC 626). He submits that the 13<sup>th</sup> Amendment represents precisely such a tailored innovation, designed to strengthen and preserve the democratic fabric of the state by ensuring credible electoral transitions. For this Court to invalidate it, he concludes, would be to negate a historic exercise of the people's constituent power and to remove a structural safeguard this Court has recognized as vital to the strength of democracy in Bangladesh. His prayer, in essence, is for a declaration that the caretaker government system, being part of the inviolable basic structure, remains a permanent feature of the constitutional landscape.

In the submissions presented before the court, the learned counsel Senior Advocate Imran A. Siddiq, in Civil Review Petition No. 248 of 2025, advanced a nuanced defense of the constitutional principle underlying the caretaker government system while critically engaging with the specific form established by the 13<sup>th</sup> Amendment. The learned counsel contends that the majority judgment in the 13<sup>th</sup> Amendment Case erred in its foundational assessment by focusing predominantly on the formation of the caretaker government while disregarding its constitutionally circumscribed functions. It is submitted that a

proper constitutional interpretation of Article 58D(1) reveals that the caretaker government is barred from making policy decisions, being restricted to the discharge of routine and day-to-day administrative functions only. This functional limitation, it is argued, preserves the essence of representative democracy by ensuring that the sovereign power to formulate policy remains exclusively vested in the elected Parliament. The omission to evaluate this critical aspect, according to the submission of learned counsel, renders the majority findings that the amendment violates democratic principles, legally unsustainable.

Furthermore, the counsel invokes comparative constitutional principles, citing scholarly authority to posit that the existence of unelected institutions within a democratic framework is not per se incompatible to it, provided such institutions operate under adequate legislative and judicial oversight. Within this paradigm, the caretaker government system is presented as a legitimate contemporary mechanism to ensure electoral integrity, functioning within a strictly defined mandate.

However, a significant concern and affiliated argument pertain to the threat to judicial independence advanced by learned counsel. The counsel acknowledges that the provision for a retired Chief Justice to serve as Chief Adviser carries a demonstrable risk. It is submitted that such a prospect could consciously or subconsciously influence the conduct of a sitting Chief Justice or senior Appellate Division judge, thereby undermining the integrity of the judiciary. This Court's attention is drawn to the precedent in *Abdul Bari Sarkar vs. Bangladesh* 46 DLR (AD) 37, which recognizes the potential for post-retirement appointments to affect judicial independence.

In light of the foregoing, a pragmatic procedural remedy is proposed. The counsel urges that, should this Court find merit in the appeal, it would be constitutionally prudent to refrain from reinstating the specific model established by the 13<sup>th</sup> Amendment. Instead, it is suggested that the matter of designing a constitutionally sound framework for a neutral interim administration be left for determination by the next duly constituted Parliament, respecting the separation of powers.

The crux of the submissions culminates in a distinction of fundamental importance. It is argued that the underlying principle of a neutral, interim government to oversee elections is integral to the basic structure of the Constitution, as it gives effect to the foundational values of democracy, free and fair elections, and the genuine reflection of the people's will. However, the specific institutional arrangement codified by the 13<sup>th</sup> Amendment, its composition and procedural mechanics, is submitted to be a mutable legislative design, not forming part of the unalterable basic structure. Consequently, while the principle requires constitutional protection, the particular statutory framework enacted to achieve it remains subject to legislative review, modification, or replacement to address evident shortcomings and to align with the nation's evolving democratic ethos.

Senior Advocate Mr. Zainul Abedin, in Civil Appeal No. 113 of 2025, advanced a series of interconnected legal arguments centered on challenging the legitimacy and reasoning of the Supreme Court's majority judgment in the 13<sup>th</sup> Amendment Case. The foundational premise advanced is that this Court, as the ultimate interpreter and guardian of the Constitution, derives its authority from the sovereign people. It is thus incumbent upon the Court to exercise this sacred trust with unwavering fidelity to constitutional principles, devoid of any

extraneous considerations. The learned counsel contends that the majority opinion in the 13<sup>th</sup> Amendment case regrettably diverged from this imperative.

A significant portion of the argument is devoted to establishing the historical and functional legitimacy of the non-party caretaker government system. It is submitted that this mechanism, though not envisioned in the original constitutional text, evolved as a necessary convention to guarantee free and fair elections, a basic feature of our democratic republic. He characterized the arrangement, wherein the Chief Justice of Bangladesh headed the caretaker government in 1991, not as a personal mandate but as a public affirmation of trust reposed in the exalted Office of the Chief Justice, thereby negating any inherent constitutional incompatibility. He also contended that the efficacy of caretaker system, as demonstrated in the national elections of 1996, 2001, and 2008, proves its deep-rooted acceptance by the people.

In his opinion, the crux of the challenge, however, pertains to alleged procedural infirmities and substantive alterations in the 13<sup>th</sup> Amendment judgment itself. It is strenuously argued that a profound and fatal discrepancy exists between the short order pronounced in open court on 10 May 2011 and the full judgment published on 16 September 2012. The short order is stated to have permitted Parliament, for the next two national elections, the discretion to utilize a reformed caretaker government framework. This provision was conspicuously absent in the subsequently published full judgment, which instead introduced a proposal for the immediate past Cabinet to constitute a caretaker government for a duration of 42 days.

This alteration is assailed on dual jurisprudential grounds. First, relying on *Qazi Mehar Din vs. Mst. Murad Begum and Others* (16 DLR (SC) 392) he contended that a judgment finalized and signed after the presiding judge's

retirement is devoid of legal efficacy. Given that the then Chief Justice retired on 17 May 2011, merely seven days after pronouncing the short order, the full judgment published thereafter is alleged to suffer from this fatal infirmity. Second, and concomitantly, it is submitted that such substantive modification violates the explicit mandate of Order X, Rule 2 of the Supreme Court of Bangladesh (Appellate Division) Rules, 1988. This Rule expressly prohibits any alteration, addition, or deletion to a judgment once pronounced in open court, save for the correction of clerical or arithmetical errors. The changes effected between the short order and the full judgment are, therefore, characterized as unlawful, a concern also reflected in the observations of the minority opinions of the 13<sup>th</sup> Amendment case.

The learned counsel further submits that the sequence of events, whereby the 15<sup>th</sup> Amendment was enacted by Parliament abolishing the caretaker system prior to the publication of the full judgment, inverts the proper constitutional order. It is contended that this sequence demonstrates the amendment dictating the terms of the judgment, rather than the judgment guiding the amendment, thereby undermining the doctrine of judicial supremacy.

An ancillary but pertinent argument addresses the reasoning on judicial independence. While the impugned judgment expressed apprehension that the prospect of heading a caretaker government could compromise judicial neutrality, the learned counsel highlights the subsequent acceptance of a post-retirement appointment by the author judge as the Chairman of the Law Commission. This action, it is suggested, stands in stark contrast to the judgment's own reasoning regarding potential conflicts of interest.

In summary, based on the grounds of (i) a fundamental discrepancy between the short order and the full judgment, (ii) the alleged violation of procedural rules and precedent concerning judgments delivered post-retirement, (iii) the assertion that the 13<sup>th</sup> Amendment did not damage the basic structure of the Constitution, rather fortified democracy by ensuring free and fair elections, and (iv) the perceived inversion of the relationship between judicial pronouncement and constitutional amendment, the learned counsel prays for this Court to set aside the judgment of the 13<sup>th</sup> Amendment case and to restore the caretaker government system prospectively.

Learned counsel, Senior Advocate Md. Ruhul Quddus, in Civil Appeal No. 113 of 2025 has also placed a series of interconnected constitutional and legal submissions seeking a review and reconsideration of this Court's earlier judgment. On the maintainability and scope of the review jurisdiction of this Court, he submits that the pronounced short order of a judgment constitutes its final and operative part. Any material variation between that order and the subsequently released full text impinges upon the principle of finality and in itself furnishes a valid ground for review. Furthermore, reliance is placed on a construction of the term "judgment" within the meaning of the Supreme Court of Bangladesh (Appellate Division) Rules, 1988, whereby the determination or opinion of any single judge of the Division may be treated as a distinct judgment. On that premise, it is contended that the separate opinion authored by Justice A.B.M. Khairul Haque in the 13<sup>th</sup> Amendment case qualifies as such a judgment, and any error apparent on its face is sufficient to invoke the review jurisdiction against the entire consolidated judgment. The procedural framework under Order X of the Supreme Court of Bangladesh (Appellate Division) Rules, 1988 is invoked to underscore that corrections beyond mere

clerical or arithmetical mistakes must necessarily follow the prescribed review procedure.

However, he also urged that the impugned judgment suffers from multiple errors apparent on the face of the record. Notably, it is submitted that the judgment failed to adequately consider the historical context, democratic essence, and the national consensus that underpinned the introduction of the non-party caretaker government system through the 13<sup>th</sup> Amendment. The judgment is further criticized for incorporating extraneous observations and personal remarks unrelated to the legal questions at hand, which, it is submitted, are inappropriate for inclusion in a judicial determination and vitiate the reasoning process. It is contended that if the opinion of Justice A.B.M. Khairul Haque, which formed part of the majority reasoning, is found to be unsustainable, the entire edifice of the majority judgment collapses.

Regarding the basic structure doctrine, a substantive argument is advanced that the non-party caretaker government system, instituted to ensure free and fair elections, constitutes a basic structure of the Constitution itself. It is submitted that the system strengthens, rather than undermines, the foundational principles of democracy and popular sovereignty. The judgment under review is questioned for adopting an unduly narrow and rigid interpretation of the basic structure doctrine, recognizing only four such structures, contrary to the more expansive understanding reflected in this Court's earlier jurisprudence. The evolving nature of the doctrine, which must be interpreted in light of societal needs and constitutional ethos, is emphasized.

In support of the proposition that this Court may revisit and reverse its earlier decision in a review petition, reference is made to comparative constitutional law, particularly the evolution of the basic structure doctrine in

India. It is illustrated how minority views expressed in earlier Indian cases were subsequently affirmed and adopted as the correct position of law. By analogy, it is submitted that the minority opinions in the 13<sup>th</sup> Amendment case, which upheld the constitutionality of the amendment, represent the correct legal position and may now be affirmed in the exercise of its review jurisdiction. It is argued that in matters of profound constitutional importance, touching upon the democratic framework and fundamental rights, the Court possesses the authority, in a review petition, to depart from its earlier decision and to deliver a fresh judgment to secure substantive justice and the public good.

However, the learned counsel also invokes the principle of judicial self-restraint. It is submitted that certain directions contained in the impugned judgment, such as specifying the modality for holding elections and permitting an unelected cabinet to govern for a stipulated period after the dissolution of Parliament, amount to a transgression into the legislative domain. Such judicial overreach, it is contended, is contrary to established constitutional principles regarding the separation of powers. A review is therefore warranted to correct this encroachment and to restore the proper constitutional balance.

The learned Additional Attorney-General, Mohammad Aneek R. Haque, responding to all appeals and review petitions, contends that the majority opinion in the impugned judgment warrants review on the grounds of errors apparent on the face of the record, coupled with other substantive reasons as envisaged under the Code of Civil Procedure.

The foundational submission characterizes the majority opinions of 13<sup>th</sup> Amendment case as effecting a substantive alteration of the constitutional order, arguing that it transgressed the proper judicial function of interpretation

and instead impermissibly negated a core democratic mechanism. It is pleaded that this resulted in the effective deprivation of the citizenry's fundamental right to choose their representatives through free and fair elections, thereby undermining a cardinal feature of a democratic state.

A principal legal challenge is raised against the interpretive methodology employed, alleging an unduly rigid textualism that disregarded historical context and pragmatic state necessity. He argues that the judicial abrogation of the caretaker government system, historically viewed as an essential guarantor of electoral integrity in the prevailing political climate, created a constitutional vacuum. This, it is submitted, interrupted the continuous operation of representative democracy and facilitated a shift in governance contrary to the spirit of the Constitution.

He asserted that democracy constitutes an inalienable basic structure of the Constitution, while the caretaker system was a 'basic feature' instrumental for its preservation. The striking down of the 13<sup>th</sup> Amendment is thus presented as an erosion of the basic structure itself. He opined, this judicial act, was subsequently utilized as a constitutional pretext for the 15<sup>th</sup> Amendment, enabling a Parliament of limited amending power to permanently dismantle a key democratic apparatus.

Drawing upon comparative historical jurisprudence, he warns of the judgment's consequential impact, suggesting it provided a framework that weakened democratic resilience and enabled authoritarian tendencies, thereby degrading the nation's political ethos to a state where upholding constitutional principles requires exceptional fortitude.

The Additional Attorney-General Mohammad Aneek R. Haque invokes the sovereign character of the people as the ultimate source of constitutional

authority. He posits the Constitution as a living instrument, a charter of power derived from the liberty of the people, and not vice-versa. He prayed that this Court, in the exercise of its review jurisdiction, would recognize the purported judicial diminution of democracy and would act to restore its full vitality, thereby reaffirming the sovereignty vested in "We, the People."

The learned Attorney-General, Senior Advocate Md. Asaduzzaman, appearing as legal counsel for the State, has advanced a comprehensive and multidimensional argument urging the Court to review and set aside the judgment rendered in the matter of the 13<sup>th</sup> Amendment. The core of his submission rests on the profound constitutional significance of the case, which touches upon the very essence of Bangladesh's democratic journey and the organic nature of our Constitution, the supreme law of the land. He respectfully implores the Court to adopt a dynamic and expansive interpretative approach, transcending conventional review principles, to address what is characterized as a grave constitutional moment for the nation.

He contends that the Constitution of Bangladesh is a living instrument which is shaped and legitimized by the sovereign will of the people. This is illustrated through the historical narrative of the caretaker government system. It is submitted that the system originated in 1991 as an extra-constitutional innovation born of national consensus to ensure a peaceful democratic transition, was ratified by the electorate, and was subsequently codified into the Constitution via the 13<sup>th</sup> Amendment. This historical sequence is presented as demonstrative of a deeper constitutional principle that the people's acceptance can crystallize practice into legitimate constitutional law, thereby informing the document's interpretation.

Doctrinally, a critical distinction is drawn between an unalterable ‘basic structure’ and a mutable ‘basic feature.’ It is contended that while democracy is an inviolable basic structure of the Constitution, the caretaker government mechanism constituted a fundamental feature designed to bolster that very structure. As such, its abolition, it is argued, inadvertently weakened the democratic framework, a consequence evidenced by the subsequent electoral controversies and public unrest. The system is further characterized as having attained the status of a ‘constitutional convention,’ a practice of such settled authority and public acquiescence that it carries significant interpretive weight, potentially surpassing mere textual provisions.

A primary and substantial ground for review is identified as an error apparent on the face of the record. This error is said to manifest in two critical forms i.e. first, in the significant and unexplained variances between the short order and the full reasoned judgment of the prior Bench, constituting a serious procedural irregularity; and second, in a fundamental jurisprudential misstep whereby the Court, under the pretext of protecting democracy (a basic structure), invalidated a procedural apparatus empirically proven to facilitate free and fair elections, the very essence of that democracy. This, it is submitted, represents a clear error in the application of the basic structure doctrine itself.

It is further argued that this erroneous conclusion was not reached in good faith, but was the product of malice in fact and in law. The submission alleges that the majority in the earlier judgment operated with a predisposed political bias, willfully adopting an unduly narrow and acontextual interpretation of democracy. This alleged malice is linked to a misapplication of the foundational legal maxim *salus populi est suprema lex* (the welfare of

the people is the supreme law). The Attorney-General contends that the maxim was perversely deployed against the people's welfare, as the caretaker system was instituted precisely to safeguard the people's sovereign right to vote, which is the ultimate expression of their welfare within a democratic republic.

Empirical evidence from international and national election observer reports is extensively cited to fortify this claim. A comparative analysis is presented, contrasting the widely endorsed elections of 1991, 1996, and 2008 conducted under the caretaker model with the deeply uncontested elections of 2014, 2019, and 2024 held under partisan governments. This evidence is tendered to demonstrate that the prior Court's assessment of what best serves the people's welfare was divorced from factual reality and operational history.

The argument then expands to critique the prior judgment's interpretative methodology as unduly restrictive, failing to heed the broad and purposive approach mandated by precedents like *Kesavananda Bharati* case. It is submitted that the majority judgment failed to consider the clear legislative intent behind the 13<sup>th</sup> Amendment (to strengthen democracy) and ignored the people's mandate as expressed through its historical operation. In support of a more flexible constitutionalism, parallels are drawn from comparative jurisprudence, specifically the 'doctrine of necessity' as articulated in certain Pakistani decisions, to suggest that constitutional mechanisms may be validated by the imperative need to preserve democratic continuity.

The learned Attorney-General in his submission characterized the Constitution as a social contract between the state and its citizens, a conceptual framework which elevates the people's will as the paramount constitutional principle. The 13<sup>th</sup> Amendment, it is argued, was an integral part of this

contract, protecting not only voting rights but also upholding broader constitutional values like human rights and the rule of law.

Leaving off the submissions so placed before this Court, it is here that the overall merit of this review exercise calls for a thorough consideration and discussion as recorded hereinbelow.

It is apt to note at this juncture, that the strands of arguments placed before this Court variously permit of categorization under four broad groupings, i.e., jurisprudential, elaboration of the ‘Basic Structure’ doctrine, deconstruction of the ‘Social Contract’ theory and its bearing on the notion of expression of sovereign popular will, and certain other supplemental issues necessary for a full and final disposal of the instant appeals and petitions.

We must remember at the outset that western models of democracy do not permit of transplantation simpliciter readily through mere mechanical lifting and entrenchment from one jurisdiction to another. Instead, democracy undergoes a necessary process of socio-legal reception, ‘legal’ transplantation, and adoption. This process is mediated by a host of external forces and requires pragmatic adaptation. Sustainable democracy, consequently, is not an imported blueprint but the result of innovative, indigenously conceived models that act as a conductive bridge between a pre-existing political order and an aspirational one. This transition is gradual, reflecting a deep plural enterprise where external concepts are filtered and reshaped by local normative landscapes (See, Sonia Zaman Khan, *The Politics and Law of Democratic Transition: Caretaker Government in Bangladesh*, 1<sup>st</sup> edn, Routledge Publication 2018 for a general discourse on the politico-legal philosophical underpinnings of the caretaker mechanism).

The attainment of substantive democracy is contingent upon a defined period of democratic consolidation. This interlude acts as a crucial catalyst or transient phase between political regimes, marked by incremental changes and qualitative alterations to the old order. Typically characterized by interim governance committed to organizing free and fair elections, this period's primary function is to generate durable legacies that will positively shape post-transitional politics.

However, the sustainability of such transitions, reflecting "democratic consolidation," depends on two identifiable and crucial factors:

- a) The boldness and skill with which policy decisions are taken during the transitional period, combined with the ability to fashion an efficient succession; and
- b) A rapid, comprehensive, and deeply committed effort to complete all steps necessary for a democratic transition.

In such a context, the central idea of the philosophical underpinning of this Court's reasoning is to abandon a strictly positivist narrative of democracy and adopt a more pluralistic/realist view of structuring models of democracy. The majority view of the judgment under review, however, adhered to an overly rigid, and therefore, inflexible model and outmoded architecture of democracy bordering on utopianism. The irony is that what was perceived by the Bench as a judicial sanction of a democratic utopia gave rise instead inevitably to a dystopian order of authoritarianism and dysfunctional electoral politics that has brought this nation on the brink of total systemic collapse.

The central philosophical thrust of this Court's reasoning is the deliberate movement beyond a narrowly positivist conception of democracy, which treats it as a mere procedural mechanism defined by fixed rules, and

toward a pluralistic and realist understanding. This view acknowledges democracy not as a monolithic, one-size-fits-all architecture, but as a dynamic, context-sensitive practice that must be structured in dialogue with the sociological, historical, and normative contours of a given polity.

In stark contrast, the majority opinion under review regrettably adhered to an inflexible and anachronistic model of democracy, one bordering on constitutional utopianism. It enshrined a rigid, idealized blueprint, presumed to be self-executing and universally applicable, while remaining willfully blind to the complex realities of political contestation, social fragmentation, and institutional capacity. This judicial sanction of a democratic utopia, ironically, did not elevate political life but triggered its antithesis, a dystopian descent into authoritarian practice and dysfunctional electoral politics. By forcing reality into an unworkable formalist frame, the judgment destabilized the very foundations of credible competition, eroded public trust in the electoral process, and empowered anti-systemic forces. Consequently, what was intended as a bulwark for democracy has instead accelerated a crisis of legitimacy, pushing the nation toward the brink of systemic collapse.

The peril of such judicial utopianism lies in its failure to recognize that democratic sustainability requires not the imposition of abstract ideals, but the careful cultivation of a working political order. A realist-pluralist approach, by contrast, would have engaged with democracy as a living system, one requiring balancing, adaptation, and prudent trade-offs among competing values such as fairness, stability, inclusivity, and decisiveness. It would have asked not only whether a rule is formally coherent, but how it will function in practice. Will it enhance or diminish genuine political agency? Will it reinforce or undermine institutional resilience? Will it integrate or further polarize the body politic?

In seeking to purify democracy through rigid legalism, the judgment under review inadvertently created the conditions for its degradation, demonstrating that the defense of democracy demands not doctrinal purity, but pragmatic wisdom attuned to the fragile ecology of political freedom.

Indeed, the journey toward sustainable democracy is not a matter of logistical replication but one of organic political evolution. The western model, while historically significant, is not a universal artifact to be installed but a set of principles that must be culturally translated and institutionally reimaged.

Thus, the combined hearings before this Court encompassing Civil Appeal Nos. 112 and 113 of 2025 along with several connected Civil Review Petitions, represent a constitutional moment of profound significance. Indeed, the judicial re-examination of this Court's own 2011 verdict in this Case transcends a mere legal technicality. Rather, the arguments presented before this Court compel it to engaging with profound questions about popular sovereignty, constitutional interpretation, judicial power, historical context, and the very nature of democracy in Bangladesh.

For instance, the philosophical bedrock of the case for reviewing and overturning the 2011 judgment rests on a re-interpretation of the basic structure doctrine and the location of sovereign authority. In this regard a powerful argument advanced by multiple counsels, including Dr. Sharif Bhuiyan and Senior Advocate Ehsan Abdullah Siddiq is that the 13<sup>th</sup> Amendment itself became part of the Constitution's basic structure.

The argument primarily suggests that any constitutional amendment enacted to protect and strengthen a basic structure itself attains that status. Since the caretaker government was introduced to safeguard democracy which is an accepted basic structure, by ensuring free and fair elections the caretaker

government mechanism itself is inviolable. Learned counsels drew an analogy to the Supreme Judicial Council, introduced by the 5<sup>th</sup> amendment and later recognized as a basic structure in the 16<sup>th</sup> *Amendment Case*. The learned counsel for the intervener (Centre for Law, Governance and Policy), Senior Advocate Ehsan Abdullah Siddiq, further fortified this by citing the 15<sup>th</sup> *Amendment Case* in the High Court Division, which observed that repealing the caretaker government undermined democracy and electoral fairness, the core elements of the basic structure.

A nuanced variation of this argument was presented by Senior Advocate Imran Abdullah Siddiq. He contended that the '*principle*' of a neutral, interim government to oversee elections is a basic feature integral to democracy. However, the specific '*form*' of that government (as outlined in the 13<sup>th</sup> Amendment with a retired Chief Justice at its head) is not unamendable and can be reformed by Parliament. This distinction seeks to preserve the core democratic function while allowing for institutional flexibility, suggesting that in the present case the Court could uphold the concept of a caretaker government without mandating the restoration of the specific 13<sup>th</sup> Amendment model.

These arguments have helped fortify this Court's own understanding of the core components of the Constitution that cumulatively emerge as its basic structure. This Court, accordingly, deems it prudent to elaborate its position on this issue through the reasoning below.

As already noted, an all-pervading theme of the different sets of arguments put forth has been that of the 'Basic Structure' of the Constitution. Owing its elaboration over the decades to common law pronouncements down to outright constitutional declarations, the 'Basic Structure' concept denotes

such of the Constitution's constituent elements that are the very building blocks of constitutionalism, the *raison d'être* of the Constitution itself, and the sheet anchor of State formation. The structural components of such basic structure, amongst which the sustenance of a substantive democratic order is one of the most noteworthy, this Court is asked to examine, suffer from wear and tear over time and demand periodic reinforcements and retrofitting. These supplemental devices at enhanced structural capacity are submitted in their own right to acquire the primary character of constitutional DNA with the passage of time. Call them by whatever name, be it 'Basic Feature' or 'Constitutional Convention', learned Counsels have variously but with remarkable consistency and similarity submitted, these devices at strengthening the very edifice of constitutionalism deserve the same status and recognition as the fraying structural constitutional component they are called in to repair and retrofit. The innovative device at establishing the Non-Party Caretaker Government is argued to be one such mechanism at ensuring constitutional sanctity that with the efflux of time and with a proven track record at living up to its promise at conducting free and fair elections must not be tinkered with lightly. This line of argument so offered for this Court's evaluation has struck a chord with this Court as the following treatment of this line of arguments bears testament to.

The basic structure doctrine, immutable in essence but contested in politics, has served as this Court's compass guiding our course corrections of late. Whether addressing excesses committed by the Executive, legislative distortions force-fed upon the people, or judicial excursions beyond permissible limits, this Court has been compelled repeatedly to reassert those entrenched norms that make constitutional life possible, i.e., separation of

powers, judicial independence, democratic governance, inalienable fundamental rights, and the sovereignty of the People.

The instant matter under review, qualifying as judicial misadventurism in this Court's eyes, amply permits of such corrective intervention by this Court on the grounds cited by the disaffected parties before us.

Aside from this, a more radical yet a profound argument was presented by Intervener Senior Advocate Ehsan Abdullah Siddiq. He contended that the 13<sup>th</sup> Amendment was not a product of the ordinary amending power under Article 142 of our constitution but a manifestation of the people's constituent power. Thus, the learned counsel drew a delicate distinction between ordinary amendment and amendment on the basis of national consensus. Ordinary amendments operate within the framework of the existing Constitution. In contrast, amendments that arise from an overwhelming national consensus and address a fundamental crisis of the constitutional order partake of the original, sovereign power of the people- the same power that created the Constitution itself. This view was echoed by Advocate A.S.M. Shahriar Kabir, who argued that the 6<sup>th</sup> Parliament, convened specifically to pass this amendment, acted as a de facto constituent assembly for this purpose, reflecting the people's will under Article 7. The profundity of this line argument has merited further examination by this Court as shall be considered below.

However, in the impugned judgment the majority affirmed that Parliament's power to amend the constitution under Article 142 is not unlimited; it cannot be used to alter or destroy the document's basic structure. In their view, the 13<sup>th</sup> Amendment did precisely that. By introducing a system that suspended popular sovereignty, altered the form of government, and

threatened judicial independence (all core components of the basic structure) the amendment exceeded the permissible boundaries of Article 142.

This line of argument has merited a thorough consideration by this Court taking it into the realm of the “Social Contract Theory” and grasping that the constituent power in a state always lies inherent in its people to the extent of such power not being expressly delegated to any representative authority, and that the expression of such will can manifest in many a ways. Indeed, in this context, this Court recognizes that the power conferred under Article 142 is not an exercise of original constituent authority but a fiduciary trust reposed by the sovereign people in their created institution, here, the parliament. It is therefore self-evident that this delegated power cannot be utilized to negate, abrogate, or substantially impair the fundamental architectural features (the basic structure) that constitute the Constitution’s essential character and give coherence to its democratic framework.

The jurisprudential inquiry thus extends to whether a constitutional innovation, promulgated subsequent to the inaugural moment of 1972, can be assimilated into the corpus of this protected basic structure. The established principle, as elucidated in *Government of Bangladesh vs. Advocate Asaduzzaman Siddiqui* (71 DLR AD 52), provides an affirmative resolution. A provision introduced by amendment may, by its substantive essence and functional necessity, become integral to the basic structure if it operates as a cardinal safeguard, a necessary outcome, or an indispensable procedural support to a pre-existing basic feature. Such a provision transcends its statutory genesis and accrues a constitutional sanctity co-equal with the foundational feature it secures. Its repeal or alteration, therefore, is not a mere exercise of

amending discretion but an act that strikes at the heart of the constitutional order, and is thus ultra vires Parliament's authority under Article 142.

This Court's recent review of the 16<sup>th</sup> Amendment judgment established further that the Supreme Judicial Council, though a later incorporation, was not a mere procedural addition but a constitutive element of the basic structure of an independent judiciary. In that case the Court held that the removal of judges by parliamentary impeachment process would fatally compromise judicial independence, as parliamentarians, constrained by the anti-defection imperative of Article 70, cannot constitute the neutral and impartial forum demanded by such a grave function. The mechanism was thus deemed an essential condition for the preservation of that basic feature. By logical analogy, any constitutional provision, including those pertaining to electoral integrity and democratic continuity that is evidently essential to realizing and protecting a basic feature, such as representative democracy itself, in this Court's considered view attains a similar status. To hold otherwise would be to permit the amending power, through the erosion of its essential safeguards, to achieve indirectly what it is prohibited from doing directly, the degradation of the Constitution's foundational pillars.

Consequently, it is this Court's definitive finding that the test of validity for any constitutional amendment is not merely textual or historical but substantive and teleological. It requires an examination of whether the impugned amendment has the effect, in substance and operation, of damaging or destroying a recognized basic structure of the Constitution. Where an amendment removes a mechanism objectively designed to ensure the fairness and neutrality of a process fundamental to democracy, be it the appointment and removal of judges or the conduct of national elections, it engages the basic

structure doctrine. Parliament, in exercising its derivative power, acts unconstitutionally if it dismantles an institutional safeguard so integral to a basic feature that its absence would render the feature itself nugatory or profoundly vulnerable. In contradistinction to negating the thrust of the 16<sup>th</sup> Amendment, and as the foregoing discussion shall have amply attested to by now, the inherent merit to the 13<sup>th</sup> Amendment was a reinforcing one, i.e., strengthening the foundation of a substantive democratic architecture as envisaged in the Constitution. The intent was to reinforce, reinvigorate, and revive the very nature of conduct of electoral politics that would convert the long trend of mere formal democracy as had become entrenched in this country's political landscape and usher in instead the sustained practice of substantive democracy.

Here, this Court finds merit necessarily too in the line of argument relying on modern constitutional scholarship (e.g., Böckenförde, Rubinelli) that the constituent power does not expire after the Constitution's adoption but remains dormant within the people. In 1996, facing a crisis of electoral legitimacy, the people of Bangladesh activated this power through their elected representatives. Consequently, the validity of the 13<sup>th</sup> Amendment is beyond the scope of ordinary judicial review, as it originates from an authority superior to the text it amended. This argument directly challenges the judiciary's authority to nullify an amendment that is a direct expression of the people's sovereign will and this Court remains convinced of the accuracy of that line of thought.

In addition, the majority judgment's rigid and erroneous application of the basic structure doctrine is also need to be addressed. Learned counsel Senior Advocate Mr. Ruhul Quddus argues that the majority opinions did not

apply the impact test, the test for whether an amendment violates the basic structure because of its negative impact on the constitutional scheme. This Court acknowledges this to be a notable shortcoming of the majority view under review. As we have already noted above, the caretaker government system by enabling credible elections, strengthened democracy; it did not damage it. The subsequent decade of failed elections was presented as empirical proof of this flawed assessment by the learned counsels in their submission and aptly so. Indeed, this failure to apply the impact test reveals a profound disconnect between the majority's abstract constitutional reasoning and the concrete political realities of Bangladesh. The majority judgment adopted a formalistic approach, scrutinizing the caretaker government's unelected character in isolation, while willfully ignoring its functional role as the guarantor of electoral integrity, the very foundation upon which the entire edifice of democratic governance rests. The majority's analysis was thus static and ahistorical, treating the Constitution as a closed legal code rather than a living framework intended to secure democratic governance in a complex society.

Moreover, in deciding this case, a focal issue also has been to identify the location of sovereignty, its vesting and how it works in practice. The learned counsels argued that the majority view was too theoretical and detached from political reality in this regard.

The majority judgment held that the unelected nature of the caretaker government system contradicted the Preamble's declaration of "We, the people." In this regard the learned counsels, drawing heavily on the minority opinions of Justices Md. Abdul Wahhab Miah and Muhammad Imman Ali, presented a powerful counter-argument. They argued that the true essence of

people's sovereignty lies not in the technical, elected status of every government functionary, but in the ultimate outcome: a government that reflects their genuine will. If the people are deprived of a free and fair election, the theoretical sovereignty becomes meaningless. The caretaker government system was a temporary, pragmatic vehicle to achieve this substantive sovereignty. Justice Muhammad Imman Ali emphasized that being governed by unelected advisers for 90 days was a price willingly paid by the people to secure their long-term democratic rights.

The 13<sup>th</sup> Amendment was passed by a two-thirds majority of elected representatives. Thus, it directly reflects the people's will. By choosing this system, the people consciously consented to a temporary deviation from the norm to secure their long-term democratic future. This act of collective choice was the highest expression of their sovereignty, not a suspension of it. In his submission, the Attorney-General, Md. Asaduzzaman, framed this as the core of a 'social contract', where the people vest power in institutions that serve their wellbeing.

It is necessary to take a pause here and find upon a jurisprudential commonality that binds together these various strands of argument. That commonality, this Court deduces, lies in the emphasis placed by all learned counsels before us on the element of popular or sovereign will as the core determinant of the constitutionality of any tenet found within the constitution.

It is here that the Court befittingly examines the notion of "social contract" as the learned Attorney General has also driven home and as underpins the origins and the making of a constitution as ours. His intention has been to highlight the constituent power of the people as inherently vests in them and is never truly fully relinquished by them. It is that residual constituent

power that determines the course of constitutional history and constitutional mutations as and when the people will it. The 13<sup>th</sup> Amendment to the Constitution was one such manifestation of constitutional reordering as willed by the people. This “social contract” theory as espoused by the learned Attorney General merits at this juncture further elaboration by this court. And to begin with we need look no further than the fundamental precept of constitutionalism, i.e., rule of law (See, ‘Rule of law within the constitutional scheme: A Judicial Perspective’ authored by Syed Refaat Ahmed in *A History of the Constitution of Bangladesh: The Founding, Development, and Way Ahead* (1<sup>st</sup> edn, Routledge Publication 2024).

Significantly, the Constitution does not provide a definition of what the notion of rule of law is precisely intended to encompass. This is by design rather than oversight and in acknowledgment of the evolving frontiers of that all-important concept this Court subscribes wholly to what Tom Bingham has had to say in his compelling work *The Rule of Law* (Penguin 2011). In a similar context of the draftsmen's notable omission of an otherwise expected "pithy definition" in the Constitutional Reform Act of 2005, Bingham observes:

*“I think, they recognized the extreme difficulty of devising a pithy definition suitable for inclusion in a statute. Better by far, they might reasonably have thought, to omit a definition and leave it to the judges to rule on what the term means if and when the question arises for decision. In this way... it would be possible for the concept to evolve over time in response to new views and situations.”*

However, in deconstructing the rule of law to its bare essence one may look no further than the preamble to the Constitution where "the people" of Bangladesh, having proclaimed their independence and, through a historic struggle for national liberation, established an independent sovereign Republic by enacting and giving themselves the Constitution, pledged:

*“that it shall be a fundamental aim of the State to realize a society in which the rule of law, fundamental human rights and freedom, equality and justice, political, economic and social, will be secured for all citizens.”*

In the preamble of the Constitution, the people also affirmed their:

*“sacred duty to safeguard, protect and defend this Constitution and to maintain its supremacy as the embodiment of the will of the people of Bangladesh so that (they) may prosper in freedom and may make [their] full contribution towards international peace and co-operation in keeping with the progressive aspirations of mankind.”*

Indeed the constituents of the rule of law are readily discernible in the supremacy of the Constitution "as the solemn expression of the will of the people", the fundamental principles of state policy comprising of lofty but judicially non-enforceable principles "fundamental to the governance of Bangladesh separation of the judiciary from the executive," promotion of international peace, security, and solidarity, equality before law; the prohibition against discrimination; and the judicial enforcement of fundamental rights; among others. But even in the plethora of pledges, convictions, aspirations, and guarantees one remains hard-pressed to decipher the true essence of the notion of rule of law.

As the learned Attorney-General Mr. Md. Asaduzzaman has forcefully highlight as the core thesis of his arguments, perhaps the answer lies latent in the very genesis of the Constitution as a social contract aiming for the establishment of a democratic society free from exploitation through limited government. In the annals of the liberal tradition of political thought, this best corresponds to John Locke's narrative of the relation between the Sovereign State and the Sovereign People in the context of the people being recognised as the legitimate source of the state's powers. As David Held in *Models of Democracy* (David Held, *Models of Democracy*, 2nd edn, Stanford University

Press 1996, page 74-88) has exhaustively discussed, a constitution as a compact is basically a licence to a limited government upon express conditions attached marking, in Locke's vision, the essential transitory device from a state of nature to that of regulated governance. Held shows that the notion of limited government circumscribed by a duty owed to the citizenry is in Locke's view a licence granted to regulate the enjoyment of rights informed by a pre-licence reality. That reality, as evident in the law of nature, is one of any individual's liberty being limited by the enjoyment of such liberty by another. Such prohibition against encroachment into or infringement of enjoyment of another's rights reinforces the obligation commonly owed to preserve each other, deterring the domination of one individual or group by another. This Locke views as the basic principle of morality as developed within the law of nature.

For Locke, the transition from the state of nature to limited government is informed, however, by inadequate regulation of guarantees to life, liberty, and property and the resultant conflicts. Held thinks that the device adopted to oversee this transition is a social compact to organise into an independent society that gives up certain facets of its autonomy to a civil association to govern in a manner that ideally best serves the governed." The citizenry organised in a civil-political society retains the powers as the final arbiter of the quality of governance and of the resultant change in the instrument and mode of governance. Locke presciently opined that in return for legislative and executive rights so relinquished by the citizenry, the social compact significantly made the citizenry the repository of "sovereign power" or capacity to determine the beneficial use of such rights. The consent given actively and directly to establish a governmental structure led to such consent being deemed

to be expressed through the people's representatives to govern as trustees as per the social compact. Locke also envisioned the law-making power to be in consonance with the law of nature, that is, the principles of morality.

The concept of the social contract is powerfully invoked to justify the caretaker government system as a legitimate expression of the people's sovereign will, rather than a deviation from the Constitution. In overall agreement with the position staunchly adopted by the learned Attorney-General, Md. Asaduzzaman this Court opines that the Constitution of Bangladesh is itself a social contract—a solemn agreement between the people and the state where the people, as the ultimate sovereign, vest power in their elected representatives to govern on their behalf. This contract is rooted in the Preamble's declaration, 'We, the People'. However, by the 1990s, a fundamental breach of this contract occurred in the form and manner of the repeated failure to hold free and fair elections which in turn meant that the state was no longer upholding its core duty of reflecting the people's will. It was incumbent upon this Court at the appellate authority to recognize, address, and step that rot which it failed so to do.

Predicated on the above, it is this Court's finding that in the electoral crisis as was unravelling in the 1990s in the country, the people, as the principals in the social contract, reasserted their constituent power. The mass movement demanding a neutral election overseer and the public acclamation for Chief Justice Shahabuddin Ahmed in 1991 was a direct exercise of this power. The subsequent adoption of the 13<sup>th</sup> Amendment by a consensus-driven parliament was the formal, legal ratification of this popular will. Therefore, the caretaker government was not an ordinary amendment but a renegotiation of the social contract itself. The people, through their sovereign act, temporarily

modified the terms of governance, consenting to be ruled by unelected officials for 90 days to restore the integrity of the very mechanism, free and fair elections, that gives the entire contract its legitimacy.

Thus, to argue that the caretaker government is ‘undemocratic’ is to misunderstand democracy. In this framing, substantive democracy (the people's genuine will) takes precedence over procedural democracy (elected government at every moment). The caretaker government system was the vehicle to ensure that the social contract was not rendered meaningless by a perpetual cycle of rigged elections and unaccountable power. Its abolition by the judiciary, against the explicit will of the people, is portrayed as a violation of the foundational social contract, leading directly to the ‘judicial murder of democracy’ and the subsequent decade of authoritarian rule, which only ended with the people's renewed assertion of their power in the July Revolution of 2024.

We must remember that at its core, the rule of law is not a sterile, positivist doctrine confined to textual adherence, but a dynamic standard that demands the constitutional order to secure justice, equality, and the genuine will of the sovereign people. The submissions of the learned counsels generally, in challenging the majority opinion that invalidated the non-party caretaker government system, fundamentally invoke this richer, substantive understanding of the rule of law. They argue that the majority's interpretation, by treating the Constitution as a static statute and disregarding the practical consequences of its judgment, violated the rule of law's essential spirit. Indeed, this Court too subscribes to the view that the rule of law, requires constitutional interpretation to be in harmony with historical context, societal necessity, and the empirical realities of democratic preservation. Caretaker system was born

from a profound national consensus to remedy recurrent crises of electoral credibility, and for this reason its abolition undermines the very democratic vitality the Constitution aims to protect. Thus, the majority judgment which prioritizes abstract legal formalism over the functional guarantee of free and fair elections, is a departure from the rule of law's mandate that law must serve justice and the public good, not merely procedural correctness.

This Court also consequentially endorses that the idea of the Constitution as a social contract, a Lockean compact where the people, as the sovereign source of all power, delegate authority to a government under strict conditions to protect their inherent rights, is central to the defence of the 13<sup>th</sup> Amendment. As mentioned earlier, the counsels also characterize the amendment as an exercise of the people's constituent power, a supreme reassertion of popular will to safeguard the conditions for democratic exercise. This aligns with the notion that the rule of law is rooted in the supremacy of the Constitution as the embodiment of the people's will, and that its interpretation must honour the foundational sovereignty of the citizenry. It posits that institution like caretaker government can become inviolable as its purpose and effect is to entrench fundamental constitutional morality. Thus, it is accepted by this Court that the caretaker system evolved into a basic feature of our Constitution's structure as it operationally secured democracy, a basic structure of our constitution and in this way it truly reflects a moral reading of the law.

Besides, the invocation of "We the People" in the preamble of our constitution is not merely a rhetorical flourish but the foundational jurisprudential and moral basis of the state's sovereignty. In the context of the submissions on the 13<sup>th</sup> Amendment, this concept becomes the central axis around which the entire debate on the rule of law, constitutional legitimacy,

and democratic integrity revolves. The learned counsels' arguments are, in essence, a profound elaboration of how "We the People" operate not as a static historical fact but as a continuous, active, and sovereign constitutional force.

Indeed, the very enactment of the 13<sup>th</sup> Amendment is a direct emanation of this sovereign will. We must remember that it was not a routine legislative act but the product of a broad national consensus, enacted by a supermajority in Parliament following a specific electoral mandate. The learned counsels' characterized it as an exercise of the people's constituent power, a power inherent in "We the People". Besides, the caretaker system, born from the national crisis of 1996 and repeatedly legitimized by popular acceptance, can be treated as an indigenous innovation that became part of Bangladesh's unique democratic basic structure. Therefore, to judge it through a rigid, textualist, and arguably imported model of democracy would be a wrong approach.

This Court finds, therefore, that the arguments put forth in this case reinforce the view that the-

*"history of the idea of democracy is curious; the history of democracies is puzzling (and that the) analysis of the variants of democracy ... though not necessarily resolving difficult questions that resultantly arise nevertheless may help to illuminate why certain positions are more attractive than others."* (David Held, Models of Democracy).

It is in this statement that any Bangladeshi citizen finds the legal and philosophical content of the dilemma of democratisation succinctly explained. The majority judgment under review, however, lost sight of this politico-legal truism and failed to appreciate that the non-party caretaker government mechanism has to date been Bangladesh's best effort at transcending many a

such dilemma and difficulties posed and comes closest to providing a near perfect model of democratic consolidation.

The jurisprudential moorings of the 13<sup>th</sup> Amendment innovation being fully endorsed by this Court thus, it is deemed prudent to highlight certain aspects of arguments variously made by learned counsels that substantiate in one way or the other the supremacy of the popular will in determining the constitutional course of our electoral system.

During the hearing, a recurring argument, therefore, was that ‘democracy’ and ‘free and fair elections’ are inseparable components of the basic structure. In this regard, Justice Md. Abdul Wahhab Miah’s minority view was frequently cited in the submissions of learned counsels that is without free and fair elections, parliamentary democracy loses its meaning. It is contended that the caretaker government system was not an alternative to democracy but the essential ‘vehicle or apparatus’ without which democracy, in the Bangladeshi context, could not function. The empirical evidence of the failed, one-sided elections of 2014, 2019, and 2024 was presented as tragic validation of this principle. The Additional Attorney-General, Mohammad Aneek Rushid Haque, starkly characterized the abolition of the caretaker government system as the ‘judicial murder of democracy’.

Learned counsels argued that the judgment of the 13<sup>th</sup> Amendment case failed to account for the historical context that necessitated the caretaker government system. In this regard, Advocate A.S.M. Shahriar Kabir and Senior Advocate Mr. Zainul Abedin recounted the history of disputed elections (1973, 1986, 1988) that eroded public trust. The public acclamation for Chief Justice Shahabuddin Ahmed to oversee the 1991 election was presented as a spontaneous expression of the people's will, which was later formalized in the

13<sup>th</sup> Amendment. It was repeatedly argued that this historical inevitability, born from repeated political failure, was a critical factor the original court should have considered.

Senior Advocate Ehsan A. Siddiq and the learned Attorney-General argued that the repeated success of elections under the caretaker government system in 1996, 2001, and 2008 established a ‘constitutional convention’. Citing *Bangladesh vs. Md. Idrisur Rahman*, they noted that even a single well-founded precedent can create a binding convention. The caretaker government system, through consistent practice and public acceptance, had become a foundational part of Bangladesh's unwritten constitutional fabric, which the judiciary was bound to recognize. The Attorney-General argued that such conventions can be more important than written law in determining constitutional matters.

During the hearing, the learned counsels carefully responded to the four main points raised by Justice A.B.M. Khairul Haque, using the minority judgments to show that the majority’s concerns were speculative and unfounded. They emphasized that the majority’s reasoning relied more on assumptions rather than on the actual constitutional framework or historical evidence. The counsels argued that the caretaker government system had been a pragmatic and necessary mechanism to uphold democratic integrity, rather than a threat to constitutional order.

For instance, the majority's contention is that the caretaker government system is illegitimate because it is unelected. This view is countered in the submission of the present case with multiple analogies drawn from the Constitution itself. To illustrate, the Constitution itself accommodates unelected officials, such as technocrat ministers and women MPs in reserved

seats, who perform the same functions as their elected counterparts. This demonstrates that the constitutional order is not purely based on direct election for all offices. Similarly, the President is indirectly elected, and past Prime Ministers have appointed unelected advisers with the rank of Cabinet Minister. These examples demonstrated that an unelected status does not, per se, violate the constitutional order when framed by a higher democratic purpose.

Besides, the majority held that the operation of the caretaker government results in a suspension of the people's sovereignty. However, sovereignty is not something that can be turned on and off; it always belongs to the people. It was through their will that the government system was created. The three-month caretaker period did not suspend sovereignty but put it into practice through a system designed to protect fair elections.

Thus, this Court opines, all learned counsels present a multifaceted and compelling case for overturning the judgment of 13<sup>th</sup> Amendment case. The petitioners and intervener have indeed built a formidable case, grounded in constitutional theory, historical practice, empirical evidence, and pragmatic necessity. They have aptly urged the Court to now correct a historic error, restore constitutional integrity, and return to the people a mechanism they believe is essential for the survival of democracy in Bangladesh. The foregoing discussion and reasonings of this Court bear ample testimony to the fact that this Court has in response risen to the occasion. In this, the Court's task has been a monumental one of weighing these powerful themes against the principles of *stare decisis*, the traditional limits of its review jurisdiction, and the immediate political realities of the nation. In the end, the Constitution's moorings resting on sovereign constituent power of the people and its expression through popular will has held sway over this Court's judicial mind,

thereby, leading to an overturning of the majority view of the judgment under review.

Another issue of considerable significance agitated before this Court has taken the form of a procedural challenge to the discrepancy between the short order delivered in open court and the subsequently published long judgment. This issue strikes at the core of the judgment's legitimacy and integrity, raising questions not only about the accuracy and consistency of judicial pronouncements but also about adherence to fundamental principles of transparency, accountability, and procedural propriety in the administration of justice. Critics contended that such a divergence could undermine public confidence in the judicial process. To elaborate, the short order, pronounced on 10 May 2011, reportedly allowed the *next two elections* to be held under a reformed caretaker government system. The long judgment, published 16 months later on 16 September 2012, omitted this directive. Learned counsels argued this violated Order X, Rule 2 of the Supreme Court of Bangladesh (Appellate Division) Rules, 1988, which forbids altering a judgment after pronouncement except for clerical errors. This was characterised as a fundamental flaw that undermined the judgment's finality.

This Court in accepting the argument above has taken into consideration for the emergence of the 15<sup>th</sup> Amendment of the Constitution in the interlude between the short order and the long judgment as placed this Court in the earlier instance in a predicament that it failed to tackle effectively. There is no gainsaying that immediately upon the pronouncement of short order, the provision of Order X Rule 2 of the Supreme Court of Bangladesh (Appellate Division) Rules, 1988 came into play, thereby, severely restricting this Court's capacity to deviate substantially from such order in any of its future rulings.

That restriction, however, was severely breached by this very Court as and when the time came to issue the full text of the 13<sup>th</sup> Amendment judgment. It is perhaps in the legislature's intervention through the 15<sup>th</sup> Amendment in the intervening period, marking the lapse of time between the short and long orders, that one may seek to address the judicial predicament. The 15<sup>th</sup> Amendment fundamentally altered the prospect of ever holding any future election under the non-party caretaker mechanism through the sweeping amendments introduced by itself targeting in particular the caretaker mechanism and ensuring its complete abolition. In doing so, the 15<sup>th</sup> Amendment to the Constitution not only deviated from the ruling of the highest court of the land, but significantly with some ingenuity preempted the substantive thrust of the long version of the 13<sup>th</sup> Amendment judgment that was still pending on the date of the introduction of the 15<sup>th</sup> Amendment. In other words, through the 15<sup>th</sup> Amendment the legislature was signaling, nay dictating, to the judiciary, the ultimate fate of the caretaker mechanism even if such fact ran counter to the Court's own declared findings and projections evident in the short order.

Furthermore, the fact that the 15<sup>th</sup> Amendment to the Constitution, in so far as related to the annulment of the caretaker mechanism, was deliberately designed to be contumacious of this Court's short order cannot be wholly discounted. In this regard, of immediate concern to this Court is the fact that this Court through the final version of the 13<sup>th</sup> Amendment judgment appears to have buckled under the legislative pressure and without further ado deviated from its earlier verdict as to the need to continue with the caretaker government for two more elections. This Court is, therefore, of the view that such a

shortcoming of the judgment under review has proven to be fatal to its legality, integrity, and indeed its constitutionality.

During the hearing, a substantial set of arguments also addressed the practical consequences that would arise if the Court were to rule in favour of the review petitioners. This line of reasoning highlighted a strategic divergence among the parties regarding the appropriate judicial response, reflecting differing views on how the Court should navigate the complex interplay between constitutional principles and political realities. Learned counsels emphasized that any ruling could have far-reaching institutional and governance implications, underscoring the need for the Court to exercise caution and prudence in determining not only the legal correctness of the petitioners' claims but also the practical viability and broader impact of potential remedies.

Citing the 8<sup>th</sup> and 16<sup>th</sup> Amendment cases, counsels like Dr. Sharif Bhuiyan argued that if the Court sets aside the 2011 judgment, the 13<sup>th</sup> Amendment and the caretaker government system would be automatically revived, just as the Supreme Judicial Council was. He argued that the Court is constitutionally competent to make observations to facilitate this restoration.

However, other counsel, including Senior Advocate Mohammad Shishir Manir and Senior Advocate Imran Abdullah Siddiq, urged caution. They noted that Parliament had been dissolved over a year ago and an interim government was already in place, planning elections for February 2026 under the framework of the "July Charter." An order for automatic restoration could create chaos and institutional conflict. Mr. Manir suggested that even if revived, the provision should remain 'dormant' for the current electoral cycle,

analogous to Article 70, which is inoperative after Parliament's dissolution in 2024.

Besides, there was a significant divergence of opinion on how active a role the Court should take in shaping the future. Some counsel prayed for the Court to not only set aside the judgment but also provide observations to facilitate the smooth restoration of the caretaker government system, citing the Court's competence to do so as demonstrated in past cases. While learned counsel for the Intervener and others argued that the Court should focus solely on the question of judicial integrity and the legal validity of the 2011 judgment, leaving the matter of the caretaker mechanism's future form to the political process and the next Parliament. On the other hand, the Attorney-General and Additional Attorney-General presented a bold vision for the Court's role, urging it to act as a dynamic savior of the constitutional order. They contended that the Appellate Division has the power to create new precedent and should not feel constrained by traditional review principles. Learned Attorney-General stated that for the sake of the people's wellbeing, the Court must break from traditional boundaries. In addition, to avoid destabilizing the current interim arrangement, learned Attorney-General suggested that any declaration of the caretaker mechanism's legality could be applied prospectively, coming into effect after the dissolution of the next Parliament. This would provide a clear roadmap for the future without disrupting the ongoing political process.

Predicated on the above and this Court's reading of the provisions of hitherto repealed Chapter IIA, Articles 58B-58E of the Constitution, this Court is of the view that auto-restoration of the non-party care-taker government mechanism will take place forthwith, but such auto-restored provisions cannot be triggered readily, hence, the restored provisions shall lie dormant until

enabling circumstances as specified in the restored provisions themselves come into play. In other words, the non-party care-taker government provisions can be invoked at the earliest under the domain of the 13<sup>th</sup> Parliament and no earlier. This is because the triggering mechanism for the non-party care-taker government (“NPCG” for the purposes of this Court’s short order of 20.11.2025 as reproduced towards the end of this judgment) is explicitly and exclusively tied to the dissolution of a sitting Parliament, as detailed in Article 58C(2) of the restored provisions. While Article 58B(1) expressly stipulates the prior dissolution of parliament to be the *sine qua non* for invocation of the non-party care-taker government mechanism, Article 58C(2) mandates that the appointment process for the Chief Adviser and other Advisers must commence “*within fifteen days after Parliament is dissolved or stands dissolved.*” Consequently, the caretaker government framework cannot be invoked during the tenure of an extant Parliament, nor can it be retrofitted to an ongoing interim arrangement that began without its invocation. The provisions lie dormant because the constitutional moment for their activation, the immediate aftermath of a parliamentary dissolution, has already passed for the current political cycle, and the next such moment is constitutionally reserved for a future point. Accordingly, the earliest possible invocation of the auto-restored caretaker government related provisions would fall under the domain of the 13th Parliament, the next Parliament to be constituted following the impending general elections, and no earlier. The restored system would spring into operational life only after this future Parliament completes its term or is dissolved at any time earlier, thereby satisfying the precise precondition set forth in Article 58C. Thus, it creates a clear and prospective application as the restoration upholds the constitutional principle and reinstates the mechanism

for the future, and at the same time it deliberately avoids creating an immediate governance vacuum or conflicting with the existing transitional framework. In this way, such auto-restoration ensures constitutional continuity for subsequent electoral cycles while preserving the stability of the current political transition.

Premised on the observation, analysis and findings above the Court hereby sets aside the order and judgment of Civil Appeal No. 139 of 2005 with Civil Petition for Leave to Appeal No. 596 of 2005 in its entirety.

It is deemed prudent to reproduce at this juncture, the previously handed down short order which shall henceforth by dint of this express direction of the Court be considered to have been subsumed under the text and substantive outcome of this long judgment and to be treated necessarily as incorporated herein as an integral part of this judgment.

C.J.

**Md. Ashfaqul Islam, J**: In agreeing with the judgment delivered by the Hon'ble Chief Justice, I wish to add some of my own observations touching upon certain constitutional aspects that have been discussed at length during the hearing of this appeal.

In doing so, let me first dwell on the resounding voice of Abraham Lincoln:

***“The people are the rightful masters of both Congresses and Courts, not to overthrow the Constitution, but to overthrow the men who pervert it.”***

By a majority decision, provision of Non-Party Caretaker Government (NPCTG) which was inducted by the Thirteenth Amendment of the Constitution, was declared unconstitutional and given a go by. We are now sitting on a review of the said judgment, that is to say, to decide whether the majority view was justified or not.

The NPCTG was conceived by the Legislature as a neutral device to ensure free, fair, and impartial elections when public confidence in the regular process had seriously eroded. The Amendment reflected the collective wisdom of the Legislature and the aspiration of the people. It sought not to replace democracy but to protect it in a moment of distrust and political tension. Freedom of franchise was thus regained by this Thirteenth Amendment.

The judgment on the Thirteenth Amendment was delivered by this Division in *Abdul Mannan Khan v. Government of Bangladesh and Others*, 64 DLR (AD) 169. A seven-member Bench headed by the then Chief Justice A. B. M. Khairul Haque declared the Thirteenth Amendment Act, 1996, which introduced the NPCTG to be unconstitutional for violating the basic structure of the Constitution, particularly the principles of democracy and people's representation.

However, the majority judgment delivered in 2011 held the Thirteenth Amendment void for damaging the basic structure of the Constitution. But simultaneously it permitted the ninth and tenth Parliamentary Elections to be held under the same caretaker framework. This dual posture reveals that even the majority recognised the temporary necessity and democratic value of the device while striking it down. The reasonings of the same, therefore, called for indepth scrutiny, which this review has now provided.

A significant procedural anomaly has also been identified in the impugned judgment. The short order, pronounced on 12 May 2011, permitted the next two general elections—the ninth and tenth—to be held under the caretaker system. Yet the full judgment, released more than one and a half years later, omitted or altered that operative portion. This inconsistency constitutes an error apparent on the face of the record which attracts Article 105 of the Constitution read with Order XXVI of the Supreme Court of Bangladesh (Appellate Division) Rules, 1988, a power of

review within the exclusive domain of this Division. Judicial propriety requires that the operative part of a pronouncement remain inviolable once delivered. For obvious reasons, however, the ninth and tenth National Elections could not, in fact, be held under the caretaker arrangement as contemplated. This unfortunate deviation from the Court's own directive underscores the confusion caused by the discrepancy between the short order and the full texture of the judgment.

The main thrust of the majority judgment, though deliberated in certain uncalled-for innuendos, is that the Thirteenth Amendment which introduced the NPCTG—had destroyed the basic structure of the Constitution. And the amendment was struck down.

A. B. M. Khairul Haque, CJ, the author of the majority decision, sought to anchor his reasoning upon an expanded and somewhat personalized interpretation of the “basic structure,” confining it to a narrow vision of democracy and the rule of law. But this exposition, instead of preserving the Constitution's spirit, distorted the framers' original intent. It unsettled the delicate constitutional balance that was meant to harmonize democratic governance with people's supremacy. The judgment, in essence, subverted the inbuilt dictum of the Constitution that democracy derives legitimacy not merely from form, but from the people's effective participation in government through a transparent electoral process.

The majority interpretation stands at variance with the long-settled judicial philosophy of both our own Appellate Division and the subcontinental constitutional jurisprudence, wherein the doctrine of basic structure has consistently been invoked to preserve, not to invalidate, people's sovereignty.

The origins of the basic structure doctrine can be traced to the judgment of the High Court of East Pakistan in *Md. Abdul Haque v. Fazlul Quader Chowdhury*, PLD 1963 Dacca 669, which was later upheld by the Pakistan Supreme Court in PLD 1963 SC 464. This principle was

subsequently acknowledged by the Indian Supreme Court in *Sajjan Singh v. State of Rajasthan*, AIR 1965 SC 845, where the Court, at page 867, referred to the decision of PLD 1963 SC to support the view that the constitutional amending power cannot be exercised in a manner that destroys the basic structure of the Constitution:

*"If upon a literal interpretation of this provision an amendment even of the basic feature of the Constitution would be possible it will be a question of consideration as to how to harmonise the duty of allegiance to the Constitution with the power to make an amendment to it. Could the two be harmonised by excluding from the procedure for amendment, alteration of a basic feature of the Constitution? It would be of interest to mention that the Supreme Court of Pakistan has in Fazlul Quader Chowdhury v. Mohd. Abdul Haque. 1963 PLD SC 486 held that franchise and form of Government are fundamental features of a Constitution and the power conferred upon the President by the Constitution of Pakistan to remove difficulties does not extend to making an alteration in a fundamental feature of the Constitution."*

In *Anwar Hossain Chowdhury v. Bangladesh* (8th Amendment Case), the Appellate Division illuminated that the basic structure is not an abstract concept of democracy in isolation, but an interwoven harmony of people's supremacy, rule of law, and participatory governance. Similarly, in *Kesavananda Bharati v. State of Kerala* (AIR 1973 SC 1461), the Indian Supreme Court held that constitutional amendments which *strengthen the democratic process* fall squarely within, not outside, the basic structure. The non-party caretaker government, far from being a deviation, was a constitutional innovation born out of historical necessity, introduced through due process of Parliament to secure free and fair elections which is the lifeblood of any democracy. To denounce such a mechanism as destructive of democracy is to misconceive democracy itself. The

Amendment was the constitutional embodiment of the people's collective demand for electoral integrity, and hence, a legitimate expression of popular sovereignty under Article 7.

On that score, maintaining the stringent and narrow parameters of review, it is earnestly hoped that the Thirteenth Amendment, in all its legislative wisdom, shall be recognized as a remarkable and awe-inspiring constitutional achievement, designed to uphold the people's sovereign will—to exercise their right of franchise freely, fairly, and impartially. In truth, the non-party caretaker system did not erode but rather fortified the basic structure of the Constitution by ensuring the sanctity of Article 7, the pole star of the Republic, wherein sovereignty belongs to the people.

Therefore, the majority view, in seeking to locate democracy only in the continuous operation of political government, ignored the deeper constitutional wisdom—that when the process of governance fails to reflect the people's free will, it is the Constitution's duty to restore that will by any legitimate means. The 13th Amendment, thus, was not a rupture but a reaffirmation of the constitutional continuum, perfectly consistent with the intent of the framers who envisioned democracy not as a privilege of politicians, but as a right of the governed.

The majority judgment, in striking down a people-empowered reform, inadvertently weakened the very edifice it sought to defend. The Constitution, being a living document, demands interpretive flexibility anchored in public sovereignty, not rigidity imposed by judicial abstraction. In these circumstances, the review of the 13th Amendment judgment is not only warranted but imperative—to realign constitutional interpretation with its foundational spirit. The restoration of the caretaker system, or at least the reaffirmation of its constitutional legitimacy, would vindicate the framers' vision, reinforce people's supremacy under Article

7, and revive the moral and institutional integrity of democracy in Bangladesh.

All arguments placed before this Court by the learned counsels from every side including those advanced by the interveners have been carefully heard and appreciated. The citations from national and international jurisdictions—as cited by them have also been meticulously considered from a comparative perspective.

Comparative understanding from *Marbury v. Madison* (1803) 2 L.ED.60, *A.K. Gopalan V. State of Madras* AIR 1950 SC 27, *State v. Dosso* 11 DLR (1959) 1, *Sajjan Singh v. State of Rajasthan* AIR 1965 SC 845, *Golak Nath v. State of Punjab* AIR 1967 SC 1643, *Asma Jilani v. Government of Punjab* PLD1972(SC)139, and *Kesavananda Bharati v. State of Kerala* AIR 1973 SC 1461, *Begum Nusrat Bhutto V. Chief of Army Staff and Federation of Pakistan*, PLD 1977 SC 657 and *Maneka Gandhi v. Union of India* AIR 1978 SC 597 and from our jurisdiction the most celebrated decision of *Anwar Hossain Chowdhury v. Bangladesh* (8th Amendment Case) 41 DLR AD 165 demonstrates that Constitutional orders sometimes admit limited adaptation to sustain the higher values of democracy and rule of law. The jurisprudence developed through the 8th Amendment Case in Bangladesh and the comparative decisions abroad consistently emphasise that continuity of democratic governance is a Constitutional imperative. Even during interruptions or exceptional arrangements, the legitimacy of the Republic must rest upon the will of the people. It is further added that in the said case, Badrul Haider Chowdhury, J delineated 21 basic features of the Constitution which I think has not at all disregarded in any manner by the Thirteenth Amendment. The said Amendment, was an indigenous adaptation within our own Constitutional frame, a Constitutional device born of necessity but grounded in legitimacy.

The long march of constitutional jurisprudence, from *Marbury v. Madison* to *Maneka Gandhi* teaches that constitutions live not by their letters alone but by the spirit they breathe. In *Marbury*, Chief Justice Marshall proclaimed that it is the “*province and duty of the judicial department to say what the law is,*” thereby affirming the judiciary’s solemn responsibility to uphold the Constitution above transient majorities. In contrast, the narrow literalism of *A.K. Gopalan v. State of Madras*—which treated fundamental rights as isolated compartments—served as a reminder that rigidity in interpretation may defeat the very liberty it seeks to preserve. Its later correction in *Maneka Gandhi v. Union of India*, which harmonized rights and emphasized due process as the essence of fairness, reestablished the Constitution as a living, organic covenant between the State and the people. These lessons find renewed relevance in the present review, for the Thirteenth Amendment, conceived to secure free and fair elections, must be judged not by its procedural novelty but by its constitutional purpose—to uphold democracy, restore public faith, and give life to the people’s sovereignty enshrined in Article 7, the polestar of our constitutional order.

In *Anwar Hossain Chowdhury v. Bangladesh* (8th Amendment Case, 41 DLR (AD) 165), the Appellate Division, speaking through Chief Justice Shahabuddin Ahmed, firmly established the doctrine of basic structure as a constitutional safeguard against arbitrary or destructive amendments. The Court held that although Parliament possesses wide authority under Article 142 to amend the Constitution, such power is not absolute—it cannot alter or destroy the core identity of the Constitution. The judges identified a set of foundational principles that constitute this inviolable framework, including the supremacy of the Constitution, the sovereignty of the people as declared in Article 7, and the republican and democratic character of the State. It further emphasized the unitary nature of the

Republic, the rule of law, the separation of powers, and above all, the independence of the judiciary, as essential features ensuring the balance among the three organs of the State. The parliamentary system of government, based on collective responsibility of the Cabinet to the Jatiya Sangsad, and the power of judicial review were also recognized as inherent to the constitutional order. Alongside these, the Court viewed fundamental rights, equality before law, and freedom of expression as indispensable attributes of constitutional democracy.

The luminous grandeur of Article 7 of the Constitution of Bangladesh solemnly enshrines the principle of the inviolability of the Constitution, proclaiming:

*“All powers in the Republic belong to the people, and their exercise on behalf of the people shall be effected only under, and by the authority of, this Constitution.”*

In its magnanimity, Article 7 affirms the democratic ethos of Bangladesh, ensuring that the sovereignty of the people remains unassailable and that no usurpation or extra-constitutional authority can compromise the will of the nation. Its gloriousness lies not merely in its words, but in its enduring assurance that the sanctity of constitutional governance is both supreme and immutable, offering a beacon of stability and legality through times of political turbulence.

The distinguished constitutionalist and the Senior Advocate, Mr. Syed Ishtiaq Ahmed, in his celebrated submissions in the 8th Amendment Case, illuminated this principle with his exceptional clarity and eloquence. With his characteristic grace, he drew attention to the profound beauty and structural harmony of our Constitution, observing that it stands unparalleled among modern constitutions. He especially emphasized that Article 7—rising at the very threshold of the Constitution like a Statue of

Liberty, proclaiming the sovereignty of the people—is a unique and incomparable feature not to be found in any other constitution.

The doctrine of necessity, when evaluated in terms of Article 7 of our Constitution—the polestar declaring that all power belongs to the people—receives its legitimacy from the Constitution itself. It is a doctrine of preservation, not of usurpation. When the ordinary political process fails to secure the people’s right to franchise, the Constitution may legitimately bend to save itself from breaking. The caretaker arrangement was such a measured bending—temporary, proportionate, and aimed solely at restoring democratic trust.

In the light of the foregoing discussion, I find that the discrepancy between the short order and the full judgment constitutes an error apparent on the record; that the Thirteenth Amendment was enacted in good faith within the Constitutional mandate of Article 7; that the doctrine of necessity, properly invoked, legitimized the caretaker arrangement as a temporary safeguard of democracy; and that the basic structure of the Constitution was not at all destroyed but preserved by that arrangement.

The Constitution is not a rigid parchment; it is a living covenant between the State and its people. It endures when it listens to the people’s conscience. The Thirteenth Amendment, born of that conscience, remains a symbol of the Republic’s capacity to renew its democratic faith.

The people’s will governs all other yardsticks of the nation. It is the cumulative voice of the citizens which, time and again, through the labyrinth of history, has moulded the substratum of our Republic. This is the essence of the Article 7. This provision is unique by itself as it cannot be found in any other Constitution. When the people’s will is preserved, the Constitution breathes; when it is denied, it withers.

To conclude my part, it is fitting to return to the timeless wisdom that has guided constitutional thought across centuries. In this spirit, I may

appropriately echo the resounding voice of Aristotle, whose insight continues to illuminate the path of constitutionalism through the ages:

*"To live by the rule of the Constitution ought not to be regarded as slavery, but rather as salvation".* (Aristotle's *Politics* (335–322 BC), pp. 233–34)

Accordingly, I concur in holding that this Civil Appeal alongwith the review petitions succeed and accordingly the same is allowed.

J.

**The short order dated 20.11.2025 reads thus:**

“By a unanimous decision, the civil appeals are allowed and civil review petitions are disposed of accordingly.

This Court is satisfied that the judgment under review is tainted by several cited errors apparent on the face of the record.

It follows that the judgment under review, is, hereby, set aside in its entirety.

Consequently, the provisions of Chapter IIA of Part IV of the Constitution relating to the Non-Party Care-taker Government (NPCG) as inserted by section 3 of the Constitution (Thirteenth Amendment) Act, 1996 (Act No. 1 of 1996), are found to have hereby been activated and revived upon this Court's ruling as above.

Such revival, though ensures automatic restoration of Chapter IIA containing NPCG provisions, its operation, however, is subject to the enforcement of the provisions of the revived Articles 58B(1) and 58C(2) of the Constitution.

It follows, therefore, that the now restored and revived Chapter IIA NPCG provisions can operate only prospectively.

The Judgment in detail shall follow.”

The office is directed to communicate the order forthwith to the High Court Division.

**C.J.**

**J.**

**J.**

**J.**

**J.**

**J.**

**J.**

20<sup>th</sup> November, 2025  
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