

COMPARISON TABLE – REFORMS IN THE LEGAL SYSTEM



TOPIC	THE CURRENT SITUATION	THE LEVIN-ROTHMAN PROGRAM	THE PRESIDENT'S PROPOSAL FOR SETTLEMENT BY BROAD CONSENSUS	MEANINGS
THE JUDGE SELECTION COMMITTEE	<p>FROM 1953 A COMMITTEE OF 9 MEMBERS MADE UP OF:</p> <p>3 SUPREME COURT JUDGES</p> <p>2 MINISTERS</p> <p>2 KNESSET MEMBERS (1 COALITION AND 1 OPPOSITION IS ACCEPTABLE)</p> <p>2 REPRESENTATIVES OF THE BAR ASSOCIATION</p> <p>FROM 2008 SELECTION: 7/9. SUPREME COURT JUDGES AND COALITION REPRESENTATIVES HAVE A MUTUAL VETO</p> <p>APPOINTMENT OF THE SUPREME COURT PRESIDENT: ACCORDING TO SENIORITY (THE SENIORITY METHOD ACCORDING TO CURRENT PRACTICE)</p>	<p>(ROTHMAN) A COMMITTEE OF 9 MEMBERS MADE UP OF:</p> <p>5 COALITION REPRESENTATIVES (3 MINISTERS, 2 MKS)</p> <p>1 OPPOSITION REPRESENTATIVE</p> <p>PRESIDENT OF THE SUPREME COURT</p> <p>2 RETIRED JUDGES APPOINTED BY THE MINISTER OF JUSTICE WITH THE APPROVAL OF THE PRESIDENT OF THE SUPREME COURT</p> <p>SELECTION: 5/9</p>	<p>A COMMITTEE OF 11 MEMBERS MADE UP OF:</p> <p>3 MINISTERS</p> <p>3 KNESSET MEMBERS (1 COALITION, 2 FROM THE OPPOSITION)</p> <p>THE PRESIDENT OF THE SUPREME COURT AND 2 SUPREME COURT JUSTICES</p> <p>2 PUBLIC REPRESENTATIVES, JURISTS WHO ARE QUALIFIED TO SERVE AS SUPREME COURT JUDGES AND WHO HAVE EXTENSIVE EXPERIENCE, APPOINTED BY THE MINISTER OF JUSTICE WITH THE APPROVAL OF THE PRESIDENT OF THE SUPREME COURT.</p> <p>SELECTION: 7/11; APPOINTMENT BY PRESIDENT AND VICE PRESIDENT -- IN ACCORDANCE WITH EXISTING PRACTICE</p>	<ul style="list-style-type: none"> FOR THE FIRST TIME IN 70 YEARS, THE NUMBER OF ELECTED OFFICIALS AND PUBLIC REPRESENTATIVES ON THE COMMITTEE WILL DRAMATICALLY INCREASE (FROM 4/9 TO 8/11). JUDGES HAVE NO VETO. THE MAJORITY REQUIRED TO ELECT CANDIDATES WAS REDUCED TO 7/11 THE COMMITTEE IS REQUIRED BY LAW TO REFLECT AND DIVERSIFY THE IDENTITY AND GUIDING IDEOLOGY OF THE JUDGES.
METHOD OF ENACTMENT AND AMENDMENT OF BASIC LAWS	<p>THERE IS NO FORMAL LIMIT ON THE CONTENT OF THE BASIC LAWS OR THE PROCEDURE FOR THEIR ENACTMENT (WITH A FEW EXCEPTIONS)</p>	<p>NO CHANGE IN THE STATUS QUO</p>	<p>FORMAT: A BASIC LAW WILL BE ENACTED IN A SPECIAL PROCEDURE IN FOUR READINGS</p> <p>ROUTE A: 3 READINGS WITH A MAJORITY OF 61, A FOURTH READING BY A MAJORITY OF 80, PROVIDED THAT AT LEAST THREE MONTHS PASSED BETWEEN THE THIRD AND FOURTH READINGS</p> <p>ROUTE B: 3 READINGS WITH A MAJORITY OF 61, A FOURTH READING WITH A MAJORITY OF 70 IN THE SUBSEQUENT KNESSET</p> <p>SAFEGUARDING OF THE EXISTING BASIC LAWS</p>	<ul style="list-style-type: none"> THE KNESSET WILL BE RESTRICTED IN ITS ABILITY TO ENACT AND AMEND BASIC LAWS FOR NARROW, POLITICAL AND PERSONAL REASONS ALL OLD BASIC LAWS GAIN INSTANT SAFEGUARDING (INCLUDING BASIC LAWS NATIONALITY AND HUMAN DIGNITY AND LIBERTY)
JUDICIAL REVIEW OF BASIC LAWS	<p>THERE IS A PRACTICE OF JUDICIAL REVIEW OF THE BASIC LAWS IN EXCEPTIONAL CASES (MISUSE OF THE CONSTITUENT AUTHORITY AND THE POSSIBILITY OF SUBSTANTIVE REVIEW IN INSTANCES WHERE ISRAEL'S CHARACTER AS A JEWISH AND DEMOCRATIC STATE IS DEPRIVED)</p>	<p>THERE IS NO JUDICIAL REVIEW OF BASIC LAWS</p>	<p>THERE IS NO JUDICIAL REVIEW OF THE BASIC LAWS, WITH THE EXCEPTION OF LAWS ENACTED IN VIOLATION OF THE PROCEDURAL RULES FOR THEIR ENACTMENT</p> <p>AN AGREED-UPON OUTLINE FOR MILITARY/CIVILIAN NATIONAL SERVICE WILL BE FORMULATED WHICH WILL BE IMMUNE FROM JUDICIAL REVIEW</p>	<ul style="list-style-type: none"> FULFILLING THE DEMANDS OF THE REFORM'S SUPPORTERS TO BAR JUDICIAL REVIEW OF BASIC LEGISLATION. LEGISLATIVE REGULATION OF THE ISSUE OF RECRUITING YESHIVA STUDENTS TO THE IDF
PROTECTION OF HUMAN RIGHTS	<p>WEAK PROTECTION OF HUMAN RIGHTS IN THE BASIC LAW: HUMAN DIGNITY AND LIBERTY. CAN BE CANCELED BY A SIMPLE MAJORITY IN THE KNESSET</p>	<p>IT IS NOT ADDRESSED AT ALL</p>	<p>ENSHRINING THE RIGHT TO EQUALITY AND THE PROHIBITION ON DISCRIMINATION, AND THE FREEDOMS OF SPEECH, OPINION, DEMONSTRATION AND ASSEMBLY IN A BASIC LAW: HUMAN DIGNITY AND LIBERTY</p> <p>SAFEGUARDING OF BASIC LAW: HUMAN DIGNITY AND LIBERTY</p> <p>A BROAD CONSTITUTIONAL PROCESS WILL BE INITIATED, WITH PUBLIC PARTICIPATION, FOR THE FORMULATION AND COMPLETION OF A COMPREHENSIVE BILL OF RIGHTS</p>	<ul style="list-style-type: none"> STRENGTHENING THE PROTECTION OF HUMAN RIGHTS IN ISRAEL.
JUDICIAL REVIEW OF LEGISLATION	<p>THE COURT IS EMPOWERED TO INVALIDATE LAWS (IN ANY PANEL COMPOSITION AND IN ANY MAJORITY) IF SUCH LAWS ILLEGALLY CHANGE A BASIC LAW, VIOLATE THE RIGHTS PROTECTED BY BASIC LAWS CONTRARY TO THE CONDITIONS STIPULATED IN THE LIMITATION CLAUSE, OR IF THERE WAS A FLAW IN THE LEGISLATIVE PROCESS</p> <p>A TOTAL OF 22 LAWS HAVE BEEN INVALIDATED BY THE SUPREME COURT TO DATE</p>	<p>THE COURT WILL BE ENTITLED TO INVALIDATE A LAW ONLY IN FULL PANEL (15) AND BY A MAJORITY OF 80% (12) AND ONLY IF THE LAW CLEARLY CONTRADICTS PROVISIONS IN BASIC LAWS + OVERRIDE CLAUSE BY A MAJORITY OF 61 >></p>	<p>THE SUPREME COURT, AND IT ALONE, WILL BE AUTHORIZED TO INVALIDATE A LAW WITH A PANEL OF NO LESS THAN 11 JUDGES WITH A MAJORITY OF 2/3 OF THE PANEL</p> <p>THERE WILL BE NO JUDICIAL REVIEW OF THE LEGISLATIVE PROCESS</p> <p>A RULING THAT DOES NOT RECEIVE A 2/3 MAJORITY VOTE WILL ALLOW THE COURT TO DECLARE THE LAW INCOMPATIBLE WITH THE BASIC LAWS AND WILL ALLOW THE KNESSET TO DEBATE PROCEDURES FOR AMENDING THE LEGISLATION AT ITS DISCRETION</p> <p>JUDICIAL REVIEW WILL CONTINUE TO APPLY TO ALL THE RIGHTS DERIVED FROM BASIC LAW: HUMAN DIGNITY AND LIBERTY, INCLUDING EQUALITY.</p>	<ul style="list-style-type: none"> A SIGNIFICANT TIGHTENING OF THE CONDITIONS FOR INVALIDATING A LAW, BOTH IN RELATION TO THE MINIMUM PANEL SIZE AND IN RELATION TO THE MAJORITY REQUIRED FOR INVALIDATION. DENYING JUDICIAL REVIEW OF THE LEGISLATIVE PROCESS. EXPLICIT ENSHRINING OF THE RIGHTS RECOGNIZED IN THE CASE LAW AS PART OF THE RIGHT TO HUMAN DIGNITY
RESTRAINING GOVERNMENT ACTIVITY: LEGAL ADVICE AND THE GROUNDS FOR REASONABLENESS	<p>CURRENTLY: THE LEGAL ADVISORS HAVE INDEPENDENT STATUS</p> <p>THE OPINION OF THE ATTORNEY GENERAL IS BINDING</p> <p>THE ATTORNEY GENERAL IS THE SOLE REPRESENTATIVE OF THE GOVERNMENT; AND ONLY HE IS ALLOWED TO AUTHORIZE SEPARATE REPRESENTATION</p> <p>THE GOVERNMENT, ITS MEMBERS AND ITS AGENCIES, ARE SUBJECT TO THE STANDARD OF REASONABLENESS</p>	<p>THE LEGAL ADVISORS POSITIONS WILL BE DEFINED AS POSITIONS OF TRUST</p> <p>THE OPINION OF THE LEGAL ADVISORS WILL NOT BE BINDING</p> <p>- CANCELLATION OF THE STANDARD OF REASONABLENESS WITH RESPECT TO THE EXECUTIVE BRANCH</p>	<p>THE DECISIONS OF THE GOVERNMENT, IN ITS PLENARY SESSION, ON MATTERS OF POLICY AND MINISTERIAL APPOINTMENTS WILL NOT BE SUBJECT TO JUDICIAL REVIEW BASED ON THE STANDARD OF REASONABLENESS</p> <p>MINISTERIAL DECISIONS ON POLICY MATTERS SHALL NOT BE INVALIDATED DUE TO UNREASONABLENESS UNLESS THEY ARE ARBITRARY OR CAPRICIOUS</p> <p>THE STANDARD OF REASONABLENESS WILL CONTINUE TO APPLY AS FAR AS THE REST OF THE STATE AGENCIES AND OTHER PUBLIC AUTHORITIES ARE CONCERNED</p> <p>LIMITATION OF LEGAL ADVISERS' TENURE</p> <p>THE SELECTION PROCESS OF THE LEGAL ADVISORS WILL REMAIN PROFESSIONAL AND THEIR PROFESSIONAL STATUS PRESERVED</p> <p>ADDING A MECHANISM FOR THE TRANSFER OF A LEGAL ADVISOR FROM A MINISTRY IF THERE ARE SUBSTANTIAL AND ONGOING DISAGREEMENTS</p> <p>THE ATTORNEY GENERAL'S OPINION REGARDING THE INTERPRETATION OF THE LAW IS BINDING, BUT THE ATTORNEY GENERAL'S OPINION WILL NOT DICTATE LEGISLATIVE PROCEEDINGS</p> <p>A MINISTER IS AUTHORIZED TO DISPUTE THE OPINION OF THE ATTORNEY GENERAL</p> <p>ALLOWING SEPARATE LEGAL REPRESENTATION FOR THE GOVERNMENT OR MINISTERS</p>	<ul style="list-style-type: none"> A SIGNIFICANT REFORM IN THE RELATIONSHIP BETWEEN THE ATTORNEY GENERAL AND THE EXECUTIVE AUTHORITY. MAINTAINING THE PROFESSIONALISM OF THE APPOINTMENT AND ROLE OF THE MINISTERIAL LEGAL COUNSELS THE GOVERNMENT MAY TAKE PRIVATE REPRESENTATION WITHOUT THE APPROVAL OF THE ATTORNEY GENERAL EASING THE CONDITIONS FOR TRANSFERRING A LEGAL ADVISOR FROM HIS POSITION REDUCING THE ABILITY TO INTERFERE IN MINISTERS' DECISIONS BY ADOPTING A STRICT LEGAL PRINCIPLE OF ARBITRARINESS AND ABSURDITY. GRANTING THE GOVERNMENT IMMUNITY ON POLICY DECISIONS AND APPOINTING MINISTERS ON THE GROUNDS OF REASONABLENESS OR CAPRICIOUSNESS THE STANDARD OF REASONABLENESS ON THE PROFESSIONAL LEVEL WILL CONTINUE TO APPLY