

## Basic Structure of the Constitution

### EMERGENCE OF THE BASIC STRUCTURE

The question whether Fundamental Rights can be amended by the Parliament under Article 368 came for consideration of the Supreme Court within a year of the Constitution coming into force. In the *Shankari Prasad case*<sup>1</sup> (1951), the constitutional validity of the First Amendment Act (1951), which curtailed the right to property, was challenged. The Supreme Court ruled that the power of the Parliament to amend the Constitution under Article 368 also includes the power to amend Fundamental Rights. The word 'law' in Article 13 includes only ordinary laws and not the constitutional amendment acts (constituent laws). Therefore, the Parliament can abridge or take away any of the Fundamental Rights by enacting a constitutional amendment act and such a law will not be void under Article. But in the *Golak Nath case* (1967), the Supreme Court reversed its earlier stand. In that case, the constitutional validity of the Seventeenth Amendment Act (1964), which inserted certain state acts in the Ninth Schedule, was challenged. The Supreme Court ruled that the Fundamental Rights are given a 'transcendental and immutable' position and hence, the Parliament cannot abridge or take away any of these rights. A constitutional amendment act is also a law within the meaning of Article 13 and hence, would be void for violating any of the Fundamental Rights.

The Parliament reacted to the Supreme Court's judgement in the *Golak Nath case* (1967) by enacting the 24th Amendment Act (1971). This Act amended Articles 13 and 368. It declared that the Parliament has the power to abridge or take away any of the Fundamental Rights under Article 368 and such an act will not be a law under the meaning of Article 13. However, in the *Kesavananda Bharati case*<sup>3</sup> (1973), the Supreme Court overruled its judgement in the *Golak Nath case* (1967). It upheld the validity of the 24th Amendment Act (1971) and stated that Parliament is empowered to abridge or take away any of the Fundamental Rights. At the same time, it laid down a new doctrine of the 'basic structure' (or 'basic features') of the Constitution. It ruled that the constituent power of Parliament under Article 368 does not enable it to alter the 'basic structure' of the Constitution. This means that the Parliament cannot abridge or take away a Fundamental Right that forms a part of the 'basic structure' of the Constitution. The doctrine of basic structure of the constitution was reaffirmed and applied by the Supreme Court in the *Indira Nehru Gandhi case*<sup>3a</sup> (1975). In this case, the Supreme Court invalidated a provision of the 39th Amendment Act (1975) which kept the election disputes involving the Prime Minister and the Speaker of Lok Sabha outside the jurisdiction of all courts. The court said that this provision was beyond the amending power of Parliament as it affected the basic structure of the constitution.

Again, the Parliament reacted to this judicially innovated doctrine of 'basic structure' by enacting the 42nd Amendment Act (1976). This Act amended Article 368 and declared that there is no limitation on the constituent power of Parliament and no amendment can be questioned in any court on any ground including that of the contravention of any of the Fundamental Rights. However, the Supreme Court in the *Minerva Mills case*<sup>4</sup> (1980) invalidated this provision as it excluded judicial

review which is a 'basic feature' of the Constitution. Applying the doctrine of 'basic structure' with respect to Article 368, the court held that:

“Since the Constitution had conferred a limited amending power on the Parliament, the Parliament cannot under the exercise of that limited power enlarge that very power into an absolute power. Indeed, a limited amending power is one of the basic features of the Constitution and, therefore, the limitations on that power cannot be destroyed. In other words, Parliament cannot, under article 368, expand its amending power so as to acquire for itself the right to repeal or abrogate the Constitution or to destroy its basic features. The donee of a limited power cannot by the exercise of that power convert the limited power into an unlimited one” .

Again in the Waman Rao case<sup>5</sup> (1981), the Supreme Court adhered to the doctrine of the 'basic structure' and further clarified that it would apply to constitutional amendments enacted after April 24, 1973 (i.e., the date of the judgement in the Kesavananda Bharati case).