

11 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 case¹ (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 13.

But in the **Golak Nath case² (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 case³ (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^{3a} (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 case⁴** (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 case⁵ (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).

ELEMENTS OF THE BASIC STRUCTURE

The present position is that the Parliament under Article 368 can amend any part of the Constitution including the Fundamental Rights but without affecting the 'basic structure' of the Constitution. However, the Supreme Court is yet to define or clarify as to what constitutes the 'basic structure' of the Constitution. From the various judgements, the following have emerged as 'basic features' of the Constitution or elements of the 'basic structure' of the constitution:

1. Supremacy of the Constitution
2. Sovereign, democratic and republican nature of the Indian polity
3. Secular character of the Constitution
4. Separation of powers between the legislature, the executive and the judiciary
5. Federal character of the Constitution
6. Unity and integrity of the nation
7. Welfare state (socio-economic justice)
8. Judicial review
9. Freedom and dignity of the individual
10. Parliamentary system
11. Rule of law
12. Harmony and balance between Fundamental Rights and Directive Principles
13. Principle of equality
14. Free and fair elections
15. Independence of Judiciary
16. Limited power of Parliament to amend the Constitution
17. Effective access to justice
18. Principles (or essence) underlying fundamental rights
19. Powers of the Supreme Court under Articles 32, 136, 141 and 142⁶
20. Powers of the High Courts under Articles 226 and 227⁷

Table 11.1 *Evolution of the Basic Structure of the Constitution*

Sl. No.	Name of the Case (Year)	Elements of the Basic Structure (As Declared by the Supreme Court)
1.	Kesavananda Bharati case ³ (1973) (popularly known as the Fundamental Rights Case)	<ol style="list-style-type: none"> 1. Supremacy of the Constitution 2. Separation of powers between the legislature, the executive and the judiciary 3. Republic and democratic form of government 4. Secular character of the constitution 5. Federal character of the constitution 6. Sovereignty and unity of India 7. Freedom and dignity of the individual 8. Mandate to build a welfare state 9. Parliamentary System
2.	Indira Nehru Gandhi case ^{3a} (1975) (popularly known as the Election Case)	<ol style="list-style-type: none"> 1. India as a sovereign democratic republic 2. Equality of status and opportunity of an individual 3. Secularism and freedom of conscience and religion 4. Government of laws and not of men (i.e., Rule of Law) 5. Judicial review 6. Free and fair elections which is implied in democracy

3.	Minerva Mills case ⁴ (1980)	<ol style="list-style-type: none"> 1. Limited power of Parliament to amend the constitution 2. Judicial review 3. Harmony and balance between fundamental rights and directive principles
4.	Central Coal Fields Ltd. Case ⁸ (1980)	Effective access to justice
5.	Bhim Singhji Case ⁹ (1981)	Welfare State (Socio-economic justice)
6.	S.P. Sampath Kumar Case ¹⁰ (1987)	<ol style="list-style-type: none"> 1. Rule of law 2. Judicial review
7.	P. Sambamurthy Case ¹¹ (1987)	<ol style="list-style-type: none"> 1. Rule of law 2. Judicial review
8.	Delhi Judicial Service Association Case ¹² (1991)	Powers of the Supreme Court under Articles 32, 136, 141 and 142
9.	Indra Sawhney Case ¹³ (1992) (popularly known as the Mandal Case)	Rule of law
10.	Kumar Padma Prasad Case ¹⁴ (1992)	Independence of judiciary
11.	Kihoto Hollohon Case ¹⁵ (1993) (popularly known as Defection case)	<ol style="list-style-type: none"> 1. Free and fair elections 2. Sovereign, democratic, republican structure
12.	Raghunath Rao Case ¹⁶ (1993)	<ol style="list-style-type: none"> 1. Principle of equality 2. Unity and integrity of India
13.	S.R. Bommai Case ¹⁷ (1994)	<ol style="list-style-type: none"> 1. Federalism 2. Secularism 3. Democracy

		<ul style="list-style-type: none"> 4. Unity and integrity of the nation 5. Social justice 6. Judicial review
14.	L. Chandra Kumar Case ¹⁸ (1997)	Powers of the High Courts under Articles 226 and 227
15.	Indra Sawhney II Case ¹⁹ (2000)	Principle of equality
16.	All India Judge's Association Case ²⁰ (2002)	Independent judicial system
17.	Kuldip Nayar Case ²¹ (2006)	<ul style="list-style-type: none"> 1. Democracy 2. Free and fair elections
18.	M. Nagaraj Case ²² (2006)	Principle of equality
19.	I.R. Coelho Case ²³ (2007) (popularly known as IX Schedule Case)	<ul style="list-style-type: none"> 1. Rule of law 2. Separation of powers 3. Principles (or essence) underlying fundamental rights 4. Judicial review 5. Principle of equality
20.	Ram Jethmalani Case ²⁴ (2011)	Powers of the Supreme Court under Article 32
21.	Namit Sharma Case ²⁵ (2013)	Freedom and dignity of the individual
22.	Madras Bar Association Case ²⁶ (2014)	<ul style="list-style-type: none"> 1. Judicial review 2. Powers of the High Courts under Articles 226 and 227

NOTES AND REFERENCES

1. Shankari Prasad v. Union of India, (1951)
2. Golak Nath v. State of Punjab, (1967)
3. Kesavananda Bharati v. State of Kerala, (1973)

- 3a. Indira Nehru Gandhi v. Raj Narain (1975)
4. Minerva Mills v. Union of India, (1980)
5. Waman Rao v. Union of India, (1981)
6. For the subject-matter of these Articles, see Appendix-1.
7. *Ibid.*
8. Central Coal Fields Ltd., v. Jaiswal Coal Co. (1980)
9. Bhim Singhji v. Union of India (1981)
10. S.P. Sampath Kumar v. Union of India (1987)
11. P. Sambamurthy v. State of A.P. (1987)
12. Delhi Judicial Service Association v. State of Gujarat (1991)
13. Indra Sawhney v. Union of India (1992)
14. Kumar Padma Prasad v. Union of India (1992)
15. Kihoto Hollohon v. Zachilhu (1993)
16. Raghunath Rao v. Union of India (1993)
17. S.R. Bommai v. Union of India (1994)
18. L. Chandra Kumar v. Union of India (1997)
19. Indra Sawhney II v. Union of India (2000)
20. All India Judge's Association v. Union of India (2002)
21. Kuldip Nayar v. Union of India (2006)
22. M. Nagaraj v. Union of India (2006)
23. I.R. Coelho v. State of Tamil Nadu (2007)
24. Ram Jethmalani v. Union of India (2011)
25. Namit Sharma v. Union of India (2013)
26. Madras Bar Association v. Union of India (2014)