

UNIT 3 – UPSC - Theory of basic structure: a limitation on amending power

The validity of constitution (24th amendment) Act 1971, was challenged in *Keshvananda Bharti vs. State of Kerala* (AIR 1973 SC 1461). This 13 judge bench decided that 24th amendment is valid and the power to amend the constitution is found in Art. 368 itself. Further the court recognized that there is a distinction between ordinary law and constitutional law. This could impliedly mean that Art.368 confers power to even abridge a fundamental right and to this extent, *Golaknath* case was overruled. But 7 of judges held that power of amendment under article 368 is subject to certain implied and inherent limitations and that in the exercise of amending the basic structure or frame-work of the constitution. So the majority was of the opinion that the amending power under article 368 is subject to the qualification that this amending power cannot be exercised to alter the basic structure of the framework of the constitution. Such as (1) Supremacy of the constitution. (2) Republican and democratic form of govt. (3) Secular character of constitution. (4) Separation of power. (5) Federal character of constitution



In *Indira Gandhi vs. Raj Narain* (AIR 1975 SC 2299), the SC referred to *Keshvananda Bharti* case and accepted the doctrine of basic structure of frame work of constitution. The validity of thirty ninth amendment (1975) of the constitution was in question. This amendment excluded judicial review of election and law relating to elections. This amendment was held to be invalid by the SC as it altered a basic feature of the constitution; the judicial review in election disputes.

To neutralise the affect of doctrine of the basic structure, the Govt. enacted the constitution (42ND Amendment) Act.1979 and added clauses (4) and (5) to art. 368 which provided for exclusion of judicial review of amendments of the constitution made before or after the 42nd Amendment. It also declared that there shall be no limitation on the amending power of the parliament under article 368. The court held that clause (4) and (5) of art. 368 are unconstitutional as it affects the basic structure of the constitution i.e. judicial review. However, there was difference of opinion on validity of amended article 31-C which gave primacy to all Directive principles over the fundamental rights. Although the minority declared void the amended article 31-C, justice

Bhagwati (minority judgment) upheld it by giving a restrictive interpretation in terms of doctrine of basic structure.

In *Minerva Mills vs. Union of India* (AIR 1980 SC 1789) The SC by 4 to 1 majority struck down clauses (4) and (5) of article 368 inserted by the 42nd amendment as these clauses destroyed the essential features of the basic structure of the constitution. And held that the following are basic structure of the constitution:

1. limited power of parliament to amend the constitution;
2. harmony and balance between fundamental rights and directive principles;
3. fundamental rights in certain cases;
4. power of judicial review in certain cases;

Independence of judiciary is part of the basic structure.

In *Woman Rao vs. Union of India* (AIR 1981 SC 271) The supreme court held that all amendment to the constitution which were made before April 24th, 1973 (i.e., the date on which the judgment of *Keshvananda Bharti* was delivered) including those by which the ninth schedule to the constitution was amended from time to time were valid and constitutional.

In *S.P. Sampat Kumar vs. Union of India* (AIR 1987 SC 271), the Supreme Court upheld the validity of art. 323-A and the Act as the necessary changes suggested by the court were incorporated in the Administrative Tribunal Act.

In a landmark judgment in *L.Chandra Kumar vs. Union of India* (AIR 1997 SC 1125) a seven-member constitutional bench of the supreme court has unanimously while reconsidering the *SAMPATH KUMAR'S CASE*, has struck down clause 2(d) of articles 323A and clause 3(d) of art. 323B which provided for the exclusion of the jurisdiction of the high courts under articles 226 and 227 and the Supreme Court under article 32 of the constitution as unconstitutional and invalid as they damage the power of judicial review which is the basic structure of the constitution.