

**1. "FUNDAMENTAL RIGHTS ARE FUNDAMENTAL NOT ABSOLUTE." JUSTIFY.****OR DISCUSS THE POWER OF THE PARLIAMENT TO AMEND THE FUNDAMENTAL RIGHTS IN PART III IN THE LIGHT OF VARIOUS CONSTITUTIONAL CASES IN INDIA.**

Fundamental Rights are a fundamental prerequisite in a democratic country. 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 Constitution coming into force. In the Shankari Prasad case (1951), the constitutional validity of the First Amendment Act (1951) 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 cases (1967), the Supreme Court reversed its earlier stand. 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 the Fundamental 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 Bharti case (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 which cannot be altered by Article 368.

This means that the Parliament cannot abridge or take away a Fundamental Right that forms a part of 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 the contravention of any of the fundamental rights. However, the Supreme Court in the Minerva Mills case (1980) invalidated this provision as it excludes judicial review which is a 'basic feature' of the Constitution. Again in the Waman Rao cases (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 Bharti case).