against each and every citizen of the republic. It is a continuing and recurring wrong committed against the republic itself. It remains wrong against future generations of citizens," the Appellate Division stated in a watershed ruling upholding the High Court verdict on the Constitution's Fifth Amendment case.

The basic structure of the Constitution

Former Chief Justice Shahabuddin Ahmed in the landmark verdict on the Constitution Eighth Amendment case found that Bangladesh's Constitution stands on certain fundamental principles, which are its structural pillars and if those pillars are demolished or damaged, the whole constitutional edifice will break down. He listed the following to be the basic structures of the Constitution, namely -- sovereignty belongs to the people, supremacy of the Constitution as the solemn expression of the will of the people, democracy, republican government, unitary state, separation of powers, independence of the judiciary and the fundamental rights.

On the question of basic features, Justice BH Chowdhury in the Eighth Amendment case listed 21 'unique features' of the Constitution and held that 'some' (without specifying which) of the said 21 features are the basic features of the Constitution.

Justice ABM Khairul Haque in the Fifth Amendment case held that sovereignty of the people, supremacy of the Constitution, rule of law, democracy, republican form of the government, unitary state, separation of powers, independence of judiciary, fundamental rights and secularism are the basis of the Constitution. Haque also stated that the Constitution is the supreme law in Bangladesh, all functionaries of the republic are the creatures of the Constitution and the existence of the country as a republic is dependent on its Constitution.

Questions have arisen on many occasions on whether the legislature, in exercise of the power of amendment granted by a constitution, can alter or repeal any basic structure or feature of the Constitution.

Justice Shahabuddin Ahmed held that the structural pillars of the Constitution stand beyond any change by amendatory process. Amendment will be subject to the retention of the basic structure. The court, therefore, has power to undo an amendment if it transgresses its limit and alters a basic structure of the Constitution, he asserted. "I think the doctrine of bar to change of basic structure is an effective guarantee against frequent amendments of the Constitution in sectarian or party interest in countries where democracy is not given chance to develop," said Ahmed.

Although Justice BH Chowdhury did not specify the basic principles of the Constitution, he stated that they are not amendable by the amending power of Parliament.

In the Eighth Amendment case, Justice ATM Afzal accepted a limited and highly restricted concept of 'basic features.' He held that the word 'amendment' has a built-in limitation in that it does not authorise the abrogation or destruction of the Constitution or any of its three structural pillars -- executive, legislature and judiciary -- which will render the Constitution defunct or unworkable.

Mahmudul Islam in his book wrote: The Indian Supreme Court also resolved the same question of whether the legislature, in exercise of the power of amendment granted by a Constitution, can alter any basic feature of the Constitution.

In several cases between 1973 and 1987, the Indian Supreme Court held that Parliament in exercise of the power of amendment cannot alter the basic structure or features of the Constitution.

Constitutional chaos: The Pakistan era

The glory of independent Bengal faded away in Palashy on June 23, 1757 for the next 190 years due to treachery and betrayal of Mir Jafar Ali Khan, commander in chief of Nabab Sirajuddoula.

Bengali rebels successfully fought many battles against the British forces during the second half of the 18th century. Finally, the great day came -- the Dominion of Pakistan formally came into existence on August 14, 1947.

But the dreams of the Bangalees were shattered in no time and the history of Pakistan was writ with palace clique, deception and disappointment. The people of the then East Pakistan discovered that they were reduced to second-class citizens; the creation of Pakistan brought them only a change of rulers and for all practical purposes, East Pakistan had become a colony of West Pakistan.

The process started with the delay in framing the Constitution of Pakistan, although in India the Constitution was framed and adopted by the Constituent Assembly on November 26, 1949. When the draft Constitution of Pakistan was