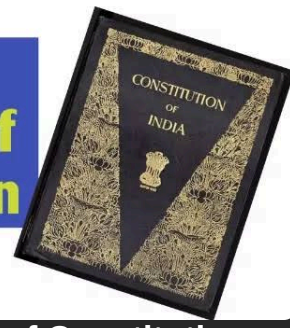




STPOL063

GS Paper 2

Basic Structure of Constitution



Basic Structure of Constitution

As Interpreted by Judiciary in various judgments

Basic Structure Essential Features

- Free and Fair Elections
- Welfare State
- Unity & Integrity of Nation
- Principle of Equality
- Judicial Review
- Freedom & Dignity of Individual
- Supremacy of Constitution
- Rule of Law
- Independence of Judiciary
- Separation of Powers
- Sovereign Democratic Republic
- Parliamentary system of Government
- FRs & DPSPs

Conclusion

the doctrine must be used by courts not arbitrarily sparingly with concrete precedence

Arguments

In Support

- Helps in preserving Fundamental Rights
- Helps in Preserving Constitutional Identity
- Parliament's Constituent Power
- Subject to Limitations
- Reinforces idea that
- Very Responsibly
- Threshold Set high
- Courts applied Doctrine

In Against

- Concept have Rewriting of Constitution
- Passed with Narrowest Majority (7:6) does not augur confidence
- what constitutes basic structure
- Judge's Subjective Preferences
- no rule, no law
- virtually 3rd chamber of Parliament
- courts became

Background

- Since adoption of Indian Constitution
- Debates started regarding Power of Parliament
- to amend/change Constitutional provisions
- In 1967 Golaknath case SC Parliament could not amend Fundamental Rights
- Article - 368 also Subject to Judicial Review
- qualified by Article-13
- In 1971 24th Amendment Act Brought By Parliament Amendability of FR Not Affected by Art.13
- Not under Judicial Review
- In 1973 Kesavananda Bharati case Challenged under Article 26 Religious Property rights
- 13 Judge Bench 7:6 Verdict
- Judgement Parliament could amend any part of Constitution Except Basic Structure Of Constitution
- amending power of parliament under Article 368 is limited
- in 1980 Minerva Mills case limited amending power part of Basic Structure
- FRs And DPSPs part of Basic Structure
- balance between of SC and HCs cannot be diluted by administrative tribunals
- power of judicial review under Article 32 & 226 part of basic structure
- in 1997 L. Chandrakumar Case
- in 2007 I.R Coelho case laws/provisions in 9th Schedule not immune from judicial review



Basic Structure of Constitution

Basic Structure of Constitution

This signifies the doctrine's focus on safeguarding the Constitution's foundational tenets. Surrounding this central theme are keywords like "Essential Features," "As interpreted by Judiciary in various Judgments," and "Constitutional Amendments," all pointing towards the doctrine's evolution through judicial interpretations and its application in assessing the validity of amendments.

Essential Features (Identified by the Judiciary)

- **Fundamental Rights (FRs) and Directive Principles of State Policy (DPSPs):** The delicate balance and harmony between these two parts are considered vital. Cases like the **Minerva Mills case** highlight this interconnectedness.
- **Rule of Law:** This ensures equality before the law and prevents arbitrary exercise of power.
- **Federal Structure:** India's division of powers between the Union and States is a basic feature, though not in its absolute form as seen in the **S.R. Bommai case**.
- **Democratic Republic:** This encompasses free and fair elections, representative government, and accountability.
- **Secularism:** The principle of religious neutrality is fundamental.
- **Sovereignty:** India's independence and autonomy are unalienable.
- **Unity and Integrity of the Nation:** This underscores the importance of national cohesion.
- **Principle of Equality:** This ensures equality of status and opportunity.
- **Dignity of Individual:** This emphasizes the inherent worth of every human being.
- **Social and Economic Justice:** This aims to reduce inequalities and ensure equitable distribution of resources.
- **Independence of Judiciary:** This safeguards the impartiality and effectiveness of the judicial system.
- **Separation of Powers:** The division of authority among the legislature, executive, and judiciary is crucial.
- **Parliamentary System of Government:** India's choice of a Westminster-style democracy is a basic feature.

Note: This list is not exhaustive and continues to evolve with judicial pronouncements.

Background and Evolution

This branch traces the historical context and development of the doctrine.

- **Golaknath Case (1967):** This case questioned the Parliament's power to amend fundamental rights.
- **24th Amendment Act:** Enacted in response to the Golaknath case, it attempted to assert Parliament's power to amend any part of the Constitution.



- **Kesavananda Bharati Case (1973):** This landmark case gave birth to the basic structure doctrine, limiting the Parliament's amending power.
- **42nd Amendment Act:** This tried to bypass the Kesavananda verdict but was partially struck down.
- **Minerva Mills Case (1980):** This case further solidified the basic structure doctrine and emphasized the balance between fundamental rights and directive principles.
- **Waman Rao Case (1981):** This case applied the doctrine to amendments made before the Kesavananda ruling.
- **L. Chandra Kumar Case (1997):** This case reiterated the doctrine and its significance.
- **I.R. Coelho Case (2007):** This case dealt with the Ninth Schedule and its immunity from judicial review, holding that even laws placed in the Ninth Schedule would be subject to the basic structure doctrine.

Arguments in Support of the Doctrine

This branch highlights the justifications for the doctrine.

- **Protection of Democracy:** The doctrine ensures that the democratic fabric is not altered through amendments.
- **Prevents Tyranny:** It safeguards against the concentration of excessive power in one branch of government.
- **Upholds Constitutional Supremacy:** It reinforces the idea that the Constitution is supreme and not subject to the whims of political majorities.
- **Preserves Fundamental Rights:** It protects the fundamental rights of citizens from legislative encroachment.
- **Maintains Checks and Balances:** It ensures that the balance of power among the three organs of the state is maintained.

Arguments Against the Doctrine

This branch presents the criticisms leveled against the doctrine.

- **Undemocratic:** Critics argue that it gives excessive power to the judiciary, limiting the will of the elected representatives.
- **Vague and Ill-defined:** The lack of a clear definition of the basic structure leads to ambiguity and judicial discretion.
- **Judicial Overreach:** It is seen as an encroachment on the legislative domain.
- **Hampers Constitutional Amendments:** Critics argue that it unnecessarily restricts the process of constitutional amendments, making it difficult to adapt to changing needs.

Debates and Challenges

This branch highlights the ongoing debates and challenges related to the doctrine.

- **Parliament's Sovereignty vs. Basic Structure:** The tension between these two principles is a continuous point of discussion.
- **Defining the Basic Structure:** The lack of a clear definition leads to diverse interpretations.



IAS RED NOTES

- **Judicial Activism:** The doctrine is sometimes seen as an instance of judicial overreach.
- **Amendments Challenged:** The doctrine has been used to challenge various constitutional amendments.

Conclusion

The conclusion emphasizes that the doctrine is **not arbitrary** and is **rooted in the Constitution itself**. It is **evolved and applied cautiously** by the judiciary. It is **necessary for preserving the democratic fabric and maintaining the balance of power**.

Did you know?

- **Fundamental Rights (FRs) and Directive Principles of State Policy (DPSPs):** The delicate balance and harmony between these two parts are considered vital. Cases like the **Minerva Mills case** highlight this interconnectedness.