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Basic Structure Doctrine of Indian Constitution

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Why is in news?

The debate, which had raised great passions in 1951 during the discussion on the First Amendment of the Constitution has now been resuscitated by the assertion of Ranjan Gogoi that the “Basic Structure Doctrine” has “a very debatable jurisprudential basis”.

About the Basic structure:

The basic structure is a **tool or judicial innovation to ensure that the legislature does not abuse the power given to it in Article 368.**

The doctrine states that no amendment to the Constitution is permissible if it alters “the basic structure or framework of the Constitution”.

It was developed by the Supreme Court of India in a series of constitutional law cases in the 1960s and 1970s that **culminated in Kesavananda Bharati v. State of Kerala in 1973** where the doctrine was formally adopted.

The doctrine thus forms the basis of the power of the Supreme Court of India to review and strike down constitutional amendments and acts enacted by the Parliament which conflict with or seek to alter this “basic structure” of the Constitution.

Evolution of Basic Structure doctrine:

The word “Basic Structure” is **not mentioned in the constitution of India.**

The concept developed gradually with the interference of the judiciary from time to time to protect the basic rights of the people and the ideals and the philosophy of the constitution.

Shankari Prasad case (1951):

The **First Constitution Amendment Act, 1951 was challenged** in the Shankari Prasad vs. Union of India case.

The amendment was challenged on the ground that it violates the Part-III of the constitution and therefore, should be considered invalid.

The Supreme Court held that the Parliament, **under Article 368, has the power to amend any part of the constitution including fundamental rights.**

Golak Nath case (1967):

In Golak Nath vs State of Punjab case in 1967, the Supreme Court **overruled its earlier decision in Shankari Prasad judgment.**

Kamaraj IAS Academy

Plot A P.127, AF block, 6 th street, 11th Main Rd, Shanthy Colony, Anna Nagar, Chennai, Tamil Nadu 600040

Phone: **044 4353 9988 / 98403 94477 / Whatsapp : 09710729833**

The Supreme Court held that the Parliament has **no power to amend Part III of the constitution as the fundamental rights are transcendental and immutable.**

According to the Supreme Court ruling, Article 368 **only lays down the procedure to amend the constitution** and does not give absolute powers to the parliament to amend any part of the constitution.

24th Constitution Amendment Act, (1971):

The Parliament, in 1971, passed the 24th Constitution Amendment Act.

The act **gave the absolute power to the parliament to make any changes in the constitution** including the fundamental rights.

It also **made it obligatory for the President to give his assent** on all the Constitution Amendment bills sent to him.

Kesavananda Bharti case (1973):

In 1973, in Kesavananda Bharti vs. State of Kerala case, the Supreme Court upheld the validity of the 24th Constitution Amendment Act by **reviewing its decision in Golaknath case.**

The Supreme Court held that the **Parliament has power to amend any provision of the constitution**, but doing so, the **basic structure of the constitution is to be maintained.**

But the Apex Court **did not any clear definition of the basic structure.** It held that the basic structure of the Constitution could not be abrogated even by a constitutional amendment.

In other words, this landmark judgment meant that every provision of the Constitution could be amended, but these amendments **can be subjected to judicial review** to ascertain that the Basic Structure of the Constitution remains intact.

Indira Gandhi Vs. Raj Narain Case (1975):

The doctrine of basic structure of the constitution was reaffirmed and applied by the Supreme Court.

The SC **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.

Minerva Mills vs. Union of India (1980):

In this case, the Supreme Court **invalidated provisions of the 42nd CAA** and ruled that **the Parliament cannot take away the power of 'judicial review' as it is a part of the 'Basic Structure'.**

Waman Rao vs. Union of India (1981):

Also known as the **'Doctrine of Prospective Overruling'**, the court decided that all the laws placed under Ninth Schedule before the Kesavananda judgment cannot be called into question for violating Fundamental Rights. However, the laws post the judgment can be raised before a court of law.

The Supreme Court **again reiterated the Basic Structure doctrine** in this case.

Indra Sawhney & Others vs. Union of India (1992):

Also known as the **Mandal case**, the Supreme Court declared the **Rule of Law** as a Basic Structure of the constitution.

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Kihoto Hollohan Case (1993):

Popularly known as the **Defection case**, the Supreme Court added **Free and fair elections, Sovereign, Democratic and Republican structure** to the Basic Structure of the Constitution.

S.R. Bommai vs. Union of India (1994):

The Supreme Court declared **Federalism, Secularism, and Democracy** as the Basic Structure of the Constitution.

Significance of the Basic Structure Doctrine:

The basic structure doctrine is a **testimony to the theory of Constitutionalism** to prevent the **damage to essence of Constitution of India by brute majority of the ruling majority**.

The basic doctrine saved the Indian democracy as it **acts as a limitation of constituent power or else unlimited power of parliament** might have turned India into a totalitarian

It helps us to retain the basic tenets of our constitution so meticulously framed by the founding fathers of our Constitution.

It **strengthens our democracy by delineating a true separation of power** where Judiciary is independent of other two organs. It has also given immense untold unbridled power to Supreme Court and made it the most powerful court in the world

By **restraining the amending powers of legislative** organ of State, it provided basic Rights to Citizens which no organ of State can overrule.

Being dynamic in nature, it is **more progressive and open to changes** in time unlike the rigid nature of earlier judgements.

Some criticisms about the Doctrine of Basic Structure:

Inconsistent with the principle of separation of powers: A system of checks and balances is healthy only when the duties of one branch are not usurped by another. A court may have the power to review but not rewrite a constitutional amendment.

Vagueness and elusiveness of the Basic features of the Constitution: There is no definite elucidation on what exactly constitutes Basic Structure, thereby making the doctrine ambiguous.

Translates judiciary into the third decisive chamber of parliament: By invoking the Basic Structure doctrine, the Judiciary acts as the third house and thereby renders the work done by the Parliament meaningless.

Judicial Overreach: Recently, the doctrine has been invoked in cases regarded as examples of judicial overreach. Ex: National Judicial Appointment Commission Act, 2014 was declared null and void by the Supreme Court by relying on this doctrine.

Conclusion:

The basic structure doctrine though subject to intense debate from the date of its inception and lack of textual basis of the same still continues to hold forte to hold up delicate constitutional balance of powers.