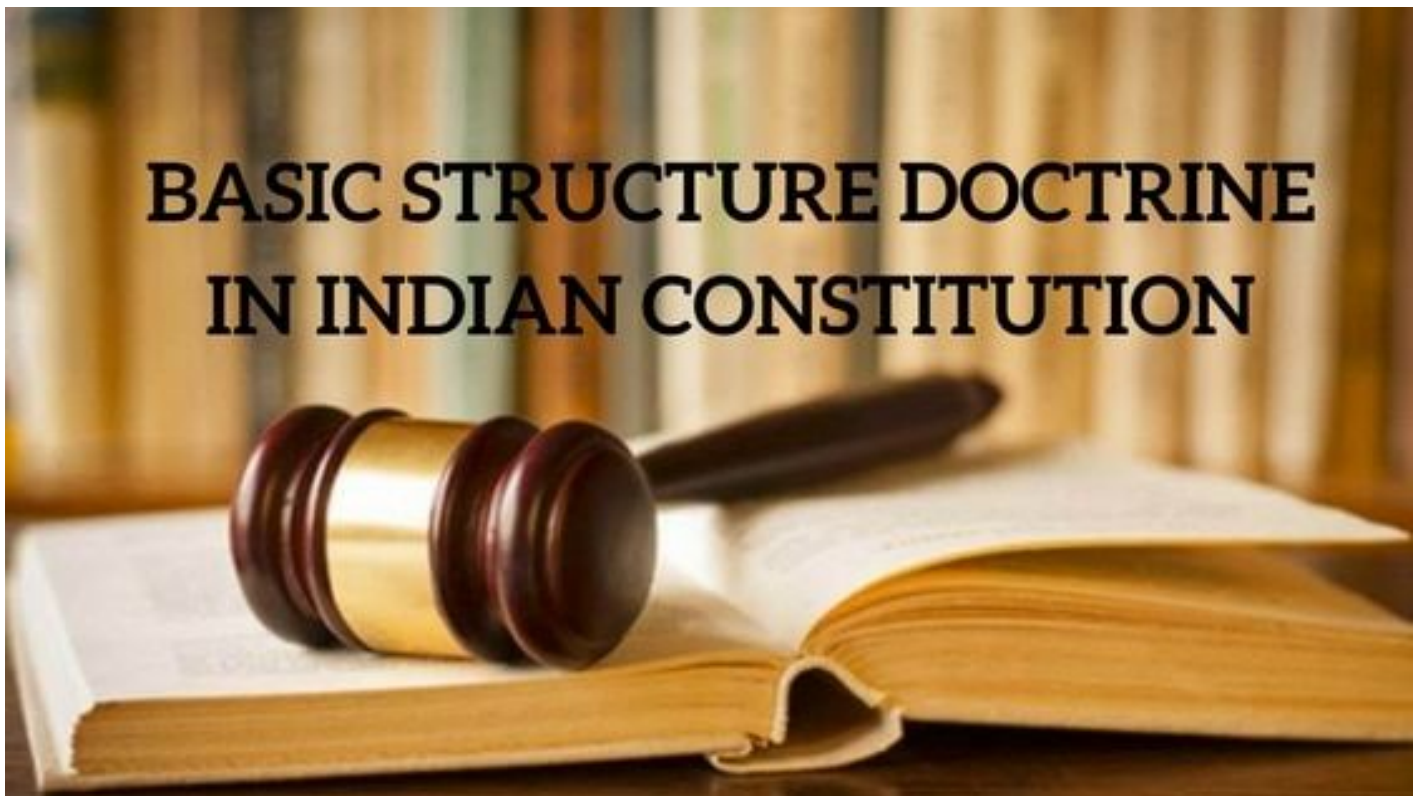


Basic Structure Doctrine & Its Significance

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Why in News?

- Vice President of India, **Shri Jagdeep Dhankhar**, questioned the landmark Supreme Court judgment that evolved the doctrine of basic structure.

- He asked if the judiciary can put fetters on the Parliament's powers to amend the Constitution and frame laws in a democratic nation.

What is Kesavananda Bharati Case?

- Kesavananda Bharati v. State of Kerala, also known as the Kesavananda Bharati judgement, was a landmark decision of the Supreme Court that outlined the basic structure doctrine of the Indian Constitution.
 - The case is also known as the **Fundamental Rights Case**.
- A **13-Judge Bench** of the Supreme Court, with a 7-6 majority, upheld the validity of the **24th Constitutional Amendment Act** (1971) and stated that Parliament is empowered to abridge or take away any of the Fundamental Rights.
 - As per 24th C.A.A., Constitutional Amendments were not considered laws under **Article 13**.
 - This amendment gave unlimited power to the Parliament to amend or repeal any part of the Constitution of India.
 - However, the **Court laid down a new doctrine of the 'basic structure' (or 'basic features') of the Constitution**.

What is the Basic Structure Doctrine?

- In the Kesavananda Bharati case, the Court ruled that the constituent power of Parliament under **Article 368** does not enable it to alter the 'basic structure' of the Constitution.
- This means that the **Parliament cannot abridge or take away a Fundamental Right that forms a part of the 'basic structure' of the Constitution**.
- It gives extra power to court to review and strike down any constitutional amendments and act enacted by the Parliament.

• Evolution of the Basic Structure Doctrine

- 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 that of the contravention of any of the Fundamental Rights***.
- However, the Supreme Court in the **Minerva Mills case** (1980) invalidated this provision as it excluded judicial review which is a 'basic feature' of the Constitution.
- Again in the **Waman Rao case** (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**.
- It is the date of the judgement in the Kesavananda Bharati case.

- **What Constitutes Basic Structure of the Constitution?**

- The Supreme Court is yet to define or clarify as to what constitutes the 'basic structure' of the Constitution.
- At present, from the various judgements, the **following have emerged as some of the 'basic features' of the Constitution or elements of the 'basic structure' of the constitution -**
 - Supremacy of the Constitution
 - Sovereign, democratic and republican nature of the Indian polity
 - Separation of powers between the legislature, the executive and the judiciary
 - Judicial review
 - Parliamentary system
 - Rule of law
 - Principle of equality
 - Free and fair elections
 - Independence of Judiciary
 - Limited power of Parliament to amend the Constitution

- **What are the Benefits/Significance of Basic Structure Doctrine?**

- **Granville Austin**, an American historian of the Indian Constitution, argues that with Basic Structure Doctrine, a balance has been reached between the responsibilities of Parliament and Supreme Court for protecting the seamless web of Indian Constitution.
- **Upendra Baxi**, a legal scholar, argues that the doctrine facilitates for constitutional change paving way for fundamental, social change through peaceful democratic means.

- **Criticism of the Basic Structure Doctrine**

- Plurality of opinions yielded in the Kesavananda judgement gave no clarity and so it is an uncertain authority to limit the amending powers of the Parliament.
- There is a **lack of clarity about the nature and the character of the basic features of the Constitution.**
- According to **Raju Ramachandran**, former Additional Solicitor General of India, the Basic Structure Doctrine is anti-democratic because ultimately court's own view of its area of competence and effectiveness becomes the only check on the exercise of its own judicial power.
- Ultimately **the unelected judges have assumed the political power not given to them in the Constitution.**

- **Conclusion**

- One certainty that emerged out of this tussle between Parliament and the Judiciary is that all **legislations and constitutional amendments are now subject to judicial review**, and laws that violate the fundamental framework are likely to be overturned by the Supreme Court.
- In essence, Parliament's ability to alter the Constitution is limited, and **all constitutional amendments are ultimately decided upon, scrutinised and interpreted by the Supreme Court.**

News Summary

- Recently, Vice President of India, Shri Jagdeep Dhankhar, addressed the 83rd **All-India Presiding Officers Conference** in Jaipur, Rajasthan.
 - The All India Presiding Officers' Conference (AIPOC) is the **apex body of the Legislatures** in India.
 - The first Conference was held in Shimla in **1921**.
 - On the occasion, he raised the issue of the powers of the judiciary vis-a-vis the legislature, highlighting the 2015 decision of the Supreme Court to strike down the **National Judicial Appointments Commission Act**.
 - He said that a judicial verdict cannot run down parliamentary will, adding "parliamentary sovereignty and autonomy cannot be permitted to be qualified or compromised as it is quintessential to the survival of democracy."
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Q1) What was the Golaknath case Judgement?

Golaknath v. State of Punjab, or simply the Golaknath case, was a 1967 Indian Supreme Court case, in which the Court ruled that Parliament could not curtail any of the Fundamental Rights in the Constitution.

Q2) Are Fundamental Rights absolute?

Fundamental rights are not absolute rights. They have reasonable restrictions, which means they are subject to the conditions of state security, public morality and decency and friendly relations with foreign countries.

Source: [Citing basic structure doctrine, Vice President Jagdeep Dhankhar asks 'are we a democratic nation'](#) | [Legal Service India](#) | [Times of India](#)

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