



## BASIC STRUCTURE OF CONSTITUTION - GS II MAINS

Q. The 'basic structure' doctrine has gone a long way in ensuring that the State doesn't circumvent the implicit foundational principles enshrined in the constitution. Examine (15 marks, 250 words)

**News:** *Protecting Basic Structure from judicial arbitrariness*

### What's in the news?

- The thesis titled, "The Judicial Role in Constitutional Protection: Examining the Legitimacy of Basic Structure Review in India", provides strong support to the jurisprudential foundations and doctrinal validity of the doctrine in a rather interesting manner.
- Seeking a new imagination of the doctrine to strengthen it and make it conform to the constitutional text, Justice Nambiar, re-examines the role of the judiciary in matters of constitutional protection in an information age when there is a public demand for transparency in the functioning of democratic institutions.

### Basic Structure Doctrine:

- The Kesavananda Bharati judgment introduced the Basic Structure doctrine which limited Parliament's power to make drastic amendments that may affect the **core values enshrined in the Constitution** like secularism and federalism.
- The verdict upheld the **power of the Supreme Court to judicially review laws of Parliament.**
- It evolved the concept of **separation of powers** among the three branches of governance - legislative, executive and the judiciary.

### Doctrine of Basic Structure says that

1. The parliament's unlimited power to amend the constitution is subject to only one restriction i.e. it should not dilute or violate the basic structure of the constitution.
2. The effects of the amendment should not be abrogating or disturbing in nature towards the basic structure.

### Evolution of Basic Structure and Important Judgements:

#### 1. Shankari Prasad Case:

- SC opined that the power of the parliament to amend the constitution under Article 368 also includes the power to **amend Fundamental Rights.**
- It based its judgment on the logic that the word 'law' mentioned in Article 13 includes only ordinary laws and not constitutional amendment acts.

#### 2. Golaknath Case:

- SC overruled its previous judgment.
- It ruled in this that - **Fundamental Rights are given a transcendental and immutable position and hence the Parliament cannot abridge or take away any of these rights.**



- It opined the constitutional amendment act is also a law under Article 13.
- Parliament reacted to this judgment by enacting the 24th amendment act which included a provision in Article 368 which declared that Parliament has power to take away any of the fundamental rights.

### 3. Keshavananda Bharati Case:

- SC overruled its judgment in the Golaknath case.
- It upheld the validity of the 24th Amendment Act and opined that **parliament is empowered to take away or abridge any of the Fundamental Rights.**
- However, such changes should not alter the 'basic structure' of the constitution.

### 4. Minerva Mills Case:

- Parliament reacted to the above case by enacting 42nd Amendment Act which declared under Article 368 that there is no limitation on the constituent power of Parliament and it barred the courts from questioning such amendments.
- This provision was invalidated by the SC stating that Parliament cannot take away the '**judicial review**' power of the constitution since it is part of the 'Basic Structure Doctrine'.

## Significance of Basic Structure:

### 1. Testimony to Constitutionalism:

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

### 2. Limit Parliamentary Sovereignty:

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

### 3. Protector of Foundational Values of the Constitution:

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

### 4. Strengthen the Doctrine of Separation of Power:

- 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 the Supreme Court and made it the most powerful court in the world.

### 5. Protect the Rights of the Citizens:

- By restraining the amending powers of the legislative organ of State, it provided basic rights to citizens which no organ of state can overrule.



## 6. Helps Constitution to be a Living Document:

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

## Main Criticisms of Basic Structure:

### 1. No Constitutional Back-up:

- The common criticism is that the doctrine has no basis in the Constitution's language.
- **The doctrine does not have a textual basis.**
- There is no provision stipulating that this Constitution has a basic structure and that this structure is beyond the competence of amending power.

### 2. Power Imbalance Between Judiciary and Parliament:

- Its detractors also believe the doctrine accords the judiciary a power to impose its philosophy over a democratically formed government.

### 3. No Clear Definition:

- There is no definite elucidation on what exactly constitutes basic structure, thereby, making the doctrine ambiguous. The Basic Structure theory is a **“vague and undefined concept”**.

### 4. Tool for Judicial Overreach:

- In recent times, the doctrine has been invoked in cases that have been regarded as examples of judicial overreach. Ex: NJAC bill was declared null and void by the SC by relying on this doctrine

### 5. Judiciary as Super Legislature:

- Judicial review is fundamental to rule of law. However, while reviewing the constitutionality of the law, the court should not consider itself as a “super legislature” and sit in judgement on the wisdom of the policies adopted by the legislature.

With the changing requirements of the populace, the constitution also requires amendments to **accommodate and manage the strain between the political system and constitutional ideals.**

Although there is need to respect the judiciary, the vagueness around basic structure needs a revisit considering that parliamentary sovereignty and autonomy cannot be permitted to be qualified or compromised as it is quintessential to survival of democracy.