Basic Structure Doctrine

Why in news?

Vice-President Jagdeep Dhankar's remark that courts cannot dilute parliamentary sovereignty sparked a debate on separation of powers, bringing the focus back to the basic structure doctrine of the Constitution.

What is the current issue?

- Currently, there is a tussle going on between the executive and the judiciary over the collegium system of appointing judges.
- The Vice-President has talked about the Supreme Court verdict which struck down the **National Judicial Appointments Commission (NJAC)** and the 99th Amendment in 2015.
- Mr. Dhankar also questioned the landmark ***Kesavananda Bharati case*** verdict.
- He said that he does not subscribe to the idea that the judiciary can strike down amendments passed by the legislature on the ground that they violate the '**basic structure'** of the Constitution.

What is the basic structure doctrine?

- In 1973, a 13-judge Constitution Bench ruled in ***Kesavananda Bharati v. State of Kerala*** that **Article 368** does not enable Parliament to amend the basic framework of the document.
- The historic ruling came to be known as the basic structure doctrine — a judicial principle that the Constitution has certain basic features that cannot be altered or destroyed by amendments by Parliament.
- Over the years, various facets of the basic structure doctrine have evolved, and are **not openly defined** by the judiciary.

How did the basic structure doctrine evolve?

- **Shankari Prasad Case (1951)** – The Court upheld that under Article 368, the Parliament has the power to amend the Constitution including the Fundamental rights.
- **Sajjan Singh v. State of Rajasthan (1965**) – The Court reiterated the Parliament's power to amend any part of the Constitution.
- **I.C. Golak Nath v. State of Punjab (1967)** - The Supreme Court held that Parliament could not curtail fundamental rights guaranteed under the Constitution.
- The term 'basic structure' was first used in this case, by lawyer **M.K Nambyar.**
- The then government enacted the 24th, 25th and 29th Constitutional (Amendment) Acts that gave Parliament uncontrolled power to alter or even abolish any fundamental

right.

- **Kesavananda Bharti Case (1973) -** The Supreme Court held that although Parliament has the power to amend any part of the Constitution, it could not use this power to alter or destroy its "basic structure".
- The verdict also made it clear that judicial review was only part of a system of checks and balances to ensure constitutional functionaries do not exceed their limits.
- **Indira Gandhi v. Raj Narain (1975) -** The basic structure theory was applied for the first time and the independent conduct of elections was categorized as basic structure
- **Minerva Mills case (1980) -** It pertained to the 42nd Amendment Act introduced by the Indira Gandhi government.
- In a majority verdict, the top court upheld the power of judicial review of constitutional amendments.

Why is basic structure so significant?

- The basic structure of the Constitution is its **living spirit,** holding up the body of its text.
- It is the **soul of the Constitution**, inextricably linked to the values enshrined in the Preamble, without which the document and the ideas that make it sacred would collapse.
- Granville Austin's *Working of a Democratic Constitution* said that the basic structure doctrine is fairly said to have become the **bedrock of constitutional interpretation** in India.
- The courts have clarified that the basic structure aims to **secure the rule of law** essential for preservation of the democratic system.

What are the criticisms of the doctrine?

- **Judicial overreach** - Its critics believe that the doctrine gives the judiciary the power to impose itself over a democratically formed government.
    - For instance, the NJAC judgment in 2015 has been termed as the "tyranny of the unelected".
- **Separation of powers** - It is said to be inconsistent with the principle of separation of powers.
- **Vague** - Basic structure doctrine is criticized for its vagueness as it has been left open before the judiciary to decide the same on the case to case basis.
    - In Kesavananda Bharti v. State of Kerala, each of the judges on the bench had their own conclusion.
- **Basic nature** - A doctrine in Constitutional sense can only be said Constitutional when it has a Constitutional genesis thus raising the question "Is the doctrine of basic structure really basic?"

References

1. The Hindu | The basic structure of the Constitution
2. The Hindu | Understanding the 'basic structure' of the Constitution



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