

## Doctrine of Basic Structure – Concept Class Polity Series #2\*

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### #1 What is the doctrine of basic structure?

- (1) Judicial innovation → Keshavananda Bharti Case → All Parts of the Constitution can be amended as long as it does not alter the basic character of the Constitution
- (2) Was the outcome of debate between (a) Supremacy of Legislature vs Judiciary (b) Article 13 over Article 368 (c) Individual Rights vs Community Rights (d) Socialism vs Capitalism € Fundamental Rights over the DPSP

### #2 Can Constitution be amended? \*

- (1) Four Judgements: Shankari Prasad → (a) Constituent Function vs Legislative Function; Amendment to Constitution not ordinary law; cannot be reviewed by Courts; (b) Fundamental Rights can be amended by CAA = no protection of Article 13;
- (2) Sajjan Singh vs Rajasthan → (a) Upheld the distinction between Constituent Power & Legislative Power (b) CAA cannot be reviewed
- (3) Golak Nath vs State of Punjab → (a) No difference between ordinary Law and Amendment Law; constituent power and legislative power are not different (b) Fundamental Rights cannot be amended; 'sacrosanct' (c) Doctrine of Prospective Ruling: judgement would apply to future and not to past judgements;
- (4) Keshavananda Bharti → Thirteen judge Bench: Creation of "Basic Structure" Filter parliament can amend any part of the Constitution, as long as it did not alter the basic structure; FR can be taken away; gave power to courts to decide constitutionality of amendments

\*Covered Separately in Important Judgements

### #3 Which features of Constitution form part of Basic Structure?

- (1) Not enumerated by the Constitution or the Courts at one point of time
- (2) Evolve from time to time on basis of judicial pronouncements
- (3) Supremacy of the Constitution; Secularism; Parliamentary Form; Rule of Law; Judicial Review; Independence of Judiciary;

### #4 What good has the doctrine done?

- (1) Protected the Constitution and Indian State from Collapse ( how? )
- (2) Protected the Nation from moving into a sharply socialist direction
- (3) Provided the balance between → (a) individual rights and community rights (b) fundamental rights and DPSC (c) capitalism vs socialism.

### #5 What are the criticism of Basic Structure Doctrine?

- (1) Basic Structure Doctrine → no mention in the Constitution
- (2) Judicial Invention → circumscribe the Legislature / Executive
- (3) Violative of Constitution as a Living Document → bound Parliament in perpetuity.
- (4) Judges decided the ends → discovered legal means to achieve them.
- (5) Indian Judiciary → most powerful in the World; era of Judicial Supremacy in the name Constitutional Supremacy
- (6) Counter Majoritarian; power to an unelected and self-appointed body.

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Related Concept Classes: [Judgements that Changed India](#), [Judicial Activism](#), [Amending Power of the Parliament](#)