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Q6(b)

The Doctrine of Basic Structure of the Constitution has enhanced the power of judicial review of the Supreme Court. Examine

UPSC Civil Services Mains 2022 · PSIR GS 1 · 15 marks · Salient Features of the Indian Constitution

Salient Features of the Indian Constitution: The Preamble, Fundamental Rights and Duties, Directive Principles; Parliamentary System and Amendment Procedures; Judicial Review and Basic Structure doctrine.

Core demand of the question

- The Doctrine of Basic Structure of the Constitution has enhanced the power of judicial review of the Supreme Court. Examine. (15 marks)

Revision summary

Kesavananda held that amendments cannot destroy basic structure, extending review to **Article 368**.

Indira **Gandhi**'s election case and **Minerva Mills** protected review against ouster clauses.

Coelho opened post-**1973 Ninth Schedule** laws to structure review.

NJAC (2015) struck an appointments amendment in the name of judicial independence.

Bommai used structure values against arbitrary President's Rule.

The Court's power grew as a shield and as a political prize.

Introduction

Kesavananda Bharati v. State of Kerala (1973) held that Parliament's amending power cannot destroy the Constitution's basic structure. That doctrine enlarged judicial review from ordinary law to the constitutional amendment itself.

Body

What review was before

- **A. K. Gopalan** treated fundamental rights in separate silos. **Golaknath** (1967) barred amendments to fundamental rights, a first expansion, then found unworkable.
- **Dicey**'s parliamentary sovereignty had no Indian home once a written constitution with **Article 13** existed, but amendments under **Article 368** still looked like a sovereign key.
- Judicial review of ordinary legislation was already in **Articles 13, 32**, and 226. The new claim was review of the constituent power.

How basic structure enhanced review

- The Court named essentials-supremacy of the Constitution, democracy, secularism, federalism, judicial review, and later additions in case law-and measured amendments against them.
- **Indira Nehru Gandhi v. Raj Narain** (1975) struck an amendment that sought to place an election dispute beyond review, which showed the doctrine protecting the Court's own jurisdiction.

- **Minerva Mills (1980)** invalidated clauses that tried to make amendments immune from review and to subordinate fundamental rights to Directive Principles without limit.
- **I. R. Coelho (2007)** brought **Ninth Schedule** laws after 24 April **1973** under basic-structure review if they damage rights that are essentials.
- **NJAC / Fourth Judges Case (2015)** used independence of the judiciary as basic structure to strike a constitutional amendment on appointments.

Examination of "enhanced"

- **Enhancement is real:** the Supreme Court became the umpire of what Parliament may not do even with a special majority.
- **Granville Austin's** social revolution still needs amendment; the doctrine can freeze a judicial reading of essentials.
- Compared with **Hobbes's** undivided sovereign, this is Lockean trust enforced by judges.
- **S. R. Bommai (1994)** used secularism and federalism, basic-structure values, to discipline **Article 356**, another expansion of review into executive federal power.
- The cost is a political Court. Enhancement of review is also a shift of amending power toward a bench.

Balance

- Without the doctrine, Emergency-era amendments showed how a written constitution can be emptied.
- With the doctrine, democracy depends on judicial self-restraint as well as on judicial courage.
- The examination therefore agrees with the statement and adds that enhancement is both a shield of constitutional identity and a concentration of power in the Court.

Flow diagram

Kesavananda 1973 -> Basic structure
 Basic structure -> Review of Article 368
 Review of Article 368 -> Minerva Mills
 Review of Article 368 -> NJAC 2015
 Review of Article 368 -> Bommai secularism federalism

Conclusion

Basic structure extended judicial review from statutes to constitutional amendments and to devices that would oust courts. Kesavananda, **Minerva Mills**, Coelho, NJAC, and Bommai mark the growth. The power of the Supreme Court rose. So did the need for judicial discipline.

Facts & figures

Kesavananda Bharati (1973)

Thirteen-judge bench; amending power exists but cannot damage basic structure.

Minerva Mills (1980)

Struck 42nd Amendment clauses that immunised amendments and unbalanced Parts III and IV.

I. R. Coelho (2007)

Ninth Schedule laws after 24 April 1973 open to basic-structure test.

NJAC case (2015)

Ninety-ninth Amendment struck down; collegium restored as linked to judicial independence.

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