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**Topic: GS2 : Legitimacy of Basic
Structure Doctrine**



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Legitimacy of the basic structure

Introduction:-

- Doctrine of Basic Structure is an innovation of Indian Supreme Court, ruled in landmark judgement **Kesavananda Bharati v. State of Kerala, 1973.**
- It is a principle of judicial review.
- It gives Judiciary power to review even constitutional amendments.
- But as entrenched as this doctrine might now be, it remains, to some, a source of endless antipathy.
- There have already been grumbings over the rule's legitimacy in certain quarters in response to challenges made to the recently introduced 103rd Constitutional Amendment, which provides for reservations based on economic criteria in government jobs and education.

Why there is Question Mark on it's Legitimacy:-

- No Basis in the Constitution's language- The phrase "basic structure", it's argued, finds no mention anywhere in the Constitution.
- Dominance of the unelected and least accountable among the three Pillar of Democracy- The doctrine accords the judiciary a power to impose its philosophy over a democratically formed government, resulting in something akin to what Union Minister Arun Jaitley once termed as a "tyranny of the unelected".

Arguments in Favour of Doctrine's Legitimacy:-

- Unquestionably, some of this censure is a result of the Supreme Court's occasionally muddled interpretation of what the Constitution's basic structure might be. But to reject the doctrine altogether because the judiciary sometimes botches its use is to throw the baby out with the bathwater.
- For not only is the basic structure canon legally legitimate, in that it is **deeply rooted in the Constitution's text and history**, but it also **possesses substantial moral value**, in that it **strengthens democracy by limiting the power of a majoritarian government** to undermine the Constitution's central ideals.
 - For eg- In Germany, the virulent end brought to the Weimar Republic by Nazism and gave rise to totalitarianism.
- **German professor, Dietrich Conrad**, affected by his own country's history believed that even if a legislature were bestowed with the widest of powers to amend the Constitution, its authority was always subject to a set of inherent constraints. **Parliament, was, after all, a creature of the Constitution.** It could not, therefore, make changes that had the effect of overthrowing or obliterating the Constitution itself.
- In **Kesavananda Bharati, Justice H.R. Khanna's** legendary, controlling opinion that, "Any amending body organized within the statutory scheme, howsoever verbally unlimited its power, cannot by its very structure change the fundamental pillars supporting its Constitutional authority."

- Yet, the limitation, wrote Justice Khanna, wasn't as much implicit from a reading of the Constitution as a whole as it was evident from the **very meaning of the word "amendment"**.
 - According to him, what could emerge out of **an amendment was only an altered form of the existing Constitution and not an altogether new and radical Constitution.**
- **Sudhir Krishnaswamy**, in his book, **Democracy and Constitutionalism in India**, has shown in depth the interpretation by Justice Khanna is compelling for at least two reasons.
 - it **represents a careful reading of the text of Article 368**, and,
 - it **delivers an attractive understanding of the moral principles that anchor the Constitution.**
- Article 368 grants Parliament the power to amend the Constitution, making it clear that on the exercise of that power **"the Constitution shall stand amended"**.
- Therefore, **if what has to remain after an amendment is "the Constitution"**, naturally a change made under **Article 368 cannot create a new constitution.**
- Such a construal is also supported by the **literal meaning of the word "amendment"**, which is defined as **"a minor change or addition designed to improve a text"**.
- Hence, for an amendment to be valid, the constitution that remains standing after such a change must be the Constitution of India; **it must continue to possess, in its essence, those features that were foundational to it even at its conception.**

Conclusion:-

- We must remember that constitutions are not like ordinary laws. Interpreting one is always likely to be an exercise fraught with controversy. But such is the nature of our political design that the court, as an independent body, is tasked with the role of acting as the Constitution's final interpreter, with a view to translating.
- Justice Robert H. Jackson of the U.S. Supreme Court once wrote, **abstract principles into “concrete constitutional commands”**. It may well be the case that the *basic structure doctrine is derived from the abstract. But that scarcely means it doesn't exist within the Constitution.*