

Vidhigya Challenger Series
Daily Practice Sheet 23
English Language

The doctrine of basic structure has been subject to an intense debate in the Constitutional field with regard to its genesis. Subhash Kashyap criticises the basic structure theory in the words **“if the sovereign people through their representatives cannot bring about their desired change, who will?”** But of what use this desired change will be to the people at the cost of the Constitution. This doctrine has anti-majoritarian flavour and is of prime importance as it prevents the Parliament from abusing its majoritarian power. It can also be criticised that it has extra Constitutional origin as there is lack of basis in the basic structure and what the Supreme Court has done is to assume to itself a power of veto on all Constitutional amendments. But if such limitations on the amending power of the Parliament will not be there, then, a day may come, when we may not be left with our basic inalienable rights that the Constitution guarantees to us in Part III. The judiciary is the protector and final interpreter of the Constitution and it is also below the Constitution. But it also appeared from the few judicial pronouncements that the Supreme Court has assumed much power in the name of basic structure, which may be termed as power of veto to every Constitutional amendment. This doctrine was meant for special use in times when Constitutional amendments threatened the basic framework of the Constitution. This doctrine is subjective and vague. As there is no clear cut list laid down by the judiciary that this constitutes the ‘basic structure’ and has said that it will be decided on a case to case basis. Probably, the reason may be, the Judiciary is afraid of the Legislature that if they will give a clear cut list of basic structure, then the Parliament may come forward with some other alternatives. Professor Dietrich Conrad who on his visit to India made us aware that there is some implied inherent limitation on the amending power of the Parliament which Palkhivala successfully propounded in the Kesavananda case what Mr. M. K. Nambyar tried in Golakh Nath but because of judicial hesitation it took about half a decade time after Golakh Nath to be approved. This doctrine protects our basic rights and every act of the Parliament is now subject to this doctrine, and puts a full stop on the unconstitutional Constitutional amendments game of the Parliament in I. R. Coelho case where the Ninth Schedule was enacted with the purpose to give effect to laws relating to land reforms. The purpose failed and history clearly shows for what purpose the Schedule was used.

1. Why does the author feel the need to restrict the Parliament's ability to amend the Constitution?

- (a) The fundamental structure raises several questions regarding Parliament's authority.
- (b) The Parliament might abuse its authority.
- (c) The Parliament has the power to change fundamental elements.
- (d) The Constitution's Part III guarantees that we have some fundamental rights that cannot be violated.

2. Which of the following statements regarding the passage's enumeration of many objections of the basic structural doctrine is true?

- (a) Only if the Constitution is altered and adjusted for the people will the intended change be visible.
- (b) Every constitutional amendment is subject to the veto power of the Supreme Court.
- (c) The ultimate decision-makers in constitutional interpretation are the people's elected representatives.
- (d) When a constitutional amendment jeopardizes the basic structure of the Constitution, the doctrine should be applied.

3. What position does Professor Dietrich Conrad take on the basic structure doctrine?

- (a) The Parliament's ability to amend the Constitution is subject to some restrictions.
(b) If the Judge gives a succinct list of the fundamental structure, the Parliament might offer some fresh viewpoints..
(c) The concept of the fundamental structure prohibits the judiciary from abusing its power.
(d) Parliament doesn't abuse its majority authority.

4. "But of what use this desired change will be to the people at the cost of the Constitution," is an example of which of the following?

- (a) Irony (b) Pun (c) Rhetorical question (d) Hyperbole

5. Which of the following interpretations of the passage is untrue?

- (a) To keep a majoritarian government in check, doctrine is essential.
- (b) The reason it is a subjective doctrine is not explained by the author.
- (c) The author does not just defend and criticize the doctrine.
- (d) This doctrine, according to the author, is an essential check that we all require.

Answers & Explanations

1. Ans. (b)

Sol. Options (a) and (c) are not the cause of the necessity to restrict the amending power, hence they can be disregarded. Both options (b) and (d) are accurate, however option (d) will be disregarded because it describes how the power can be abused, resulting in the removal of fundamental rights. We require a justification for the restriction of the amending power. i.e., option (b).

2. Ans. (d)

Sol. Option (a) is out of context, hence it is erroneous. Although the passage claims that the Supreme Court has assumed that they are granted the power in the name of basic structure, Option (b) appears to be right. The judiciary, which includes the Supreme Court, serves as the final interpreter. Option (d) is the appropriate response as a result.

3. Ans. (a)

Sol. Option (c) can be disregarded because the judiciary enacts laws, whereas the Parliament has a strict prohibition on abusing its authority. Option (b) is accurate, however the issue at hand concerns Dietrich Conrad's interpretation of the basic structural concept. Option (a) is erroneous since it conflicts with the passage's logic.

4. Ans. (c)

Sol. Rhetorical question is a question asked in order to make a point rather than to get an answer.

5. Ans. (b)

Sol. Options (a), (c) and (d) are incorrect because they are given in the passage. In spite of criticising the concept, the author shows why it is essential to have one in order to serve as a check on majoritarian rule. It clarifies why this philosophy is arbitrary and nebulous. As he queries the doctrine's genesis, option (b) is implied.