

## Polity Class 12

2nd June, 2023 at 1:00 PM

### INSIGHTS ON PRELIMS 2023 (1:15 PM):

- The paper focussed more on conceptual clarity, rather than superficial factual memorization.
- Self-study has no substitute and anything else can only complement anyone's preparation.
- The paper was indeed difficult, but it was fairly doable for anyone with a good grip on the basics.
- The CSAT paper II was much more difficult than in previous years.
- CSAT paper II must be given due attention and must not be taken for granted, regardless of one's academic background.
- Luck indeed plays a very important factor, but only for those with good conceptual backgrounds and sincere practice.
- The exam can give rude shocks, and not everything can be predicted, despite working hard.
- The exam is largely a "hit & trial " job and most of the success stories and reverse constructions from the results to preparation, and not otherwise.
- Our life must not hinge around only the exam, especially at a time when we have more employment options than any older generation.

### SAJJAN SINGH CASE V/S STATE OF RAJASTHAN 1965 (1:32 PM):

- A five-judge bench was formed which gave a decision with a 3:2 majority where three judges agreed and two judges disagreed on the final judgment.
- Supreme Court gave the same judgment as it gave earlier in the **Shankari Prasad Case 1951**: Constitutional Amendment Acts (CAA) are not laws as per **article 13(2)**.
- **Justice Hidayatullah** gave a dissenting opinion in which he held that fundamental rights are not amendable because that would make fundamental rights similar to any other provision in the constitution.
- He also held that the Parliament cannot be held on the same pedestal as the **Constituent Assembly**.
- That would effectively mean that the parliament can rewrite the constitution as per its will.

- That would make the whole exercise of the Constitution making meaningless.
- Because if any part of the Constitution is amendable, then we will have **parliamentary supremacy** (like the UK), unlike **constitutional supremacy**.
- **Justice Mudholkar** who also gave a dissenting opinion, held that fundamental rights are amendable, but with certain implicit limitations as placed by the Constitution.

#### **IC Golaknath Case 1967:**

- The question of amenability of the fundamental rights was raised again.
- The eleven-judge bench was formed, which was the largest bench at that time.
- With a 6:5 majority, the final judgment was that the Fundamental Rights are sacrosanct.
- CAA is a law under article 13(2), hence open for judicial scrutiny.
- CAA cannot be used to amend the Fundamental rights.
- The judgment was criticized on the grounds that it reduces the Constitution into a static document that will have no scope for any kind of changes-positive or negative.
- After the judgment, a question was raised on its retrospective application.
- The judgment could be interpreted in a manner to contravene the land ceiling and zamindari reforms.
- Effectively, the land had to be taken back from the poor and given back to the Zamindars, as the Zamindars held their lands under their fundamental right to property under **Article 19(1) (f)**
- The supreme court used the American precedent of the **Doctrine of Prospective Overruling**.
- The doctrine held that a judgment of the court that overrules a previous ruling shall apply only prospectively.

### **Background of the case:**

- The era was an era of political confusion.
- The first-generation leaders of the country- Pandit Nehru, Sardar Patel, and Sahstriji were dead.
- There were leadership tussles within the largest party in India- Indian National Congress.
- There were also tussles between the judiciary and the legislature.
- The legislature kept securing laws from judicial scrutiny under Article 13(2) by adding them to Schedule IX, as per the first amendment.
- **Indira Gandhi** campaigned in 1971 on the plank of **socialism**- bringing social equality as seen during **the land ceiling**.
- After she won with a strong majority, collisions between the parliament and the Supreme Court increased, as can be seen with various court cases and CAAs.

### **GOVERNMENT'S RESPONSE TO THE JUDGEMENT (2:00 PM):**

- The government came up with the 24th and 25th constitutional amendments in 1971.

#### **24th CAA 1971:**

- Two provisions were added: article 13(4) and 368(3).
- Article 13(4) held that there was to be no judicial review under Article 13(2) of any CAA.
- Article 368(3) held that no CAA was to be subjected to judicial review under Article 13(2)
- Both the added provisions seemingly said the same thing, yet both of them were added so as to preemptively answer any question regarding the constitutional validity of the amendment.

#### **25th CAA 1971:**

- Article 31 C was added.
- Article 31 C originally said that-"No law giving effect to DPSPs under 39(b) and 39(c) shall be called into question on the grounds of violating Articles 14,19 & 31".
- The second part of article 31 C was "no law containing a declaration that it gives effect to DPSPs under 39(b) and 39 (c) shall be called into question on grounds of whether it gives effect to the said principles".

- It simply meant that the courts shall have no powers to inquire whether the law actually gives effect to DPSPs under 39(b) & 39(c) as long as the law has such a declaration.
- The Golaknath case was effectively overturned by the 24th and 25th Amendments.

#### **26th CAA 1971:**

- The privy purses to the princely states were abolished.
- This stopped the yearly payments to the princely states who had agreed to join India in 1947.

#### **29th CAA 1972:**

- Some laws were further added to Schedule IX.
- Among those laws was the **Kerala Land Reforms Act 1969**, which paved the way for the Kesavanada Bharti case in 1973.

#### **KESAVANDA BHARTI CASE 24th APRIL 1973 (2:30 PM):**

- The case saw the largest bench of the Supreme Court to date with 13 judges.
- **Nani Palkhivala**, who is regarded as the tallest legal figure till now, argued against the government.
- There was seemingly a contradiction between DPSPs(non-justiciable) and Fundamental Rights(justiciable)
- the doctrine of harmonious construction.
- If there are two conflicting provisions in the law, (here articles 39(b) and 39 (c) v/s 14.19 and 31), we must have such an interpretation that none of them is rendered completely useless.
- It is hence possible that some DPSPs be given importance over some fundamental rights in certain situations.
- On this basis, the court upheld the partial validity of the 25th CAA.
- **Justice Khanna** floated a note of Justice Mudholkar in the Golaknath case- "fundamental rights are amendable, but with certain implicit limitations as placed by the Constitution".

- This paved way for the "**Doctrine of Basic Structure**":
- Under the doctrine, certain parts of the Constitution are unamenable as they form the essence of the Constitution.
- Parliament can amend the peripheral provisions of the constitution, but not the core values.
- **Justice Mukherjee** gave the analogy of core and peripheral values of religion.
- So any amendment in effect must not change the core values of the Constitution.
- Justice Mudholkar seemingly got inspiration from a 1964 case in the Pakistani Supreme Court.
- The fact that the Indian constitution is a written constitution, implies that the powers of the parliament regarding amending the constitution are limited.

#### **BASIC STRUCTURE (3:05 PM):**

- Some values believed to be a part of the basic structure as given in the Kesavananda Bharti case and successive cases are:
- I. Parliamentary democracy.
- II. Federalism.
- III. Rule of Law.
- IV. Separation of Powers.
- V. Judicial Review.
- VI. Republican State.
- VII. Free & Fair Elections.
- VIII. Principle of Equality
- IX. Secularism
- The list is not exhaustive and more values can be added as per the circumstances.
- The judgment also held that the basic structure doctrine will be implemented prospectively, from the date of the judgment.
- The judgment also used the **doctrine of severability** and struck down the second part of the 25th CAA which isolated certain CAAs from judicial scrutiny.

### **39th CAA in 1975:**

- The election of the President, the Vice President, the Prime Minister, and the Speaker of the Lok Sabha was placed beyond the scrutiny of the Indian courts.
- This came in the backdrop of the Supreme Court's judgment in the **Raj Narain Case** under which Indira Gandhi was disqualified from the parliament.

### **42nd CAA 1976:**

- Among other changes, 368(4) and 368(5) were added which essentially gave the parliament unchecked powers to the government for amending any part of the constitution.
- Parliament by using its powers under 368 gave itself unlimited powers to amend the Constitution.
- It essentially meant that CAA cannot be challenged as per the basic structure doctrine.
- Under the **Minerva Mills Case in 1980**, the constitutional validity of the 42nd Amendment was challenged.
- The supreme court used the doctrine of severability and made articles 368(4) and 368(5) null and void.
- 368(4) and 368(5) can still be found in the constitution because Supreme Court can only judge the constitutionality of the CAA.
- The court cannot amend any portion of the CAA, or the constitution.
- So despite these provisions present, they have no legal significance.
- 42nd Amendment also amended Article 39 C as "No law giving effect to ANY DPSP shall be called into question on the grounds of violating Articles 14, 19 & 31".
- Even this change was challenged and struck down in the Minerva Mills case.
- So despite being present in the Constitution, the principle in force is the one that was present prior to the 42nd CAA:
- "No law giving effect to DPSPs under 39(b) and 39(c) shall be called into question on the grounds of violating Articles 14, 19 & 31".
- Minerva Mills case also held that the constitution is based upon the balance between the Fundamental rights and DPSPs.

## **CRITICAL ANALYSIS OF THE DOCTRINE OF BASIC STRUCTURE (3:45 PM):**

- **Arguments in favor of the basic structure:**

- It limits the powers of the state and helps in preserving the basic identity of the Constitution.
- It is often termed as a concept that saved India's democracy as the changes introduced by the 39th constitutional amendment act were draconian and could reduce India to a dictatorship
- It ensures that a popularly elected parliament does not exercise its powers arbitrarily.
- The doctrine has been applied by the courts in a limited number of cases.
- Hence the arguments against its misuse are unfounded.
- Several other countries have subsequently adopted this principle as a part of their constitution scheme, giving it global legitimacy.
- Singapore, Bangladesh, Malaysia, etc have cited this doctrine.

### **Criticisms of the basic structure doctrine:**

- It has no constitutional basis and is purely an innovation of the Indian Supreme Court.
- It is considered to be violative of the principle of Separation of Powers as it amounts to the judiciary writing a provision in the constitution.
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### **Separation of Powers :**

- Separation of Powers held that legislature, judiciary, and executive must not encroach on each others' domains.
- This is different from the **division of powers** which is similar to federalism

- The principle was first given by the French philosopher **Montesquieu**.
- America follows the principle in a very strict manner.
- India follows the partial separation of powers as the Indian executive is fused into the legislature:
- The Council of Ministers is drawn from the Parliament.
- It is vague and subjective and introduced uncertainty in the law-making process.
- Judges can overshadow the democratic mandate provided to the parliament by the citizens.

#### **I. R. Coelho case 2007:**

- A question was asked with respect to the immunity enjoyed by the laws placed under Schedule IX from the judicial review.
- The contention made was that since judicial review is a part of the basic structure, how can Schedule IX be violating judicial review?
- The court held that judicial review is a part of the basic structure and Schedule IX is not immune from judicial review.
- After 24th April 1973(the date of the Kesavananda Bharti case), any law placed in Schedule IX via constitutional amendment shall be placed on the grounds of violating the basic structure.
- The court laid down a two-fold test in this regard:
- I. Whether a law in Schedule IX violates any fundamental right or not.
- II. If the answer to the above question is affirmative (yes), then do those fundamental rights constitute the basic structure of the Constitution or not?
- This has an implication that some fundamental rights might not be a part of the basic structure.



- The court also implied that articles 14, 19 and 21 form a part of the basic structure, and therefore any law placed in Schedule IX after 24th April 1973 shall be subject to judicial review on the grounds of violating these rights.
- In other words, there is no blanket immunity to laws placed in Schedule IX after the Kesavananda Bharti judgment.

**The topic for the next class is the continuation of the basic structure doctrine.**