

1. Discuss the critical areas of the state's functioning which contributed hugely to perpetuation of inequalities by birth?

Inequalities by birth, particularly those rooted in caste and socio-economic status, have been a persistent issue in India. Despite the country's constitutional commitment to equality, various aspects of the state's functioning and its institutions have contributed significantly to perpetuating these inequalities. The following critical areas illustrate how these inequalities have been sustained over time.

Critical Areas of the State's Functioning Contributing to Inequalities by Birth

1. Delivery of Basic Services:

- The state's failure to effectively deliver essential services like water, sanitation, and drainage disproportionately affects the poor, making their struggle to escape poverty even harder.
- **Impact:** The lack of access to basic services forces marginalized communities to rely on intermediaries, entrenching their socio-economic vulnerabilities.
- **Example:** FDR, Surveys indicate that nearly 65% of households are forced to pay bribes for basic services they are entitled to, highlighting the systemic corruption that exacerbates inequalities.

2. Rule of Law:

- Although the Constitution guarantees equality before the law, the justice system often fails the poor, particularly in terms of access to legal aid and timely justice.
- **Impact:** A significant number of under-trial prisoners are from marginalized communities, who remain incarcerated due to their inability to afford bail, perpetuating social and economic inequalities.
- **Example:** About 75% of the 400,000 prisoners in India are under-trials, mostly from marginalized communities, who are too poor to post bail or secure competent legal help. (FDR)

3. Quality Education and Healthcare:

- The state's inadequate provision of quality education and healthcare services has left marginalized groups with few opportunities for upward mobility.
- **Impact:** Poor educational outcomes and high out-of-pocket healthcare expenses keep disadvantaged groups trapped in a cycle of poverty.
- **Example:** In Southern states, per-child expenditure in government schools ranges from ₹50,000 to ₹70,000 per year, yet outcomes are poor, with many children unable to read or perform basic arithmetic. (FDR report)
- **Example:** According to the World Health Organization (WHO), around 55 million Indians are pushed into poverty annually due to OOPE on healthcare.

4. Local Governance:

- The ineffective structure of local governance, especially in rural areas, has failed to empower marginalized communities, exacerbating existing inequalities.
- **Impact:** Centralized power and lack of resources at the local level result in poor service delivery and limited representation for disadvantaged groups.

5. Electoral and Political System:

- The first-past-the-post electoral system and centralized political power have led to practices like vote-buying and caste-based mobilization, which marginalize the interests of disadvantaged groups.
- **Impact:** This has perpetuated a political environment that prioritizes power retention over the equitable representation of marginalized communities.

The perpetuation of inequalities by birth in India is deeply rooted in the failures of state institutions and their functioning. Addressing these issues requires comprehensive reforms in service delivery, justice, education, healthcare, local governance, and the electoral system to ensure that the principles of equality enshrined in the Constitution are realized for all citizens, regardless of their birth status.

2. Discuss the criticisms against the Basic Structure Doctrine, and how they impact the balance of power between the judiciary and the legislature?

The Basic Structure Doctrine, established by the Supreme Court of India in the landmark *Kesavananda Bharati* case (1973), asserts that certain fundamental features of the Constitution cannot be altered by any amendment.

Criticisms against the Basic Structure Doctrine

1. Judicial Overreach:

- Critics argue that the Basic Structure Doctrine empowers the judiciary to overstep its boundaries by invalidating constitutional amendments, thereby encroaching on the legislative domain.
- **Example:** The doctrine allows the Supreme Court to strike down amendments passed by Parliament, which some view as undermining the sovereignty of the legislature.

2. Lack of Constitutional Basis:

- The doctrine is criticized for having no explicit mention in the Constitution, leading to debates on its legitimacy and whether the judiciary is creating law rather than interpreting it.
- **Criticism:** Some legal scholars argue that the judiciary has assumed a quasiconstitutional assembly role, which was never intended by the framers of the Constitution.

3. Subjectivity and Ambiguity:

- The identification of what constitutes the "basic structure" of the Constitution is seen as subjective, leading to inconsistent and unpredictable judicial rulings.
- **Impact:** The lack of clear guidelines on what elements constitute the basic structure creates uncertainty and may result in arbitrary judicial decisions.

4. Undermining Democratic Principles:

- Critics contend that the doctrine undermines the principle of parliamentary supremacy, which is a cornerstone of democracy, by restricting the ability of elected representatives to amend the Constitution.
- **Example:** The inability of Parliament to amend certain parts of the Constitution could be viewed as limiting the democratic will of the people, as expressed through their elected representatives.

Impact on the Balance of Power between Judiciary and Legislature

1. Judicial Supremacy:

- The Basic Structure Doctrine enhances the power of the judiciary, allowing it to act as the ultimate guardian of the Constitution. However, this shift towards judicial supremacy can disrupt the balance of power between the judiciary and the legislature.
- **Example:** The judiciary's power to invalidate amendments passed by a two-thirds majority in Parliament raises concerns about the erosion of legislative authority.

2. Potential for Conflict:

- The doctrine has led to several instances of conflict between the judiciary and the legislature, particularly when the judiciary strikes down constitutional amendments or laws passed by Parliament.
- **Example:** The annulment of the 39th Amendment (1975), which sought to place the election of the Prime Minister beyond judicial scrutiny, exemplifies the tension between the two branches.

3. Guardianship of Constitutional Values:

- Proponents of the doctrine argue that it is essential for preserving the foundational values of the Constitution and preventing the tyranny of the majority, thereby maintaining a necessary check on legislative power.

The criticisms highlight concerns about its legitimacy, ambiguity, and potential to disrupt democratic processes. As India's constitutional framework continues to evolve, finding a balance between judicial review and legislative sovereignty remains essential to maintaining a healthy democracy.