PLUTUS IAS

CURRENT AFFAIRS

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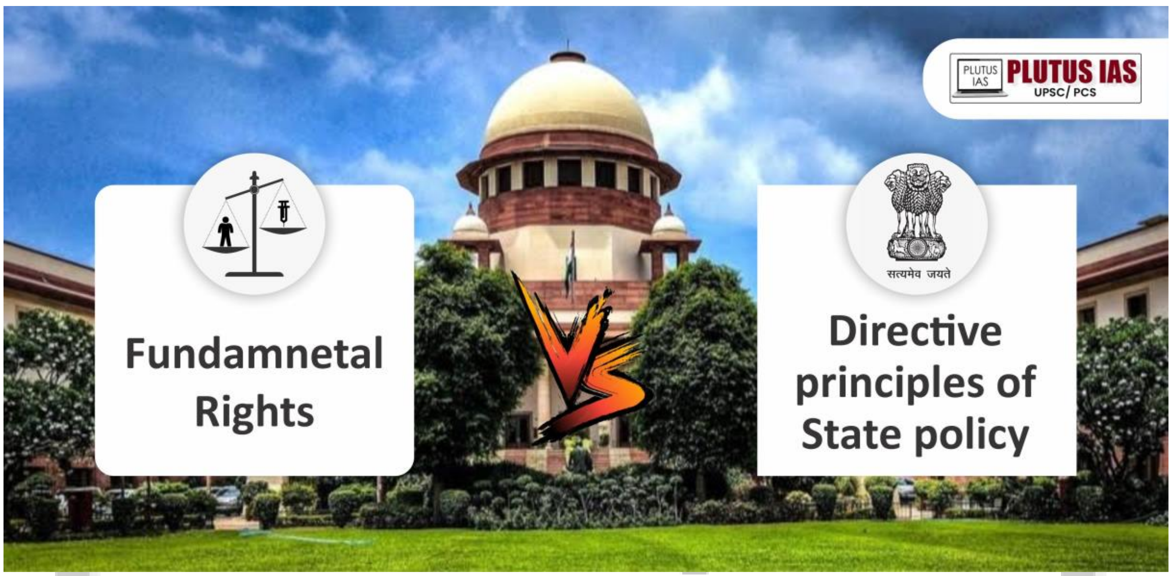
FUNDAMENTAL RIGHTS VS DIRECTIVE PRINCIPLES

WHY IN THE NEWS?



In the recent hearings before a nine-judge Bench of the Supreme Court of India in the case of **Property Owners Association vs State of Maharashtra**, two critical questions have emerged for consideration. Firstly, the interpretation of the term "material resources of the community" as enshrined in Article 39(b) of the Constitution is under scrutiny. This term holds significant implications for understanding the constitutional framework concerning resource allocation and societal welfare.

Secondly, the case raises the pertinent issue of whether laws crafted to advance the objectives outlined in Article 39(b), particularly those focusing on ensuring fair resource ownership and distribution for the collective welfare, enjoy immunity from legal challenges based on the fundamental rights to equality and freedom.

DEBATE REGARDING FRS VS DPSPS

The debate surrounding Fundamental Rights and Directive Principles of State Policy (DPSPs) in India is crucial in the Indian constitutional setup, embodying the **tension between individual liberties and state responsibilities towards socio-economic justice**. Enshrined in Part III and Part IV respectively of the Indian Constitution, these provisions reflect the framers' vision of a balanced society where rights are safeguarded alongside state action to promote welfare and social justice.

Fundamental Rights, articulated in Articles 12 to 35, guarantee civil liberties such as equality before law, freedom of speech and expression, and the right to life and personal liberty. These rights are justiciable, meaning they can be enforced by the courts against any encroachment by the state or private entities. They serve as the bedrock of democracy, ensuring the protection of citizens from arbitrary state action and fostering individual dignity and autonomy.

On the other hand, **DPSPs**, outlined in Articles 36 to 51, embody the socio-economic goals and directives that guide the state in policymaking. They include provisions for securing social and economic justice, promoting welfare measures, and striving towards a just and egalitarian society. Unlike Fundamental Rights, DPSPs are not enforceable in courts, and their implementation is subject to the discretion of the state.

One key aspect of the debate is the hierarchy between Fundamental Rights and DPSPs. While both are integral parts of the Constitution, conflicts may arise when state action aimed at fulfilling DPSPs infringes upon Fundamental Rights. The **judiciary plays a crucial role in adjudicating such conflicts**, often employing the doctrine of harmonious construction to reconcile conflicting provisions and uphold the spirit of the Constitution.

Another dimension of the debate concerns the **justiciability of DPSPs**. Unlike Fundamental Rights, which can be directly enforced through judicial intervention, DPSPs lack enforceability in courts. This has led to criticisms regarding the efficacy of DPSPs as mere pious declarations without legal teeth. Proponents argue that while DPSPs may not be justiciable per se, they provide a guiding framework for legislative and executive action, influencing policy formulation and governance.

The debate also extends to the role of the state in balancing individual rights with social welfare objectives. Some argue for a more interventionist approach by the state to address socio-economic disparities and uplift marginalized communities, even if it entails limitations on individual freedoms. Others advocate for a minimalist state, emphasizing the primacy of individual liberties and market mechanisms in driving socio-economic progress.

Historically, the Indian judiciary has played a significant role in interpreting and reconciling the tensions between Fundamental Rights and DPSPs. Landmark cases such as Kesavananda Bharati v. State of Kerala (1973) and Minerva Mills Ltd. v. Union of India (1980) have shaped the constitutional jurisprudence, establishing the doctrine of basic structure and reaffirming the supremacy of Fundamental Rights while acknowledging the importance of DPSPs.

EVOLUTION OF THE DISCOURSE

The evolution of the debate surrounding Fundamental Rights and Directive Principles of State Policy (DPSPs) in Supreme Court judgments reflects the **dynamic interpretation of constitutional principles and the changing socio-political landscape of India**.

The watershed moment in the evolution of this debate came with the case of **Golaknath v. State of Punjab** (1967). In this landmark judgment, the Supreme Court held that Parliament could not amend Fundamental Rights, including the right to property, through constitutional amendments. This decision underscored the Court's commitment to protecting Fundamental Rights as sacrosanct and immune from legislative encroachment.

Subsequently, the debate shifted towards defining the scope and limitations of state action in relation to Fundamental Rights and DPSPs. The case of **Kesavananda Bharati v. State of Kerala** (1973) marked a turning point, where the Supreme Court introduced the **doctrine of basic structure**, holding that while Parliament had the power to amend the Constitution, it could not alter its basic structure. This judgment affirmed the supremacy of Fundamental Rights while recognizing the importance of DPSPs in shaping state policy.

In **Minnerva mills case**, the Supreme Court struck down several provisions of the 42nd Amendment Act, including those related to the restrictions on judicial review. The Court reaffirmed the primacy of the basic structure doctrine and held that Parliament could not abrogate or alter the basic features of the Constitution, including the independence of the judiciary and the separation of powers between the executive, legislative, and judicial branches.

AN OPPORTUNITY

The Supreme Court has yet to provide a definitive analysis on the constitutionality of Article 31C, as introduced by the 25th Amendment, and its compatibility with the basic structure of the Constitution. This lack of clarity has perpetuated a perpetual conflict between Fundamental Rights and Directive Principles of State Policy (DPSPs). Despite subsequent judgments like Sanjeev Coke vs Bharat Coking Coal (1982) building upon the precedent set by Waman Rao, there remains an unresolved tension between the two constitutional provisions.

The ongoing case of Property Owners presents an opportunity for the Court to address this long standing clash and potentially offer clarity on the relationship between Fundamental Rights and DPSPs. By providing a comprehensive analysis and resolution in this case, the Supreme Court has the chance to reaffirm the supremacy of the Constitution's most cherished guarantees while also harmonizing the objectives of individual liberties and collective welfare. This could significantly enhance the integrity and coherence of the constitutional framework, ensuring a more equitable and just society in line with the principles enshrined in the Constitution.

Ankit Kumar

CENTRAL BANK DIGITAL CURRENCY

THIS ARTICLE COVERS 'DAILY CURRENT AFFAIRS' AND THE TOPIC DETAILS OF "Central Bank Digital Currency". THIS TOPIC IS RELEVANT IN THE " ECONOMICS" SECTION OF THE UPSC CSE EXAM.

Why in the News?

Speaking at the BIS Innovation Summit 2024 in Basel, Switzerland, Governor Das expressed the RBI's intentions to conduct pilot trials involving the usage of Central Bank Digital Currency (CBDC) in commercial papers and certificates of deposits. He emphasized the transformative potential of the e-Rupee and highlighted the significant opportunities for the digitization of payments.

ABOUT THE DIGITAL CURRENCY

A central bank digital currency (CBDC) refers to a type of digital currency issued by a nation's central bank. It shares similarities with cryptocurrencies, but unlike them, its worth is determined and guaranteed by the central bank, aligning with the value of the country's traditional fiat currency.

WHAT IS FIAT CURRENCY?

- Fiat currency denotes a government-issued form of money that lacks tangible backing such as gold or silver. It holds status as legal tender, enabling its exchange for goods and services.
- Historically, fiat currency primarily comprised banknotes and coins, but technological advancements have enabled governments and financial entities to complement physical fiat currency with a credit-based system, facilitating digital recording of balances and transactions.

TYPE OF CENTRAL BANK DIGITAL CURRENCY

There are typically three classifications of Central Bank Digital Currencies (CBDCs): retail, wholesale, and hybrid.

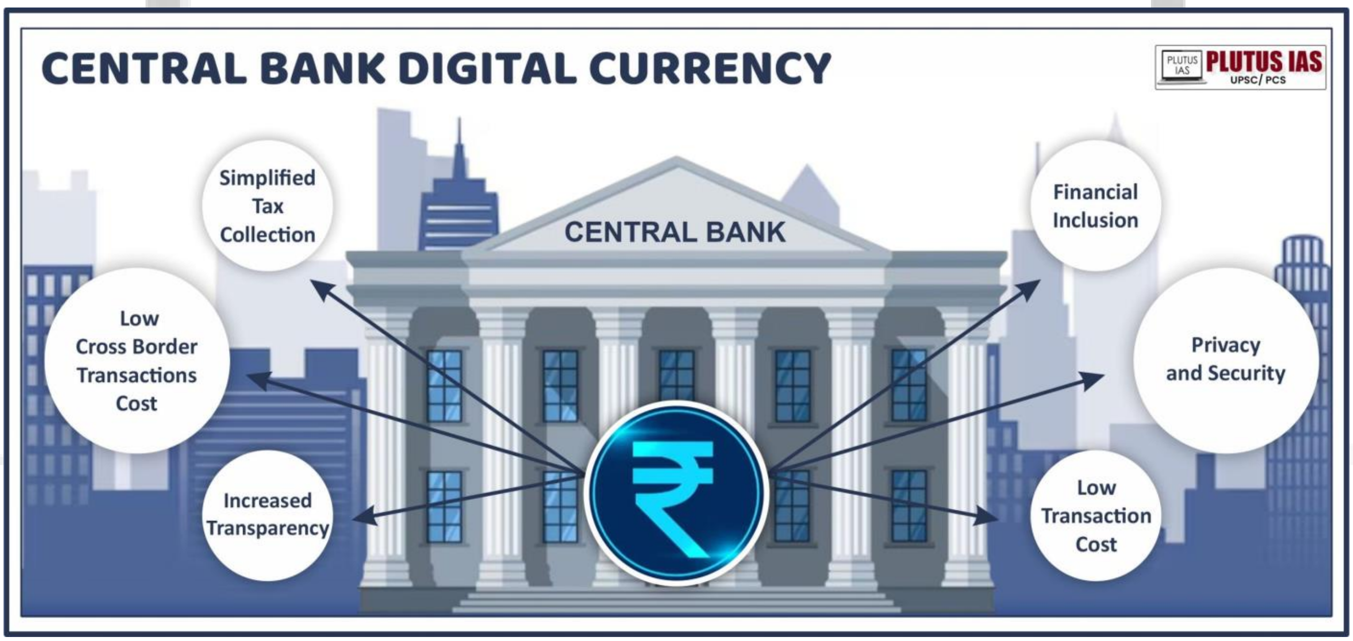
- **Retail CBDCs:** Retail CBDCs are tailored for use by the general public, enabling individuals to conduct everyday transactions and payments. They are accessible to the public through digital wallets, smartphone applications, or other payment platforms. Designed to function akin to physical cash, retail CBDCs offer a secure and digital method for conducting transactions.
- **Wholesale CBDCs:** Wholesale CBDCs are designed for utilization among financial institutions, such as banks, and are not directly accessible to the general public. They serve to facilitate high-volume and high-value transactions, such as interbank transfers and securities settlements.
- **Hybrid CBDCs**: Hybrid CBDCs amalgamate features from both retail and wholesale CBDCs. They offer greater flexibility compared to the other two categories as they can be employed by both the general public and financial institutions. Depending on the requirements of the user, hybrid CBDCs can accommodate everyday transactions as well as large-scale purchases.

PURPOSE OF CENTRAL BANK DIGITAL CURRENCY

- CBDCs could potentially reduce the expenses associated with maintaining a complex financial system, diminish cross-border transaction costs, and furnish individuals currently using alternative methods of money transfer with more economical alternatives.
- CBDCs also present the opportunity to mitigate the risks linked with utilizing digital currencies or cryptocurrencies in their current state.
- Reinforcing the implementation and oversight of monetary policy by central banks while also enhancing the capacity to identify and prevent illicit activities through real-time monitoring and analysis of CBDC transactions.
- The primary aim of CBDCs is to offer businesses and individuals engaging in financial transactions with privacy, transferability, convenience, accessibility, and financial security.
- The main objective is to reduce risks and minimize expenses associated with managing physical currency, including costs related to replacing damaged notes, transportation, insurance, and logistical operations.

WHY IS THE RBI PROMOTING DIGITAL CURRENCY?

- **Reduced Central Bank Costs:** CBDCs may decrease the expenses associated with printing and circulating physical currency and diminish the reliance on intermediaries in payment processes.
- **Enhanced Security and Privacy**: CBDCs ensure secure transactions and offer increased privacy, thereby mitigating the risks of fraud and identity theft.
- **Potential for Economic Growth:** CBDCs facilitate faster and more efficient payments, potentially stimulating economic activity and fostering growth.
- **Facilitation of Cross-Border Transactions:** CBDCs can simplify and lower the costs of international transactions, reducing the necessity for foreign exchange conversions and intermediaries.
- **Mitigation of Illicit Activities:** CBDCs can potentially decrease illegal activities such as money laundering and tax evasion by meticulously recording and tracing all transactions.
- **Simplified Tax Collection**: CBDCs could streamline tax collection procedures due to the comprehensive recording and tracking of transactions.
- **Increased Transaction Efficiency**: CBDCs can streamline payment systems, shorten settlement times, and facilitate quicker and more convenient transactions.
- **Enhanced Financial Inclusion:** CBDCs can broaden access to financial services for individuals and businesses underserved by traditional banks, thus fostering financial inclusion.
- **Improved Monetary Policy Control:** CBDCs offer central banks improved tools for managing inflation, interest rates, and other macroeconomic indicators, thereby aiding in economic stabilization.



CHALLENGES WITH DIGITAL CURRENCY

- **Regulatory and Legal Considerations**: Current laws and regulations may require adjustments to accommodate the distinctive features and needs of CBDCs, such as programmability and controlled anonymity.
- **Technological Infrastructure and Security:** CBDCs must be equipped with robust security measures to safeguard against cyber threats, including encryption, multi-factor authentication, and secure data storage.

- **Privacy and Anonymity Concerns:** Balancing the imperative for privacy and anonymity with the necessities for anti-money laundering and counter-terrorism financing presents a delicate challenge.
- **Public Adoption and Awareness:** Encouraging the public to utilize and embrace a new CBDC system, particularly when contrasted with the flexibility and familiarity of physical cash, can pose a significant obstacle.
- **Competing with Private Banks:** CBDCs may pose a potential competition to private banks for attracting deposits, potentially influencing their capacity to lend and make investments.

WAY FORWARD

- **Suitable Regulatory Frameworks**: Develop clear and adaptable legal and regulatory frameworks to govern the utilization of CBDCs and mitigate potential risks. Foster collaboration among central banks, financial institutions, and policymakers to create a conducive environment for CBDC adoption.
- **Promote Public Awareness:** Educate the public on the advantages and applications of CBDCs to foster trust and encourage widespread adoption. Encourage businesses and consumers to embrace CBDCs through various promotional initiatives and campaigns.
- **Cybersecurity and Privacy**: Implement robust security protocols to safeguard CBDCs from cyber threats and maintain the system's integrity. Strike a balance between preserving privacy and anonymity while fulfilling anti-money laundering and counter-terrorism financing obligations.
- **Integrate Emerging Technologies:** Integrate CBDCs with cutting-edge technologies such as blockchain, smart contracts, and offline payment capabilities to enhance their functionality and attractiveness.

PRELIMS BASED QUESTION

Q1. Consider the following statements regarding Central Bank Digital Currency:

1. Bahamas was the first economy to launch CBDC nationwide.
2. CBDCs aim to reduce the cost of Financial transactions.

Choose the correct answer using the codes given below:

(a). 1 Only
(b). 2 Only
(c) . Both 1 and 2
(d) . Neither 1 nor 2

ANSWER: C

MAINS BASED QUESTION

Q1. What are CBDCs? How is it different from cryptocurrency? What are the key challenges and obstacles associated with the implementation and adoption of Central Bank Digital Currencies (CBDCs)?

Himanshu Mishra