International Relations · GS - II

Examine the constitutional tension between legislative autonomy and judicial protection of fundamental rights, with reference to the use of the notwithstanding clause in Canada.

EXAM YEAR	PAPER	SUBJECT
The principle of constitutional conventions governing federal appointments	GS - II	International Relations

MARKS	WORD LIMIT
15	~250 words

Answer Hint

Canadian Charter of Rights and Freedoms, Section 33, notwithstanding clause, legislative supremacy, judicial review, constitutional accountability, fundamental rights

Model Answer

Constitutional democracies seek to balance the authority of elected legislatures with judicial protection of fundamental rights. Canada's notwithstanding clause illustrates an institutional mechanism through which this balance can be contested.

1. Constitutional basis

Section 33 of the Canadian Charter of Rights and Freedoms permits Parliament or a provincial legislature to expressly declare that legislation will operate notwithstanding specified Charter provisions.

1. It applies to fundamental freedoms under Section 2 and legal and equality rights under Sections 7–15.
2. Such a declaration remains effective for a maximum of five years unless renewed.
3. It does not provide immunity from every constitutional challenge, as other constitutional provisions remain applicable.

2. Democratic arguments and constitutional concerns

Arguments supporting its use:

1. It preserves a degree of legislative autonomy in matters involving public policy and competing social values.
2. It allows elected representatives to make decisions even where certain Charter rights would otherwise invalidate legislation.

Concerns regarding its use:

1. Frequent invocation may weaken judicial protection of individual rights.
2. It can disproportionately affect religious, linguistic or other minority groups.
3. Pre-emptive invocation may limit meaningful judicial scrutiny before rights violations are established.
4. It raises questions about the accountability of governments exercising exceptional constitutional powers.

3. Lessons for constitutional democracies

India does not have an equivalent of Canada's notwithstanding clause. Its constitutional framework combines judicial review, legislative powers and the basic structure doctrine to protect constitutional supremacy.

Conclusion

The Canadian experience demonstrates that democratic legitimacy and constitutional rights protection must operate together. Legislative autonomy requires transparency and accountability, particularly when the rights of minorities are involved.

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