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CONSTITUTIONAL DYNAMICS: UNVEILING THE EXTENT OF JUDICIAL INTERPRETATION OF CONSTITUTIONAL AMENDMENTS

- Manav[1]

ABSTRACT

This article focuses on the various aspects of judicial scrutiny concerning Article 13 vis-à-vis Article 368 of the Indian Constitution. Various unanswered questions on constitutional law and interpretation doctrines are discussed in this Article. Questions such as What is the extent and limit of judicial interpretation of the Indian constitution?; Does the term 'law' include constitutional amendments concerning A13?; What are the basics and rudiments of the 'Basic structure doctrine'?; What are the proportionate powers of parliament and judiciary concerning constitutional changes? ; Who is there to limit the judicial privilege of evolving such new principles and thereby giving itself immense power? ; Does the term 'law' include constitutional amendments too concerning A13?; Does 'any provision of this constitution' in A368 mean the provision prevailing in any period of time i.e., after the future amendments too?; Does the absence of the principle of 'limits to the basic structure' confer absolute amendment powers to the parliament?; What could be the Repercussions of absolute amendment powers? The essence and spirit of the constitution, constituent assembly and objective resolution, True meaning of separation of functions and checks and balances, Positive affirmation by various jurists regarding the current judiciary stance on A368 and the changing needs and wants of people; changing economic, social and political circumstances are among the other things that are discussed in this Article.

Keywords: Amendment power, Judicial Interpretation, Article 13 & 368, Basic Structure, Constituent power, Legislative power

I. Introduction

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Under the chairmanship of Dr B.R Ambedkar, constitutional advisory by Mr. B.N Rao, presidency by Dr Sachidanand Sinha and all the prominent personalities of 389 members constituent assembly, the Indian constitution was made. It took 2 years 11 months and 18 days to make one of the largest-ever written constitutions of India by our constituent assembly. A major part of it was taken from the Government of India Act, 1935 and various provisions of it are adopted from various other countries. It is known to be a rigid but flexible constitution, since it is a living document and can be amended, by way of addition, variation or repeal of any provision of law, with the change in time. Whereas some of the core principles and the essence and spirit of the Constitution cannot be altered. This is the doctrine of basic structure. Some of these principles include the Sovereignty of India, democratic form of government, Secular character, separation of power and supremacy of the Constitution. It is the interpretation of the bare law which has the effect on its applicability in practical senses. It is a question to consider who has the authority to add new theories and principles in the doctrine of basic structure, right now only the judiciary is vested with that power. In this research paper, this contravention concerning the separation of power and the powers of understanding and interpretation of the Indian constitution and thereby evolution of new concepts is discussed in detail. There had been a tussle between the government and the judiciary concerning the extent of the power of the government to amend the Constitution. There have been many landmark judgements as well as constitutional amendments that have come into the picture to resolve the issue in favour of one of the bodies that are in conflict. This research paper discusses all these issues like the interpretation of Article 13 and Article 368, their applicability, the true meaning of separation of power, the spirit of the constituent assembly, and the consequences of adopting the government's view as well as the judiciary's view.

II. Article 13

Article 13 talks about the voidability of laws that are inconsistent and are in contravention of the Fundamental rights given under Part 3 of the constitution. This article talks about two things-

The first clause talks that all laws in force in the Indian territory immediately before the commencement of the constitution, that are inconsistent with the provisions of Part 3 of the constitution, shall, to the extent of such inconsistency, be void.

The second clause says that any law made by the state shall not take away rights conferred by part 3 of the constitution and any law made in contravention of this clause shall, to the extent of such contravention, be void.

In the third clause, the terms 'law' and 'laws in force' are defined in subclauses (a) and (b) respectively,

(a) 'law' includes any ordinance, order, by-law, rule, regulation, custom or usage having in the territory of India the force of law.
(b) 'laws in force' includes laws passed or made by a legislature or other competent authority in the territory of India before the commencement of this constitution and not previously repealed, notwithstanding any such law or part thereof may not be then in operation either at all or in particular areas.

Clause (4) of this article was Ins. by the Constitution (twenty-fourth Amendment) Act, 1971, sec. 2 (w.e.f. 5-11-1971). It says nothing in this Article shall apply to any amendment of this constitution made under Article 368.

Article 13 (1) gives rise to the interpretation doctrine of severability and the doctrine of eclipse as defined below.

DOCTRINE OF SEVERABILITY

It is the fundamental presumption of the constitutional validity of any statute passed by the legislature. If any part of any statute is in contravention of the fundamental rights, then only that part becomes inoperative. But if that part is inseparable and if separated defies the whole purpose of enactment, then the whole of the statute could be struck down. This is the doctrine of severability. This could be seen in various judgements of the Supreme Court as well as the high Courts of the states.

In AK Gopalan vs. State of Madras[2], section 14 of the Preventive Detention Act[3] which talks about the non-disclosure of grounds of detention in Court, was separated since it was in contravention of the fundamental right conferred by Article 22 of the constitution and the remaining act remained valid.

[2]A.K. Gopalan v. The State of Madras, AIR 1950 SC 27 (Ind.)
[3] Preventive Detention (Amendment) Act, No. 4 of 1950, §14 (Ind.)

DOCTRINE OF ECLIPSE

The existing laws that were in contravention of the fundamental rights at the commencement of the constitution are not dead altogether but are overshadowed by the fundamental rights and become inoperable. This inconsistency or conflict can be removed by bringing the constitutional amendment.

III. Article 368

This Article gives power to the parliament to amend any provision of the constitution by way of addition, variation or repeal and gives the procedure for bringing such an amendment.

The first clause of this Article gives such powers to the parliament while the second clause gives the procedure for bringing such an amendment.

Clause (3) which says Nothing in Article 13 shall apply to any amendment made under this Article was Ins. by the Constitution (twenty-fourth Amendment) Act, 1971, sec. 3(d) (w.e.f. 5-11-1971).

Clause (4) restricts the calling, of any amendment under this Article, in question in any Court on any ground. And Clause (5) states that there shall be no limitation whatever on the constituent power of parliament to amend the provisions of this constitution under this Article.

Both clauses (4) and (5) which were Ins. by section 55 of the constitution (forty-second Amendment) Act, 1976 have been declared invalid by the Supreme Court in Minerva Mills Ltd. V. Union of India, (1980) 2 SCC 591.

IV. HISTORY OF TUSSLE BETWEEN THE GOVERNMENT AND THE JUDICIARY

Shankari Prasad vs UOI[4]

In this case, the constitutional validity of the First Amendment Act (1951) was challenged. Issues like – abridgement of fundamental rights, the power of parliament to amend the third part of the constitution and the inclusion of term amendment within the meaning of Article 13(2) of the constitution were discussed.

[4] Shankari Prasad v. Union of India, 1951 AIR 458, (Ind.)

In this judgement, the apex Court decided that the parliament has the power to amend the fundamental rights enshrined in part 3 of the constitution. And the term 'law' in Article 13 (2) does not include the amendment and is an ordinary law which includes ordinance, order, bye-law, rule, regulation, notification, custom or usage having in the territory of India the force of law, as given in the Article 13 (3)(a). Parliament has an exclusive power under Article 368 and can abridge fundamental rights by bringing a constitutional amendment.

Sajjan Singh vs. State of Rajasthan[5]

In this case, too, the question of the true scope and effect of Article 368 was raised once again and the question brought before the Court was whether the legislature has the power to amend fundamental rights and the validity of Article 31B which makes the 9th schedule outside the purview of judicial review was questioned. The petitioner contended to reconsider the decision given in the Shankari Prasad case.

The Supreme Court validated its decision in the Shankari Prasad case and held that parliament has the power to amend any provision of the constitution under Article 368. The word 'law' in Article 13 (2) does not include a law passed by the parliament by virtue of its power to amend the constitution. "*If the constitution-makers had intended that any future amendment of the provisions in regard to fundamental rights should be subject to Article 13(2), they would have taken the precaution to make the provision in that behalf. The constitution-makers must have anticipated that in dealing with the socioeconomic which the legislature may have to face from time to time, the concepts of public interest and other important considerations may change and expand, and so, it is legitimate to assume that the constitution-makers knew that parliament should be competent to make amendments in those rights so as to meet the challenge of the problem that may arise".*[6]

I.C. Golaknath and ors vs. state of Punjab[7]

In this case the earlier decisions by the Supreme Court of upholding the validity of The Cons. (First Amendment Act), 1951 and The Cons. (Seventh Amendment Act), 1964 in the Shankari Prasad case and Sajjan Singh Case respectively, were challenged.

[5] Sajjan Singh v. State of Rajasthan, 1965 AIR 845, (Ind.)
[6] Id.
[7] I.C. Golaknath and ors v state of Punjab, 1967 AIR 1643, (Ind.)

This decision was passed with a thin majority of 6:5. This was the judgement in which the earlier decision of the apex Court was overturned and it was held that an amendment to the constitution is 'law' within the meaning of Article 13(2) and is therefore subject to Part 3 of the constitution. The bench was headed by Chief Justice K. Subba Rao and he contended that Article 368 only prescribes the procedure to amend the constitution and not the power. The parliament does not have the power to amend or take away fundamental rights by amending procedure in Article 368 of the constitution. The Doctrine of Prospective overruling was used and thus it did not affect the previous enactments of law.

The Cons. (24th Amendment Act), 1971

After the passing of the Golaknath judgement by the apex Court, the then government of the Indian National Congress brought the 24th amendment to the constitution and added some new provisions to Article 13 and Article 368. The changes made are given below-

Clause (4) was added to the 13th Article, which says – Nothing in this article shall apply to any amendment of this constitution made under article 368.

The title of Article 368 itself was changed and renamed to Power of Parliament to amend the constitution and procedure therefor. Earlier it was – 'Procedure for amendment of the constitution'. In the same article, a new clause was added which says – 'Notwithstanding anything in this constitution, Parliament may in the exercise of its constituent power amend by way of addition, variation or repeal any provision of this constitution in accordance with the procedure laid down in this article'.

Article 368 was renumbered as clause (2) and in clause (2) as so re-numbered, for the words "it shall bepresented to the President for his assent and upon such assent beinggiven to the Bill", the words "it shall be presented to the Presidentwho shall give his assent to the Bill and thereupon" was substituted.

A new clause (3) was added which says – 'Nothing in article 13 shall apply to any amendment made under this article'

So, these changes, brought by the then government, show the government's standpoint on the decision made by the honourable Supreme Court of India. The repercussions of this tussle and instability in the working synchronisation between the two most essential wings of the state could be menacing for the future of a country.

Kesavanand Bharti vs State of Kerala[8]

This was the landmark judgement given by the 13-judge bench (by a majority of 7:6) in which the doctrine of Basic Structure evolved. The extent of parliament's power to amend the constitution and the validity of previous amendments to Article 13 and 368 which regulates the judicial power and amending powers of parliament was the primary issue in this case.

In this case, the decision of the Golaknath case was overturned. And the distinction was made between the ordinary law and the amendment and held that both of these are different. Also, the parliament has the power to amend any provision of the constitution including the fundamental rights and declared the 24th Amendment Act valid.

However, a new doctrine was evolved to protect the Constitution from its absolute alteration. This was the doctrine of Basic structure. The bench held that though the parliament has the power to amend any provision of the constitution but it cannot alter the basic essence or the structure of the constitution. And the list of this basic structure is not exhaustive and cannot be defined absolutely. The Court mentioned some features like "Free and Fair Elections" and the "Federal Structure of the Nations" as the basic features. Justice Sikri (para 302) tabulated the basic features of the Constitution as follows:

- Supremacy of the constitution
- Republican and democratic forms of government
- Secular character of the constitution
- Separation of powers
- Federal character of the constitution

In *Indira Nehru Gandhi v. Raj Narain*[9]Justice Yeshwant Chandrachud listed the following to be the fundamental principles of the basic structure of the Constitution:

- India as a sovereign democratic republic
- Equality of status and opportunity
- Secularism and freedom of conscience
- Rule of law

[8] Kesavanand Bharti vs state of Kerala, AIR 1973 SC 1461, (Ind.)
[9] Indira Nehru Gandhi v. Raj Narain, AIR 1975 2299, (Ind.)

Section 55 of The Cons. (42nd Amendment Act), 1976

Two new clauses (4) and (5) were inserted in Article 368 by Section 55 of the Constitution (Forty-second Amendment) Act,1976. These were-

(4) No amendment of this constitution (including the provisions of Part 3) made or purporting to have been made under this article [whether before or after the commencement of section 55 of the constitution (Forty-second Amendment) Act, 1976] shall be called in question in any Court on any ground

(5) For the removal of doubts, it is hereby declared that there shall be no limitation whatever on the constituent power of parliament to amend by way of addition, variation or repeal the provisions of this constitution under this article.

Minerva Mills v. U.O. I[10]

In this case, the constitutional validity of the forty-second Amendment Act, of 1976 came into question.

This was the judgement in which clauses (4) and (5) in Article 368 have been declared invalid by the Supreme Court. The Court noted that it demolishes the very pillars on which the preamble rests by empowering the Parliament to exercise its constituent power without any "limitation whatsoever". No constituent power can conceivably go higher than the sky-high power conferred by clause (5), for it even empowers the Parliament to "repeal the provisions of this Constitution", that is to say, to abrogate the democracy. The Court contended that it is the harmonious balance between the fundamental rights and the directive principles of state policy which is one of the features of the basic structure of the Constitution. Anything that destroys the balance between the two parts will ipso facto destroy the essential element of the basic structure of our constitution.

IR Coelho v. state of Tamil Nadu[11]

The question of judicial review arose in this case. Whether it comes under the ambit of basic structure, can the parliament insert laws in the 9th schedule by way of amendment to exempt them from the Supreme Court's scrutiny or review, etc.?

[10] Minerva mills v. Union of India, AIR 1980 1789, (Ind.)
[11] IR Coelho vs state of Tamil Nadu, AIR 2007 SC 861, (Ind.)

The Supreme Court bench held that every law passed by the legislature is subject to judicial review since judicial review forms part of the basic structure. The insertion of law in the 9th schedule cannot be exempted from the judicial review and if it abrogates the basic structure can be struck down by the judiciary. The Court held that some of the other features of the basic structure are- Federalism, secularism, the sovereign, democratic, republican nature, freedom and dignity of the individual, and unity and integrity of the nation.

V. SUGGESTIONS AND CONCLUSION

- When an ordinary law is made using the legislative power of the parliament, then its compliance with the provisions of the constitution could be examined by the judiciary. But the question arises when a law is brought by the parliament after amending the constitution using its constituent power, then Would it be prudent to examine that law with the amended version of the constitution or firstly the amendment itself has to go through the examination process by the judiciary? If the ordinary laws were to be checked with the amended constitution and no amendment could go through the judicial review, then, in that case, the whole power of the judiciary would be confined to only checking the conformity of the ordinary laws with the amended constitution (where the parliament can alter the constitution as many times as it thinks fit, since there is no limit on the number of amendments that could be brought, though amendment procedure is not a simple process and requires special majority for the passage of the amendment bill) and the judicial pillar of a democratic country could not remain intact. In that situation, even the country would be democratic or not would depend upon the elected representatives in the government. It was the choice of the then citizens and their elected representatives to make India a SOVEREIGN DEMOCRATIC REPUBLIC country. In the current scenario, it is up to the people of India to know whether the choice of the people of a country is supreme or the constitution.
- Marbury vs Madison[12] is a well-known legal case in the history of the United States of America. This was the first landmark judgement of the US Supreme Court, on February 24 1803, in which it declared the act of Congress unconstitutional and established the doctrine of judicial review. Justice John Marshell claimed the Court to be in a paramount position for the interpretation of the Constitution.
- The framing of the sentence in Article 368 is such that it says, **parliament may in exercise of its constituent power,** amend any provision of this constitution. It is imperative to prioritize

[12] Marbury v. Madison, 5 U.S. 137. 138 (1803)

the examination of the terminology 'constituent power'. What precisely does this term entail? How does it differentiate itself from an ordinary legislative power? Does the constituent power confine the exercise of power to constitutional boundaries? If this is the case, then was the government at that time unaware of the implications when incorporating the 24th amendment, considering that this understanding of constituent power, as limited to constitutional boundaries, contradicts the legislative intent to expand the scope of amendment powers?

- ***Distinction between 'legislative power' and 'constituent power'***

The lines of the Kesavanand Bharti judgement are worth noting regarding the ascertainment of the constituent power of legislature-

- *"The position taken up on behalf of the respondents is that so far as Article 368 is concerned, the 24th Amendment has merely clarified the doubts cast in the majority judgment in Golak Nath. That Article, as it originally stood, contained the* ***constituent power*** *by virtue of which all or any of the provisions of the Constitution including the Preamble could be added to, varied or repealed. In other words, the power of amendment was unlimited and unfettered and was not circumscribed by any such limitations as have been suggested on behalf of the petitioners".*
- *"The argument of the Attorney General is that the amending power in Article 368 as it stood before the 24th amendment and as it stands now has always been and continues to be the constituent power, e.g., the power to de-constitute or reconstitute the Constitution or any part of it. Constitution at any point of time cannot be so amended by way of variation, addition or repeal as to leave a vacuum in the government of the country. The whole object and necessity of amending power is to enable the Constitution to continue and such a constituent power, unless it is expressly limited in the Constitution itself, can by its very nature have no limit because if any such limit is assumed, although not expressly found in the Constitution, the whole purpose of an amending power will be nullified.[13]"*
- *"The expression 'constituent power' is used to describe only the nature of the power of amendment. Every amending power, however large or however small it might be, is a fact of a constituent power. The power, though described to be 'constituent*

[13] *Kesavanand Bharti vs state of Kerala, AIR 1973 SC 1461, (Ind.)*

power', still continues to be an 'amending power'. The scope and ambit of the power is essentially contained in the word 'amendment'. Hence, from the fact that the new article specifically refers to that power as a constituent power, it cannot be understood that "The word 'constituent' is so well-known in modern Political Constitutions that it is defined in the dictionaries as 'able to frame or alter a Constitution' And the power to frame or alter the Constitution is known as constituent power[14]."

- *'The power conferred under the original Article being a limited power to amend the Constitution, the constituent power to amend the Constitution referred to in the amended Article must also be held to carry with it the limitation to which that power was subject earlier[15]".*

- S.M Sikri, in this judgement, writes-
  - *"the insertion of the words 'in exercise of its **constituent power**' only serves to exclude Article 248 and Entry 97 List I and emphasize that it is not ordinary legislative power that Parliament is exercising under Article 368 but legislative power of amending the Constitution[16]".*
- D.G. Palekar, in this judgement, writes-
- In the judgement there was a distinction made between the controlled and uncontrolled constitution in which uncontrolled was defined as it doesn't have any variation of legislative or constituent power and the legislature simply by law-making procedure amends any part of the constitution as if it were a statute.
- S.N. Dwivedi, in his judgement, writes-
  - *"Broadly speaking, 'constituent power' determines the frame of primary organs of Government and establishes authoritative standards for their behaviour. In its ordinary sense, legislative power means power to make laws in accordance with those authoritative standards. Legislative power may determine the form of secondary organs of Government and establish subordinate standards for social behaviour. The subordinate standards are derived from the authoritative standards established by the constituent power*.[17]"

[14] *Id.*
[15] *Id.*
[16] *Id.*
[17] *Id.*

- *"No part of the Constitution can be amended by the law-making procedure. This distinction between constituent power and legislative power in a controlled Constitution proceeds from the distinction between the law-making procedure and the Constitution-amending procedure. Our Constitution is of a hybrid pattern. It is partly controlled and partly uncontrolled. It is uncontrolled with respect to those provisions of the Constitution which may be amended by an ordinary law through the legislative procedure; it is controlled with respect to the remaining provisions which may be amended only by following the procedure prescribed in Article 368. When any part of the Constitution is amended by following the legislative procedure, the amendment is the result of the exercise of the legislative power; when it is amended through the procedure prescribed by Article 368, the amendment is the result of the exercise of the constituent power*."[18]

- Sri Palkhiwala's argument of inherent and implied limitations may be reduced to the form of a syllogism. All legislative powers are subject to inherent and implied limitations.

  The constituent power in Article 368 is the legislative power.

  The constituent power is subject to inherent and implied limitations.

- Y.V. Chandrachud, made the following conclusion-
  - *"There are no inherent limitations on the amending power in the sense that the Amending Body lacks the power to make amendments so as to damage or destroy the essential features or the fundamental principles of the Constitution*."

- ***Contrasting views of judges in the earlier judgements***-

- In Shankar Prasad Singh vs UOI, Patanjali Sastri J. contended that although in a general sense 'law' include constitutional law, there was a clear demarcation between ordinary law made in the exercise of legislative power and the constitutional law made in the exercise of constituent power; and therefore, in the absence of a clear indication to the contrary, Fundamental Rights were not immune from Constitutional amendment.
  - Wanchoo J. who delivered the leading minority judgment in the Golaknath Nath case came to the conclusion that *"the power to amend being a constituent power cannot be held to be subject to any implied limitations on the supposed ground that the basic features of the Constitution could not be amended."*

[18] *Id.*

- It was said by the chairman of the drafting committee, Dr B.R. Ambedkar, explaining the proposals for amendment, in the constituent Assembly that-

  "Those who are dissatisfied with the constitution have only to obtain in two-thirds majority, and if they cannot obtain even a two-third majority in the parliament elected on adult franchise in their favour, their dissatisfaction with the constitution cannot be shared to be shared by the general public[19]".

- The inclusion of various provisions by bringing amendments by the parliament shows its crystal-clear contention to empower itself with the absolute power to amend the constitution. The words 'any provision of this constitution' in Article 368 (1) can be construed to mean, literally, any provision or all the articles (without limitation) including Article 13 and Article 368 itself. Furthermore, Article 13 (4) says nothing in that article applies to constitutional amendments.
- Therefore, the clear mention of the words 'any provision' in Article 368 which talks of power as well as amendment procedure and the absence of the word 'amendment' in Article 13(3)(a), which defines what is included in the term 'law' which is subject to judicial review and that includes ordinance, order, bye-law, rule, regulation, notification, custom or usage having in the territory of India the force of law, rests the parliament of this country with the absolute power to alter any part of the constitution with no limit whatsoever (if we strictly stick to what the constitution says without going into the current judiciary stance).
- For example, if a law is made by an Act, whether of central or the state, then if there is a provision in that law that violates the fundamental rights conferred by part 3 of the constitution, then anyone can reach out to the Court and challenge that provision of the Act and the judiciary can too struck down that provision by saying it is inconsistent with fundamental rights. And that law which is to be struck down by the judiciary due to inconsistency with the fundamental rights can be any order, bye-rule, rule, regulation, etc. under Article 13, where the term 'amendment' is absent. But what if the same law is brought after bringing an Amendment to the constitution so that when the judiciary checks it with the amended provisions of Part 3 of the constitution it cannot be declared inconsistent due to

[19] *LOK SABHA SECRETARIAT, GOV'T OF IND.,CONSTITUENT ASSEMBLY DEBATES (PROCEEDINGS) - VOLUME XI, FRIDAY, THE 25TH NOVEMBER 1949, 59, https://loksabha.nic.in/writereaddata/cadebatefiles/C25111949.pdf*

non-compliance withthe fundamental rights because in this situation the Act which is enacted complies with the amended provisions and those amendments were brought only with the intent to comply with the forthcoming Act so that it passes the judiciary check.

- This is the time when the judiciary played a smart move in the case of Kesavanand Bharti when it overturned the judgement delivered in the IC Golaknath case and accepted that 'law' under Article 13 does not include an 'amendment' but at the same time evolved all the way a new doctrine called a basic structure doctrine. Apart from that it was also contended that the list of basic structure cannot be exhaustive. And it is left to the judiciary to recognize it from time to time by its further judgements according to the cases.
- Although the reversing or over-turning of the honourable apex Court decisions by the same apex Court can be construed to be a good step towards serving justice with respect to the changing socio-economic conditions, but such a long chain of contradicting judgements by the constitutional bench of the apex Court on such a concerning and important legal issue raises the question not only on the credibility of the decisions of the honourable supreme Court of our country but a doubt on the chances of further changes in the judgement on the same issue by the same Court.
- When such a lengthy constitution doesn't have any article that talks of limitation on amending powers of the parliament and on the other hand it contains an intact amended Article (affirmed by the judiciary itself) i.e., Article 368 which explicitly talks of the power of parliament to amend any provision of the constitution, then in the light of that scenario, judgments delivered by the Supreme Court previous to the Golaknath Case seem to be justified. But later, it is the Kesavananda Bharti case in which a new doctrine of basic structure arose by the Supreme Court. Even the landmark judgment of Kesavananda Bharti (delivered by a 7:6 majority) could not able to directly refer to any such article that talks of such a limitation on amending the power of the parliament.
- India is a country where people rely on the Court for keeping the checks and balances on the legislative or executive power of the government but Who is there to limit the judicial privilege of evolving such new principles and thereby giving itself immense power? The move by the judiciary to empower itself by its own decision by giving the doctrine of basic structure and not defining what provisions of the constitution are included in it is worth noting.

- While interpreting the Constitution on this issue an attempt had been made to understand what could have been the thinking of the framers of the Constitution. On that point too, we could refer to Jawahar Lal Nehru's words, *"if you make anything rigid and permanent you stop a nation's growth, the growth of a living, vital organic people".*

- It is the constitution which is supreme and it is this document which gives the power to even the Supreme Court to perform its functions. How can a recipient convert its limited power of judicial review to a limitless power? Therefore, questions could be raised on how a judicial body which itself inherits the power to interpret the Constitution can all the way brought a new doctrine of which the Constitution nowhere talks about and limits the power of government, which is the representative of the people, to amend the constitution, which on the contrary is explicitly mentioned in the constitution, and on the other hand the judiciary by bringing such a doctrine giving itself the potency to declare which constitutional amendment must be struck down and which must be not.
- But if otherwise would be the case and the absence of such a doctrine would render the parliament with the power to amend the constitution, and if there is no one to put that amendment to pass the filter of judicial review, then the repercussions could be beyond the imagination. Even the chances of evolving a whole new constitution could be there. The absolute amending power of parliament would negate even the role of the judiciary and attacks directly on to its core powers to keep a check and balance and protect the very constitution. That is the reason that an eccentric judicial mind was applied in the landmark judgment of Kesavananda Bharti by the honourable judges of the Supreme Court.
- Any provision of law is understood and interpreted by keeping in mind the intent and purpose behind the enactment of that very law. The doctrine of beneficial construction also says that if the provision of any law or Act is silent on a particular issue then that interpretation would be adopted which is in the favour of that class of people for whose benefit the legislature had brought the particular Act. So, if we consider the constitution as an Act passed by the legislature i.e., the constituent assembly of that time, then its interpretation must be done for the benefit of the people of India and the essence and spirit of the constitution and constituent assembly must remain intact. The Objective Resolution introduced by Pandit Jawahar Lal Nehru, the resolution that established the Assembly's goals, in 1946 that expressed the

fundamental principles that drove the creation of the constitution must be respected and protected not only by the judiciary but by the government of the country too.

- True meaning of separation of functions and checks and balances must be ascertained by both bodies. There is no doubt in saying that though the Indian constitution is said to be a living document but the governing body which came into the very existence by virtue of the power conferred by that document cannot alter the entire document of constitution and its core principles.
- It was the objective resolution passed by Jawaharlal Nehru on December 13 1946 which laid the foundation for the preamble which shows some of the core features and the very essence of the Constitution. Though it is concluded that the preamble too can be amended,the basic features of it can't be amended. To understand this, we need to look at the terminology and elucidation of the words 'amend' and 'amendment'. According to the Oxford Advanced American Dictionary- amend something is - to change a law, document, statement, etc. slightly in order to correct a mistake or to improve it. According to the Cambridge Dictionary, amend means- to change the words of a text, especially a law or a legal document. According to the Merrium-Webster dictionary amend means- to change or modify (something) for the better. Samuel Johnson's Dictionary of the English Language (1785) defines 'To Amend' as - to correct; to change anything that is wrong to something better. The same dictionary defines amendment [emendation, Lat.] as "It signifies, in law, the correction of an error committed in a process, and espied before or after judgement; and sometimes after the party's seeking advantage by the error."
- Is the parliament of India a 'legally sovereign' body and thereby vest with itself the ultimate sovereign power? What is the jurisprudential point of view? For the first time French jurist Jean Bodin, in his famous work *Republic* (1577), defined 'sovereignty' as the concept of absolute and perpetual power of the State. Thomas Hobbes observed that a sovereign's power is unlimited and absolute and this power is unalienable. In reaction to the above theory, A.V. Dicey, in his theory, differentiated 'legal sovereignty' and 'political sovereignty'. He explained that parliament is the law-making body and is thus legally sovereign and the electorate is the politically sovereign. The legally sovereign works on the wishes of the political sovereign. The Austinian concept also says that there can be only one sovereign body and his powers are legally unlimited and indivisible. The criticism of this concept that sovereignty is indivisible was done by Lord Bryce. He said this concept doesn't stand in the

case of federal countries. Looking into India's situation the divisible concept of sovereignty seems to be more valid. The sovereignty, in our nation, not solely rests with one ultimate body but is distributed into the three organs of the state i.e., legislative, executive and judiciary. In the Kesavananda Bharati judgement, too this divisible concept of legal sovereignty was discussed. The significance of the separation of power in a federal nation must be understood by each branch or organ of the state. When the British crown handed over the legal sovereignty to the constituent assembly which was considered to be the body of representatives of the people of India, it was this body itself which created these three organs in the federal system of our country. Since each of the organs derives its sovereignty from the constitution which was prepared by the constituent assembly, therefore, confining our perspective to look at today's legislature or the parliament as a constituent assembly of present-times which has the power of ultimate sovereignty similar to the one that was possessed by the original constituent assembly, is not a rational interpretation. The applicability of the jurisprudential viewpoint of jurists like John Austin on the subject of 'ultimate legal sovereignty' seems unfair in the current political system.