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Manikchand Pahade Law College, Aurangabad was established in 1956 by Marathwada Legal and General Education Society founded by eminent lawyers and savants of law with the avowed object of spreading legal education in Marathwada region.

This college existed in 11 acres of land in the heart of the city with qualified Teachers and the students affiliated to Dr. Babasaheb Ambedkar Marathwada University, Aurangabad and recognized by Govt. Maharashtra, Bar Council of India, UGC under 2(f) & 12(b).

The library consists of reference, text, e-books, law reports and journals both national & international. It has Computer lab, Auditorium, Multipurpose sports hall and separate hostel facility for boys and girls.

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Separation of Powers

Montesquieu propounded the doctrine of separation of powers. He said that in every State, there are three kinds of powers - the legislative power, the executive power, and the judicial power. He was of the view that the English people owed their liberty to the separation of powers of government. According to him, "when the legislative power is united with the executive power in the same person there is no liberty, because he will make tyrannical laws and execute them tyrannically. There is again no liberty if the Judicial Power is not separated from the Legislative Power and from the Executive Power. If it was joined with Legislative power, the power over the life and liberty of citizens would be arbitrary, because the Judge will be the legislator. If it was joined with the Executive Power, the Judge would have the strength of an oppressor. All would be lost if the same man or the same body exercised these three powers, that of making laws, that of executing public decisions and that of judging the crimes or the disputes of private persons[1].

James Madison, one of the architects of the American Constitution, while echoing the same view in the Federalist pointed out that Montesquieu did not mean that the different branches could not have overlapping functions. His emphasis was that the power of one department of the government should not be entirely in the hands of another department. Alexander Hamilton underlined the importance of the independence of the Judiciary to preserve the separation of powers and the rights of the people. The doctrine of Separation of Powers is the foundation of the American Constitution. Article I, Section One says: "All legislative powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives". Article II, Section One reads, "The Executive power shall be vested in a President of the United States of America". Article III, Section One says: "The Judicial power of the United States shall be vested in one Supreme Court and in such inferior courts as the Congress may from time to time ordain and establish."

Constitution of India

Article 52(1) vests the Executive Power of the Union in the President, to be exercised by him in accordance with the Constitution. Article 154(1) vests the Executive Power of a State in the Governor. Article 79 provides for the Constitution of Parliament consisting of the President and two Houses namely, the Council of States and the House of the People. Article 168 provides for the Constitution of a State Legislature in every State consisting of the Governor and in a few states, two

[1] (L'Espirit des Lois, Book XI, Ch. VI 2nd ed., Vol. I, p.220)

Houses namely the Legislative Council and Legislative Assembly and in other States one House, i.e. the Legislative Assembly. Articles 245 to 255 provide for distribution of Legislative Powers among the Union Parliament and the Legislatures of States and other incidental matters. So far as, the Judicial Power is concerned, the Constitution provides for a three - tier system, with Subordinate Courts at the bottom, the High Courts in the middle and the Supreme Court of India at the top. The Judicial Power is divided among the various Courts. Like the American Constitution, the Indian Constitution, has a part dealing with basic human rights called the Fundamental Rights which can be enforced either by High Courts under Article 226 or by the Supreme Court under Article 32 of the Constitution. The Directive Principle of State Policy in Article 50 mandates the State to take steps to separate the Judiciary and the Executive from the public services of the State.

In **Rai Sahib Ram Jawaya Kapur vs. The State of Punjab**[2] , a Constitution Bench of the Supreme Court observed that "the Indian Constitution has not indeed recognised the doctrine of separation of powers in its absolute rigidity but the functions of the different parts or branches of the Government have been sufficiently differentiated and consequently it can very well be said that our Constitution does not contemplate assumption by one organ or part of the state, of functions that essentially belong to another." In **Keshavananda Bharati vs. State of Kerala**[3] the Supreme Court declared finally that Separation of Powers is part of the basic structure of the Constitution.

Constitutional Limitations On Powers

Article 13 (2) of the Constitution declares , that the State shall not make any law which takes away or abridges the rights conferred by this Part and any law made in contravention of this clause shall, to the extent of the contravention, be void. Article 368, confers on Parliament, the power to amend the Constitution. In **Shankari Prasad Singh Deo vs. Union of India**[4] , the Supreme Court, declared that an amendment to the Constitution was not "law'' within the meaning of Article 13(2) and repelled the challenge to the First Constitution Amendment Act, 1951, which inter alia inserted Articles 31A, 31B and the Ninth Schedule to the Constitution giving immunity from Judicial Review to the Acts listed in that Schedule on the ground of violation of any of the fundamental rights. When the same question was raised again before a coordinate Bench in **Sajjan Singh vs. State of Rajasthan**[5] the Bench reiterated the law declared in Shankari Prasad Singh Deo. However, one of the two judges who doubted the said correctness of the declaration of law, namely, J.R. Mudholkar, J. posed a fundamental question,:

[2] 1955 (2) SCR 225, 235-236 = AIR 1955 SC 549
[3] 1973 (Supp) SCR 1 = (1973) 4 SCC 225 = AIR 1973 SC 1461
[4] 1952 SCR 89 = AIR 1951 SC 458
[5] 1965(1) SCR 933 = AIR 1965 SC 845

whether making a change in the basic feature of the Constitution can be regarded merely as an amendment or would it be in effect, rewriting a part of the Constitution; and if the latter, would it be within the purview of Article 368! He sowed the seed of an unprecedented proposition of law. A Bench of eleven judges in **I.C. Golaknath vs. State of Punjab**[6] unsettled the settled law by overruling the earlier two decisions and declaring that an amendment to the Constitution was "law" and therefore, was liable to be declared void if it took away or abridged a fundamental right. A still a larger Bench of 13 judges in Keshavananda Bharati vs. State of Kerala (supra) overruled the decision in Golaknath and declared that Parliament in exercise of its amending power under Article 368 could not abridge or abrogate the basic structure of the Constitution. It was a historic declaration of law by any court in any country. It expanded the scope of judicial review to amendments to the Constitution made by Parliament in exercise of its constituent power. In **Indira Nehru Gandhi vs. Raj Narain**[7] , the Court declared that the Thirty-ninth Amendment by which Article 329-A inserted in the Constitution in order to salvage the election of Indira Gandhi, which was already set aside by the Allahabad High Court in an Election Petition filed by Raj Narain, was voilative of the rule of law and judicial review which are part of the basic structure of the Constitution. However, the Bench allowed her Appeal by upholding the amendments made to the Representation of the People Act, 1951. In this judgment the Court reiterated that there was no rigid separation of powers in the Indian Constitution.

In the year 1964, there was a head on clash of powers of the State Legislative Assembly of Uttar Pradesh and the High Court of Allahabad. Article 194 of the Constitution undoubtedly confers on the Legislative Assembly of a State the power to punish a person found guilty of contempt of the House. Under Article 226, every High Court has power to issue inter alia, the writ of habeas corpus and quash the detention of a person if his or her fundamental right to personal liberty guaranteed by Art. 21 of the Constitution is infringed. The State Assembly found one Keshav Singh guilty of contempt of the House. The Speaker directed that Keshav Singh be sent to prison for his contumacious conduct. A warrant was issued by the Speaker, for his detention and sent to the District Judge, Lucknow. Accordingly, he was detained in jail. Keshav Singh challenged the detention, before the Lucknow Bench of the Allahabad High Court through his Advocate, B. Solomon , by filing a writ petition. The High Court issued notice and directed the release of Keshav Singh on bail, subject to usual conditions. The State Assembly took a serious view of the

[6] 1967 (2) SCR 762 = AIR 1967 SC 1643

[7] 1976(2) SCR 347 = AIR 1975 SC 2299 and 1975 (Supp) SCC 1

conduct of Keshav Singh, his lawyer B. Solomon and the two Hon'ble judges of the High Court, namely N.U. Beg and G.D. Sahgal JJ, who granted the bail. The House resolved that all the four had committed contempt of the House and directed that Keshav Singh should immediately be taken into custody and the two judges and the Advocate should be brought in custody before the House. All of them filed separate petitions in the same High Court under Art. 226 challenging the resolution of the Legislative Assembly. A Full Bench, consisting of 28 judges, admitted the petitions and passed an order restraining the Speaker from taking any action in pursuance of the resolution of the House. Considering the gravity of the situation, the Central Government stepped in and sought the opinion of the Supreme Court by having the questions of law involved as to the respective jurisdictions and powers of the State Legislative Assembly and the High Court referred to the Supreme Court by the President of India under Art. 143. A Bench of seven judges gave the opinion that the High Court was within its powers to entertain and deal with the Writ Petition challenging the legality of the detention of Keshav Singh and that the conduct of Keshav Singh in approaching the High Court, B. Solomon in filing the Writ Petition and the two Hon'ble Judges in entertaining the said writ petition and granting bail did not amount to contempt of the House. The Court did not doubt the power of the Legislative Assembly to punish a person for its contempt, but upheld the High Court's power of judicial review of the order of detention passed by the House, for the limited purpose of examining its validity with respect to two aspects, namely, the existence of the privilege claimed and its extent. Once the Court was satisfied on these two aspects, it should not interfere with the detention ordered by the House[8].

Interim Legislation to fill a Vacuum

In **Vineet Narain vs.Union of India**[9] , the Court declared that in exercise of its powers under Articles 32, 141 and 142, it could issue necessary directions to the Executive to fill the vacuum in legislation, which will hold good till the Legislature makes a law to cover the gap. The Court, relying on a number of precedents declared :"it is the duty of the executive to fill the vacuum by executive orders because its field is coterminous with that of the legislature, and where there is inaction even by the executive, for whatever reason, the judiciary must step in, in exercise of its constitutional obligations under the aforesaid provisions to provide a solution till such time as the legislature acts to perform its role by enacting proper legislation to cover the field." Before this decision the settled law was that Courts

[8] AIR 1965 SC 745 = (1965) 1 SCR 413

[9] (1998) SCC 226

had no such power to issue a direction to a Government or a Legislature to make a law, much less make a law themselves[10] . In **Vishaka vs. State of Rajasthan**[11] , the Court reiterated this declaration of law and laid down guidelines and norms for due observance by all concerned for the purpose of enforcement of fundamental rights until legislation is enacted.

A question arose in **Prem Chand Garg vs. Excise Commissioner**[12] whether the Supreme Court could in exercise of its power under Article 142 to do complete justice in any cause or matter pending before it issue a direction, contrary to or inconsistent with a provision of enacted law. A Constitution Bench declared that under Article 142, the Court could not issue a direction, which was inconsistent with a statutory provision. This proposition was reiterated in **Supreme Court Bar Association vs. Union of India**[13] after considering the intervening decisions which had struck a different note. However, in **Prakash Singh vs. Union of India**[14] , a Bench of 3 judges of the Supreme Court, issued certain directions to the Central Government, State Governments and Union Territories for framing of appropriate legislation to constitute a State Security Commission and lay down how to select the Director General of Police, what should be the minimum tenure of the DGP, IG of Police and other officers, to provide for separation of investigation from law and order, create a Police Establishment Board, Police Compliance Authority and National Security Commission. When another Bench of the Supreme Court sought to enforce these directions, some of the State Governments objected stating that they are inconsistent with the existing statutory provisions and the doctrine of separation of powers which is a part of the basic structure of the Constitution. The objections are pending. In contract, in **Dayaram vs. Sudhir Batham**[15] , the Court found that one of the directions issued by the Court earlier in **Madhuri Patil vs. Commissioner Development**[16] , was in conflict with a provision of enacted law and declared it void. This is consistent with the position that law making is the exclusive province of the Legislature and the Court will issue binding directions only to fill the gaps in enacted law when such directions become necessary for the enforcement of any of the fundamental rights.

[1] a) Narinder Chand Hem Raj vs. Lt. Governor, Union Territory, Himachal Pradesh .
b) State of Himachal Pradesh vs. A Parent of a Student of Medical College (1985) 3 SCC 169.
c) Supreme Court Employees' Welfare Association vs. Union of India (1989) 4 SCC 187, 219, pr.51.
d) Asif Hameed vs. State of Jammu and Kashmir (1989) Supp 2 SCC 364, 375, pr.21
e) Suresh Seth vs. Commissioner, Indore Municipal Corpn. (2005) 13 SCC 287, 288, pr.5.
f) Indian Soaps and Toiletries Makers Association vs. Ozair Husain and Ors. (2013) 3 SCC 641, 656, pr. 39.

[11] (1997) 6 SCC 241, 251, pr.16
[12] (1963) Supp. 1 SCR 885= AIR 1963 SC 996,
[13] (1998)4 SCC 409.
[14] (2006) 8 SCC 1
[15] (2012) 1 SCC 333 , 349, pr.22 , pr. 37-44
[16] (1994) 6 SCC 241

It was a well settled proposition of law that a court cannot dictate to a Government what should be the conditions of service of Government employees including judicial officers. However in All India **Judges Association vs. Union of India**[17] , a Bench of three Judges, directed the Union of India and State Governments to revise the conditions of service of judicial officers by raising their age of retirement to 60 years, provide residential accommodation to every judicial officer with a working library, to set up an All India Judicial Service to bring about uniformity of designation of all officers , both on the civil and the criminal side, to provide a vehicle to every District Judge and Chief Judicial Magistrate. These directions required amendment of existing rules and making some new rules. The aggrieved States filed Review Petitions, inter alia, on the ground that the Court had transgressed the boundaries of Separation of Powers which is a part of the basic structure of the Constitution. The Court dismissed the Review Petitions relying on independence of judiciary which is also a part of the basic structure of the Constitution and justified its directions issued on the ground that the Legislature and the Executive had failed in their obligations.[18]

However, in Re **Mehar Singh Saini, Chairman, Haryana Public Service Commission and others**[19], the Supreme Court rejected the plea of the counsel for the State to lay down specific qualification and experience required for the post of Chairman/member of State Public Service Commissions or at least indicating clear guidelines observing : "Desirability, if any, of providing specific qualification or experience for appointment as Chairman/members of the Commission is a function of Parliament. The guidelines or parameters, if any, including that of stature, if required to be specified are for the appropriate Government to frame. This requires expertise in the field, data study and adoption of the best methodology by the Government concerned to make appointments to the Commission on merit, ability and integrity. Neither is such expertise available with the Court nor will it be in consonance with the Constitutional scheme that this Court should venture into reading such qualifications into Article 316 or provide any specific guidelines controlling the academic qualification, experience and stature of an individual who is proposed to be appointed to this coveted office. Of course, while declining to enter into such arena, we still feel constrained to observe that this is a matter which needs the attention of the Parliamentarians and quarters concerned in the Governments." Notwithstanding the view taken by the Supreme Court in Mehar Singh Gill, a Full Bench of the Punjab and Haryana High Court in Salil

[17] (1992) 1 SCC 119, 149, pr. 63
[18] (1993) 4 SCC 288
[19] (2010) 13 SCC 586, 630, pr.85

Sabhlok vs. Union of India, decided on 17.8.2011, while quashing the appointment of Harish Dhanda as Chairman of the Punjab Public Service Commission, laid down elaborate procedure for appointment of Chairman and members of the Public Service Commission. On appeal in **State of Punjab v. Salil Sabhlok**[20] the Supreme Court declared that the Full Bench of the Punjab and Haryana High Court had acted beyond its jurisdiction and has usurped the constitutional power of the Governor in laying down the procedure for appointment of Chairman and members of the Public Service Commission and set aside the Judgment.

All over the world, appointment of Judges was always regarded as part of the Executive Power. In **SP Gupta vs. Union Of India**[21] , a Bench of seven judges accepted this position. Subsequently, a Bench of nine judges in **Supreme Court Advocates-on-Record Association vs. Union of India**[22] by a laboured interpretation of the Constitution overruled the decision in SP Gupta's case and upheld the primacy of the Chief Justice of India in the consultation process and brought in the concept of a collegium of Judges which would in effect make the final selection of candidates for appointment as judges of the Supreme Court and of High Courts and made the CJI the Chairman and spokesman of the collegium. This is again an instance of assumption of Executive Power by expansion of Judicial power through interpretation of the Constitution. What remains of the basic feature of Separation of Powers if the Judiciary goes on invading the areas reserved for the Executive and the Legislature in the Constitution?

In **P. V. Narshimha Rao vs. State (CBI)**[23] , there was no question of enforcement of any Fundamental Right; only interpretation of Article 105 of the Constitution which deals with the powers, privileges etc. of the Houses of Parliament and their Members and the Prevention of Corruption Act, 1988 was involved. One of the questions considered was: whether the definition of 'public servant' in Section 2(c) of the said Act was wide enough to cover Members of Parliament? Notwithstanding, the clarification given by the Minister concerned on the floor of the House during the debate on the Bill that the definition did not cover Members of Parliament or of a State Legislature and that there was no intention to bring them under the purview of the Act, the Supreme Court declared that they were also 'public servants' liable to be prosecuted under the Act for criminal misconduct. When it was pointed out to the Court that there was no authority competent to remove a Member of Parliament or of a State Legislature for granting

[20] (2013) 5 SCC 1, p.33, pr.40
[21] (1982) 2 SCR 365 = 1981 Supp (1) SCC 87 = AIR 1982 SC 149
[22] (1983) 4 SCC 441
[23] (1998) 4 SCC 626, 702, pr. 98

sanction for prosecution mandated by Section 19 of the Act, the Court gave authority to the presiding officer of the House concerned to permit filing of a chargesheet in the criminal court in respect of an offence punishable under the Act till provision was made by Parliament in that regard by suitable amendment in the law. This is not just another instance of judicial power spilling over the boundaries of separation of powers, but one of creating an unintended gap in a statute and filling it by interim legislation.

In **L. Chandrakumar vs. Union Of India**[24] , the Supreme Court struck down clause (2) (d) of Article 323-A and clause (3) (d) of Article 323-B of the Constitution to the extent they excluded the jurisdiction of the High Courts to review the decisions of the Tribunals constituted under these Articles. The Court also struck down Section 28 of the Administrative Tribunals Act, 1985 to the extent it excluded the said jurisdiction of the High Courts and the Supreme Court. Not stopping at that, the Court proceeded to restructure Articles 226 and 227 by the following declaration : "In the view that we have taken no appeal from the decision of a Tribunal will directly lie before the Supreme Court under Article 136 of the Constitution; but instead, the aggrieved party will be entitled to move the High Court under Articles 226/227 of the Constitution and from the decision of the Division Bench of the High Court the aggrieved party could move this Court under Article 136 of the Constitution. …….. The Tribunals will, nevertheless, continue to act like courts of first instance in respect of the areas of law for which they have been constituted. It will not, therefore, be open for litigants to directly approach the High Court even in cases where they question the vires of the statutory legislations (except where the legislation which creates the particular Tribunal is challenged) by overlooking the jurisdiction of the Tribunal concerned." This direction barring the litigants from approaching the High Courts directly under Articles 226 and 227 for relief or approaching the Supreme Court under Article 136 for special leave to appeal from the decision of a Tribunal is difficult to appreciate as it curtails the powers of the High Courts and the Supreme Court. It is always open to a High Court under Article 226 or 227 and for the Supreme Court under Article 136 to decline to entertain a petition on the ground of availability of an adequate alternative remedy. The question which arises for consideration is : whether it is open to the Supreme Court to restrict the jurisdiction and powers of High Courts conferred by Articles 226 and 227 after reviving the same on the ground of basic structure of the Constitution and fetter the wide scope of Article 136 which permits the Supreme Court to entertain a special leave petition against any

[24] (1997) 3 SCC 261, p.308 pr.92 and p.311 pr.99

judgment or order of any court or tribunal except one constituted by or under any law relating to the Armed Forces? Will it not amount to rewriting the Constitution?

Election of Leader of the House is the exclusive privilege of members of the Legislative Assembly of a State. Article 174 of the Constitution confers power on the Governor of a State to summon the House or Houses of the Legislature of the State to meet at a time and place as he thinks fit. The business to be transacted in the House is always decided by the Government in consultation with the Speaker of the State Legislative Assembly or the Chairman of the Legislative Council, as the case may be. A peculiar situation arose in **Jagdambika Pal vs. Union of India**[25] , due to ousting of existing Chief Minister and the difficulty in choosing another leader of the House on account of controversial defections by some MLAs. To resolve the political and constitutional deadlock, a Bench of three judges of the Supreme Court stepped in and issued the following directions:

"(i) A special session of the Uttar Pradesh Assembly be summoned/convened for 26.2.1998, the session commencing forenoon.

(ii) The only agenda in the Assembly would be to have a composite floor test between the contending parties in order to see which out of the contesting claimants of Chief Ministership has a majority in the House.

(iii) It is pertinently emphasised that the proceedings in the Assembly shall be totally peaceful and disturbance, if any, caused therein would be viewed seriously.

(iv) The result of the composite floor test would be announced by the Speaker faithfully and truthfully."

The Court further directed that the order of the Court shall be treated to be a notice to all the MLAs and no major decisions would be made by the functioning Government, except attending to routine matters. It may be recalled that in **S.R. Bommai vs. Union of India**[26] , a Bench of nine Judges had declared that the question whether a leader enjoys the support of majority of MLAs in the State Assembly, cannot be decided by head count in Raj Bhavan but shall be decided on the floor of the House. The problem in U.P. was that the Speaker was unable to conduct a peaceful session for conducting the floor test. Therefore, the Supreme Court had to intervene to ensure that the election of a new leader of the House takes place smoothly and in accordance with the Constitution and the law. As a result of implementation of the directions given by the Supreme Court, Shri Kalyan Singh was declared elected and the order of the High Court putting him in position as Chief Minister was made absolute by the Supreme Court. Similar directions were given in the case of Jharkhand Assembly also by another Bench of three Judges[27] . The only way to justify such orders of the Supreme Court is on the ground of

[25] (1999) 9 SCC 95, 96, pr. 1

[26] (1994) 3 SCC 1

[27] Anil Kumar Jha vs Union of India & Ors. (2005) 3 SCC 150

necessity of upholding the Constitution. It is said that 'necessity knows no law'. A Bench of two Judges criticized both these orders in **Divisional Manager, Aravali Golf Club and Anr. Vs. Chander Hass**[28] and Anr. The Bench observed:

"Judges must know their limits and must not try to run the Government. They must have modesty and humility, and not behave like Emperors. There is broad separation of powers under the Constitution and each organ of the State - the legislature, the executive and the judiciary - must have respect for the others and must not encroach into each others domains."

"The Jagadambika Pal's case of 1998 [(1999) 9 SCC 95], involving the U.P. Legislative Assembly, and the Jharkhand Assembly case of 2005, are two glaring examples of deviations from the clearly provided constitutional scheme of separation of powers. The interim orders of this Court, as is widely accepted, upset the delicate constitutional balance among the Judiciary, Legislature and the Executive, and was described Hon. Mr. J.S. Verma, the former CJI, as judicial aberrations, which he hoped that the Supreme Court will soon correct."

The Supreme Court, has over the years, interpreted the human rights incorporated in Part III of the Constitution liberally and for securing their effective enforcement employed methods which are appropriate for the Legislature or the Executive. For instance, the right to life guaranteed by Article 21 of the Constitution has been interpreted to mean right to life free from environmental pollution. By issuing a series of directions in a public interest litigation and regularly monitoring their implementation, the Court has brought down air pollution in Delhi, the capital of India. The Court has ensured that all public transport vehicles are run using compressed natural gas (CNG) as fuel instead of diesel[29] . For preservations of forests, the Supreme Court has evolved a mechanism and also constituted a separate Forest Bench to deal with cases and to monitor its orders. Strict adherence to the principle of separation of powers would not have achieved such beneficial results.

Conclusions

Separation of Powers is necessary to prevent arbitrariness in State action. There cannot be rigid compartmentalization of the Executive, Legislative and Judicial Powers, more so in a parliamentary democracy, where the Executive (the Council of Ministers) functions with the support of the Legislature. Both the Executive and the Legislature, have to function harmoniously. In the words of Walter Bagehot, "A Cabinet is a combining committee- a hyphen which joins, a

[28] (2008) 1 SCC 683, 689, pr.20 and p.692, pr.28

[29] MC Mehta vs. Union of India [1997]4 Scale (SP) 6, [1998] 6 SCC 63, [1998]8 SCC 648, [2000]9 SCC 519, [2001] 3 SCC 756, [2002]10 SCC 191, [2003] 10 SCC 5690).

buckle which fastens, the legislative part of the State to the executive part of the State. In its origin, it belongs to the one, in its function it belongs to the other [30]. The extent of separation of powers varies from country to country. Each country shapes its Constitution having regard to the conditions prevailing therein. In India, in theory, separation of powers is part of the basic structure of the Constitution but in practice the balance has been tilting progressively towards the Judiciary. While, there is broad demarcation of powers in the Constitution, over the years, the Judiciary has been enlarging its power of judicial review through interpretation of the Constitution and the laws which is undoubtedly a judicial function. Initially the Supreme Court was of the view that no Court can exercise legislative power or issue directions to the Government or the Legislature to make rules or enact a law in a particular manner. Subsequently the Court felt constrained to issue binding directions in the nature of interim legislation either for the purpose of enforcement of Fundamental Rights or for protecting independence of the Judiciary in areas covered by statutory provisions. Deviating from the traditional view that Judges merely declare the law and do not make law, they have been making law, may be out of necessity. 'Necessitas quod cogit defendit' - Necessity defends that which it compels. The Executive and the Legislature are unable to arrest the growth of judicial power post Kesavananda Bharati. Tilting of balance of powers beyond a point is likely to upset the checks and balances visualised by the framers of the Constitution and impede coordinated efforts by all the three wings of the State to achieve the Constitutional goals.

[30] Bagehot, Walter (1977) The English Constitution, pg. no 68, Williams Collins Sons & Co Ltd Glasgow, Thirteenth Impression.

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He enrolled as an Advocate in the Bar Council of Delhi in 1967. In Feb. 1969 he became Advocate on record in Supreme Court of India, New Delhi. In August 1976 he was designated as Senior Advocate. In 1980 he represented Central Government in Supreme Court of India as Senior Standing Counsel.

He has argued several leading cases on Constitutional law, Administrative law and other branches of law before the Supreme Court of India on behalf of the Central, many State Governments and Corporations. He has appeared in cases on behalf of the Supreme Court and several High Courts, Election Commission of India, public sector undertakings, prominent public figures including two former Prime Ministers, Chief Ministers, Union Ministers, a former Chief Justice of India, and a Judge of the Supreme Court, a former Governor and citizens belonging to different strata of society.

He has participated in several conferences and seminars in India and abroad. He has also served as a Member of the Faculty at several workshops of lawyers organized by the Bar Council of India and in a few courses conducted by the National Judicial Academy for members of the Judiciary. He has participated in SAARC Law Conferences held in Nepal, Pakistan, Sri Lanka, Maldives and Bhutan, International Bar Association's Conference in New York, Conference of Commonwealth Lawyers Association in Kuala Lumpur, Conference of International Democratic Lawyers Association in Brussels and Law Asia Conferences in Tokyo and Queensland and has delivered several lectures on matters relating to Constitution of India. He is recipient of 12 awards from various organizations throughout the Country.