vest the power to the parliament is a 'derivative' one; and that derivative constituent power will not automatically make the amendment immune from challenge.

In the dissenting opinion, Justice ATM Afzal rejected the doctrine and argued that 'it is unthinkable the makers of the Constitution did not leave any option to the future generation but decided on all matters for all people'.

In the 3-to-1 majority judgement, the Court ruled that a number of features such as supremacy of the Constitution, democracy, and independence of the Judiciary are beyond any alteration or change by amendatory process.

In the Fifth Amendment case, the Court made similar argument re the Basic Principles of our Constitution.

The judiciary has no influence over either the sword or the purse; no direction either of the strength or of the wealth of the society; and can take no active resolution whatever. It may truly be said to have neither force nor will, but merely judgment.

The 'period of delinquency' and 'Condoning' in retrospective

Justice Tafazzul Islam in his Appellate Division judgment on the Fifth Amendment case held that 'Period of Delinquency' comes when those entrusted to preserve, protect and defend the Constitution miserably fail in their sacred obligations. In his words, Bangladesh entered into this period of delinquency 'at its very early Part in 1975 and that delinquency continued for long 16 years', through two martial law regimes.

While the Court opined about the whole period, the complainant of the case initiated the lawsuit against the validity of particular martial law proclamations that were retrospectively legitimised by the Fifth Amendment of the Constitution. Hence, the verdict of that particular case did not invalidate Fourth or Seventh Amendment (though a different case invalidated the later amendment).

According to the rulings of the High Court Division, following were the underlying principles of the Fifth Amendment verdict, in brief (page numbers in the parentheses refer to respective verdicts).

1. The Constitution and its supremacy cannot be suspended by any law, much less Martial Law; and since 'there is no such law in Bangladesh as Martial Law' (p-386)hence all martial law proclamations are illegal to begin with.
2. 'The Parliament may enact any law but subject to the Constitution' (p-336) but cannot validate martial law proclamations that contradicts with the Constitution. Hence, the Second Parliament's approval of the Fifth Amendment Act is *ultra vires* (p-388), that is, beyond the Parliament's Constitutional power.
3. Invalidation of the whole Fifth Amendment would mean Bangladesh will automatically return to the one-party political system introduced by the Fourth Amendment. But that will create a Constitutional vacuum in the country since most laws and amendments were made assuming the invalidation of the Fourth Amendment by the now-invalid Fifth Amendment. So by invoking the doctrine of *State necessity*, the Court 'condoned' some martial law acts (p-156-357) and the reversal to Fourth Amendment was averted.
4. The Court could only condone certain clauses that are past and closed transactions, and/or 'could have been legally done at least by the proper authority' (p-346). Then, following the Eighth Amendment case, the Court also held that 'only those amendments which did not change the basic structure of the Constitution' (p-363) could have been legally done. So the Court did not condone martial law acts that changed the fundamental principles of the Constitution (that is, socialism and secularism).

We should note that few changes made by the martial law proclamations that do not fall within the *State necessity or basic structure* doctrines, such as the introduction of the Supreme Judicial Council, were not condoned in the