



SEPARATION OF POWERS IN INDIA: JUDICIAL ACTIVISM OR JUDICIAL OVERREACH?

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ABSTRACT

The separation of powers sits right at the centre of how constitutional government works. Its main job? To keep power from stacking up in one spot and to make sure those running the show stay answerable to the people. For ages, political thinkers and legal experts have wrestled with the best way to divvy up power among the legislature, executive, and judiciary. This article digs into how the separation of powers actually works in India, especially as the judiciary's influence has grown. It asks whether the courts' bold moves really make our constitutional democracy stronger, or if they sometimes cross the line and threaten it by taking over roles that aren't theirs. The main idea is pretty simple: judicial activism has its place under the Constitution, as long as judges know where to draw the line. But once they push past those limits, they risk upsetting the balance and shaking the very ethics the Constitution stands on.

Keywords: Separation of Powers, Judicial Activism, Judicial Overreach, Indian Constitution, Judicial Review.

INTRODUCTION

The separation of powers sits right at the heart of most constitutional democracies. The whole idea is pretty straightforward: if you spread out political power, you keep freedom safer. No one group gets to call all the shots. When you split up authority between different institutions, you create a system where people answer for their actions, abuse gets harder, and everyone's

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got to play by the rules. But it's not just about drawing lines on paper. This concept shifts and changes, keeping pace with political realities and whatever a country needs to govern itself.

Take India, for example. Separation of powers looks a little different there. Unlike the U.S. Constitution, which spells things out in black and white, India's Constitution doesn't mention the doctrine directly. Instead, India goes with a parliamentary system, which means the legislative and executive branches are allowed to overlap a bit -that's just how it works. Meanwhile, the judiciary has its own job: interpret the Constitution and protect people's rights.

Over time, the Indian judiciary has stepped up its involvement. Through judicial review - especially under Articles 32 and 226 - and with the rise of public interest litigation, courts have started weighing in on issues you'd usually expect legislators or the executive to handle. This shift has sparked some pretty fierce debate. Some people say judicial activism matters because it keeps the system honest when lawmakers or the government drop the ball. Others think the courts are sticking their noses where they don't belong, threatening the whole idea of separation of powers. This article looks at how the separation of powers works in India, and digs into how judicial activism and overreach shape the country's constitutional setup.

PHILOSOPHICAL FOUNDATIONS OF THE DOCTRINE OF SEPARATION OF POWERS

The concept of dividing government power isn't something new-it has deep roots stretching back to ancient times. Aristotle, one of history's most influential philosophers, tackled this idea in his work *Politics*. He identified three fundamental roles within any government: making laws, carrying out or enforcing those laws, and resolving disputes that arise under the law. While Aristotle didn't argue that these roles needed to be completely separated from one another, he did highlight¹ an important danger: when all these powers are concentrated in a single set of hands, it creates the perfect conditions for abuse, disorder, or injustice. He recognised that unchecked authority could easily spiral into corruption, undermining the very purpose of government, which is to serve the common good.

Centuries later, the French thinker Montesquieu took Aristotle's observations and transformed them into a cornerstone of modern political theory. In his influential book, *The Spirit of the Laws*, Montesquieu went much further than his predecessors. He asserted that when the

¹ Aristotle, *Politics* (Benjamin Jowett tr, Clarendon Press 1885).

² Montesquieu, *The Spirit of the Laws* (Anne M Cohler tr, Cambridge University Press 1989).

legislative, executive, and judicial powers are combined, personal freedom is at risk, and the door to tyranny is flung wide open. According to Montesquieu, the only way to prevent this concentration of power-and the oppression that often follows-was to formally divide government functions among separate branches. Each branch would keep the others in check, ensuring no single group or individual could dominate the entire system. This system of checks and balances not only protected liberty but also promoted a more accountable and transparent government.

Montesquieu's ideas didn't stay confined to theory. They were incorporated into the design of many constitutions around the world, leaving a lasting impact on the structure of modern democracies. The American, French, and Indian constitutions, among others, reflect his thinking, structuring government so that power is balanced and distributed rather than centralised.

However, Montesquieu never insisted that the separation of powers be implemented in a rigid, one-size-fits-all manner. He understood that each country's unique culture, history, and circumstances would require adjustments to the basic idea. This flexibility is crucial, as it allows nations to adapt the principle to their own needs while still upholding its essential purpose: preventing the abuse of power. When India wrote its constitution, for instance, its leaders drew on Montesquieu's insights but shaped them to suit the country's complex social and political realities. They recognised that a flexible approach to separation of powers could help promote stability, safeguard individual rights, and support effective governance in a diverse society.

Ultimately, the evolution of the separation of powers demonstrates how foundational ideas can be reinterpreted and applied in new ways over time. By understanding its origins and the ways it has been adapted, we can better appreciate the importance of limiting power and protecting liberty in any system of government.

CONCEPT AND MEANING OF SEPARATION OF POWERS

Separation of powers means splitting up government authority between three branches:

1. The legislature makes the laws
2. The executive carries them out
3. The judiciary interprets law.

Traditionally, this idea called for each branch to stick to its own job, with no sharing of staff or interference in each other's business. That strict setup didn't last. Most modern constitutions dropped it in favour of checks and balances. Now, the branches have some overlap, which actually helps them work together and keeps everyone accountable. The Indian Constitution follows this more flexible system instead of the old, rigid one.

CONSTITUTIONAL SCHEME OF SEPARATION OF POWERS IN INDIA

Legislature: Parliament holds the Union's legislative power. It's made up of the President, Lok Sabha, and Rajya Sabha. Parliament makes laws, manages public funds, and keeps the executive in check through things like inquiries, resolutions, and open debates.

Executive: The President holds executive power, but it's the Council of Ministers, led by the Prime Minister, that really runs the show. The executive isn't just about administration-it plays a big part in lawmaking too, thanks to its ordinance powers and its knack for delegated legislation.

Judiciary: On the other side, the judiciary stands alone, with the Supreme Court at the top. The Constitution doesn't just say judges should be independent-it backs that up with real protections: job security, guaranteed pay, and rules to stop unfair removal. Now, the Constitution doesn't draw a hard line between the branches. There's separation, sure, but there's also overlap. This setup isn't rigid. It lets the system stay flexible but still keeps everyone in check.

JUDICIAL INTERPRETATION OF SEPARATION OF POWERS

The Supreme Court of India has consistently refrained from advocating for a rigid or absolute separation of powers among the branches of government. Instead, in the landmark case of *Ram Jawaya Kapur v State of Punjab*, the Court clarified that the Indian Constitution establishes a pragmatic and workable division of functions, rather than an uncompromising split between the legislature, executive, and judiciary. The justices recognised that while the executive branch derives its authority and legitimacy from the legislature, it cannot operate in a vacuum or above the law. The executive remains bound by constitutional limits and is always subject to judicial scrutiny. This ensures that no branch becomes all-powerful or unaccountable, and that the rule of law is preserved.

The principle of separation of powers was further entrenched and given greater significance through the historic judgment in *Kesavananda Bharati v State of Kerala*. In this case, the Supreme Court articulated the doctrine of the basic structure, declaring that certain fundamental features of the Constitution, including the separation of powers,² from its unalterable core. By doing so, the Court dramatically reinforced the power of judicial review, empowering the judiciary to invalidate even constitutional amendments if they violate these essential principles. This doctrine has acted as a critical safeguard against the arbitrary exercise of power and has prevented the dilution of foundational values enshrined in the Constitution.

The Supreme Court's commitment to these principles was put to the test during the turbulent period of the Emergency, particularly in the case of *Indira Nehru Gandhi v Raj Narain*. In this case, Parliament had attempted to shield election disputes from judicial intervention by enacting laws that sought to place certain matters beyond the courts' reach. The Supreme Court struck down these provisions, holding that such attempts undermined the essential separation of powers and violated the basic structure of the Constitution. The justices emphasised that denying judicial review in such fundamental matters not only eroded the system of checks and balances but also threatened the rule of law itself. Through its reasoning, the Court affirmed that judicial review is not merely a procedural safeguard but is central to the functioning of Indian democracy and the protection of constitutional governance.

Taken together, these landmark rulings demonstrate the Supreme Court's nuanced understanding of the separation of powers. Rather than insisting on a formalistic division, the Court has recognised the need for cooperation among the branches, balanced by robust mechanisms of accountability. Judicial review, as reiterated in these decisions, remains a cornerstone of India's constitutional framework, ensuring that the government remains accountable to the people and the Constitution's fundamental values endure over time.

JUDICIAL ACTIVISM IN INDIA: CONCEPT AND EVOLUTION

Judicial activism refers to the proactive role played by the courts in safeguarding the Constitution, upholding³ fundamental rights, and addressing shortcomings or lapses in the

⁴ *Ram Jawaya Kapur v State of Punjab* AIR 1955 SC 549.

⁵ *Kesavananda Bharati v State of Kerala* AIR 1973 SC 1461.

⁶ *Indira Nehru Gandhi v Raj Narain* AIR 1975 SC 2299.

⁷ *S P Gupta v Union of India* AIR 1982 SC 149.

⁸ *Vineet Narain v Union of India* (1998) 1 SCC 226.

⁹ *Manoj Narula v Union of India* (2014) 9 SCC 1.

functioning of government institutions. In the context of India, judicial activism gained significant momentum after the Emergency period of the 1970s, a time when democratic norms were under severe strain. The judiciary emerged from this era determined to reinforce its position as a guardian of constitutional values, signalling its independence and commitment to the rule of law.

A pivotal development in this movement was the rise of public interest litigation (PIL). Traditionally, the courts only allowed those directly affected by an issue to bring legal cases. However, with PIL, the judiciary relaxed these procedural norms, enabling concerned citizens, activists, and organisations to approach the courts on behalf of marginalised or disadvantaged groups who otherwise lacked the resources or awareness to seek justice. This transformation democratized access to the judicial system and empowered ordinary people to challenge injustices.

Through judicial activism and the tool of PIL, the courts began to play an instrumental role in advancing social justice. They addressed issues such as environmental protection, the rights of bonded labourers, gender equality, and government accountability. The judiciary intervened not just in matters of individual rights, but also in systemic issues affecting large sections of society. By holding the executive and legislative branches accountable, the courts ensured that the spirit of the Constitution was not merely theoretical but actively protected and realised in everyday life. This dynamic activism has shaped Indian democracy by making the legal system more responsive to the needs of the people and by promoting a culture of accountability, transparency, and respect for constitutional principles.

CONSTITUTIONAL JUSTIFICATION FOR JUDICIAL ACTIVISM

Judicial activism in India draws its authority primarily from Articles 32 and 226 of the Constitution. These crucial provisions empower the Supreme Court and the High Courts to intervene whenever there is a threat to the fundamental rights of citizens. By granting individuals the right to approach the courts directly when their rights are violated, these articles establish the judiciary as the guardian of the Constitution and the protector of civil liberties.

The role of the judiciary goes far beyond simply resolving disputes; it also involves interpreting the Constitution and ensuring that the actions of the legislative and executive branches remain within constitutional boundaries. This dynamic creates a system of checks and balances that is vital for the health of Indian democracy. Whenever lawmakers enact legislation or government

officials implement policies that are inconsistent with constitutional principles, it becomes the judiciary's responsibility to review and, if necessary, strike down such measures. This function is not an encroachment on the authority of other branches, but rather an essential aspect of the judiciary's mandate to uphold the Constitution.

Judicial activism, when exercised judiciously, serves as a powerful tool to address governmental inaction or misuse of power. It allows the courts to respond to new and complex social challenges, fill gaps left by outdated laws, and provide remedies when other institutions fail to act. Through public interest litigations and innovative interpretations, the judiciary can expand the scope of rights and ensure that justice is accessible to all, especially marginalised groups who may lack the resources or influence to seek redress through traditional means.

Ultimately, responsible judicial activism fortifies democracy by reinforcing the accountability of public officials and safeguarding the fundamental rights of every citizen. It ensures that constitutional promises are not merely theoretical but are realised in practice, fostering a more just, equitable, and responsive society.

JUDICIAL OVERREACH: CONCEPT, MEANING AND CONSTITUTIONAL LIMITS

Judicial overreach refers to situations where courts go beyond their constitutionally assigned duties and begin to involve themselves in matters that are specifically the responsibility of the legislative or executive branches. This can disrupt the careful balance of power that is fundamental to a functioning democracy. While courts have the important role of interpreting laws and safeguarding constitutional rights, they are not intended to create policies or administer government programs. When they do so, they intrude into domains where they lack both expertise and democratic legitimacy.

The concept of judicial activism, on the other hand, is more nuanced. Judicial activism involves courts taking an active role in ensuring that constitutional values are upheld, especially in circumstances where other branches of government are failing to protect fundamental rights or to address significant gaps in governance. In such cases, the judiciary acts as a safeguard against abuses of power or neglect by the legislature and executive. However, even judicial activism must be grounded in a strong constitutional basis; otherwise, it risks slipping into overreach.

The Indian Constitution is built on the principle of separation of powers, meaning that each branch of government-the legislature, the executive, and the judiciary-has its own distinct functions and areas of authority. The judiciary is entrusted with interpreting the law and ensuring justice, but not with governing. Problems arise when courts substitute their own preferences for those of elected representatives or government officials, especially in the absence of a clear constitutional mandate.

The distinction between judicial activism and judicial overreach often lies in necessity and justification. Judicial activism becomes necessary when the legislature fails to act, the executive is inactive or unresponsive, or when citizens' basic rights and freedoms are under threat. In these scenarios, the courts fill a vital gap and protect the public interest. Conversely, judicial overreach occurs when courts intervene in matters that the other branches are fully capable of handling, thereby undermining the principle of democratic accountability. When judges venture into policy-making or take administrative decisions, they blur the lines between judicial review and governance, which can lead to inefficiency, confusion, and a weakening of public trust in both the judiciary and other branches of government. Thus, while judicial activism can serve as an important check on power, it must always be exercised with restraint and a clear respect for constitutional boundaries.

JUDICIAL OVERREACH THROUGH POLICY AND ADMINISTRATIVE INTERVENTIONS

Lately, Indian courts have started stepping in more often when it comes to things like policy-making, economic regulation, environmental issues, and government management. You can see why they're usually trying to serve the public interest. Still, this kind of involvement brings up some tough questions about whether courts really have the tools for the job, and how it fits with the idea of democracy.

Making policy isn't simple. It's tangled up with things like whether something makes economic sense, how it affects society, and who's held responsible politically. These aren't areas where judges have much hands-on experience. When courts keep a close watch on policy, say, by using continuing mandamus, they risk turning into decision-makers instead of just resolving disputes.

Even the Supreme Court has pointed out the danger here. They've said judges should be careful not to get too involved with policy, and that it's important to respect the separation of powers. Courts should know when to step back.

CASE STUDIES ILLUSTRATING JUDICIAL OVERREACH

Policy and Administrative Matters: Courts have frequently intervened in a range of matters, from economic policies and large-scale infrastructure initiatives to the day-to-day operations of government. These judicial actions are often motivated by a desire to protect the public interest, ensuring that laws are followed and that government decisions do not harm citizens. However, such interventions can sometimes disrupt the balance of power, particularly by impacting the executive branch's ability to be directly accountable for its actions and decisions.

Judges regularly emphasise that the responsibility for making and implementing policy primarily lies with the executive branch, as this is essential for maintaining the separation of powers in a functioning democracy. Nevertheless, when courts take an active oversight role, such as through mechanisms like "continuing mandamus," where they monitor government compliance over time, the distinction between judicial and executive functions can become increasingly blurred. This judicial oversight, while intended to prevent abuse of power or administrative inertia, may inadvertently lead to confusion over which branch is ultimately responsible for policy outcomes. As a result, both the efficiency of governance and the clarity of accountability can suffer, raising important questions about where the proper limits of judicial intervention should lie in a democratic system.

Judicial Appointments and the NJAC Judgment: After the Supreme Court struck down the National Judicial Appointments Commission (NJAC), discussions about judicial overreach intensified significantly. Many observers acknowledged that the verdict was a move to safeguard the independence of the judiciary, ensuring that the executive and legislature could not directly influence the appointment and transfer of judges. However, this protection of autonomy has also concentrated even greater authority within the judiciary itself, particularly when it comes to the collegium system—a process where senior judges select new judges behind closed doors.⁴

¹¹ *Supreme Court Advocates-on-Record Association v Union of India* (2016) 5 SCC 1.

¹² Upendra Baxi, *The Indian Supreme Court and Politics* (Eastern Book Company 1980).

This outcome has fueled ongoing criticism from various quarters. Detractors argue that the collegium system lacks both transparency and accountability, operating without clear guidelines or public scrutiny. As a result, questions arise about whether the system truly represents independence or if it has merely replaced one form of control with another, one that is shielded from external checks and balances. Critics contend that this arrangement risks creating an insulated elite within the judiciary, potentially leading to favouritism or groupthink, and making the process less accessible or understandable to the public.

These concerns have reignited debates about the delicate equilibrium among the branches of government—the executive, the legislature, and the judiciary. A robust democracy depends on each branch holding the others in check, preventing any single arm from accumulating too much influence. With the judiciary now enjoying significant discretion over its own composition, some worry that this balance is being disrupted. There are fears that such unchecked power could erode public trust in the courts and diminish the accountability that is foundational to democratic governance.

Furthermore, the controversy has prompted broader reflection on what judicial independence should entail. While insulation from political pressure is crucial, so too is the need for openness and accountability to the people that the judiciary ultimately serves. The ongoing debate suggests that finding the right mechanism to appoint judges, one that respects both independence and transparency, remains a pressing, unresolved challenge within India's democratic framework.

Misuse of Public Interest Litigation: Public Interest Litigation (PIL) was originally conceived as a powerful mechanism to advance social justice, giving a voice to the marginalised and enabling the courts to address issues that affected large sections of society. It democratized access to justice, allowing individuals or groups to approach the judiciary on matters of public concern, even if they were not directly affected. However, as time has passed, the purpose of PIL has often been diluted. Many individuals and organisations now misuse this legal tool, filing PILs not out of genuine concern for public welfare, but to pursue political agendas, settle scores, or simply attract media attention. This trend not only clogs up the courts with frivolous or ill-motivated cases but also threatens to undermine the very spirit of PIL.

Judges have become increasingly aware of this shift and have started issuing stern warnings against the filing of such baseless or publicity-driven PILs. They recognise that the courts'

valuable time and resources must be reserved for matters of genuine public interest rather than being squandered on cases that are essentially political stunts or attempts at self-promotion.

Furthermore, when courts are compelled to entertain a large number of these non-essential cases, they risk overstepping their traditional constitutional role. Instead of functioning as impartial arbiters of the law, they can inadvertently become overseers of government action, constantly monitoring and intervening in the day-to-day affairs of the executive. This blurring of boundaries can erode the clear separation of powers that is essential for a healthy democracy. If the judiciary becomes too entangled in the functions of the executive, it not only strains judicial resources but also weakens the independence of both branches. This can eventually undermine public trust in the judicial process, as the courts appear to be micromanaging governance rather than upholding the rule of law. It is therefore crucial to preserve the sanctity of Public Interest Litigation by ensuring it remains a means to serve genuine public needs, rather than a tool for personal or political gain.

JUDICIAL ACTIVISM VS JUDICIAL OVERREACH: THE THIN CONSTITUTIONAL LINE

The Indian Constitution empowers judges to intervene when necessary, rather than prohibiting such actions. This design shows a clear expectation that the judiciary will actively safeguard constitutional principles and ensure that the rule of law is maintained. Judicial intervention is not meant to be arbitrary or routine; rather, certain key conditions must be met before courts step in. First, there must be a genuine and significant violation of constitutional rights or provisions. Second, there should be clear evidence that other branches of government, namely the executive or the legislature, are either unable or unwilling to address the issue effectively.⁵ Third, any remedy or intervention by the judiciary should be directly relevant and proportional to the problem at hand, offering a tailored solution instead of an overreach. Finally, the court's action should be temporary and corrective, designed to restore balance and proper functioning, rather than to establish ongoing judicial control over governmental functions.

When the judiciary intervenes appropriately, it acts as a crucial check within the democratic framework, reinforcing accountability and preventing abuses of power. Such timely intervention upholds the boundaries set by the Constitution and ensures that no branch of government exceeds its mandate. This not only protects individual rights but also strengthens

¹³ Granville Austin, *The Indian Constitution: Cornerstone of a Nation* (Oxford University Press 1966).

the democratic process by ensuring that the principles of justice, fairness, and equality are observed.

However, when courts exceed their intended role and begin to administer or dictate policy, they risk undermining the democratic system. Judicial overreach can erode the separation of powers, a fundamental aspect of constitutional democracy, by shifting authority from elected representatives to unelected judges. This shift replaces the will of the people, expressed through their chosen leaders, with the judgments of a small group of individuals. Ultimately, such a scenario diminishes public trust in both the judiciary and the broader democratic system, as it blurs the lines between interpreting the law and making it. True democracy thrives when each branch of government respects its own limits and works collaboratively to serve the people, with the judiciary stepping in only when it is essential to preserve constitutional order.

CONTEMPORARY CHALLENGES TO SEPARATION OF POWERS

Recently, tensions among major institutions have noticeably intensified, as each one seeks to assert its influence and maintain relevance. Leaders are caught in a constant cycle of competition, frequently introducing new regulations or policies in an effort to surpass one another. This ongoing rivalry not only creates complexity but also generates confusion about which rules truly matter and who should enforce them.

Meanwhile, legislative bodies appear to be operating at a standstill. The passage of new bills has slowed to a crawl, and meaningful debate is increasingly rare, leaving a legislative vacuum that other branches are quick to fill. As a result, the judiciary has become more active, stepping beyond its traditional boundaries to shape the administration and interpretation of rules. Courts are now involved in decisions that were once the exclusive purview of lawmakers or executives, fundamentally shifting the balance of power.

Amid these changes, public arguments have erupted over lines of authority and the need for transparency. Citizens and officials alike are questioning where accountability truly lies, as overlapping roles and responsibilities blur the chain of command. There is growing concern that without clear boundaries and openness, trust in these institutions will continue to erode.

Given these challenges, it is more important than ever to renew our dedication to constitutional principles. A recommitment to foundational norms and checks and balances is essential to restore order and prevent further power struggles. By holding all branches and leaders

accountable, and by insisting on clarity and transparency in their actions, we can reinforce the integrity of our governance and ensure that no institution or leader operates above the law.

FINDINGS OF THE STUDY

Based on the analysis undertaken in this article, the following findings emerge:

1. The doctrine of separation of powers is an integral part of the basic structure of the Indian Constitution.
2. The Indian Constitution adopts a functional, not rigid, separation of powers.
3. Judicial activism has played a crucial role in protecting fundamental rights and constitutional values.
4. Judicial overreach occurs when courts exceed constitutional necessity and encroach upon executive or legislative domains.
5. Excessive judicial intervention risks undermining democratic accountability and institutional balance.
6. Effective governance requires mutual respect and restraint among constitutional organs.

SUGGESTIONS AND WAY FORWARD

To preserve constitutional balance and democratic legitimacy, the following measures are suggested-

Judicial Self-Restraint: Courts must exercise restraint in policy-centric and administrative matters.

Clear Guidelines on PILs: Strict scrutiny of PILs to prevent misuse and ensure genuine public interest.

Strengthening Legislative Functioning: Enhanced parliamentary debate and accountability mechanisms.

Executive Accountability: Transparent and constitutionally compliant governance to reduce judicial intervention.

Judicial Transparency: Reforms in judicial appointments to balance independence and accountability.

CONCLUSION

Separation of powers isn't some fixed rule in Indian constitutional law-it's always changing, always evolving. Judicial activism has pushed constitutional governance forward, especially by protecting people's rights and stepping in when other institutions fall short. But there's a line. When judges go too far and start stepping outside what the Constitution actually allows, that's judicial overreach-and it throws off the balance and chips away at democracy. What really keeps Indian constitutionalism working isn't rigid boundaries, but a kind of practical give-and-take. Every branch of government has to stick to its own lane and respect the others' independence. Courts should step in when the Constitution demands it, but they shouldn't try to run the country. Their job is to protect the Constitution, not to take over the roles of the other branches.