



DOCTRINE OF SEPARATION OF POWERS

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ABSTRACT

This study provides a critical overview of the doctrine of separation of powers within the Indian constitutional framework. This has an analysis of constitutional provisions and landmark Supreme Court Judgments; it examines the doctrine and also the practical application of the doctrine in India. It explores how the legislature, executive and judiciary work within the constitutional framework and maintain a system of checks and balances. Unlike the classical theory, which advocates strict separation, the Indian model reflects a flexible approach to ensure effective governance. The paper further evaluates the challenges arising from institutional tensions, including debates over judicial activism and executive authority. While the separation of powers aims to prevent conflict of powers and uphold the constitutional order. Supremacy, practical realities often test these boundaries from time to time. The study concludes that the Indian approach represents a balanced and pragmatic adaptation of the doctrine to seek accountability, cooperation and constitutional restraints among the various organs of the state.

Keywords: Separation of Powers, Indian Constitution, Checks and Balances, Constitutional Governance.

INTRODUCTION

The doctrine of Separation of Powers, as articulated by Montesquieu,¹ rests on the premise that liberty is best protected when the three organs of the government, namely, Executive, Legislature and Judiciary, function with independence from each other and their powers clearly

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¹ M. J. C. Vile *Constitutionalism and the Separation of Powers* (2nd ed. Indianapolis, Liberty Fund 1998).

and distinctly distributed. By preventing the concentration of the state's power in one single institution, the doctrine seeks to guard its citizens from arbitrariness and tyranny.

This doctrine is traditionally adopted in its strictest form in the United States of America, where each organ of the government operates with clearly distinguished and demarcated boundaries. This doctrine is entrenched in the constitution of the USA; however, in India, a very rigid form of separation in accordance with this doctrine is not in operation. Instead, we have a system of functional separation, which is coupled with a complex system of checks and balances, which are both entrenched in the constitution of India and have evolved through various Supreme Court decrees as well. The Legislative, Executive, and Judicial powers are broadly allocated under different constitutional provisions; however, significant overlaps do exist.

The executive is drawn from the members elected to the legislature; the judiciary reviews the decrees of the legislature and the acts of the executive; and the Legislature or the Parliament of India exercises certain quasi-judicial functions such as impeachment. The Supreme Court of India has been dutifully faithful in elevating this doctrine into a constitutional cornerstone by recognising it as a part of the "basic structure" of the constitution in *Kesavananda Bharati v State of Kerala* (1973).² Over time, the doctrine of Separation of Powers has evolved from a largely implied structural principle into a substantive limitation towards the excess of the powers of the State.

This Essay argues that while the Supreme Court's jurisprudence has strengthened constitutional principles and protected Indian Democracy, it has simultaneously generated tensions concerning judicial overreach and democratic legitimacy. The Indian experience reflects a dynamic equilibrium between institutional autonomy and judicial supremacy.

CONSTITUTIONAL BASIS OF SEPARATION OF POWERS

Although the Constitution of India does not explicitly use the term "separation of powers", its framework clearly reflects this doctrine. The Constitution distributes governmental authority among the Legislature, Executive and Judiciary in a structured manner. However, instead of creating rigid boundaries, it adopts a functional separation, allowing coordination while preventing concentration of power in one authority.

² *Kesavananda Bharati v State of Kerala* [1973] Supp SCR 1, AIR 1973 SC 1461

Legislative Powers: Articles 245 and 246, read with the Seventh Schedule, divide legislative competence between Parliament and the State Legislatures. The Union List, State List and Concurrent List define the respective spheres within which each legislature may enact laws.

This division does more than merely allocate subjects; it preserves federal balance. By granting States exclusive power over certain matters and Parliament exclusive control over others, the Constitution ensures that law-making authority is not monopolised. At the same time, the Concurrent List allows both levels to legislate, subject to the principle of repugnancy.

However, this arrangement is not entirely rigid. During emergencies or under specific constitutional provisions, Parliament may legislate on State subjects. This flexibility shows that separation in India is structured, but not absolute.

Executive Authority: Article 53 vests the executive power of the Union in the President. Yet this formal vesting must be read alongside Article 74, which requires the President to act on the aid and advice of the Council of Ministers. In practice, executive power is exercised by the elected government, ensuring democratic accountability.

The Executive implements laws framed by the Legislature and remains collectively responsible to the Lok Sabha. Mechanisms such as question hour, debates, and no-confidence motions maintain legislative control over executive action.

Further, Article 50 directs the State to separate the judiciary from the executive in public services. Though part of the Directive Principles and therefore non-justiciable, it reflects the constitutional intention to secure judicial independence, a key element of the separation of powers.

Judicial Powers: Judicial authority is secured through Articles 32 and 226, which confer writ jurisdiction upon the Supreme Court and High Courts. These provisions make judicial review a central feature of the constitutional scheme. Article 136 grants discretionary appellate power to the Supreme Court, enabling it to correct substantial legal errors.

At the same time, Articles 121 and 122 restrict judicial inquiry into parliamentary proceedings. This ensures that courts do not interfere in internal legislative functioning except on limited constitutional grounds. Therefore, the Constitution does not establish

complete isolation of powers. Instead, it creates differentiated roles combined with mutual checks.

JUDICIAL INTERPRETATION: FUNCTIONAL SEPARATION, NOT ABSOLUTE DIVISION

The Supreme Court clarified early on that India does not follow the basic theory of strict separation. In *Ram Jawaya Kapur v State of Punjab* (1955),³ the Court observed that although the Constitution defines the functions of different organs, it does not prohibit overlap where necessary.

This judgment laid the foundation for understanding the separation of powers in India as a system of checks and balances rather than a rigid division. Functional overlap is permissible so long as it does not interfere with the institutional balance.

Separation of Powers as Part of the Basic Structure: The doctrine acquired stronger constitutional protection through the development of the Basic Structure principle.

In *Kesavananda Bharati v State of Kerala* (1973), the Supreme Court held that Parliament's power to amend the Constitution under Article 368 is wide but not unlimited. It cannot alter the basic structure of the Constitution. Among the recognised basic features were judicial review, constitutional supremacy, rule of law, and separation of powers.

This decision transformed the separation of powers from a structural implication into a protected constitutional guarantee. It imposed substantive limits on Parliament's amending authority.

The principle resurfaced in *Indira Gandhi v Raj Narain* (1975),⁴ where the Court struck down provisions of the Thirty-Ninth Amendment that sought to exclude judicial review over the Prime Minister's election. The Court emphasised that Parliament cannot immunise its actions from constitutional scrutiny. Similarly, in *Minerva Mills Ltd v Union of India* (1980),⁵ parts of the Forty-Second Amendment were invalidated. The Court held that the limited amending power itself forms part of the basic structure.

³ *Rai Sahib Ram Jawaya Kapur v State of Punjab* [1955] 2 SCR 225

⁴ *Smt Indira Nehru Gandhi v Shri Raj Narain* [1976] 2 SCR 347

⁵ *Minerva Mills Ltd v Union of India* AIR 1980 SC 1789

Through these decisions, the separation of powers became integral to preserving constitutional identity.

JUDICIAL INDEPENDENCE AND INSTITUTIONAL SEPARATION

The doctrine of Separation of Powers in India is most visibly manifested through constitutional protection of Judicial Independence, also clearly articulated in Article 50 under the Directive Principles of State Policy. It states that “The State shall take steps to separate the judiciary from the executive in the public services of the State”, albeit not justiciable. This article, in a way, makes the foundation of Judicial Separation. Beyond this, the Supreme Court had time and again, through its various judgments, reiterated its emphasis on the fact that without an independent judiciary, constitutional guarantees become illusory.

The transformation of judicial appointments marks a decisive moment in this evolution. Through the Second Judges Case (Supreme Court Advocates on Record Association v Union of India, 1993),⁶ the court reinterpreted Article 124 to hold that the Chief Justice of India, acting collectively with senior judges (the Collegium), would have primacy in judicial appointments. This decision effectively shifted the appointment power from the executive to the judiciary, as the dominance of the executive in judicial appointments would undermine Judicial Independence.

The principle was then reaffirmed in the National Judicial Appointments Commission (NJAC) case [Supreme Court Advocates-on Record-Association v Union of India, 2015]⁷ where the court struck down the 99th Constitutional Amendment and the National Judicial Appointments Commission Act, holding that if the executive was handed over such a determinative role in appointments to the judiciary violated the basic structure by compromising its independence.

From one perspective, these decisions reinforce the separation of powers by insulating the judiciary from political pressures, given India’s experience during the Emergency imposed by the then Prime Minister, Indira Gandhi. However, critics point out that the collegium system inverts the idea of Separation of Powers by concentrating the authority of appointments within the judiciary itself, creating an arbitrary system of self-selection with limited transparency, raising concerns about accountability and democratic legitimacy.

⁶ Supreme Court Advocates-on-Record Association v Union of India, AIR 1994 SC 268

⁷ Supreme Court Advocates-on-Record Association v Union of India (2015) 5 SCC

Therefore, while judicial independence is undeniably central to the separation of powers, the unchecked expansion threatens to blur the lines between constitutional protection and institutional aggrandisement. To preserve autonomy without its underlying checks and balances is the real challenge.

JUDICIAL REVIEW AS AN ENFORCEMENT OF SEPARATION OF POWERS

The principal mechanism through which the Separation of Powers operates in India is the doctrine of Judicial Review; it ensures that the Legislature and Executive act within the limits prescribed by the Constitution. Unlike the United Kingdom, where there is complete parliamentary sovereignty, the Indian Constitution explicitly empowers the judiciary to invalidate unconstitutional state actions.

The textual foundation of Judicial Review lies in Article 13 of the Constitution of India; it declares that any law inconsistent with or in derogation of fundamental rights shall be void to the extent of such inconsistency [Doctrine of Severability]. Article 13 (2) specifically prohibits the state from making laws that abridge or take away the fundamental rights, and any such law is rendered unconstitutional. This provision establishes the judiciary, with the Supreme Court at the helm of the Judicial System, as the guardian and protector of the Constitution, along with the liberties of the citizens.

The principle was further strengthened through judicial interpretation in *Kesavananda Bharati v State of Kerala* (1973), where the Supreme Court held that Parliament's power to amend the Constitution under Article 368 is subject to judicial review and cannot alter the basic structure of the Constitution. The scope of Judicial Review was further expanded in

I. R. Coelho v State of Tamil Nadu (2007),⁸ where the Supreme Court held that even the Laws placed under the Ninth Schedule are subject to judicial scrutiny if they violate the basic structure of the Constitution. The parliament tried to shield certain laws from scrutiny by placing them beyond judicial examination; however, the court rejected this attempt, holding that the power of Judicial Review in itself is a part of the basic structure and thus cannot be excluded by the parliament.

⁸ *I.R.Coelho By Lrs vs State Of Tamil Nadu & Ors* AIR 2007 SUPREME COURT 861

Similarly, in *Kartar Singh v State of Punjab* (1994),⁹ the Court emphasised that determining the constitutional validity of laws is exclusively a judicial function; the Legislature cannot assume the role of the interpreter of the constitution any more than it can alter the basic structure, as doing so would violate the separation of powers and hence violate the basic structure.

Articles 32 and 226 further strengthen judicial review by granting the Supreme Court and High Courts, respectively, the power to enforce the fundamental rights granted under Part III. Dr B. R. Ambedkar described Article 32 as the “Heart and Soul of the Constitution”, highlighting the significance of individual liberties and the role of Judicial Review in protecting those liberties in the working of a healthy democracy. Through these constitutional provisions and judicial pronouncements, the Judiciary takes up the role of the constitutional arbiter. However, the concentration of interpretive authority into the hands of one institution also generates tensions as critics view the Judiciary’s expansive powers as an encroachment upon democratic decision making, as stated by the former Vice President of India, Mr Jagdeep Dhankhar, who called Article 142 of the Constitution, which gives the Judiciary the power to do “complete justice” equivalent to a Nuclear Missile.

Nevertheless, in the democratic dance of the Republic of India, Judicial Review remains an indispensable asset, ensuring that power remains within the constraints of constitutional limitations rather than at the whims of political majorities.

JUDICIAL SELF-RESTRAINT AND INSTITUTIONAL LIMITS

Separation of powers does not merely restrict the Legislature and Executive; it also requires judicial discipline.

In *P Ramachandra Rao v State of Karnataka* (2002),¹⁰ the Supreme Court considered whether it could prescribe rigid time limits for the disposal of criminal trials in the absence of statutory provisions. The Court held that doing so would amount to judicial legislation, a function belonging to Parliament.

⁹ *Kartar Singh v State of Punjab* (1994) 3 SCC 569

¹⁰ *P Ramachandra Rao v State of Karnataka* (2002) 4 SCC 578.

This decision is significant because it acknowledges that even judicial activism has boundaries. While Article 21 has received expansive interpretation, procedural frameworks ordinarily remain within legislative competence.

CHALLENGES AND TENSIONS

The development of Public Interest Litigation significantly expanded access to justice by relaxing the rules of locus-standi. This strengthened constitutional remedies, especially for marginalised groups. However, critics argue that excessive judicial intervention in policy matters risks blurring institutional boundaries.

The evolution of the Collegium system has enhanced judicial autonomy by reducing executive involvement in judicial appointments. Supporters view it as necessary for independence; critics question its transparency and democratic accountability. The judiciary serves as the ultimate interpreter of constitutional meaning under Articles 32 and 226.

This structure strengthens checks and balances but simultaneously increases judicial prominence. A recurring criticism is that unelected judges sometimes override decisions of elected representatives, raising concerns about democratic legitimacy.

Yet constitutional democracy is not synonymous with majoritarian rule. Courts perform a counter-majoritarian function by protecting minority rights, safeguarding civil liberties, and preventing authoritarian excess.

Thus, the separation of powers in India is neither rigid nor static. It evolves with circumstances, shaped by constitutional morality and institutional balance. It remains a dynamic principle ensuring that no organ becomes supreme, while all continue to function within constitutional limits.

CONCLUSION

The doctrine of Separation of Powers in India is neither rigid nor textual in its origin; it is structural, implied, and developed with judicial prudence. Through various decisions in cases such as *Indira Gandhi v Raj Narain*, *Minerva Mills*, and the *NJAC Case*, the Supreme Court, acting as the guardian of the Constitution, has entrenched this doctrine within the basic structure. Through provisions like Article 13, 32, 50, and 226, the makers of the constitution

have ensured that neither the Parliament nor the Executive may claim unlimited authority and that the sanctity of the Judiciary is preserved in its independence.

Yet the doctrine is not static. Its contours continue to be negotiated in contemporary constitutional adjudication. Through the *State of Tamil Nadu v. the Governor of Tamil Nadu*¹¹ and the subsequent Presidential Reference case of 2025,¹² the Supreme Court addressed the prolonged withholding of assent by the Governor to Bills passed by the Tamil Nadu Legislative Assembly.

While holding that the Governor cannot indefinitely delay the bills passed by the assembly and hence cannot exercise a “pocket veto” while acting under the powers granted to him by Article 200, the court acted as a mediator by reminding the constitutional authorities of their constitutional responsibility.

It reinforced the will of the legislature while affirming that judicial scrutiny at the same time has to be practised with restraint and prudence, thus nullifying the “deemed assent” provision and reinstating the balance of power between the real and the nominal executive, alongside clearly defining the role and extent of interference of the courts. Finally, it underscored that the extent of the doctrine of Separation of Powers is not only exercised horizontally (between the Legislature, Executive and the Judiciary) but also vertically (between the Union and the States).

The Indian model, through the assertion of Judicial Review, expansion of Public Interest Litigation and the process of judicial appointments, has constantly reflected a negotiation between democratic accountability and constitutional guardianship. The vitality of the Separation of Powers in India depends both on judicial vigilance and on institutional maturity and restraint, where each organ respects and acts within its scope of authority and acknowledges the same for others. That is and will be the most dignified virtue of a mature and evolving democracy like India.

¹¹ *The State of Tamil Nadu v The Governor of Tamil Nadu & The Union of India*, 2025 INSC 481

¹² *In re: Assent, Withholding, or Reservation of Bills by the Governor and the President of India (2025)* 16 Special Reference 1, 2025 INSC 1333.