

# Calibrating Constitutional Equilibrium: Addressing Judicial Overreach in India's Separation of Powers Doctrine

Nishant Singh Rawat

Research Scholar, Faculty of Law, University of Delhi

Asst Prof, Lloyd Law College

**Abstract-** India's constitutional design is grounded in a vision of institutional equilibrium, wherein the Legislature, Executive, and Judiciary function as co-equal organs of the State, each entrusted with distinct responsibilities yet integrally bound by the common objective of upholding constitutional governance. This tripartite framework, while borrowing the concept of separation of powers from classical liberal theory, notably adapts it to the Indian context by allowing for a pragmatic overlap in functions. The underlying philosophy is not to build impermeable silos between state organs, but to prevent the centralization of power and ensure that governance operates through a calibrated matrix of checks and balances. The Constitution of India, though silent on an express separation of powers, operationalizes the doctrine through detailed allocation of functions under Articles 53, 74, 122, 123, 124, 141, 162, and others, thereby establishing a system of distributed sovereignty. The architecture reflects both a reverence for parliamentary supremacy and a trust in judicial guardianship, allowing each organ to work autonomously but not in isolation.

**Keywords**— Constitutional Equilibrium; Judicial Overreach; Powers Doctrine;

## I. INTRODUCTION

However, this delicate balance has been increasingly challenged by a growing trend of judicial expansionism in India's post-constitutional jurisprudence. Judicial interventions, which initially emerged as responses to executive inaction or legislative inertia, particularly during the post-Emergency era have progressively evolved into assertive forms of judicial policy-making and administrative supervision. This phenomenon, often described as "judicial overreach," reflects the judiciary's increasing inclination to step beyond traditional adjudication and into matters reserved for the elected branches. While judicial review is an essential mechanism to uphold constitutional values and safeguard individual rights, its excessive or misplaced application can undermine democratic accountability and institutional competence.[1] Courts, when assuming roles such as overseeing public schemes, invalidating legislation without legislative recourse, or engaging in detailed policy framing, risk not only overextending their mandate but also absorbing the democratic legitimacy meant to reside in elected institutions. The constitutional

commitment to the rule of law must be preserved without transforming judicial review into judicial governance.

This growing tension necessitates a fundamental re-evaluation of how the constitutional scheme can be recalibrated to preserve both the independence and the boundaries of the Judiciary. The central normative question is: how can India uphold the integrity of judicial review without permitting it to morph into judicial supremacy?

## II. DOCTRINE OF SEPARATION OF POWERS IN INDIA

The Indian Constitution does not adopt a strict doctrine of separation of powers as found in the American model, which envisages distinct and impermeable boundaries between the three organs of the state. Instead, it opts for a pragmatic and functional approach wherein powers are separated by function rather than structure.[2] This arrangement facilitates a system of coordinated governance, enabling each branch to check and balance the other while cooperating in the larger constitutional mission. The Parliamentary system in India inherently implies that the Executive is a subset of the Legislature and is being drawn from it

and accountable to it under Articles 74 and 75 of the Constitution. Judicial oversight, primarily through the power of judicial review, ensures that laws and executive actions remain within constitutional confines. Article 50 of the Constitution explicitly enjoins the State to separate the judiciary from the executive in public services, particularly at the subordinate court level, thus reflecting the intent to uphold judicial independence even within this interdependent system.[3]

The idea of separation in India is best understood as a "continuum", a theoretical model wherein governance flows across a spectrum of interconnected institutional functions rather than residing in exclusive silos. This notion, as elaborated in political theory by Hans Kelsen and Otto Kirchheimer and referenced in contemporary legal discourse, captures the practical realities of modern statecraft.[4] In India, the judiciary is not a passive interpreter of the law but an active participant in governance, especially through its constitutional and statutory interpretative powers. However, while the continuum allows for institutional cooperation, it also creates opportunities for institutional overreach. When courts undertake executive or legislative functions under the pretext of "justice," "public interest," or "constitutional morality," the fluidity intended to enable checks transforms into an enabler of encroachment. This tendency, though sometimes catalyzed by executive inaction or legislative apathy, raises concerns about the erosion of institutional integrity and balance.

Judicial innovation and activism, most prominently through the instrument of Public Interest Litigation (PIL) and the extraordinary powers under Article 142, have yielded transformative jurisprudence.[5] Through PILs, courts have expanded fundamental rights, enforced environmental norms, and directed administrative reforms.[6] Article 142, which empowers the Supreme Court to pass orders necessary for "complete justice," has been instrumental in addressing lacunae in law or administration. However, this judicial creativity has sometimes traversed into legislative or executive territory. Examples include court-mandated bans (e.g., on firecrackers or diesel vehicles)[7], restructuring of governance mechanisms (such as in police reforms)[8], and even judicially appointed monitoring committees or administrators.[9] These

acts, while often driven by laudable objectives, raise normative concerns about democratic legitimacy, institutional accountability, and judicial overreach. In bypassing legislative debates or administrative planning, such interventions risk centralizing constitutional authority in an unelected and largely unaccountable institution.

The asymmetry in accountability mechanisms between the Judiciary and the other two organs accentuates this issue. The Legislature and Executive operate under the constant gaze of public scrutiny, electoral consequences, and media attention. Ministers and legislators are answerable through questions, motions, debates, and elections. In contrast, the Judiciary by constitutional design enjoys security of tenure, financial autonomy, and immunity from political pressures. While this independence is crucial for upholding the rule of law, it must not translate into functional impunity.[10] As courts increasingly issue directives that carry legislative or administrative weight, the absence of counterbalancing accountability threatens the equilibrium of the Constitution. Thus, the doctrine of separation of powers in India needs neither rigid compartmentalization nor unfettered fluidity, but a careful reaffirmation of constitutional roles. Normative boundaries must be restored not to weaken judicial power but to preserve the legitimacy of all three branches and ensure governance remains responsive, democratic, and constitutionally sound.

### III. JUDICIAL OVERREACH: CONCEPT AND MANIFESTATIONS

Judicial overreach refers to instances where the judiciary, in the exercise of its interpretive powers cross the boundaries and goes beyond its constitutional mandate to encroach upon the legislative or executive domains. While it is very much natural for courts to address legal gaps and executive inaction, the usurpation of core policy or legislative functions constitutes a breach of constitutional propriety. This phenomenon often takes birth when courts issue directions that are not merely clarificatory but normative like, say prescribing rules, frameworks, or even in appointments.

The NJAC judgment[11] serves as a pivotal case study in this regard. The 99th Constitutional

Amendment[12] and the NJAC Act, passed unanimously by Parliament and ratified by a majority of states, sought to reform the opaque collegium system of judicial appointments. Yet, the Supreme Court struck it down, invoking the independence of the judiciary as part of the basic structure. Critics argue that the Court effectively declared itself the sole judge of judicial appointments, thereby negating a democratic consensus and undermining legislative intent.

Beyond appointments, overreach is more evident in cases where the judiciary imposes structural solutions upon complex administrative challenges. For example, court-monitored investigations[13], judicial guidelines on governance structures[14], and creation of advisory bodies by judicial fiat suggest a shift from adjudication to administration. While motivated by noble ends, such interventions erode the principle of institutional specialization, where each organ is best suited to perform its own role.[15]

Judicial overreach also undermines the principle of separation by disrupting constitutional federalism. Courts have occasionally entered into domains reserved for state legislatures, issuing directives that affect state finances, appointments, and law-making. The net result is a perceived judicial centralism where concentrating power within the Supreme Court and High Courts and marginalizing the autonomy of other constitutional authorities. This centralization is constitutionally anomalous and democratically undesirable.

#### IV. IMPACT OF JUDICIAL OVERREACH ON CONSTITUTIONAL HARMONY

The Indian Constitution, inspired by Montesquieu's doctrine of separation of powers, does not enforce a rigid demarcation but rather orchestrates a dynamic interaction among the legislature, executive, and judiciary. This fluidity, referred to as a continuum in political theory, acknowledges that the demarcations between legislative rule-making, administrative enforcement, and judicial adjudication are often permeable and overlapping.[16] The judiciary's role, originally envisioned as a guardian of the Constitution and interpreter of law, has increasingly assumed activist and policy-making functions, leading to a phenomenon widely termed as judicial overreach. This overreach, while occasionally necessary to

correct executive excesses or legislative inaction, often disrupts the constitutional equilibrium by appropriating the functional space of other organs. Political analysts now view these functions as classes in want of a continuum, indicating that the older analytical labels fail to account for the hybrid and cross-functional tasks the organs perform today.[17] The problem arises when this hybridism becomes unilateral, particularly when the judiciary begins to legislate or administer under the guise of interpretation.

The case of *State of Tamil Nadu v. Governor of Tamil Nadu*[18] exemplifies how judicial intervention, even if constitutionally grounded, can expose the fragility of institutional interplay. The Governor's prolonged withholding of assent to ten bills passed by the Tamil Nadu Legislative Assembly raised questions not only about executive accountability but also about the extent of permissible judicial remedy. As per Article 200 of the Constitution[19], the Governor may assent, withhold assent, or return a bill for reconsideration. However, the indefinite delay without recourse to any of these options precipitated a constitutional crisis. The Supreme Court was called upon to resolve what was fundamentally a political impasse, thereby drawing it into a domain where judicial competence intersects awkwardly with executive discretion. The judgment, though seeking to assert constitutional propriety, also highlighted how the judiciary, by stepping in too frequently to compensate for executive delays or lapses, ends up being entangled in precisely those political quagmires that the doctrine of separation sought to avoid.[20]

One of the most profound consequences of such judicial overreach is the erosion of public accountability structures. Unlike the legislature and executive, whose authority derives from electoral mandate and who are answerable to the people through periodic elections, the judiciary enjoys tenure-based independence and is insulated from direct public scrutiny. When courts pronounce on issues with policy implications or effectively mandate administrative actions, the democratic deficit becomes glaring. The public cannot "vote out" judges, and judicial errors or ideological biases are difficult to rectify without compromising judicial independence. Consequently, the judiciary risks accruing political functions without being

subjected to corresponding democratic checks, which undermines its institutional legitimacy. This is particularly problematic in a constitutional democracy where the judiciary is both the ultimate interpreter of the Constitution and a custodian of fundamental rights.[21] If it is seen as overstepping its remit, especially by encroaching upon policy or political matters, it could fuel public resentment, lead to accusations of partisanship, and weaken the perception of judicial neutrality.

Finally, from an institutional perspective, the expansion of judicial discretion places significant operational burdens on the judiciary itself. Courts, originally designed for adjudicating disputes and interpreting law, now find themselves monitoring the implementation of welfare schemes, ordering bureaucratic restructuring, and at times even prescribing administrative timelines.[22] This not only distracts from their core function that is dispensing timely and fair justice but also results in administrative fatigue and case backlogs. The judiciary's institutional capital is finite, and the diversion of attention from adjudication to governance dilutes both efficiency and effectiveness. Re-establishing constitutional harmony, therefore, requires judicial self-restraint and a renewed commitment to institutional boundaries. The constitutional vision is not of hierarchical supremacy but of coordinated governance where each organ complements the other without usurping its space. The enduring challenge lies in ensuring that judicial vigilance does not morph into judicial paternalism, and that the pursuit of justice does not derail the structural integrity of constitutional governance.

#### V. THE NEED FOR HARMONIOUS BALANCE

The doctrine of separation of powers in the Indian constitutional framework was never intended as an absolutist doctrine, but as a system of coordinated governance where the legislature, executive, and judiciary function in mutual deference. The judiciary's task is not to supplant the will of the people, as represented by Parliament, but to interpret the Constitution faithfully and to ensure that the democratic framework is not subverted. As Hans Kelsen theorized, modern constitutional systems operate along a normative continuum as a gradated structure where legislative rule-making, executive implementation, and judicial

interpretation overlap rather than stand in watertight compartments.[23] Otto Kirchheimer also highlighted that rigid compartmentalization is unrealistic in contemporary governance but warned against the collapse of all functional boundaries, which undermines institutional legitimacy.[24] Thus, while functional overlap may be inevitable in complex democracies, the principle of constitutional morality requires each branch to respect the domain of the other, especially when legislative competence is unequivocal.

Restoring constitutional balance thus requires purposeful reform. One possibility is to statutorily define areas of administrative conduct where courts must exercise restraint, especially in cases involving policy trade-offs and resource allocation.[25] Another option is to revisit the National Judicial Appointments Commission (NJAC) model, not in its original form which was struck down in *Supreme Court Advocates-on-Record Association v. Union of India*, [26] but through a redesigned structure that upholds judicial independence while ensuring accountability through limited executive and legislative oversight. At the same time, the Legislature and Executive must reclaim their roles by actively addressing governance voids and ensuring responsive administration, thereby reducing the judiciary's compulsion to intervene. A more engaged polity and responsible government would diminish the judiciary's burden to step into governance or legislative lacunae.

The Supreme Court has acknowledged this principle of restraint in multiple rulings. In *Divisional Manager, Aravali Golf Club v. Chander Hass*, [27] the Court explicitly warned against judicial overreach into executive policy, emphasizing that judges must "remain within their constitutional limits." However, these judicial sentiments need institutional expression. It is time to codify conventions and enforceable guidelines that embed restraint as a judicial ethic, just as Public Interest Litigations (PILs) normalized judicial activism in the 1980s. Possible mechanisms include internal judicial codes, review protocols, or constitutional benches designed to evaluate policy implications before adjudicating them. Furthermore, consistent use of doctrines of deference such as political question or institutional competence can limit courts from entering domains unsuited to judicial inquiry, such as fiscal policy or administrative prioritization.



This rebalancing is not about disempowering the judiciary but restoring functional supremacy within constitutional boundaries. Each organ of government must act with fidelity to the Constitution, not as competitors but as co-trustees of public power. A pragmatic reinterpretation of separation of powers rooted in constitutional wisdom, not rigid formalism, attempts to protect the institutional legitimacy of each branch.[28] Ultimately, accountability must flow not just from one organ to the other, but from all organs to the people and the Constitution. A calibrated constitutionalism, drawing from India's lived democratic experience and informed by institutional dialogue, is the only sustainable path to preserving constitutional harmony in an era of increasing complexity.

## VI. CONCLUSION

The Indian constitutional architecture is a product of thoughtful compromise which is deliberately flexible to accommodate diverse political realities, yet firmly rooted in principles of institutional dignity and mutual respect. It draws from Westminster traditions, yet embeds judicial review to ensure constitutional supremacy. Within this framework, the judiciary serves a critical function as the interpreter of the Constitution and the final arbiter of rights. However, when this adjudicatory role gradually expands into realms traditionally occupied by the executive or legislature such as policy formulation, administrative oversight, or political resolution, it leads to what has come to be termed judicial overreach. This overreach, while often well-intentioned and even welcomed during institutional paralysis, can unsettle the delicate balance between constitutional organs. The problem is not the existence of judicial power but its uncalibrated expansion. Preserving judicial legitimacy requires not disempowerment but discipline: an internalized ethic of restraint, rooted in the understanding that courts are guardians of the constitutional order, not substitutes for political governance.

The continuum of state functions, as identified by scholars like Hans Kelsen and Otto Kirchheimer, accurately reflects the modern administrative state where functions often bleed into one another. However, acknowledging this overlap does not entail dissolving institutional boundaries. The

National Judicial Appointments Commission (NJAC) judgment, though driven by the aim to preserve judicial independence, foreclosed a valuable opportunity to bring greater transparency and democratic accountability to judicial appointments. Similarly, the recent confrontation between the State of Tamil Nadu and the Governor, and the subsequent judicial intervention, highlights the precarious position courts are placed in when compelled to resolve executive-legislative deadlocks. The judiciary's response, while constitutionally necessary, reveals the paradox of the court acting to uphold equilibrium while risking overstepping its own constitutional boundaries. These examples affirm that safeguarding constitutional harmony requires not just judicial prudence, but reciprocal accountability from the political branches as well.

Ultimately, recalibrating constitutional equilibrium is a collective responsibility. The legislature must reclaim its law-making space through active, responsive policymaking. The executive must strengthen institutional delivery mechanisms and uphold constitutional obligations without inviting litigation as a form of administrative redress. The judiciary, in turn, must evolve from the current phase of hyper-activism to one of principled pragmatism asserting its authority, when necessary, but refraining from substituting its judgment for that of elected representatives. Constitutional morality must guide all three branches to fulfill their roles not in competition, but in constructive dialogue. As Dr. B.R. Ambedkar warned, the Constitution can only be as effective as those who operate it.[29] In that spirit, the future of India's constitutional democracy depends not on institutional supremacy, but on a shared commitment to constitutional fidelity, functional harmony, and the foundational ideal of "We the People."

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the Bill or any specified provisions thereof and, in particular, will consider the desirability of introducing any such amendments as he may recommend in his message and, when a Bill is so returned, the House or Houses shall reconsider the Bill accordingly, and if the Bill is passed again by the House or Houses with or without amendment and presented to the Governor for assent, the Governor shall not withhold assent therefrom.'

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