



The Indian Journal for Research in Law and Management

Open Access Law Journal – Copyright © 2025

Editor-in-Chief – Dr. Muktai Deb Chavan; Publisher – Alden Vas; ISSN: 2583-9896

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MYTH OR REALITY: THE INDIAN CONSTITUTION'S SEPARATION OF POWERS?

~ *Anshu Singh*

ABSTRACT

The foundation of democratic governance is the theory of separation of powers, which maintains equilibrium between the legislative, executive, and judicial branches. Although Montesquieu's *The Spirit of Laws* (1748) is the source of the idea, its use in India shows a practical adaptation rather than rigid compartmentalization. Although the notion is not expressly embodied in the Indian Constitution, it is incorporated through a system of checks and balances. Examining significant Supreme Court rulings like *Ram Jawaya Kapur v. State of Punjab*, *Kesavananda Bharati v. State of Kerala*, and *Indira Nehru Gandhi v. Raj Narain*, this essay explores the constitutional and judicial evolution of the theory in India. It examines how the three organs' functions overlap and assesses current issues like legislative lethargy, executive domination, and judicial activism. The study finds that the Indian model represents a flexible yet effective form of separation—characterized by interdependence, accountability, and institutional balance. Ultimately, the doctrine in India is not a myth but a living constitutional principle, evolving through judicial interpretation and political practice to preserve democracy and the rule of law.

Keywords: Separation of Powers, Indian Constitution, Judiciary, Checks and Balances, Judicial Review, Basic Structure Doctrine.

INTRODUCTION

The concept of separation of powers is one of the foundational principles of modern constitutional governance. First it was articulated by Montesquieu in his classic work *The Spirit of Laws* (1748), the principle states that the legislative, executive, and judicial powers of the State should be vested in distinct organs to prevent the concentration of authority and safeguard individual liberty. The rationale lies in the maxim that “power should act as a check to power.” In countries following this doctrine strictly—such as the United States—each organ operates within its defined limits, ensuring mutual checks and balances.

In the Indian context, however, the doctrine has been adopted in a modified form. The framers of the Constitution realized that rigid separation would be impractical to Indian parliamentary democracy where the executive is drawn from and accountable to the legislature. Instead, the Indian Constitution establishes a system of functional overlap with built-in mechanisms for mutual control and coordination among the three organs. The result is not a complete separation but a harmonious balance designed to promote efficiency without compromising accountability.

OBJECTIVES OF THE STUDY

1. To analyze the constitutional provisions reflecting separation of powers.
2. To examine judicial interpretations and key Supreme Court cases.
3. To assess the extent of overlap among the three organs of government.
4. To evaluate whether the doctrine is effectively applied in practice.

CONSTITUTIONAL FRAMEWORK OF SEPARATION OF POWERS IN INDIA

The Indian Constitution, though does not explicitly enshrining the doctrine of separation of powers, but embodies it through its structure, spirit, and various provisions that define the powers and limitations of the legislature, executive, and judiciary. Unlike the United States, where the separation of powers is absolute, the Indian model is **functional and flexible**, ensuring **coordination rather than isolation** among the three organs.

LEGISLATIVE POWERS

The **legislative authority** of the Union and the States is provided under **Articles 79–122** and **Articles 168–212**, respectively. The Parliament and State Legislatures are entrusted with law-making powers as per the distribution of subjects in the **Seventh Schedule**—Union List, State List, and Concurrent List. The legislature also performs oversight functions by questioning the executive, passing motions, and approving budgets. The **executive's accountability** to the legislature is the hallmark of India's parliamentary democracy, ensuring that legislative supremacy remains balanced by executive responsibility.

EXECUTIVE POWERS

The **executive power** of the Union is vested in the **President under Article 53**, and that of the States in the **Governor under Article 154**. The real executive authority, however, rests with the **Council of Ministers**, headed by the Prime Minister or Chief Minister, who are collectively responsible to the legislature under **Article 75(3)** and **Article 164(2)**. The executive implements laws enacted by the legislature, but it also performs limited legislative functions, such as issuing **ordinances under Articles 123 and 213** and **framing subordinate legislation**, reflecting a deliberate functional overlap within constitutional limits.

JUDICIAL POWERS

The **judicial powers** are vested in the **Supreme Court (Articles 124–147)**, **High Courts (Articles 214–231)**, and **subordinate courts (Articles 233–237)**. The judiciary enjoys

institutional independence through **security of tenure, fixed salaries, and protection from arbitrary removal**, ensuring impartial adjudication. Moreover, **Article 50** of the Directive Principles of State Policy directs the State to separate the judiciary from the executive, reflecting the framers' intent to maintain judicial autonomy as a pillar of the rule of law.

MUTUAL RESTRICTIONS AND IMMUNITIES

The Constitution also establishes safeguards to prevent encroachment among organs. **Articles 121 and 211** prohibit the legislature from discussing the conduct of judges, while **Articles 122 and 212** restrict judicial interference in legislative proceedings. Similarly, **Articles 105 and 194** provide legislative privileges, ensuring functional independence.

Thus, while the Indian Constitution does not rigidly enforce separation of powers, it creates a **delicate equilibrium of autonomy and accountability**. Each organ performs its core functions independently but remains subject to constitutional checks—preserving the democratic spirit and preventing the concentration of power.

JUDICIAL INTERPRETATION AND DEVELOPMENT OF THE DOCTRINE

The Supreme Court of India has played a pivotal role in interpreting and reinforcing the doctrine of separation of powers.

Ram Jawaya Kapur v. State of Punjab (1955)

This was one of the earliest cases to address the doctrine in the Indian context. The Supreme Court observed that the Constitution does not rigidly separate the three branches of government as in the United States. Instead, it establishes a **functional demarcation** among them. Chief Justice B.K. Mukherjea held that while the executive can exercise legislative or judicial functions in a limited capacity, it must not encroach upon the essential powers of other organs. This judgment laid the foundation for the Indian understanding of separation of powers as **not absolute but complementary**.

Kesavananda Bharati v. State of Kerala (1973)

In this landmark judgment, the Supreme Court introduced the **Basic Structure Doctrine**, holding that Parliament's power to amend the Constitution under Article 368 does not extend to altering its basic features. The Court explicitly recognized the **separation of powers** as one such basic feature, thereby making it immune from legislative amendment. This decision marked a turning point, elevating the doctrine from a mere principle of governance to a **constitutional safeguard**.

Indira Nehru Gandhi v. Raj Narain (1975)

This case arose from the constitutional amendment that sought to immunize the election of the Prime Minister from judicial review. The Supreme Court struck down the amendment, emphasizing that judicial review is part of the basic structure and that Parliament cannot assume

judicial functions. Justice Khanna reaffirmed that separation of powers is essential to prevent the subversion of the Constitution and to uphold the rule of law.

I.R. Coelho v. State of Tamil Nadu (2007)

The Court reiterated that even laws placed under the Ninth Schedule are subject to judicial review if they violate the basic structure. The judgment reaffirmed that **judicial review and separation of powers** are integral to constitutional governance. The judiciary thus asserted its role as the final interpreter and guardian of the Constitution.

State of Bihar v. Bal Mukund Shah (2000)

In this case, the Court cautioned that the judiciary should also exercise restraint and avoid intruding into the legislative or executive domains. The decision emphasized **mutual respect and institutional balance** among the three organs, recognizing that each has constitutionally assigned functions that must be performed independently.

OVERLAPS AND INTERACTIONS AMONG THE THREE ORGANS

Legislative and Executive Overlaps

- The **executive participates in law-making** through its power to propose bills and issue ordinances under Articles 123 and 213.
- **Delegated legislation** enables the executive to frame rules and regulations under legislative authority.
- The Council of Ministers is collectively responsible to the Parliament, ensuring legislative control over the executive.

Executive and Judicial Overlaps

- The **President and Governors appoint judges** of the higher judiciary (Articles 124 and 217).
- The executive also exercises **quasi-judicial powers** through tribunals and commissions.
- Judicial review acts as a check on executive action, as seen in cases like *Vineet Narain v. Union of India* (1998), which mandated independence of investigative agencies.

Judiciary and Legislature

- The judiciary interprets laws made by the legislature and may strike down those that violate the Constitution.
- However, the legislature can re-enact laws with modifications to overcome judicial objections, as seen in the aftermath of *Kesavananda Bharati*.

These overlaps are deliberate, intended to create a **system of checks and balances** that ensures coordination without concentration of power.

JUDICIAL ACTIVISM AND INSTITUTIONAL TENSIONS

In recent decades, the judiciary has often expanded its role through **Public Interest Litigations (PILs)** and **suo motu actions**. This proactive stance has been both celebrated and criticized.

Proponents argue that judicial activism fills the vacuum left by legislative and executive inaction, especially in areas like environmental protection, human rights, and governance reforms. Cases such as *Vishaka v. State of Rajasthan* (1997) and *Prakash Singh v. Union of India* (2006) exemplify the judiciary's role in policy-making where legislative measures were absent.

Critics, however, label this as **judicial overreach**, arguing that it disturbs the constitutional equilibrium. Instances where courts have intervened in administrative decisions or legislative domains—such as bans, appointments, or environmental policies—raise questions about institutional boundaries.

The balance, therefore, lies in maintaining **judicial restraint** while ensuring that constitutional values are not compromised.

CONTEMPORARY DEVELOPMENTS AND CHALLENGES

Ordinance-Making and Executive Dominance

The frequent use of ordinance powers (Article 123) by the executive, bypassing legislative debate, has raised concerns about democratic accountability. Judicial scrutiny of such ordinances, as in *D.C. Wadhwa v. State of Bihar* (1987), reflects an ongoing tension between efficiency and legality.

Collegium System and Judicial Independence

The collegium system for judicial appointments, established through *Supreme Court Advocates-on-Record Association v. Union of India* (1993), reduced executive influence but has been criticized for lack of transparency. The striking down of the National Judicial Appointments Commission (NJAC) in 2015 reaffirmed the judiciary's insistence on independence, yet reignited debates about accountability.

Role of Tribunals

Tribunals, which combine administrative and judicial functions, blur traditional boundaries. While intended to provide specialized justice, their increasing control by the executive challenges the principle of separation of powers, as noted in *Madras Bar Association v. Union of India* (2020).

Critical Analysis

The doctrine of separation of powers in India operates as a **constitutional ideal tempered by pragmatism**. The framers envisioned a “**cooperative separation**”, recognizing that complete independence of organs would be impractical in a parliamentary democracy.

However, the balance is delicate.

- **Judicial overreach** may weaken democratic accountability.
- **Executive dominance** through ordinances or delegated legislation can undermine parliamentary sovereignty.
- **Legislative passivity** erodes democratic deliberation.

Therefore, the effectiveness of the doctrine depends not merely on constitutional design but on **institutional self-restraint and mutual respect**. The courts’ assertion that separation of powers is part of the basic structure ensures that no organ can usurp another’s core function, preserving the constitutional equilibrium.

CONCLUSION

The doctrine of separation of powers under the Indian Constitution is **not a myth but a living constitutional reality**, albeit with necessary flexibility. It serves as a **principle of coordination, accountability, and balance** rather than strict division. The Indian model emphasizes harmony among the legislature, executive, and judiciary, each functioning within its constitutional limits while ensuring mutual checks.

In practice, the success of this doctrine depends on the conduct of institutions. When each organ respects the constitutional boundaries and refrains from overstepping, the doctrine strengthens democracy and the rule of law. The Indian experience thus demonstrates that separation of powers, though not absolute, remains **the backbone of constitutional governance**—a dynamic equilibrium between independence and interdependence.

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