
THE BLURRED LINES OF GOVERNANCE: A CRITICAL ANALYSIS OF SEPARATION OF POWERS IN THE INDIAN CONSTITUTIONAL FRAMEWORK

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ABSTRACT

The doctrine of separation of powers, historically known as trias politica, finds its early origins in ancient Greek political thought and is traditionally attributed to Montesquieu. Elements of this doctrine can also be traced to ancient Indian governance structures, including references in the Vedas and the functioning of royal councils during monarchical rule, where distinct authorities were entrusted with judicial, executive, and administrative responsibilities. While the underlying spirit of the doctrine remains relevant, its application has undergone significant transformation in modern constitutional democracies. Absolute separation of powers is neither practicable nor desirable, as some degree of functional overlap among the legislature, executive, and judiciary is inevitable and necessary for effective governance. Such overlap facilitates checks and balances; however, unchecked encroachment by one organ into the essential functions of another may undermine constitutional balance. This paper undertakes a doctrinal and analytical examination of the evolving contours of the separation of powers in India, focusing on instances where functional boundaries have blurred. Relying primarily on constitutional provisions, judicial decisions, and secondary sources, the study seeks to identify circumstances that trigger institutional overreach and to assess the mechanisms available to prevent erosion of this foundational constitutional principle. Ultimately, this paper argues that the Indian model, while intentionally flexible, faces persistent stress at key pressure points particularly judicial appointments and tribunal independence requiring not just doctrinal clarity but a renewed institutional commitment to constitutional spirit over political convenience.

Keywords: Separation of Powers, Trias Politica, Indian Constitution, Checks and Balances, Judicial Independence, Executive Encroachment, Basic Structure Doctrine, Tribunal Independence, Constitutional Governance.

1. Introduction

The doctrine of separation of powers occupies a foundational position in constitutional and administrative law, serving as a safeguard against concentration of authority and arbitrariness in governance. However, its application in modern constitutional systems has never been absolute. Contemporary governments function as integrated and organic entities, making rigid compartmentalisation of legislative, executive, and judicial powers neither practical nor desirable. Historical experience demonstrates that strict separation often hampers effective governance, whereas cooperation, coordination, and functional overlap among the three organs are essential for the smooth functioning of the State.

In the Indian constitutional framework, the doctrine was actively debated during the Constituent Assembly deliberations, including proposals for its explicit incorporation through a separate constitutional provision. These proposals were ultimately rejected, reflecting a conscious choice to adopt a flexible model rather than a rigid one. Consequently, while the Constitution does not expressly mandate a strict separation of powers, it embodies the principle through a carefully structured scheme of checks and balances dispersed across various constitutional provisions. This approach recognises that limited overlap among State organs, when exercised within constitutional boundaries, serves as a mechanism of accountability rather than a threat to democratic governance.

Scholarly discourse has consistently acknowledged this evolved understanding of separation of powers. Supriya Rani observes that Montesquieu's classical formulation continues to operate in a modified form, characterised by structural and functional separation rather than absolute insulation of powers. She emphasises that institutional overlap is generally constitutionally permissible and becomes problematic only in exceptional circumstances, with checks and balances operating as the primary corrective mechanism. Similarly, Nidhi Singh and Anurag Vija, adopting a constitutional perspective, argue that the Indian Constitution envisages a separation of functions rather than powers.¹ Drawing comparisons with the United States model, they highlight the role of the basic structure doctrine in India as a constitutional safeguard preventing any organ from usurping the essential functions of another.²

¹ Nidhi Singh & Anurag Vija, *Basic Structure as a Safeguard: The Indian Perspective*, 12 INDIAN J. CONST. L. 112 (2018).

² Supriya Rani, *Separation of Powers in India: A Modified Model*, 7 J. INDIAN L. & SOC'Y 45 (2015)

From a comparative public law standpoint, Rio de Janeiro advocates a contextual and nuanced approach to analysing separation of powers, cautioning against rigid legal formalism in the assessment of political and constitutional developments. He argues that constitutional practices must be understood within their broader political and institutional settings, even if such an approach invites criticism, as it allows for a more comprehensive understanding of governance dynamics.

Despite these scholarly contributions, existing literature largely focuses on the theoretical justification of functional overlap, the operation of checks and balances, and the protective role of the basic structure doctrine. There remains limited clarity on the precise circumstances that trigger the blurring of separation of powers in practice. In particular, insufficient attention has been paid to identifying the point at which permissible overlap transforms into unconstitutional encroachment, and to examining the conditions under which established safeguards begin to fail.³

This paper proceeds on the premise that while complete separation of powers is neither feasible nor desirable, the erosion of essential functional boundaries raises serious constitutional concerns. It seeks to critically examine the causes and manifestations of blurred institutional boundaries in India, the extent to which one organ may legitimately exercise oversight over another, and the criteria used to determine when such action amounts to unconstitutional intrusion. Through an analysis of constitutional provisions and judicial pronouncements, the study underscores the contemporary relevance of separation of powers as a dynamic doctrine grounded in checks and balances rather than rigid division.

2. Understanding inception of blurring of separation of powers in India.

2.1. Constitutional Design and Deliberate Ambiguity

As mentioned earlier it is not possible to apply the principle of separation of powers in a strict sense and this was known even to the drafters of our constitution. Although this is true, one fact that was universally agreed upon at that time was that independence of judiciary was of utmost importance to maintain balance between the three arms of government. When our Constitution was first drafted, intent was to secure the above independence through inclusion

³ Charles de secondat, baron de montesquieu, the spirit of laws (Thomas Nugent trans., Hafner Publ'g Co. 1949) (1748).

by way of DPSP. During revision of our Constitution Mr. K.T Shah advocated that Article 40-A of the Indian Constitution be altered to include total separation of powers⁴. To this Shri K. Hanumanthaiya opposed saying it would cause our form of government to shift from parliamentary form to the nature of presidential executive, bringing such a change would require significant alterations to be made to structure of the Constitution and was not desirable at that stage. However separation of powers between executive and judiciary has been mentioned by way Article 50.

One of the most essential feature for ensuring democracy in India was assuring independence of judiciary through the Constitution itself. This at the same time does not lead to arbitrariness as judiciary is accountable to the Constitution. Therefore the idea was that even though legislative and executive are interconnected judiciary should be made responsible to ensure separation of essential functions. This gave rise to what is today known as “system of checks and balances”. It was observed by DR. Ambedkar that political background of India during British regime highly influenced the formation of government.

2.2. Executive Control Over the Judiciary: Provisions and Concerns

The main threat to separation of powers in India has been executive control over judiciary, especially in cases where governmental litigation and executive responsibilities are involved. There is always an element of fear that the Executive would use its powers to turn the tide in their favor during judicial hearings and also to gain immunity from public scrutiny. This may also involve political parties having undue influence upon Government decision-making.

Today the number of cases coming up involving the State are much higher than those in the past. This has caused superior courts such as the Supreme court to come under a lot of political pressure. The courts have to endure such situations while maintaining their unbiased outlook. Keeping this in mind, it goes without saying that government cannot be allowed to have complete control over selection of judges or it would steadily erode Judiciary’s independence.

There are various provisions in our Constitution that entrust the Executive with Judicial powers, for example Article 102 & 103 which deals with disqualification of a member of parliament. Such matters are referred to the president, but it is the election commission whose

⁴ Sunita Zalpuri, Training Package on Administrative Law, Legal Brief, pp. 18-20.

decision is considered final. Talking about Article 72 & 161, here again executive has the power to influence decision making of the President or Governor respectively.⁵

Executive has power to hold inquiry into charges against any person holding a civil post under the Union/State and can also award punishment by virtue of Article 311 of our Constitution. They also have the Judicial power to staff the tribunals set up under Article 323A and 323B to discharge their functions.

There are several other factors through which Executive exercise control over Judiciary such as, it is the President who decides the number of judges to be appointed in HC and also decides the chief justice of both HC and SC. It was held in the case of *Veeraswami v. Union of India*⁶ that Executive has power to prosecute Judges under Prevention of Corruption Act.

3. Judicial Control over Executive

It was stated in the case of *BALCO Employees Union v UOI*⁷ that Judiciary by virtue of its power of Judicial review can direct the Government to comply with constitutional or statutory measures. It was observed that the Judiciary is reluctant to interfere in policy matters. Policy concerns are mainly dependent of the Government in power and are subject to frequent change with the change in political scenario. Although many a times such sudden changes in policies have a negative impact on established interests, the Judiciary cannot do much unless there is an illegality committed. The courts have to proceed with caution as policy matters are decided by experts in their particular field.

Since the Executive have a upper hand in matters concerning policy due to the technical nature of the subject, the Judiciary in extreme cases is required to set up committees to monitor implementation of policies. A good example for the aforesaid is the case of *Ram Jethmalani V UOI*⁸ in which a high-level Special Investigation Team was set up acknowledging the Government's failure to investigate effectively.

4. Encroachment on Judicial Independence: Historical and Contemporary Concerns

In the recent years there have been several instances which raised a question regarding

⁵ M.P. JAIN, *PRINCIPLES OF ADMINISTRATIVE LAW* (Wadhwa & Co., Nagpur 2007).

⁶ *K. Veeraswami v. Union of India*, (1991) 3 S.C.C. 655 (India).

⁷ *BALCO Employees' Union v. Union of India*, (2002) 2 S.C.C. 333 (India).

⁸ *Ram Jethmalani v. Union of India*, (2011) 8 S.C.C. 1 (India).

independence of Judiciary. Since Judiciary is the body that acts as a barrier between Executive's misuse of power and the citizens, its independence is of great importance. However The Executive, as well as external pressures and prejudices, impede the independence of the Judiciary.

Tracing back into history can reveal several facts that are no less than shocking, to the common man. After the Kesavnanda Bharti⁹ decision several of the senior judges involved in that case were superseded, while the dissenter was granted with the office of CJI because the judgment had the effect of curtailing authority to modify Constitution. Many judges resigned in protest of the same. In 1975 emergency was declared and there was outright infringement of fundamental rights but the Judiciary had failed to guard the interest of its people. Several High court judges who stated that the Government should be unable to do so were reassigned to different courts. The SC itself gave a decision in favour of the Government while overruling the verdict of the HC. Justice H.R Khanna who was the lone dissenter was punished by denying him what was rightfully his, nomination as CJI.

Judicial Activism has also taken a negative turn, where judges have used all the interpretative tools in their arsenal to vest powers of appointment, confirmation and transfer of Judges with the executive through a series of judgements including public interest litigation ¹⁰

Right after the judgment regarding challenges to the law which governs the quasi-judicial tribunals, Justice Gogoi was nominated as a member of Rajya Sabha. This is no doubt a form of post-retirement benefit but it is certainly not the first time such a thing has happened. Even during Nehru's regime, Justice Baharul who after becoming a SC judge later on became a member of Parliament. Several other judges such as Justice Hidayatullah and Justice Ranganath Mishra were offered important posts in the Executive. Justice Gogoi was involved in various important decisions just before his retirement which include the Rafale Deal, the Ayodhya Temple issue, and the Assam NRC case, all of which were decided in the Government's favour. The question is whether the retired judges are nominated because of their credibility or because of a favour they may have rendered to the Government. These selections, therefore, call into doubt the Judiciary's credibility and independence.¹¹

⁹ Kesavananda Bharati v. State of Kerala, (1973) 4 S.C.C. 225 (India).

¹⁰ N Jain, Principles of Administrative Law, W&C,01, 24-16,(2007)

¹¹ DURGA DAS BASU, INTRODUCTION TO THE CONSTITUTION OF INDIA (25th ed., LexisNexis 2021).

5. Analysis of Recent Case Laws

5.1. *Judicial Boundaries and Tribunal Independence: From Madras Bar Association to the Tribunals Reforms Act, 2021*

In *Madras Bar Association v. Union of India*¹², the Supreme Court struck down Sections 12 and 13 of the *Tribunal Reforms Ordinance, 2021*, finding them violative of Articles 14 and 21 of the Constitution for impinging upon the independence of the judiciary, a principle implicit in Article 50. The Court held that provisions prescribing short tenures and granting excessive executive control over appointments undermined the autonomy of tribunals. This marked the seventh iteration of a protracted judicial dialogue aimed at insulating quasi-judicial bodies from executive influence, a sequence commencing with *Union of India v. R. Gandhi*¹³. Significantly, the Court clarified that its intervention was not an overreach but a necessary contribution to inter-institutional discourse, intended solely to uphold the constitutional vision of robust and independent adjudicatory mechanisms.

This judicial delineation, however, was met with a legislative reassertion. Parliament responded by enacting the *Tribunals Reforms Act, 2021*, which reinstated provisions concerning tenure and appointment terms that were substantively similar to those invalidated. This legislative reiteration ignited a fresh constitutional clash, widely interpreted as the executive-legislature testing the boundaries established by the judiciary. The ensuing legal challenges underscore a persistent and deep-seated struggle to reconcile administrative efficiency with the non-negotiable constitutional imperative of an independent adjudicatory framework.

5.2. *Judicial Restraint in Law-Making: Ashwani Kumar v. Union of India*¹⁴

The principle of judicial restraint was explicitly affirmed in *Ashwani Kumar v. Union of India* (2019). The petitioner sought a writ of mandamus directing Parliament to enact a consolidated law on human rights in line with international conventions. The Supreme Court, led by Justice Gogoi, declined to issue such a directive, firmly stating that it is not within the Court's constitutional remit to direct the legislature on the specifics of law-making. The Court observed

¹² *Madras Bar Ass'n v. Union of India*, (2021) 8 S.C.C. 747 (India).

¹³ *Union of India v. R. Gandhi*, (2010) 11 S.C.C. 1 (India).

¹⁴ *Ashwani Kumar v. Union of India*, (2019) 3 S.C.C. 732 (India).

that while it could not mandate legislation, it remained fully empowered to adjudicate individual cases of human rights violations. This decision exemplifies a clear demarcation whereby the judiciary respects the legislature's plenary domain over policy formulation while reserving its own authority to provide remedies for rights violations, thereby honouring the separation of powers.

5.3. The Farm Laws Stay Order (2021) and the Subsequent Repeal: A Case Study in Institutional Interaction

The Supreme Court's stay order on the three farm laws in January 2021, and the subsequent creation of an expert committee, presented a complex instance of institutional interplay. The Court's intervention, motivated by concerns over the welfare of protesting citizens and a stalled dialogue, was justified on humanitarian grounds rather than a prima facie finding on the laws' constitutionality. Critics argued that by acting to "assuage the farmers' injured feelings" and broker negotiations, the Court ventured into the executive's domain of political mediation, a function alien to its primary role of administering justice.

The subsequent enactment of the Farm Laws Repeal Act, 2021 by Parliament completed this episode. The judicial stay provided a political pause, but the ultimate resolution was achieved through the legislative process following sustained popular mobilization. This sequence reframes the episode as a dynamic interaction where judicial action, mass protest, and legislative response intertwined. It demonstrates that while judicial intervention may blur functional boundaries, it can also, in extraordinary circumstances, create a space for political resolution, leaving enduring questions about the permissible limits of such judicial maneuvering.

5.4. Intensifying the Stalemate: The Judicial Appointments Crisis Post-2021

The tension inherent in the judicial appointments process has escalated into a more acute conflict. The stalemate between the Collegium and the Executive has moved beyond procedural delays to overt confrontation. The Government's invocation of "national security" and "intelligence inputs" to reject specific Collegium recommendations has been criticized as diluting transparency and granting the executive an opaque veto. The Supreme Court's forceful pushback during hearings in October-November 2023, where it demanded clear justifications and questioned the use of unsubstantiated claims, exemplifies the judiciary's defense of its

primacy in appointments. The 2023 judgment in *Money v. Union of India*¹⁵, while upholding the Collegium system, formally closed the NJAC chapter but laid bare the unresolved systemic friction, emphasizing that the envisaged "checks and balances" remain dysfunctional due to a lack of constructive cooperation.

5.5. New Frontiers of Boundary Testing: Electoral Bonds and Beyond

Recent landmark rulings continue to define and test the contours of institutional authority. In *Association for Democratic Reforms v. Union of India*¹⁶, the Supreme Court struck down the Electoral Bonds Scheme, 2018, declaring it unconstitutional for violating the rights to information and equality. This demonstrates the Court's willingness to exercise vigorous judicial review over a major legislative-financial policy deeply entrenched in the executive and legislative domains, reaffirming its role as the ultimate arbiter of constitutional morality.

Simultaneously, ongoing debates surrounding the Government of National Capital Territory of Delhi (Amendment) Act, 2023 (Delhi Services Bill) and the application of the Anti-Defection Law (Tenth Schedule) represent fresh institutional battlegrounds. These issues, involving core questions of federalism, executive control, and legislative party discipline, inevitably draw the judiciary into interpreting and defining the limits of power, ensuring that the dialogue and occasional conflict over the separation of powers remains a central, dynamic feature of Indian constitutionalism.¹⁷

6. Conclusion

The constitutional framework of India does not envisage a rigid, watertight separation of powers, but rather a dynamic and flexible system of interdependence among its three organs. This foundational choice, evident in the Constituent Assembly debates and the scheme of checks and balances, facilitates cooperative governance. As this analysis demonstrates, however, this deliberate functional overlap creates inherent zones of contestation. The ongoing tribunals saga, the acute stalemate in judicial appointments, and episodic judicial forays into policy domains are not systemic failures but logical manifestations of this fluidity.

¹⁵ *Money v. Union of India*, (2023) 5 S.C.C. 1 (India).

¹⁶ *Ass'n for Democratic Reforms v. Union of India*, W.P. (C) No. 880 of 2017

¹⁷ Nidhi Singh & Anurag Vija, *Basic Structure as a Safeguard: The Indian Perspective*, 12 INDIAN J. CONST. L. 112 (2018).

While such blurring is constitutionally embedded, its peril lies in the potential transformation of cooperative overlap into institutional appropriation. Historical precedents and contemporary pressures reveal that the central threat is not a sudden collapse of the doctrine, but its gradual erosion where "checks" weaken and "balances" tilt. The ultimate safeguard, therefore, lies not in seeking an unattainable purity of separation but in reinforcing the normative spirit of the Constitution. Each organ must exercise vigilant self-restraint to avoid usurping the *essential functions* of another, guided by the overarching imperative of constitutional morality.

Consequently, the resilience of India's separation of powers depends less on doctrinal refinement and more on institutional culture. It requires a renewed commitment from the legislature, executive, and judiciary to engage in constructive dialogue, ensuring that the necessary overlap serves accountability rather than appropriation. The future of this delicate equilibrium hinges on translating constitutional principles from form into lived spirit, where power is exercised not as a privilege of office but as a trust for the preservation of democratic sovereignty.