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INSTITUTIONAL TUG-OF-WAR: WITH REFERENCE TO SEPARATION OF POWERS AND ITS IMPACT ON INDIAN DEMOCRACY

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I. ABSTRACT

Separation of powers is usually a well-known constitutional formula that is being acted out as a theatre of unceasing rivalry. There is no place where this is clearer than in India, where the three arms of State, Legislature, Executive, and Judiciary seldom act separately. Rather, they often encroach on the others territory, and we end up in a game of institutional tug of war. This tension is not by chance; it is a natural result of a constitutional structure which does not seek to separate its powers in strict line, but to provide a more practical overlap. This paper is going to contend that these institutional conflicts are not just instances of friction, but important pointers of the health and strength of Indian democracy. In most instances, judicial interventions tend to right executive overreach, legislative discussions seek to tame judicial overreach, and the executives take on a headbanging role at times of political need. The outcome is the existence of a dynamic equilibrium whereby there is co-existence of conflict and cooperation. This study provides a comparison of the development of the constitution in the United States, the United Kingdom, and Europe through the analysis of some of the most relevant cases, constitutional developments, and comparative views of the issue, demonstrating that stability of the Indian democracy is not in its institutional silence, but in its institutional struggle. The key issue that this paper is going to consider is whether this tug-of-war weakens governance by creating instability or its reinforcement of democracy by holding them accountable.

II. KEYWORDS

Separation of Powers; Judicial Review; Indian Constitution; Institutional Conflict; Legislature–Executive–Judiciary Relations; Democratic Governance.

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III. INTRODUCTION

A. THE LIVING DRAMA OF POWER

Montesquieu once cautioned that power should be kept in check by power.² The same in India has become the basic reality in their constitution. The concept of separation of powers which is usually perceived as a means of potential correction of tyranny has assumed a unique dimension in an Indian context. It is not absolute, or even ceremonial, but a system of flexible limits within which each organ is constantly striving to push its limits. This has turned the process of governing into a living drama, a form in which courts overturn laws, those states that are legislative reestablish their power, and executives bend and twist to avoid either.

B. REASON BEHIND SEPARATION OF POWERS IN INDIA

Separation of power is not just a hollow constitutional undertaking, but the skeleton of democratic governance. The sheer scale and diversity of governance issues in India aggravate the need and significance of it. The doctrine vows to avoid the concentration of power but the Indian experience shows that there have been frequent tensions: Judicial intrusion into policy decisions, the dominance of the executive during majoritarian administrations and the slowness of the legislature in responding to urgent societal needs.

C. STATEMENT OF THE PROBLEM

Although, the Constitution of India allocates the powers between the Legislature, the Executive and the Judiciary, the lines are still intentionally drawn.

This functional overlap is usually productive of open conflict:

- **Judiciary vs Legislature:** making amendments illegal and challenging the sovereignty of parliaments.
- **Judiciary vs Executive:** the fight over constitutional morality and judicial appointment.³

² Montesquieu, *The Spirit of Laws* (1748).

³ *Supreme Court Advocates-on-Record Association v. Union of India* (NJAC case) (2015) 6 SCC 408.

- **Executive vs Legislature:** Ordinance, party-based majoritarianism and legislature dissolution.

Pivotal questions are raised by such fights; Are such fights a form of efficacy in governance or is it a check and balances that keeps democracy alive? Does India drift towards institutional imbalance or does this tug-of-war make the energy of democracy accountable.

D. SCOPE OF THE STUDY

The paper is mainly centered on the constitutional structure of India that controls the principle of separation of powers and how the same is applied in real life to the working of democracy. Although the primary focus will be on Indian institutions, which are the Legislature, the Executive, and the Judiciary, the study will also include comparative experiences in the United States, the United Kingdom and the European Union. It goes as far as the law of the constitution, the political practice, the landmark case and scholarship analysis, giving both doctrinal and analytical insights on how the conflicts of the institution affect governance, accountability and democratic stability.

E. AIM AND OBJECTIVES

To critically examine the doctrine of separation of powers and assess to what extent the tug-of-war between the Legislature, Executive and Judiciary in its institutional setting influences Indian democracy.

- To follow the historical and theoretical development of the doctrine of separation of powers.
- To investigate the way in which the constitutional structure of India can apply this doctrine in practice.
- To examine major questions of institutional warfare and landmark judicial rulings that conditioned the balance of powers.
- To make the Indian experience be compared with other democratic systems (U.S., U.K., and E.U.).

- To determine that institutional conflicts enhance or undermine democratic governance.
- To offer recommendations on how reforms should be implemented to facilitate accountability, balance and efficiency.

F. RESEARCH QUESTIONS

- What is the application of the doctrine of separation of powers on the Indian Constitution?
- What do you consider to be the major examples and trends of institutional tug-of-war in India?
- What is the comparison between such institutional conflicts in other democracies like the U.S and the U.K.?
- Are these conflicts eroding the administration or making Indian democracy accountable?
- What changes can guarantee more balanced and effective inter-institutional relationship?

G. HYPOTHESES

- The Indian paradigm of separation of powers is operational and not absolute, which forms a point of flexibility and tension between institutions.
- Institutional conflicts are not only destructive, but they are also crucial in promoting accountability and democratic resilience.
- Too much judicial activism or executive dominance disrupts the constitutional balance as it was intended.
- A check and balances system is more effective in fortifying democracy than a strict division of labour.
- The global experience of other countries can be used to make changes in boosting constitutional peace in India.

H. LITERATURE REVIEW

The scope of academic views on the separation of power in India present in the literature displays the following range.

- The philosophical basis of division of power was given by Montesquieu and Locke.
- Granville Austin spoke of the system having a mixture of powers with functional boundaries in India and focused on flexibility.
- So, parliamentary dominance and constitutional accountability were discussed by Subhash Kashyap and H.M. Seervai.
- Upendra Baxi examined institutional tension as the index of democracy vitality.
- The approaches were different in the U.K. and U.S., which comparative scholars such as A.V. Dicey and Hilaire Barnett emphasized.

Taken together, the literature indicates that it is indeed impossible to ensure strict separation in a parliamentary democracy, but institutional balance is very essential in governance and liberty.

I. RESEARCH METHODOLOGY

This research adopts a doctrinal and analytical approach, combining descriptive and critical methods.

- The Constitution of India
- Parliamentary debates and government reports
- Scholarly books, journal articles, and commentaries on constitutional law
- Comparative studies from U.S., U.K., and E.U. systems
- Online legal databases and credible academic publications

The study employs qualitative analysis of texts, doctrines, and judgments to interpret institutional roles, assess constitutional balance, and derive conclusions on the democratic implications of the separation of powers.

IV. SEPARATION OF POWERS IN CONCEPTUAL FRAMEWORK

A. HISTORICAL BEGINNINGS OF THE DOCTRINE

The concept of the division of the governmental power is not a new one; it has its origins within the ancient political philosophy. John Locke highlighted the distinction between the deliberative and executive roles of government and warned that the concentration of the three in a single authority would result in tyranny, this occurred centuries after Aristotle had done the same.⁴

The most persuasive was by Montesquieu in the *Spirit of Laws* (1748), when he wrote, There is no liberty unless the power to judge is separated of the legislative and executive.

B. CONCEPT AND MEANING

The ideology of separation of powers essentially implies that the law-making, law-enforcing and law-interpreting powers should not reside in a single institution to avoid the misuse of power. The doctrine in its extreme version requires absolute freedom and non-intervention. Nevertheless, in reality, no democratic system pursues an unquestioning division.

Therefore, researchers define a difference between:

- **Strict Separation** - like in the United States, where the Constitution draws a strict line between the legislative, executive and judicial functions.⁵
- **Flexible or Functional Separation** - as in United Kingdom and India, whereby some uniformity is unavoidable by parliamentary systems.

⁴ Aristotle, *Politics*, Book IV & John Locke, *Two Treatises of Government* (1689).

⁵ U.S. Constitution, Articles I, II, and III.

C. SEPARATION OF POWERS FUNCTIONS

The doctrine has several purposes:

- **Avoiding Concentration of Power** - having no one organ be authoritarian.
- **Checks and Balances** - the various organs check the other to ensure that they operate within the constitutional boundaries.
- **Efficiency of Governance** - through division of powers, it is done by specialized bodies.
- **Guarantee of Freedom** - power sharing means that the rights of citizens are more secure.

D. THE MYTH OF AN ULTIMATE SEPARATION

Contemporary rule has demonstrated that one cannot be absolutely separate.

For example:

- In the U.S. the President is able to veto laws, but Congress can override the veto.
- In the U.K. the Executive is drawn out of the Legislature.
- In India, the Legislature controls the Executive, and the Judiciary can frequently meddle in policy areas by Public Interest Litigation (PIL).⁶

Separation of powers is, therefore, best understood as not a wall but rather as a system of functional overlap and responsibility to one another.

E. INDIAN POWER SEPARATION

The Indian Constitution is silent on the concept of separation of powers as is the case with the U.S. Constitution. Rather, it is an embodiment of the principle by way of a sharing of functions

- Laws are made by legislation (Articles 245-246).
- Laws are implemented by executive (Articles 53-77).

⁶ S.P. Gupta v. Union of India (1981 Supp SCC 87).

- Laws are interpreted by judiciary (Articles 124-147).

Nevertheless, the framers of the Constitution were not going to establish strict separation. Dr. B.R. Ambedkar observed at the Constituent Assembly that at least a system of checks and balances was preferable to India than strict compartmentalization. It was a practical decision that India required stability in a multicultural, parliamentary democracy.

F. COMPARATIVE INSIGHTS

- **United States:** In the U.S. these powers are strictly separated under the constitution, but even in this case the system is balanced in the form of checks and balances like the judicial review and the presidential veto.
- **United Kingdom:** The U.K does not have a separation of powers but rather, it has parliamentary supremacy and ministerial accountability, which, in combination, combine legislative and executive powers.⁷
- **India:** It is between the two extremes. It steals the American concept of checks, but still, maintains parliamentary fusion as in the U.K. to form a new style of hybrid.

V. TUG-OF-WAR: INSTITUTIONAL: THE INDIAN EXPERIENCE

A. INTRODUCTION

The Constitution of India does not stipulate the strict separation of powers but a functional division of power between the Legislature, the Executive, and the Judiciary.⁸ It is designed to facilitate coordination, however, in practice, it has contributed to the constant institutional confrontation. These struggles as they are frequently called an institutional tug-of-war are at the heart of the Indian democracy functioning.

This chapter discusses the ongoing tensions between the three organs, significant judicial rulings, legislative-executive tussles and broadening of judicial roles by public

⁷ S.P. Gupta v. Union of India (1981 Supp SCC 87).

⁸ M.P. Jain, Indian Constitutional Law (LexisNexis, 8th Ed., 2018).

interests' litigation. It further takes into consideration the effects of such clashes to the democratic government, accountability, and power balance.

B. JUDICIARY VS LEGISLATURE

The Judiciary and Parliament are one of the most exposed points of institutional tug-of-war in India. The courts have often come to the rescue of the constitutional principles, which limits powers of parliament.

- **Kesavananda Bharati v. State of Kerala (1973):** The Supreme Court came up with Basic Structure Doctrine, which restrained the amending power of the Parliament. As parliament tried to demand its sovereignty, the judiciary stressed the separation of powers, and the rights to fundamental elements was sacred.
- **Indira Nehru Gandhi v. Raj Narain (1975):** In the politically volatile times of the Emergency, the Court invalidated a section of the 39th Amendment, which attempted to shield against judicial scrutiny an election of the Prime Minister. This ruling restated that the legislature could not exempt itself to scrutiny by the constitution.
- **Minerva Mills v. Union of India (1980):** In this case, the Court invalidated provisions of the 42nd Amendment, it is important to note that Parliament cannot, by its legislative power, annihilate the balance between the Legislature and the Judiciary.

All these cases reveal that when Parliament tries to widen its powers to a state of surpassing constitutional powers, the Judiciary always steps in to re-establish balance, resulting in a game of tug-of-war.

C. JUDICIARY VS EXECUTIVE

Judiciary-Executive conflict in India is usually focused on judicial independence, appointment and review of executive action.

- **ADM Jabalpur v. Shivkant Shukla (1976):** The suspension of the right to habeas corpus was notoriously upheld by the Supreme Court, on the side

of the Executive, during the Emergency. This case is taken to be a low ground in judicial independence.

- **S.P. Gupta v. Union of India (1981):** The case is also referred to as the First Judges Case, as it saw the judiciary effectively declare its own power to appoint judges; this made the executive weaker.
- **Assume that it is case two, by now known as Second Judges Case (Supreme Court Advocates-on-Record Association v. Union of India, 1993):** Eight the Court fixed the collegium system; it further limits the executive power in the appointment of judges.
- **NJAC Case (2015):** 99 The 99th Constitutional Amendment creating the National Judicial Appointments Commission was overturned by the Supreme Court which claimed that executive control over appointment infringes the fundamental structure.

All these are indicative of a tug-of-war where the judiciary alternates lapses of submissiveness (Emergency era) with assertiveness (appointments and review) to balance the power of the executive arm of government.

D. EXECUTIVE VS LEGISLATURE

Even amongst branches of election, there is often tension especially where the Executive tries to outflank Parliament.

- **Powers of ordinance-making:** Article 123 requires the Executive to be able to promulgate ordinances. Re-promulgation, however, without parliamentary action was on this subject, attacked in *D.C. Wadhwa v. State of Bihar* (1987) as weakening legislative supremacy.
- **Dissolution of State Assemblies:** The Executive has always been controversial with its authority to suggest the President rule. In *S.R. Bommai v. The Supreme Court* restrained arbitrary dismissals in *Union of India* (1994), which reinforced federalism and kept the executive in check.
- **Confidence motions and Parliamentary committees:** With majorities, the Executive may exercise sufficient control over the agenda of legislative

bodies, often to the exclusion of debate, and this raises the issue of legislative independence.

These tussles are representative of the tug-of-war in the institutional realm of elections, as majoritarianism in the Executive can create a challenge to parliamentary control.

E. PUBLIC INTEREST LITIGATION (PIL) AND JUDICIARY

PILs have grown the judicial sphere into governance and policy since the 1980s.

- **Environmental and Social PILs:** The Supreme Court has guided governments on matters such as pollution control as well as the rights of prisoners.
- **Judicial Activism vs Overreach:** PILs critics claim that the judiciary at times becomes involved in administrative duties, making it hard to distinguish between the executive and judicial branches of government.⁹

Although PILs increase accountability, it is also a confirmation of a continuing game of tug-of-war wherein a judicial branch takes a quasi-executive role in implementing constitutional and statutory norms.

F. THE TUG-OF-WAR IN PRACTICE

The institutional conflict patterns may be summed up as:

- **Parliamentary checking the Judiciary:** By constitutional provisions such as the basic structure, review of amendments by the courts and the right to basic rights.
- **Checking of Executive by Judiciary:** By assessment of executive actions, appointments, ordinances, and Emergency excesses.
- **Executive bypassing Legislature:** Via ordinances, dissolution proposals and majoritarianism.

⁹Madhu Limaye, "Judicial Activism: A Critical Review" (1999) Economic and Political Weekly.

- **Legislature restricting Judiciary:** through judicial review (which frequently constrained by constitutional amendment), or procedural reform.

This struggle of tugs and ropes is not a standstill, the leadership switches between organs in different political, social, and judicial conditions.¹⁰

G. LANDMARK JUDGEMENTS

The following historic cases have greatly influenced the tug-of-war between the Legislature, Executive and Judiciary of India. They did not only answer constitutional crises but they also re-established the limits of each of the institutions.

1. Kesavananda Bharati v. State of Kerala (1973)

- **Background:** Parliament had passed reforms (24th, 25th and 29th) in an attempt to change property rights and restrict fundamental rights.
- **Conflict:** Could Parliament amend the Constitution forever, thus, undermining the separation of powers?
- **Supreme Court Ruling:** The Court by a majority of 7/6 presented the Basic Structure Doctrine, stating that some aspects of the Constitution, such as democracy, rule of law, separation of powers cannot be changed even through constitutional changes.
- **Impact:** The case was a judicial challenge to legislative authority that found Parliament had no authority to act in a manner that upset constitutional balance, and that it would be reviewed by the judiciary in any cases where the fundamental rights were at stake, or where institutional balance was endangered.

2. Indira Nehru Gandhi v. Raj Narain (1975)

- **Background:** In the 1970s, the Prime Minister was attempting to shield her election against judicial review through the 39th Amendment.

¹⁰ B.N. Kirpal et al., *Supreme But Not Infallible: Essays in Honour of the Supreme Court of India* (Oxford University Press, 2000).

- **Conflict:** WAS could Parliament make an act excluding judicial review by political office?
- **Supreme Court Decision:** The court ruled against the features of the amendment that shielded the election of the Prime Minister stating that judicial review is part of the Constitution.
- **Impact:** This case strengthened the judiciary as a system to check the overreach of parliament as this case underscored that it has powers to act even against the most influential politicians.

3. *Minerva Mills v. Union of India* (1980)

- **Background:** Parliament had been trying to create an amending power without restraint after the 42nd Amendment, at the expense of the judiciary.
- **Controversy:** Is it possible to override the basic rights and separation of powers by the legislature?
- **Supreme Court Decision:** The 42nd Amendment clauses were declared unconstitutional by the Court, which again asserted that the fundamental framework such as the separation of powers could not be destroyed.
- **Impact:** Having established judicial supremacy in constitutional interpretation; and emphasizing the non-absoluteness of legislative supremacy.

4. *ADM Jabalpur v. Shivkant Shukla* (1976)

- **Background:** The rights of habeas corpus were suspended by the government during the Emergency.
- **Dispute:** Can citizens dispute the practice of preventive detention in the event of termination of fundamental rights?
- **Supreme Court Decree:** Controversially, the Court declared the citizens could not appeal to the courts in case of Emergency, the utmost judicial submission to Executive.

- **Impact:** This case demonstrated the risks of institutional over-deference and led to the changes so as to enhance judicial independence after the Emergency.

5. S.P. Gupta v. Union of India (1981)

- **Background:** The Executive wanted to have power to appoint and transfer judges.
- **Conflict:** To what extent might the Executive have an impact on the Judiciary?
- **Supreme Court Decree:** the court established that the Judiciary had the first say in judicial nomination but at the start, there would be some executive consultation (First Judges Case).
- **Impact:** Brought about a debate on judicial autonomy which continues to date and the collegium system was established.

6. The Second Judges Case (Supreme Court Advocates-on-Record Association v. Union of India, 1993)

- **Background:** controversy on how Supreme Court judges are appointed.
- **Conflict:** Is the Executive to keep the primacy in appointments?
- **Judgment of Supreme Court:** The Court put the collegium in place, which vested the judiciary with the dominant role in the selection of judges at the expense of the executive.
- **Impact:** Bolstered judicial independence, and demarcated the limits of Executive power, an opportune time in the tug-of-war.

7. NJAC Case (2015)

- **Background:** with the replacement of the collegium system, Parliament passed the 99 th Amendment in which the National Judicial Appointments Commission (NJAC) was established.

- **Conflict:** Was this amendment a violation of judicial independence by providing the Executive with a large measure of control in the appointment process?
- **Supreme Court Ruling:** invalidated the NJAC Act on constitutional grounds and pointed out that judicial independence is a constituent of the basic fabric.
- **Impact:** Restated the independence of the judiciary, and reinstated the check and balance of judicial appointments.

8. D.C. Wadhwa v. State of Bihar (1987)

- **Background:** The Executive re-promulgated ordinances several times without the approval of the parliament.
- **Conflict:** Did this amount to executive usurpation of the Legislature?
- **Judgment of the Supreme Court:** It was found that in case of continuous re-promulgation the legislative supremacy was in violation.
- **Impact:** Strengthened parliament and limited Executive overreach, balancing authority among the organs.

9. S.R. Bommai v. Union of India (1994)

- **Background:** The use of Article 356 in dismissing state governments was due to political reasons.
- **Conflict:** Could the Executive fire the State governments?
- **Judgment of Supreme Court:** Limited abuse of Article 356, with focus on federalism and judiciary control.
- **Impact:** Enforced legislative and federalism, a limitation on executive whims and constitutional checks.

VI. COMPARATIVE PERSPECTIVE

Although India has evolved a flexible separation of powers model, the other states have used a different model depending on their historical, political, and legal contexts.

Research into these systems gives us an insight on how the tug-of-war in India can transform or be improved.

The chapter contrasts the systems of the United States, the United Kingdom and the European Union with that of India, in terms of checks and balances, institutional independence, institutional conflict resolution mechanisms.

A. UNITED STATES MODEL

- **Strict Separation of Powers:** The U.S. Constitution clearly separates the legislative (Congress), executive (President), and judicial (Supreme Court) branches.
- **Checks and Balances:** The powers of the branches to check each other
 - **President:** Veto bills passed by the congress.
 - **Congress:** Override veto with two-thirds majority, impeach President.
- **Supreme court:** the right to review judicial to invalidate an unconstitutional law or action of the executive branch.
- **Judicial Independence:** The judges of the United States are appointed on a life basis, which makes them not subject to the influence of the executive or legislative branches of government.¹¹
- **Impact:** System decreases overlap but may create deadlocks (e.g., government shutdowns) when there is conflict between the branches.¹²
- **Indian Lesson:** Huge judiciary and independent appointment can increase constitutional stability but strict separation may limit flexibility in the management of crisis.

¹¹ Federalist Papers Nos. 51 & 78.

¹² Government Shutdowns in the USA (2013, 2018–2019), Congressional Research Service Report.

B. UNITED KINGDOM MODEL

- **Parliamentary Sovereignty:** The UK is a parliamentary system, which offers the executive an evolutionary develop out of the legislature, unlike the U.S.¹³
- **Fusion of Powers:** The Prime Minister and Cabinet belong to Parliament; there is more functional separation than actual separation.
- The judicial review is restricted; the courts are not able to invalidate primary legislation.
- Checks are provided by constitutional conventions, political accountability and opposition parties
- **Impact:** It is a fast-implementation policy making system which is deeply dependent on political norms in terms of accountability.¹⁴
- **Lesson to India:** The parliamentary system of India resembles that of the U.K. in terms of executive-legislative overlap but has increased checks in terms of judicial review and written constitutional protections.

C. EUROPEAN UNION MODEL

- **Supranational System:** It grants power to the European Commission (executive), European Parliament (legislative) and European court of justice (judiciary).
- **Shared Sovereignty:** Member states make concessions to central institutions; when national sovereignty and EU law come into conflict.
- **Judicial Review:** The European Court of Justice its supremacy in EU law sometimes takes precedence over national legislatures.
- **Impact:** Attests to a blend type in which separation is practical, coordination is critical and courts have a high profile in conflict-resolution.

¹³ A.V. Dicey, Introduction to the Study of the Law of the Constitution (1885).

¹⁴ Treaty of Lisbon, 2007.

- **India Lesson:** Indicates that judicial arbitration is significant in the multi-layered systems of governance, as would be the case in India, with the federal system.

VII. IMPACT ON INDIAN DEMOCRACY

The tug-of-war between the Legislature, the Executive and the Judiciary is a typical characteristic of the Indian democracy. Though it brings about checks and balances, it brings about tensions which affect policymaking, efficiency in governance and trust of the people, especially in India and this chapter explores the impacts of this dynamic in detail with recent trends and case studies.

A. STRENGTHS OF THE TUG-OF-WAR

1. Safeguarding of Fundamental Rights

- Intervention of the judiciary especially in judicial review, Public Interest Litigation (PILs) protect fundamental rights of the citizens against infringement by the legislature or the executive.¹⁵
- **Example:** In *Maneka Gandhi v. The Supreme Court* liberalized the meaning of Article 21 in *Union of India* (1978) and therefore strengthened procedural due process and prevented arbitrary executive authority.

2. Maintenance of Constitutional Balance

- The landmark cases of *Kesavananda Bharati* (1973) and of *Minerva Mills* (1980) illustrate that the judiciary may stop any of the branches to get omnipotent to maintain institutional balance.

3. Strengthening Federalism

- Court examination of executive action pursuant to Article 356 (e.g. *S.R. Bommai v. Union of India*, 1994), the control of the central government is not misused by the autonomy of the state governments.

4. Promoting Responsibility

¹⁵ P.N. Bhagwati, "Judicial Activism and Public Interest Litigation" (1982) *Journal of the Indian Law Institute*.

- Multi-layered accountability is made up of parliamentary committees, Right to Information (RTI), and judicial oversight.¹⁶

B. WEAKNESSES / CHALLENGES

1. Judicial Overreach

- Too much activism by use of PILs at times subjects the judiciary to quasi executives.
- **Example:** Vishaka v. State of Rajasthan (1997) administrative implementation was necessitated by and environmental PILs, which has been controversial as an attempt to legislate the bench.

2. Parliamentary System of executive dominance

- Powerful majority governments can take control of Parliament, quash discussion and exclude the scrutinizing role of the legislature.
- **Example:** There has been a criticism of frequent use of ordinance bypassing Parliament as a way of overturning authority in legislation.

3. Policy Paralysis as a result of Conflicts

- Sometimes the executive and judiciary conflict can postpone key decisions on policy.
- **Examples:** Reforms have been sometimes paralyzed due to disagreements over constitutional amendments or appointments.

4. Public Perception and Trust

- Constant organizational conflicts can also disorient citizens on accountability and responsibilities, which influences citizen confidence in the governance.

C. CURRENT TRENDS AND ISSUES

1. Digital Governance and Executive Power

¹⁶ Subhash Kashyap, *Parliamentary Procedure: Law, Privileges, Practice & Precedents* (Universal Law Publishing, 2011).

- The growth of digital surveillance, information technology regulation (e.g., IT Rules 2021), and regulation of the Internet also bring up new tensions between executive power and core rights.

2. Judicial policy management

- Increasingly courts are giving directives around the area of education, health and environmental policy, and the role of activist courts.

3. Political Polarization and Gridlock in legislations

- The politics of the regions and coalitions can also exacerbate the executive-legislature struggles, and this forces the judiciary to intervene.

4. Federal Challenges

- The conflict between the rights of states and central mandates has always challenged the constitutional design, putting a significant focus on the judiciary as the judge.

VIII. CRITICAL ANALYSIS AND SUGGESTIONS

Separation of powers in India has not been in a strict sense separation, but a pragmatic balancing out of the Legislature, Executive and Judiciary, which has not only facilitated the adaptation of changing times, but also has created grey areas facilitating conflicts, inefficiency and allegations of overreach. The chapter is a critical analysis of the current situation and suggested reforms aimed at enhancing the democratic governance of India.

A. CRITICAL ANALYSIS OF THE CURRENT FRAMEWORK

1. Blurred Boundaries of Power

In contrast to the U.S. model, the Constitution of India is not based on a strict separation of power, but a combination of powers.¹⁷ The Executive branch is elected

¹⁷ Granville Austin, *Cornerstone of a Nation* (Oxford University Press, 1966).

through the Legislature, and the Judiciary often draws executive and legislative roles. Although it secures a flexible environment it undermines accountability.

2. Judicial Activism vs. Judicial Overreach

Such seminal cases as *Vishaka v. State of Rajasthan* (1997) and *MC Mehta v. Union of India* (1987) demonstrates judicial activism as a means of social justice. But critics also claim that courts tend to take legislative or executive functions and this creates judicial overreach, particularly in such areas as policy and administration.

3. Executive Dominance in a parliamentary system

The Legislature tends to be dominated by party majorities and anti-defection rules, undermining the ability of the Legislature as an independent check of power and concentrating it in the Cabinet and the Prime Minister's Office (PMO).¹⁸

4. Underperformance by legislatures

The role of the Legislature is waning as seen through frequent disruptions, rushed law-making and through ordinances being struck down by the Judiciary (*Krishna Kumar Singh v State of Bihar*, 2017) shows, more powerful parliamentary accountability is necessary.

5. Federal Tensions

Central dominance usually marginalizes states which results in conflict over Article 356 and financial devolution, court rulings such as *S.R. Bommai v. Union of India* (1994) defends federalism, yet political centralization is still practicing a challenge to cooperative federalism.

B. SUGGESTIONS FOR REFORM

1. Empowering the Legislature

- Compulsory minimum parliamentary and state assembly sittings.
- Reinstatement of parliamentary committees that have the binding powers.

¹⁸ Parliamentary Procedure: Law, Privileges, Practice & Precedents (Universal Law Publishing, 2011).

- More freedom to the Speaker to prevent partisan operation.

2. Regulating Judicial Activism

- Guidelines on judicial intervention should be made clearer, so that courts will only intervene when the fundamental rights are in danger.
- Installing Judicial Performance Commissions that are independent to check overreach.

3. Checking the Domination of the Executive

- Reform of anti-defection law that gives freedom to MPs/MLAs to vote freely, which makes them really a legislature.
- Openness of the activities of the Prime Minister Office (PMO).

4. Strengthening Federalism

- Reconsider the role of Finance Commission to provide even-handed devolution.
- Greater restrictions to the abuse of Article 356.
- Laying down systems of Centre-State consultation (such as a better Inter-State Council).

5. Adopting Technology and Transparency

- Computerization of the legislative procedures to be publicly accountable.
- Internet-based systems to monitor execution of judicial orders and legislative promises.
- Enhancing RTI and whistleblower.

IX. CONCLUSION

A. RESTATING THE CORE ISSUE

Separation of Powers is not just a figment of imagination, but as a practical requirement to maintain democracy. In India, where the framers of the constitution favoured a loose system, the system has always been subjected to challenges of

executive domination, poor legislative performance, and judicial activism. The Indian model does not dictate hard division between institutions but rather prescribes a fine line, in which every organ should have the concern of constitutional limits.

B. LESSONS OF THE INSTITUTIONAL TUG-OF-WAR

Indian experience demonstrates that tension between institutions is unavoidable--but it is not necessarily devastating. Instead, this kind of conflict, so far as it is held within the scope of constitutional limits, produces accountability and democratic control by making sure that no organ turns authoritarian. Cosmogenic cases like the *Kesavananda Bharati* (1973), *Indira Gandhi v. Raj Narain* (1975), and *S.R. Bommai* (1994) demonstrate that the Judiciary system frequently becomes the last to save the day, upholding the democratic spirit when the Executive or the Legislature fails.

The experience of the U.S., the U.K. and the EU proves that overt separation is as worrisome as over fusion. A hybrid model of checks without rigidity is available in India, which offers flexibility and control, but at the cost of overlap and friction between institutions.

C. CHALLENGES AHEAD

- **Judicial Activism:** The danger of judicial activism is that it will destroy democratic accountability.
- **Executive Centralization:** The accumulation of authority by the Cabinet and PMO is a danger to parliamentary independence.
- **Legislative Lassitudes:** This deterioration of democracy through parliamentary debates and over-use of ordinances.
- **Federal Imbalance:** Central dominance has its problem with cooperative federalism.

Such struggles indicate that the concept of separation of powers in India is not only a doctrine but a practice, which is dynamic, and needs to respond to the political realities constantly.

D. WAY FORWARD

To make separation of powers strengthening in the Indian democracy.

- The Legislature needs to make a comeback to its deliberative side by engaging in substantial debate and committee questioning.
- The Executive should operate in a transparent and restrained manner by ensuring that it does not overstep the judicial instructions and oversight by legislature.
- The Judiciary should exercise restraint and only interfere when it has to protect the basic rights and constitutional values.
- The Federal institutions should be empowered and there should be Centre State balance in financial and legislative spheres.

E. FINAL REFLECTION

Separation of powers is not really a doctrine, but rather a dynamic equilibrium- a never-ending tug-of-war where institutions are tugging and pulling at one another, but it is always attached to the Constitution. It is not the evading of this tug-of-war by the Indian democracy but it's being secured that it never snaps the constitutional rope which binds the system together.

The Constitution as B.R. Ambedkar advised so rightly in the Constituent Assembly debate is just as strong as the institutions and the individuals mandated to uphold it. The difficulty, however, is not just structural, but also ethical; that is, it requires a culture of constitutionalism, institutional humility, and democratic responsibility.

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