



Doctrine of Separation of Powers in the Age of Judicial Review

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ARTICLE DETAILS	ABSTRACT
Research Paper	
Keywords : <i>Separation of Powers; Judicial Review; Judicial Activism; Rule of Law; Checks and Balances; Basic Structure Doctrine; Constitutional Supremacy; Judicial Accountability; Comparative Constitutionalism.</i>	<i>The doctrine of separation of powers stands as one of the most enduring principles of constitutional governance, ensuring that the legislative, executive, and judicial organs of the State operate within their respective spheres while maintaining a system of checks and balances. In the contemporary constitutional era, the doctrine has been re-interpreted through the lens of judicial review — the judiciary's authority to scrutinize legislative and executive actions for conformity with the Constitution. This paper examines the evolution, scope, and contemporary relevance of the separation of powers in the age of judicial review, with a comparative analysis of constitutional developments in India, the United States, and the United Kingdom.</i> <i>Tracing the historical origins from Montesquieu's political philosophy to modern constitutional practice, the study highlights how judicial review has transformed from a tool of constitutional control into an essential feature of constitutional identity. In India, the doctrine's adaptation within a parliamentary democracy has produced a unique balance between flexibility and restraint. Landmark judgments such as Kesavananda Bharati v. State of Kerala, Indira Nehru Gandhi v. Raj Narain, and Minerva Mills Ltd. v. Union of India have entrenched judicial review as part of the Constitution's basic structure, reaffirming the judiciary's role as the guardian of constitutional supremacy.</i> <i>However, the paper also critiques the emerging tension between judicial activism and judicial overreach, exploring the challenges posed by excessive judicial intervention in policy domains. It argues that the</i>



modern understanding of separation of powers must transcend rigid compartmentalization and instead emphasize functional coordination, institutional accountability, and constitutional balance. The study concludes that in the age of judicial review, the separation of powers endures not as a static doctrine but as a dynamic principle that continues to safeguard liberty, uphold constitutionalism, and adapt to the evolving needs of democratic governance.

Introduction

The doctrine of separation of powers is one of the most fundamental principles underlying modern constitutional governance. It embodies the idea that governmental power should not be concentrated in any one organ but should be divided among the legislature, the executive, and the judiciary to prevent the abuse of authority. The doctrine traces its philosophical roots to the political thought of Aristotle and Montesquieu, who recognized that the accumulation of all powers—legislative, executive, and judicial—in the same hands may result in tyranny. In the context of constitutional democracies, this principle ensures not only efficiency but also accountability, transparency, and the protection of individual liberty.

However, in the modern era, particularly under the evolving constitutional frameworks of liberal democracies, the strict application of this doctrine has become increasingly complex. The rise of judicial review — the power of the judiciary to examine the constitutionality of legislative and executive actions — has significantly redefined the boundaries between these organs. Judicial review, while being a guardian of constitutional supremacy, has also been perceived as an intrusion into the domains of the legislature and the executive, raising debates about judicial overreach and activism. The tension between the traditional concept of separation of powers and the modern practice of judicial review represents one of the most intellectually stimulating and practically relevant issues of contemporary constitutional law.

This research paper seeks to critically analyze the doctrine of separation of powers in the age of judicial review, examining its evolution, theoretical underpinnings, and judicial interpretations across India, the United States, and the United Kingdom. It aims to explore whether the doctrine still serves as a meaningful constitutional safeguard or has evolved into a flexible, functional concept adapting to the exigencies of governance in a constitutional democracy. Through an analysis of landmark judgments and comparative constitutional approaches, this study evaluates how judicial review reshapes the balance among the organs of the State, especially within the Indian constitutional context.



Historical Foundations of the Doctrine of Separation of Powers

The origins of the doctrine can be traced to classical political philosophy. Aristotle, in *Politics*, identified three elements in every constitution: the deliberative, the executive, and the judicial. However, it was the French philosopher Montesquieu who systematically articulated the modern version of the doctrine in his seminal work *De l'esprit des lois* (*The Spirit of the Laws*, 1748). Montesquieu argued that “there can be no liberty where the legislative and executive powers are united in the same person, or body of magistrates,” and further warned that if judicial power were joined with either of the others, “the life and liberty of the subject would be exposed to arbitrary control.” His theory, influenced by the British constitutional system of his time, became the intellectual foundation for later constitutional designs emphasizing the separation of powers.

In the United States, the framers of the Constitution were deeply influenced by Montesquieu’s philosophy. James Madison, in *Federalist Paper No. 47*, defended the idea of separation of powers as essential for the preservation of liberty. The American Constitution institutionalized this division explicitly by assigning distinct powers to the three branches of government: Article I to Congress, Article II to the President, and Article III to the Judiciary. Nevertheless, the American model was never a system of absolute separation; rather, it was based on a carefully designed mechanism of *checks and balances* whereby each branch could restrain the other to prevent abuse of power. Judicial review, though not expressly mentioned in the Constitution, was recognized in *Marbury v. Madison* (1803), which established the judiciary as the ultimate interpreter of the Constitution.

In contrast, the United Kingdom, being a product of an unwritten constitution, never adopted a strict separation of powers. The British system is based on the principle of parliamentary sovereignty, wherein Parliament is the supreme legal authority capable of making or unmaking any law. The Crown, Parliament, and the Judiciary operate in a system of functional differentiation rather than rigid separation. Historically, the judiciary was subordinate to Parliament’s will, and courts could not invalidate parliamentary statutes. However, the constitutional reforms of the late twentieth and early twenty-first centuries — especially the *Constitutional Reform Act, 2005* — have moved the British system closer toward an independent judiciary and a clearer demarcation of powers.

The Indian experience with separation of powers represents a distinctive synthesis of these traditions. The framers of the Indian Constitution did not adopt a strict separation as in the United States, nor did they follow the British model of complete parliamentary sovereignty. Instead, they designed a system that combines separation of functions with a scheme of checks and balances to ensure that no organ oversteps



its constitutional limits. Articles 50, 122, 212, and 361 provide implicit recognition of the doctrine, while the Supreme Court has, through judicial interpretation, developed the contours of this principle in harmony with the overarching concept of constitutional supremacy.

The Constitutional Position in India

The Indian Constitution, while not explicitly enunciating the doctrine of separation of powers, is founded on a functional division of governmental responsibilities. The legislative power is vested in Parliament and state legislatures, the executive power is exercised by the President and Governors with their respective councils of ministers, and the judicial power lies primarily with the Supreme Court and High Courts. Yet, the framers were conscious that a rigid separation would be impractical in a parliamentary democracy where the executive is derived from and accountable to the legislature.

Dr. B.R. Ambedkar, while defending the draft Constitution, clarified in the Constituent Assembly that “the doctrine of separation of powers has not been strictly adhered to in the Constitution of India.” Instead, the Constitution ensures that “the legislature, the executive, and the judiciary are kept apart in their spheres, but their functions are interrelated.” This interdependence is seen in multiple provisions — for instance, the President’s legislative role in promulgating ordinances under Article 123, the judiciary’s ability to strike down unconstitutional laws, and the executive’s role in judicial appointments under Article 124.

Despite this flexibility, the Indian judiciary has consistently recognized separation of powers as part of the basic structure of the Constitution. The landmark *Kesavananda Bharati v. State of Kerala* (1973) established that the basic structure, including separation of powers, cannot be amended by Parliament under Article 368. The Court observed that the doctrine serves as a safeguard against the concentration of power in any single organ. Similarly, in *Indira Nehru Gandhi v. Raj Narain* (1975), the Supreme Court struck down clause 4 of Article 329-A, inserted by the 39th Amendment, as unconstitutional for violating the separation of powers and undermining judicial independence.

In *Minerva Mills Ltd. v. Union of India* (1980), the Court reiterated that “the Constitution is founded on a fine balance of power among the legislature, the executive, and the judiciary,” and any attempt to disturb this equilibrium would destroy the basic structure. Thus, through judicial interpretation, the separation of powers has evolved from a political theory into a constitutional imperative within India’s democratic framework.



Judicial Review: Concept, Origin, and Evolution

Judicial review represents one of the most powerful and defining instruments of modern constitutionalism. It signifies the power of the judiciary to examine the validity of legislative enactments and executive actions to ensure conformity with the Constitution. In essence, judicial review acts as a constitutional safeguard that maintains the supremacy of the Constitution and the rule of law. While the doctrine of separation of powers prescribes distinct functional domains for each organ of the State, judicial review serves as a mechanism to maintain harmony and prevent the transgression of those boundaries.

The conceptual foundation of judicial review lies in the idea of constitutional supremacy. If the Constitution is the supreme law of the land, all laws and executive actions must conform to it; otherwise, they are void. This notion is deeply rooted in the political philosophy of natural rights and limited government. The courts, therefore, become the guardians of constitutional values, ensuring that no branch of government exceeds the limits prescribed by the Constitution.

The doctrine of judicial review was firmly established in the United States through the landmark decision in *Marbury v. Madison* (1803). Chief Justice John Marshall, speaking for the Supreme Court, held that “it is emphatically the province and duty of the judicial department to say what the law is.” By asserting this principle, the judiciary positioned itself as the ultimate interpreter of the Constitution and the arbiter of constitutional disputes. This decision not only solidified the separation of powers but also introduced the concept of checks and balances that has become central to the American constitutional system. Since *Marbury*, the U.S. Supreme Court has used judicial review to invalidate numerous federal and state statutes that contravened constitutional provisions, thus acting as a counter-majoritarian institution that protects individual rights against legislative and executive excesses.

In the United Kingdom, the traditional doctrine of parliamentary sovereignty precluded the exercise of judicial review over primary legislation. Courts were bound to apply laws enacted by Parliament, even if they were unjust or unconstitutional. However, judicial review in the U.K. developed in a different context—primarily as a review of administrative actions rather than legislative acts. The *Council of Civil Service Unions v. Minister for the Civil Service (GCHQ case)* (1985) marked a turning point by recognizing that executive discretion is subject to judicial scrutiny on grounds of illegality, irrationality, and procedural impropriety. The enactment of the *Human Rights Act, 1998* further expanded the scope of judicial review by enabling courts to assess whether legislation is compatible with the European Convention on Human Rights, though Parliament remains legally sovereign. This transformation

demonstrates that even within a system of parliamentary supremacy, the judiciary plays a vital role in upholding constitutional principles and protecting individual rights.

In India, judicial review occupies a constitutionally entrenched position. Articles 13, 32, 131–136, 143, 226, and 227 collectively vest in the judiciary the power to review legislative and executive actions. Article 13(2) explicitly provides that any law inconsistent with or in derogation of fundamental rights shall be void. The Supreme Court and High Courts thus serve as guardians of the Constitution, empowered to strike down unconstitutional enactments and executive orders. The Supreme Court's decision in *A.K. Gopalan v. State of Madras* (1950) laid the early foundations of judicial review in India, but the doctrine matured significantly through subsequent landmark rulings.

In *Kesavananda Bharati v. State of Kerala* (1973), the Supreme Court not only reaffirmed its power of judicial review but also introduced the *Basic Structure Doctrine*, which prevents Parliament from altering the fundamental framework of the Constitution. Judicial review, therefore, was recognized as part of the basic structure itself. Later decisions such as *Indira Nehru Gandhi v. Raj Narain* (1975), *Minerva Mills Ltd. v. Union of India* (1980), and *L. Chandra Kumar v. Union of India* (1997) consolidated this principle, making judicial review an integral component of India's constitutional identity. The Indian judiciary, thus, exercises judicial review not merely as a legal prerogative but as a constitutional duty to maintain the balance of power and to preserve the rule of law.

Interaction between Separation of Powers and Judicial Review

The relationship between the doctrine of separation of powers and judicial review is inherently complex. On the one hand, separation of powers dictates that the judiciary should not encroach upon the domains of the legislature or the executive. On the other hand, judicial review empowers the judiciary to oversee and, if necessary, invalidate actions of the other two branches. The reconciliation of these principles requires a nuanced understanding of constitutional design and the practical realities of governance.

In the United States, this interaction manifests through the doctrine of checks and balances. The judiciary ensures that the legislature and the executive operate within constitutional boundaries, while those branches, in turn, possess mechanisms to influence the judiciary. For instance, Congress can amend the Constitution, regulate the appellate jurisdiction of federal courts, and control judicial appointments and budgets. The President, through the power of appointment and pardon, also exercises a degree of influence over the judiciary. Thus, judicial review operates not in isolation but within a dynamic system of mutual restraint. However, this balance has often been tested — as seen during the *New Deal* era when the Supreme Court invalidated several legislative measures, prompting President Franklin D. Roosevelt's



controversial “court-packing” plan. These tensions illustrate that while judicial review safeguards constitutionalism, it must be exercised with prudence to avoid disrupting institutional equilibrium.

In the United Kingdom, the relationship between separation of powers and judicial review has evolved gradually. The creation of the Supreme Court of the United Kingdom in 2009 under the *Constitutional Reform Act, 2005* symbolized a formal recognition of judicial independence and clearer institutional separation. Judicial review, though limited by parliamentary sovereignty, functions as an effective tool of accountability within the administrative state. Courts have increasingly asserted their role in ensuring that executive decisions adhere to the principles of legality and reasonableness, as exemplified in *R (Miller) v. The Prime Minister* (2019), where the Supreme Court held that the prorogation of Parliament was unlawful. This judgment underscored that even in a system with no codified constitution, the rule of law and separation of powers require that governmental power be exercised within legal limits.

In India, the interplay between separation of powers and judicial review is both constitutional and pragmatic. The judiciary, while recognizing the autonomy of the legislature and the executive, has not hesitated to intervene when constitutional mandates are violated. In *Indira Gandhi v. Raj Narain*, the Supreme Court emphasized that while the legislature can make laws, it cannot adjudicate election disputes, as doing so would encroach upon judicial power. Similarly, in *State of Bihar v. Bal Mukund Shah* (2000), the Court reiterated that each organ must act within the sphere assigned by the Constitution, and judicial review serves as the instrument to maintain this balance.

However, this delicate equilibrium has not been without controversy. The growing phenomenon of *judicial activism* — where courts engage in policy-making or issue directives on administrative matters — has raised concerns about the judiciary’s encroachment into executive and legislative domains. Public Interest Litigation (PIL), while empowering citizens and expanding access to justice, has sometimes led to judicial forays into areas traditionally reserved for other branches, such as environmental regulation, economic policy, and administrative governance. Cases like *Vineet Narain v. Union of India* (1998) and *Prakash Singh v. Union of India* (2006) demonstrate the judiciary’s proactive role in enforcing accountability but also highlight the thin line between judicial vigilance and judicial overreach.

Thus, judicial review in the context of separation of powers operates as a double-edged sword. It is indispensable for maintaining constitutional supremacy, but its overextension risks disturbing the very balance it seeks to protect. The challenge lies in ensuring that judicial review remains an instrument of constitutional control rather than institutional dominance.



Comparative Analysis of Separation of Powers and Judicial Review

The relationship between separation of powers and judicial review has evolved differently across constitutional systems. While the concept originates from a common philosophical base — the prevention of tyranny and maintenance of liberty — each nation's historical, political, and legal environment has determined the precise contours of the doctrine. The comparative study of the United States, the United Kingdom, and India reveals both convergences and divergences in their approaches toward maintaining institutional equilibrium.

In the United States, the constitutional design embodies a classical model of separation of powers tempered by checks and balances. The American Constitution expressly distributes legislative power to Congress, executive power to the President, and judicial power to the Supreme Court and subordinate courts. However, this division is neither absolute nor rigid. Each branch is endowed with means to influence the others — the President's veto, Congress's power of impeachment, and the judiciary's authority of constitutional review. The landmark case of *Marbury v. Madison* (1803) established judicial review as an inherent aspect of judicial power, ensuring that no law repugnant to the Constitution could stand. This doctrine was further strengthened in *McCulloch v. Maryland* (1819), where Chief Justice Marshall upheld the principle of implied powers and federal supremacy.

Over time, American courts have played a decisive role in delineating constitutional boundaries. For instance, in *Brown v. Board of Education* (1954), the Supreme Court struck down racial segregation laws, demonstrating the judiciary's power to enforce fundamental rights against legislative inertia. Conversely, during the *New Deal* period, judicial resistance to economic reforms led to a constitutional confrontation between the judiciary and the executive. This episode illustrates that while judicial review acts as a check on political branches, its exercise must align with evolving social realities. Today, judicial review in the United States continues to function as the linchpin of constitutionalism, but courts remain cautious not to intrude into overtly political questions, adhering to doctrines such as the *political question doctrine* and *judicial restraint*.

In the United Kingdom, the evolution of the doctrine has been gradual and pragmatic. The traditional doctrine of parliamentary sovereignty, as articulated by A.V. Dicey, implies that Parliament has the ultimate legal authority, and no court can question the validity of its statutes. Consequently, the British judiciary's role historically focused on interpreting statutes rather than invalidating them. Nonetheless, the principle of separation of powers, though not constitutionally entrenched, has acquired increasing recognition, particularly through judicial independence. The *Constitutional Reform Act, 2005* formally



separated the judicial and legislative functions by transferring the judicial role of the House of Lords to the newly established Supreme Court of the United Kingdom in 2009.

Judicial review in the British context primarily addresses executive and administrative actions. The *GCHQ case* (1985) defined the grounds of judicial review as illegality, irrationality, and procedural impropriety, thus institutionalizing judicial control over administrative discretion. The expansion of human rights jurisprudence following the *Human Rights Act, 1998* further empowered courts to assess legislative compatibility with the European Convention on Human Rights. Although courts cannot strike down primary legislation, they can issue *declarations of incompatibility*, which exert considerable moral and political pressure on Parliament to amend inconsistent laws. The decision in *R (Miller) v. The Prime Minister* (2019), invalidating the prorogation of Parliament, underscores that even within a framework of parliamentary sovereignty, the rule of law and constitutional conventions impose limits on executive power.

The Indian system represents a hybrid constitutional model that merges the American principle of constitutional supremacy with the British parliamentary system. The Constitution vests legislative power in Parliament and state legislatures, executive power in the President and Governors, and judicial power in the Supreme Court and High Courts. However, the overlap of functions, particularly in a parliamentary executive drawn from the legislature, makes the Indian variant a flexible and cooperative model of separation of powers. The judiciary's role as the guardian of the Constitution, empowered by Articles 13, 32, and 226, has been repeatedly reaffirmed through landmark judgments.

In *Kesavananda Bharati v. State of Kerala* (1973), the Supreme Court propounded the *Basic Structure Doctrine*, declaring that while Parliament possesses wide powers to amend the Constitution under Article 368, it cannot alter its essential features, including separation of powers, judicial review, and the rule of law. This judgment established the judiciary as the ultimate interpreter of constitutional limitations. The subsequent case of *Indira Nehru Gandhi v. Raj Narain* (1975) further strengthened this position by striking down constitutional amendments that sought to immunize the Prime Minister's election from judicial scrutiny. In *Minerva Mills Ltd. v. Union of India* (1980), the Court reaffirmed that limited amending power, separation of powers, and judicial review form part of the Constitution's basic structure. These decisions collectively entrenched judicial review as an instrument for preserving the delicate balance of power among the organs of the State.



Landmark Judgments and Doctrinal Developments

The doctrine of separation of powers in the age of judicial review has been shaped by several transformative judgments that continue to guide constitutional interpretation in India and beyond.

The decision in *Kesavananda Bharati* remains the cornerstone of Indian constitutional jurisprudence. The Court, through a thirteen-judge bench, held that while constitutional amendments are permissible, they cannot abrogate the basic structure of the Constitution. By including judicial review within this framework, the Court ensured that the judiciary retained the power to examine not only ordinary legislation but also constitutional amendments. This position elevated judicial review to a meta-constitutional status, making it an essential feature of India's democratic order.

In *Indira Nehru Gandhi v. Raj Narain*, the Supreme Court invalidated Clause (4) of Article 329-A, which excluded judicial scrutiny of the Prime Minister's election. The Court reasoned that such exclusion would destroy the concept of rule of law and violate separation of powers by vesting judicial functions in the legislature. Justice Khanna famously observed that the legislature cannot exercise judicial power, just as the judiciary cannot assume legislative or executive functions.

The *Minerva Mills* case reaffirmed the essential harmony between Parts III and IV of the Constitution, emphasizing that fundamental rights and directive principles must coexist. The Court held that any attempt to expand Parliament's amending power to destroy this harmony would upset the constitutional balance and thus violate the separation of powers. Similarly, in *L. Chandra Kumar v. Union of India* (1997), the Court held that the power of judicial review vested in the High Courts and the Supreme Court is part of the basic structure and cannot be ousted by legislative or constitutional amendments. This decision invalidated provisions that excluded the jurisdiction of High Courts over administrative tribunals, reinforcing the judiciary's role as the final arbiter of legality.

The Supreme Court has also extended its interpretative reach in areas such as environmental protection, governance, and human rights through Public Interest Litigation (PIL). In *Vineet Narain v. Union of India* (1998), the Court directed the establishment of institutional mechanisms to ensure the independence of investigative agencies, emphasizing that inaction of the executive cannot defeat the rule of law. In *Prakash Singh v. Union of India* (2006), it issued guidelines for police reforms to insulate law enforcement from political interference. Although these interventions have been hailed as necessary correctives to executive failure, critics argue that they signify a drift toward judicial policymaking, thereby challenging the classical understanding of separation of powers.



The comparative jurisprudence from other jurisdictions also highlights this evolving interplay. The U.S. Supreme Court's decision in *United States v. Nixon* (1974) reaffirmed judicial supremacy in constitutional interpretation by compelling the President to produce evidence in the Watergate investigation, reinforcing that executive privilege cannot override the rule of law. Similarly, the British case of *R (Miller) v. The Prime Minister* (2019) reaffirmed judicial authority to enforce constitutional principles even in the absence of a written constitution. These cases illustrate a universal trend: the judiciary's role as a constitutional sentinel has expanded in response to the increasing complexity of modern governance.

The cumulative effect of these judicial developments is the emergence of a dynamic and functional approach to separation of powers. Rather than a rigid demarcation, the doctrine now emphasizes a system of cooperation and mutual accountability among the three branches, mediated through judicial review. However, this transformation also raises normative questions about the limits of judicial power and the appropriate balance between activism and restraint.

Contemporary Challenges: Judicial Overreach, Activism, and Accountability

In the contemporary constitutional landscape, the doctrine of separation of powers operates in a far more intricate environment than what was envisioned by its classical exponents. The expansion of governmental functions, the complexity of socio-economic policies, and the rising expectations of citizens have blurred the traditional boundaries among the legislature, executive, and judiciary. Among the three, the judiciary — equipped with the power of judicial review — has emerged as a decisive force in shaping public policy, interpreting rights, and enforcing constitutional norms. While this development has strengthened constitutional governance, it has also generated concerns about judicial overreach and the accountability of unelected judges.

Judicial activism, as a concept, denotes the proactive role of the judiciary in advancing justice, often beyond the text of statutes or the conventional limits of interpretation. It emerged in India during the post-Emergency period as a response to executive arbitrariness and legislative inertia. The judiciary, through creative interpretation, expanded the ambit of fundamental rights, particularly under Article 21, transforming it from a narrow procedural guarantee into a repository of substantive rights. In *Maneka Gandhi v. Union of India* (1978), the Supreme Court declared that the “procedure established by law” must be just, fair, and reasonable, thereby infusing the concept of due process into the Indian Constitution. Subsequently, the Court recognized the right to livelihood, education, health, and a clean environment as facets of the right to life.



Public Interest Litigation (PIL) became the principal vehicle of judicial activism. By relaxing the traditional rules of *locus standi*, the Court allowed public-spirited individuals and organizations to approach it on behalf of the disadvantaged. Landmark judgments such as *Hussainara Khatoon v. State of Bihar* (1979), *M.C. Mehta v. Union of India* (1986), and *Vishaka v. State of Rajasthan* (1997) exemplify how the judiciary addressed issues of human rights, environmental protection, and gender equality through innovative jurisprudence. These interventions filled critical gaps left by legislative and executive inaction and established the judiciary as the guardian of social justice.

However, the same phenomenon also invites criticism under the label of judicial overreach — when judicial decisions venture into policy domains traditionally reserved for the executive or legislature. Critics argue that excessive judicial activism disturbs the constitutional balance by eroding democratic accountability. The judiciary, unlike the legislature or executive, lacks electoral legitimacy and administrative expertise, yet its directives often have far-reaching policy implications. Instances where courts have issued guidelines on governance, environmental policy, police reform, or even economic management highlight this growing concern. For example, in *Common Cause v. Union of India* (2018), the Court prescribed guidelines for the allocation of natural resources, effectively performing a regulatory function.

The debate, therefore, is not about the desirability of judicial review itself but about its scope and limits. A functional democracy requires the judiciary to act as a check against unconstitutional actions, but it must also respect the autonomy of the other branches. As Justice J.S. Verma observed, “Judicial activism should not become judicial adventurism.” The doctrine of separation of powers, while flexible, cannot be stretched to justify judicial assumption of executive or legislative functions. The principle of institutional comity requires each branch to operate within its domain while remaining accountable to constitutional norms.

Accountability mechanisms for the judiciary remain an evolving area of discourse. While judges enjoy constitutional protection under Articles 121 and 124 to safeguard their independence, this independence should not translate into unaccountability. Internal mechanisms such as judicial collegiums, in-house procedures, and judicial ethics codes aim to preserve transparency, yet they are insufficient in ensuring democratic oversight. The debate over judicial appointments, particularly the *National Judicial Appointments Commission (NJAC) case* (2015), reflects the tension between independence and accountability. In striking down the NJAC, the Supreme Court reaffirmed judicial primacy in appointments but simultaneously acknowledged the need for greater transparency within the collegium



system. Thus, maintaining judicial accountability without compromising independence remains a constitutional challenge that directly impacts the equilibrium envisioned by the separation of powers.

Doctrinal Reassessments in the 21st Century

In the twenty-first century, constitutional systems across the world have undergone a paradigm shift in their understanding of the separation of powers. The increasing interdependence among governmental organs, the rise of global governance structures, and the growing judicialization of politics have necessitated a reassessment of the doctrine in functional, rather than formal, terms.

In the United States, debates over judicial activism have resurfaced in politically charged cases such as *Roe v. Wade* (1973), *Obergefell v. Hodges* (2015), and the recent overturning of *Roe* in *Dobbs v. Jackson Women's Health Organization* (2022). These cases illustrate how judicial interpretations can influence political and moral discourse, reinforcing the judiciary's role as a policymaker in areas like reproductive rights and same-sex marriage. While proponents view this as the judiciary's duty to protect fundamental liberties, opponents argue that it undermines democratic decision-making. Consequently, judicial restraint — the idea that courts should defer to the elected branches unless there is a clear constitutional violation — remains an enduring principle in American constitutional theory.

In the United Kingdom, the doctrine has evolved toward a more balanced constitutionalism. The judiciary, though constrained by parliamentary sovereignty, has gained unprecedented authority in holding the executive accountable. The *Miller* cases (2017 and 2019) exemplify the British courts' willingness to safeguard constitutional conventions and prevent executive abuse. Moreover, post-Brexit constitutional developments have intensified discussions on judicial independence and accountability in the absence of supranational oversight. The British experience demonstrates that separation of powers, even without a written constitution, can function effectively through conventions, judicial integrity, and political culture.

In India, the 21st century has witnessed both the consolidation and the contestation of judicial power. The judiciary's role in expanding rights jurisprudence — encompassing privacy (*K.S. Puttaswamy v. Union of India*, 2017), environmental protection, and governance reforms — underscores its continued relevance as a constitutional sentinel. Yet, concerns persist about institutional overreach, delay in justice delivery, and lack of transparency. The Indian judiciary today faces the delicate task of balancing constitutional guardianship with self-restraint. As Justice R.F. Nariman observed, "The Constitution demands that the separation of powers be maintained not merely in theory but in practice, as the foundation of the rule of law." The future of Indian constitutionalism depends on achieving this equilibrium in an era where courts are increasingly called upon to resolve political and policy disputes.



Conclusion and Suggestions for Constitutional Balance

The doctrine of separation of powers, far from being a relic of eighteenth-century constitutionalism, remains a living and evolving principle that underpins democratic governance in the twenty-first century. In the age of judicial review, this doctrine has acquired renewed significance as a means of preserving the constitutional balance, ensuring accountability, and protecting individual liberty. The comparative experience of the United States, the United Kingdom, and India demonstrates that while absolute separation is neither feasible nor desirable, a functional distribution of powers is essential to prevent the concentration of authority.

In India, the judiciary has played an indispensable role in maintaining constitutional supremacy and the rule of law. Through landmark judgments such as *Kesavananda Bharati*, *Indira Nehru Gandhi*, *Minerva Mills*, and *L. Chandra Kumar*, the Supreme Court has institutionalized judicial review as a part of the Constitution's basic structure. This has ensured that no branch of government can act arbitrarily or undermine fundamental constitutional values. Yet, the judiciary's expanding role also necessitates caution. Judicial review must remain a tool for enforcing constitutional limitations, not for substituting judicial preferences for legislative or executive policy choices.

To strengthen the constitutional balance, several measures can be considered: First, judicial review should operate within the bounds of textual interpretation and constitutional necessity. Courts should avoid policy-making in areas requiring technical or administrative expertise. Second, mechanisms for judicial accountability must be enhanced through transparent appointment processes, periodic performance evaluations, and ethical oversight without compromising judicial independence. Third, the legislature and executive must respect judicial decisions and fulfill their constitutional responsibilities to prevent the judiciary from becoming the default policy-maker. Fourth, legal education and civic awareness should emphasize the importance of institutional harmony as a cornerstone of democratic governance.

Ultimately, the doctrine of separation of powers in the age of judicial review must be understood as a principle of balance, coordination, and restraint. It is neither a barrier to cooperation nor a license for domination. The genius of constitutional democracy lies in its ability to adapt timeless principles to contemporary realities. As governance becomes more complex and the judiciary continues to safeguard constitutional morality, the spirit of separation of powers — tempered by mutual respect and guided by the rule of law — remains the best assurance against tyranny and the surest guarantee of liberty.



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