

# The Fine Line of Separation: Conflict Between Judiciary and Legislature

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**Abstract-** In any constitutional democracy, the doctrine of separation of powers is a foundational principle aimed at ensuring that the legislature, executive, and judiciary operate independently yet harmoniously. However, the practical application of this doctrine often leads to friction, particularly between the legislature and the judiciary. While the legislature is entrusted with law-making, the judiciary interprets and, at times, reviews the validity of these laws. In India, this dynamic has led to a series of confrontations, especially in cases involving constitutional amendments, judicial appointments, and legislative privileges. This assignment seeks to analyze the root causes, legal implications, and evolving nature of the judiciary-legislature conflict, drawing from landmark cases and constitutional provisions. It also examines whether such conflicts threaten democratic balance or reinforce institutional accountability.

**Keywords:** Separation of powers, Judiciary, Legislature, Constitution, Conflict

## INTRODUCTION

India is a democracy that follows the **separation of powers**. Powers are separated between the **Judiciary, Legislature, and Executive**. The judiciary is that branch of the government that interprets the law, settles disputes, and administers justice to all citizens. The judiciary is considered the watchdog of democracy, and also the guardian of the Constitution. For democracy to function effectively, it is imperative to have an impartial and independent judiciary. India has a single integrated judicial system. The judiciary in India has a pyramidal structure with the **Supreme Court (SC)** at the top. **High Courts** are below the SC, and below them are the **district and subordinate courts**. The lower courts function under the direct superintendence of the higher courts. Whereas, the

legislature is the law-making body of our nation. In India, at the union level is the **Parliament**, comprising the President and two Houses: The Council of States (*Rajya Sabha*) and the House of the People (*Lok Sabha*). At the state level, legislatures are either **unicameral** (one house) or **bicameral** (two houses), with the lower house being the **Legislative Assembly** and the upper house, where applicable, being the **Legislative Council**. The legislature is the supreme legislative body of the State and plays a vital role in safeguarding democracy as envisaged in the Constitution.

Separation of powers is the yardstick that guides them. It provides for the division of the legislative, executive, and judicial functions of a government. *Article 50*<sup>1</sup> says that states shall take steps to separate the Judiciary from the Executive. Furthermore, *Article 13*<sup>2</sup> grants the judiciary the power to examine the validity of any law made by the legislature. The constitutional demarcation precludes the concentration of excessive power by any branch of the government. The Indian Constitution lays down the structure and defines and determines the role and functions of every organ of the State and establishes norms for their inter-relationships and checks and balances.

## HISTORICAL AND CONSTITUTIONAL BACKGROUND

### *Separation of powers*

The separation of powers roots back to the era where there used to be kings who ruled over their kingdoms and had all the powers vested in them. The concept of separation of powers was discussed by Aristotle in his book '*Politics*'<sup>3</sup>. According to this, every Constitution

<sup>1</sup> Indian Constitution, Art.50

<sup>2</sup> Indian Constitution, Art.13

<sup>3</sup> Thomas L. Pangle, Aristotle's Politics,

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must include three organs of the government: deliberative, public officials, and judicial departments. The Roman Republic Government also adopted the principle of checks and balances in the country.

In the 17<sup>th</sup> century, after the advent of the English Parliament, a British politician, John Locke, also stated three forms of organs in his book '*Two Treatises of Government*<sup>4</sup>' from a different perspective. He explained in his book that all three organs do not have independent authority or power. According to him, legislation has the supreme authority, and the executive or federative functions are exercised by the monarch. John Locke did not consider all three branches equal.

In the 18<sup>th</sup> century, a French lawyer named Baron de Montesquieu meticulously theorised the word "*trias politica*"<sup>5</sup> or the idea of separation of powers. He emphasised the judicial branch's independence more than most philosophers. He explained that the judiciary must have an actual nature rather than being ostensible and that no one organ or person should execute the functions of every other organ to protect personal freedom. This theory was first propounded by Montesquieu as early as 1747 via his book, namely '*Esprit des Lois*' (*The Spirit of the Laws*). Montesquieu observed that if all the power is concentrated in the hands of an individual or a group of people, it results in a tyrannical form of government.<sup>6</sup>

The Indian Constitution, though not adopting a rigid separation of powers, incorporates a functional demarcation among the three organs. The Preamble and Part V (Articles 52–151) and Part VI (Articles 152–237) reflect the structure of government with separate roles for the Legislature, Executive, and Judiciary.

The Constituent Assembly Debates also highlight this design. Dr. B.R. Ambedkar, while defending Article 32, stated: "*If I was asked to name any particular Article in this Constitution as the most important...an Article without which this Constitution would be a*

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(Edward N. Zalta ed., Fall 2023 ed.), <https://plato.stanford.edu/entries/aristotle-politics/>

<sup>4</sup> John Locke, *Two Treatises of Government*, Volume V, The Works of John Locke (Thomas Tegg et al. eds., London 1823).

<sup>5</sup> Charles de Montesquieu, *The Spirit of the Laws* bk. XI, ch. 6 (Anne M. Cohler et al. eds. & trans., Cambridge Univ. Press 1989) (1748)

*nullity....I could not refer to any other Article except this one. It is the very soul of the Constitution and the very heart of it.*"<sup>7</sup> This reflects the centrality of judicial review, especially in ensuring that no law transgresses Part III of the Constitution.

## CONSTITUTIONAL AND LEGAL FRAMEWORK

India follows a quasi-federal structure with a written constitution that provides a clear demarcation of powers. The Indian constitutional structure, while not explicitly codifying the doctrine of separation of powers, inherently recognises it through a careful distribution of functions among the Legislature, Executive, and Judiciary. This implied doctrine forms the bedrock of India's constitutional democracy, ensuring that each organ remains within its constitutionally demarcated sphere, while also maintaining a system of checks and balances. The supremacy of the Constitution remains the paramount guiding principle, restricting absolute power in any one branch of government.

The legislative powers of the Indian Parliament are primarily governed by Articles 79 to 122<sup>8</sup>, which define the structure, privileges, and procedures of the bicameral Parliament comprising the Lok Sabha and the Rajya Sabha. Article 245<sup>9</sup> authorises Parliament to make laws for the whole or any part of the territory of India, subject to the provisions of the Constitution. Article 368<sup>10</sup> empowers Parliament to amend the Constitution, yet such power is not unfettered.

In the landmark case of *Kesavananda Bharati v. State of Kerala*<sup>11</sup> (1973), the Supreme Court, in a 7:6 majority, laid down the doctrine of the basic structure, ruling that while Parliament has wide-ranging powers to amend the Constitution, it cannot destroy or emasculate its fundamental framework. Justice H.R. Khanna succinctly stated that "*the power to amend is not the power to destroy.*" This principle was reiterated in *Indira Nehru Gandhi v. Raj Narain*

<sup>6</sup> MONTESQUIEU, THE SPIRIT OF LAWS bk. XI, ch. 6 (1748)

<sup>7</sup> Constituent Assembly Debates, Vol. VII, 23 Nov. 1948, at 529–530

<sup>8</sup> Indian Constitution, Art. 79-122

<sup>9</sup> Indian Constitution, Art. 245

<sup>10</sup> Indian Constitution, Art. 368

<sup>11</sup> AIR 1973 SC 1461

<sup>12</sup> (1975), wherein the Court invalidated the 39<sup>th</sup> Constitutional Amendment, holding that the principles of free and fair elections, judicial review, and the rule of law formed part of the inviolable basic structure of the Constitution.

The judiciary, on the other hand, derives its authority from Articles 124 to 147, which establish the Supreme Court and outline its composition, powers, and jurisdiction. *Article 13*<sup>13</sup> plays a foundational role in the protection of Fundamental Rights, providing that any law inconsistent with or in derogation of such rights shall be void. Articles 32 and 226<sup>14</sup> empower the Supreme Court and High Courts, respectively, to issue writs for the enforcement of rights, thereby reinforcing the judiciary's role as the guardian of constitutional morality.

The Supreme Court in *Minerva Mills Ltd. V. Union of India (1980)*<sup>15</sup> reiterated the inviolability of judicial review as part of the basic structure. Justice Y.V. Chandrachud observed that the Constitution is founded on the “*bedrock of the balance between Parts III and IV, and that any attempt to abrogate the Fundamental Rights under the guise of implementing Directive Principles would amount to constitutional subversion*”<sup>16</sup>. Similarly, in *L. Chandra Kumar v. Union of India (1997)*<sup>17</sup>, the Court reaffirmed that the power of judicial review conferred upon the High Courts and the Supreme Court under Articles 226 and 32 is integral to the basic structure and cannot be excluded by constitutional amendment or statutory enactment.

Although the Indian Constitution does not embody a strict and watertight separation of powers, the doctrine has been recognised and applied by the judiciary to preserve the constitutional equilibrium. In *Rai Sahib Ram Jawaya Kapur v. State of Punjab (1955)*<sup>18</sup>, the Supreme Court observed that the Constitution does not insist on a rigid separation, but it does delineate the essential functions of each organ. This nuanced approach allows for flexibility in governance, while restraining institutional overreach. In *State of Rajasthan v. Union of India (1977)*<sup>19</sup>, the Court

exercised judicial restraint and declined to interfere with the political discretion of the executive, reaffirming that the judiciary must not trespass into areas reserved for the political branches unless there is a clear violation of constitutional provisions. In the *Indira Gandhi case*, the judiciary once again underscored the importance of maintaining institutional boundaries, asserting that while the judiciary is the final interpreter of the Constitution, it must not usurp legislative functions.

In essence, the Indian constitutional framework envisages a dynamic interplay between the Legislature and the Judiciary, grounded in mutual respect and constitutional fidelity. While the Legislature is vested with the authority to legislate and amend, such powers are bounded by constitutional limitations, including the basic structure doctrine. Simultaneously, the judiciary must exercise its interpretative role with restraint, intervening only to uphold constitutional supremacy. The doctrine of separation of powers, though not express, remains a guiding principle that sustains the integrity and functionality of India's democratic polity.

#### NATURE AND SOURCES OF CONFLICT

The constitutional scheme of India is predicated on the separation of powers and checks and balances. However, the demarcation is not absolute, leading to frictions, particularly between the judiciary and the legislature. These conflicts often arise from differing interpretations of constitutional mandates and the dynamic interplay of roles in a constitutional democracy.

- *Judicial Activism v. Judicial Overreach*

Judicial activism refers to the proactive role of courts in upholding constitutional values, particularly in protecting the rights of marginalised and vulnerable groups. The Indian judiciary, through Public Interest Litigation (PIL), has evolved into a custodian of socio-economic justice, as seen in *Hussainara Khatoon v. State of Bihar (1979)*<sup>20</sup> and *Olga Tellis v. Bombay*

<sup>12</sup> AIR 197 SC 2299

<sup>13</sup> Indian Constitution, Art. 13

<sup>14</sup> Indian Constitution, Art. 32 and 226

<sup>15</sup> 1980 AIR 1789

<sup>16</sup> *Minerva Mills Ltd v. Union of India*, 1980 AIR 1789, pg 57

<sup>17</sup> AIR 1997 SC 1125

<sup>18</sup> AIR 1955 SC 549

<sup>19</sup> 1977 AIR 1361

<sup>20</sup> 1979 AIR 1369

*Municipal Corporation (1985)*<sup>21</sup>, where the Supreme Court expanded the scope of Article 21<sup>22</sup> to include the right to legal aid and the right to livelihood, respectively. Such interventions have been lauded as necessary correctives in a system where executive inertia or legislative apathy may result in the denial of constitutional entitlements.

However, the thin line between activism and overreach becomes blurred when courts venture into policy-making or administrative governance, domains traditionally reserved for the legislature and executive. In *Common Cause v. Union of India (2018)*<sup>23</sup>, the Supreme Court directed the allocation of natural resources in a particular manner, which some legal scholars criticised as an encroachment into the executive's policy domain. Justice Markandey Katju, in *Divisional Manager, Aravali Golf Club v. Chander Haas (2008)*<sup>24</sup>, warned against this trend, stating "There is a broad separation of powers under the Constitution, and judges must exercise self-restraint and not encroach into the executive or legislative domain."

The counterview asserts that in a constitutional democracy governed by the rule of law, the judiciary must act decisively when the other branches fail to discharge their duties. The commonly known, National Judicial Appointments Commission (NJAC) case, otherwise known, *Supreme Court Advocates-on-Record Association v. Union of India (2015)*<sup>25</sup>, is emblematic of this tension, where the Court struck down a constitutional amendment passed by Parliament on the ground that it undermined judicial independence, a basic feature of the Constitution. The series of cases was epitome to tussles between judiciary and legislature settling on to the supremacy of none, but the constitution only.

- *Legislative Supremacy vs. Constitutional Supremacy*

A fundamental source of friction lies in the perception of legislative supremacy, rooted in the idea that Legislature represents the sovereign will of the people versus constitutional supremacy, wherein all institutions are subordinate to the Constitution. While

Parliament has plenary powers under Article 245 and 246, these are circumscribed by Part III (Fundamental Rights) and the basic structure doctrine.

In *Kesavananda Bharati v. State of Kerala (1973)*<sup>26</sup>, the Supreme Court held that Parliament's power to amend the Constitution under Article 368 does not extend to altering its basic structure. Justice Sikri, delivering the leading opinion, asserted: "*The Constitution is supreme and Parliament, while exercising its amending power, is subject to inherent limitations*". Proponents of parliamentary sovereignty argue that such judicially crafted doctrines undermine democratic will and lead to judicial supremacy. However, defenders of constitutional supremacy maintain that without such limitations, there exists the risk of constitutional despotism under the guise of popular mandate.

Nevertheless, the Second Administrative Reforms Commission (2007)<sup>27</sup> recommended evolving a convention of consultation and cooperation among the three organs to reduce institutional tensions. It stressed that the role of the judiciary must be one of interpretation and enforcement, not of governance.

- *Legislative Privileges vs. Judicial Review*

Another flashpoint is the interplay between parliamentary privileges and the judiciary's power of review. Articles 105 and 194<sup>28</sup> confer privileges on Parliament and State Legislatures, respectively, to ensure their independent functioning. However, these privileges are not absolute and are subject to constitutional limitations. In *Raja Ram Pal v. Speaker, Lok Sabha (2007)*<sup>29</sup>, the Supreme Court held that judicial review is permissible in cases where the exercise of privilege violates constitutional provisions or fundamental rights. The Court emphasised, "*The claim of exclusive jurisdiction of the legislature does not oust judicial review when the impugned action transgresses constitutional limitations.*"

Opponents of judicial interference argue that such review infringes on the internal autonomy of the legislature, potentially destabilising the *doctrine of*

<sup>21</sup> 1986 AIR 180

<sup>22</sup> Right to life and liberty

<sup>23</sup> AIR 2018 SC 1665

<sup>24</sup> 2008 AIR SCW 406

<sup>25</sup> AIR 1994 SC 268

<sup>26</sup> Kesavananda Bharati, supra note 11,

<sup>27</sup> Second Administrative Reforms Commission, Ethics in Governance, Rep. No. 4 (2007)

<sup>28</sup> Indian Constitution. Art. 105 and 194

<sup>29</sup> AIR 2007 SC 1448

comity<sup>30</sup>. However, in a constitutional democracy, no authority is above the Constitution. As noted by Justice V.R. Krishna Iyer, “Parliament is not supreme in India; the Constitution is.”, The conflict thus lies in reconciling the need for legislative autonomy with the requirement for constitutional conformity. This debate is further complicated by the lack of codification of privileges, leading to ambiguity in determining the scope and limits of judicial review.

#### LANDMARK JUDGMENTS

The jurisprudential evolution of the Indian Constitution has been marked by several landmark decisions where the balance between judicial interpretation and legislative competence has been fiercely contested.

The most seminal among these is *Kesavananda Bharati v. State of Kerala (1973)*<sup>31</sup>, where the Supreme Court, by a 7:6 majority, propounded the Basic Structure Doctrine, placing substantive limits on legislature’s amending power under Article 368<sup>32</sup>. The Court held that while Parliament could amend any part of the Constitution, it could not alter the basic features such as the supremacy of the Constitution, separation of powers, and judicial review. Justice Khanna’s words remain pivotal, “*Constitution is not a mere political document but a legal mechanism controlling the exercise of all public power.*”

In *Indira Nehru Gandhi v. Raj Narain (1975)*<sup>33</sup>, the 39<sup>th</sup> Constitutional Amendment, which barred judicial review of the Prime Minister’s election, was struck down as violative of the basic structure. Justice H.R. Khanna stated that the amendment amounted to “*emasculatation of the rule of law,*” reinforcing the judiciary’s role in ensuring constitutional fidelity.

The tension intensified in *Minerva Mills Ltd. V. Union of India (1980)*,<sup>34</sup> where the Court invalidated clauses of the 42<sup>nd</sup> Amendment that sought to exclude judicial review of laws implementing Directive Principles. Justice Chandrachud famously observed: “*Limited*

*amending power is a basic feature of the Constitution; destruction of the judiciary’s power is subversive of the Constitution.*”

In *S.R. Bommai v. Union of India (1994)*,<sup>35</sup> the judiciary laid down stringent guidelines for the use of Article 356<sup>36</sup> (President’s Rule), restricting the Centre’s power and asserting that “*secularism*” and “*federalism*” are essential components of the basic structure. This marked a clear judicial check on executive discretion that had been previously validated by Parliament.

The conflict resurfaced in *Raja Ram Pal v. Speaker, Lok Sabha (2007)*<sup>37</sup>, where the Court reviewed the expulsion of Members of Parliament involved in the cash-for-query scam. While upholding the expulsion, the Court ruled that privileges under Article 105<sup>38</sup> are not immune from judicial scrutiny when they transgress constitutional norms. Justice Sabharwal noted, “*No institution in a democracy is above the Constitution.*”

The NJAC judgment in *Supreme Court Advocates-on-Record Association v. Union of India (2015)*<sup>39</sup> reignited the debate. The Court struck down the 99<sup>th</sup> Constitutional Amendment establishing the National Judicial Appointments Commission, terming it a violation of judicial independence. Parliament, which had overwhelmingly passed the amendment, expressed deep discontent, reflecting the sharp institutional divergence. Justice Khehar, in his opinion, reaffirmed that “*independence of the judiciary is the cornerstone of our democracy, and any dilution undermines constitutional governance.*”

*Keshav Singh and the Special Reference (1964):*

One of the most constitutionally significant illustrations of conflict between the judiciary and legislature in Indian legal history is the *Keshav Singh* case, which led to Special Reference No. 1 of 1964 (AIR 1965 SC 745). The case arose when the Uttar Pradesh Legislative Assembly sentenced Keshav Singh, a private citizen, to imprisonment for contempt. When Singh challenged the arrest by filing a Habeas

<sup>30</sup> The doctrine of comity is a legal principle where courts in one jurisdiction respect and give effect to the laws and judicial decisions of other jurisdictions, not as a matter of obligation but out of deference and mutual respect.

<sup>31</sup> *Kesavananda Bharati*, supra note 11

<sup>32</sup> Indian Constitution, Art. 368

<sup>33</sup> *Indira Narain*, supra note 12

<sup>34</sup> *Minerva mills*, supra note 16

<sup>35</sup> AIR 1994 SC 1918

<sup>36</sup> Indian Constitution, Art. 356

<sup>37</sup> *Raja Ram Pal*, supra note

<sup>38</sup> Indian Constitution, Art. 105

<sup>39</sup> NJAC, supra note

Corpus petition before the Allahabad High Court, the Assembly issued a warrant for the production of two High Court judges who had entertained the petition, effectively escalating the issue into a direct confrontation between the legislature and the judiciary.

The core constitutional question was whether Article 194(3)<sup>40</sup>, which confers parliamentary privileges on State legislatures, granted absolute immunity from judicial scrutiny. The President of India referred the matter to the Supreme Court under Article 143<sup>41</sup>, seeking clarification on the boundaries of legislative privilege vis-à-vis judicial power.

A seven-judge Bench of the Supreme Court, in its advisory opinion, decisively held that legislative privileges cannot override the fundamental structure of the Constitution. The Court clarified that although State legislatures had the power to punish for contempt, this power was not absolute and remained subject to judicial review. Most importantly, it was held that no House of the Legislature could take punitive action against a judge for discharging his judicial functions, reinforcing the principle of judicial independence.

Justice M.H. Beg, in his commentary on the case, underlined that the concept of *lex parliamenti*, derived from British parliamentary conventions, could not be transplanted wholesale into the Indian context. He warned against importing vague and historically inconsistent British practices into India's rigid, federal, and written Constitution, which enshrines the supremacy of the Constitution and the rule of law. As he noted, "No person or authority or organ of State can claim to be above the law."

The Supreme Court thus vindicated the principle of constitutional supremacy. It ruled that privileges under Article 194(3)<sup>42</sup> must be consistent with fundamental rights and other provisions of the Constitution, and that the judiciary retains the power to review legislative actions that violate constitutional mandates. This case laid the foundation for future doctrines concerning the limits of legislative privilege, the role of judicial review, and the harmonious interpretation of the Constitution.

These cases reflect the judiciary's determination to safeguard constitutional ethos, often at the cost of institutional confrontation.

#### COMPARATIVE PERSPECTIVE

In the United States, the doctrine of separation of powers is rigidly adhered to. The landmark case of *Marbury v. Madison (1803)*<sup>43</sup> established the principle of judicial review, empowering the judiciary to strike down laws inconsistent with the Constitution. However, judicial appointments remain in the political domain through presidential nomination and Senate confirmation, ensuring a balance between independence and accountability.

The United Kingdom, lacking a written Constitution, adheres to the principle of parliamentary sovereignty. The Parliament is considered legally supreme, and courts cannot invalidate legislation. However, post the Human Rights Act, 1998, UK courts can issue "declarations of incompatibility" if legislation violates the European Convention on Human Rights, thereby exerting a persuasive, though not binding, check.

In Germany, the Federal Constitutional Court has the authority to review laws passed by the Bundestag for conformity with the Basic Law. Germany's constitutional framework explicitly enshrines judicial review, and the court is widely respected for its legal restraint and clarity in delineating institutional boundaries.

South Africa's post-apartheid Constitution grants the Constitutional Court wide powers to review legislation. However, its functioning is informed by a dialogic model. Courts frequently issue "suspended declarations of invalidity", allowing Parliament time to rectify the defect before the law is struck down, thus promoting institutional harmony.

In Canada, courts have embraced the *doctrine of proportionality* and often use "reading down" and "reading in" techniques to preserve legislative intent while ensuring constitutional compliance. The "notwithstanding clause" under Section 33 of the Canadian Charter allows legislatures to override certain judicial decisions, though its use remains rare and politically sensitive.

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<sup>40</sup> Indian Constitution, Art.194 clause 3

<sup>41</sup> India Constitution, Art.143

<sup>42</sup> Indian Constitution, Art. 194 clause 3

<sup>43</sup> 5 U.S. 137

These models offer contrasting but instructive approaches. While some uphold parliamentary supremacy with judicial moderation, others empower the judiciary with robust review mechanisms tempered by doctrines like proportionality and dialogue. The Indian system occupies a middle ground; it is neither absolutist like the UK nor rigidly separated like the US. Instead, it reflects a “*Controlled Constitution*”, where each organ is sovereign in its own sphere, subject to constitutional limitations.

Justice R.F. Nariman, in recent Indian decisions, has spoken of the need for a “*constitutional conversation rather than confrontation*”. The comparative perspective underscores that institutional comity, rather than supremacy, is the hallmark of mature constitutionalism.

#### IMPACT OF THE CONFLICT

The continued tension between the legislature and judiciary has profound implications for constitutional governance, policy-making, and public confidence in democratic institutions.

##### 1. Policy Paralysis:

One of the most visible consequences is policy paralysis. When courts invalidate legislation or stay executive policies, however well-intentioned the intervention may be, the result is often a delay or derailment in the implementation of critical legislative initiatives.

##### 2. Institutional Distrust:

Another fallout is the erosion of institutional trust. When the judiciary and legislature engage in public or symbolic contestations, be it through judgments, parliamentary resolutions, or political statements, it undermines the spirit of cooperative federalism and constitutional comity. Instances such as the fallout after the NJAC verdict (2015), where Parliament expressed dismay over judicial overreach, or the judiciary’s pointed remarks about legislative conduct in sensitive cases, contribute to an environment of mutual suspicion. This institutional antagonism, if left unchecked, can impede deliberative democratic processes and weaken the architecture of constitutional checks and balances.

##### 3. Democratic Accountability:

The issue also raises concerns of democratic accountability. Courts, while unelected, serve as the final interpreters of the Constitution and are tasked with the protection of Fundamental Rights. However, when courts frequently intervene in domains traditionally reserved for Parliament, such as fiscal policy, economic regulation, or legislative appointments, they risk bypassing the democratic mandate and limiting parliamentary debate. As Justice Frankfurter once cautioned in *Trop v. Dulles* (1958)<sup>44</sup>, “*The judiciary must not become a super-legislature.*” While the Indian judiciary has been celebrated for expanding rights and promoting justice, critics argue that excessive intervention in policy undermines the principle of representative democracy, where accountability flows from the electorate to their chosen lawmakers.

##### 4. Media and Public Perception:

Finally, the judiciary-legislature conflict has a pronounced effect on media and public perception. In an age of 24/7 media cycles and judicial proceedings being livestreamed, institutional criticisms and confrontations are magnified. Public trust in democratic institutions erodes when branches of government are perceived to be at war with each other rather than working in tandem. Polarised media narratives further exacerbate the divide, turning constitutional deliberations into political theatre. This erosion of confidence ultimately undermines the legitimacy of both lawmaking and adjudication.

#### THE WAY FORWARD; RECOMMENDATIONS

The intricate balance between the judiciary and legislature forms the backbone of India’s constitutional democracy. While their mandates differ, both institutions are united by a common commitment to uphold the Constitution and serve the people. The recurring conflicts between them reflect not merely institutional rivalry, but deeper tensions between democratic responsiveness and constitutional fidelity. The challenge lies not in eliminating these tensions, but in managing them within the framework of constitutionalism and mutual respect.

The judiciary has played a transformative role in expanding constitutional rights, enforcing accountability, and protecting fundamental freedoms.

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<sup>44</sup> 356 U.S. 86

Simultaneously, the legislature, as the representative body of the people, retains primacy in law-making and policy articulation. When either institution oversteps its bounds, be it judicial overreach or legislative disregard for constitutional limits, the equilibrium is disturbed, and governance suffers.

#### 1. Respect for Boundaries

Adherence to constitutional roles is fundamental. The doctrine of separation of powers, though not explicitly codified in the Constitution, has been judicially affirmed as part of its basic structure. Articles 122 and 212<sup>45</sup> guarantee procedural autonomy to Parliament and State Legislatures, respectively, by preventing judicial inquiry into their internal proceedings on grounds of procedural irregularity. However, courts have clarified that this protection does not extend to substantial illegality or unconstitutionality. In *Raja Ram Pal v. Speaker, Lok Sabha (2007)*, the Supreme Court held that while procedural irregularities are non-justiciable, actions that contravene constitutional mandates remain subject to judicial scrutiny. *Therefore, the legislature as well as the judiciary must understand and adhere to the boundaries marked by the constitution.*

#### 2. Transparent Appointments

The need to reform the judicial appointment process is pressing. The existing collegium system, while safeguarding judicial independence, lacks transparency. *A reformed mechanism, possibly a restructured NJAC with sufficient judicial safeguards, can promote both accountability and independence without tipping the balance.* While striking down the NJAC in 2015, the Supreme Court emphasised that independence of the judiciary is a basic feature of the Constitution, but left the door open for improving transparency through dialogue.

#### 3. Strengthen Deliberative Democracy

*The legislature must enhance the quality of debate and deliberation. Excessive use of ordinances, limited committee scrutiny, and frequent disruptions have led to concerns about legislative effectiveness.* The Second Administrative Reforms Commission recommended reducing reliance on ordinances and improving parliamentary functioning. A vibrant parliamentary process ensures that laws are well-considered and reflective of democratic consensus.

#### 4. Judicial Restraint

The judiciary must practice calibrated restraint, especially in areas involving policy-making or executive discretion. *Courts must remain the guardians of the Constitution, not substitutes for the legislature or executive.* In *Divisional Manager, Aravali Golf Club v. Chander Hass (2008)*, Justice Katju warned against *judicial overreach*, observing that judges must not try to run the government. Activism must not cross the line into encroachment.

#### 5. Institutional Dialogue

To bridge the divide, a structured mechanism for institutional dialogue must be explored. *The creation of a constitutional council* comprising representatives from all three branches could help address friction points and facilitate collaborative constitutional interpretation. As discussed in the *Legislature and Judiciary report* published by the Rajya Sabha Secretariat, such mechanisms foster mutual respect while ensuring accountability.

In essence, the strength of the Indian republic lies in the maturity of its institutions. The judiciary and legislature must move from institutional confrontation to constitutional conversation, not as adversaries, but as co-guardians of the constitutional vision. Only then can the promises of justice, liberty, equality, and fraternity be fully realised for all citizens.

### CONCLUSION

The Indian constitutional framework is a delicate equilibrium between parliamentary sovereignty and constitutional supremacy, maintained through an implicit but essential doctrine of separation of powers. The tensions between the judiciary and the legislature are not aberrations but natural consequences of a dynamic constitutional democracy. However, when these tensions escalate into prolonged institutional conflict, the foundational principles of governance, accountability, rule of law, and democratic legitimacy are placed at risk. The judiciary, as the final interpreter of the Constitution, has a solemn duty to uphold fundamental rights and check legislative transgressions. Simultaneously, the legislature, as the elected representative of the people, enjoys broad law-making powers within constitutional boundaries. The key lies not in asserting supremacy, but in understanding the constitutional limits and

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<sup>45</sup> Indian Constitution, Art. 122 and 212

responsibilities of each organ. The jurisprudence of the Supreme Court from *Kesavananda Bharati and Indira Gandhi to Raja Ram Pal and NJAC* makes it abundantly clear that no organ is immune from constitutional scrutiny, and no institution is above the Constitution. Yet, the exercise of such scrutiny must be tempered by restraint, maturity, and mutual respect. Ultimately, democracy thrives not through institutional supremacy, but through cooperative constitutionalism. As Justice R.F. Nariman once remarked, “*dialogue between the wings of the State is the lifeblood of a living Constitution.*” The way forward lies in institutional dialogue, transparent functioning, and a shared commitment to the constitutional vision. Only then can India continue to uphold the ideals of justice, liberty, equality, and fraternity, enshrined in the Preamble and nurtured through its democratic institutions.

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