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## Judicial response to separation of powers in India

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### Abstract

The doctrine of separation of powers draws upon the boundaries for the functioning of the three organs of the state - the legislature, the executive and the judiciary. The doctrine serves as model to strengthen the structure of government in a political system. It intends to act as a checks against tyranny and arbitrary. The truth is that, today, the society face serious problems, both in political analysis and in matters of practical significance in the field of governmental functions and their division among the institutions of government, as well as in terms of the relationships between these institutions. Forthwith, there are practical problems of the control of government every bit as important and difficult as in the days of Montesquieu. The judiciary is prerequisite for ensuring a free and fair society under the rule of law. The doctrine of Separation of Powers provides responsibility to the judiciary to act as a watchdog and to check whether the legislature and the executive are functioning within their limits under the constitution and not encroaching upon the functioning of each other.

**Keywords:** Separation of powers, government, judiciary, checks and balances

### 1. Introduction

The Separation of powers, a doctrine, is a model for a democratic form of Government. The doctrine is an integral part of the governmental structure. It formulates each branch of the government that is the executive, the legislature and the judiciary, not to encroach on the sphere of the other. The main object of the doctrine of separation of power is that there should be government of law rather than having whims of the official. Also another most important feature of the doctrine is that there should be independence of judiciary i.e. it should be free from the other organs of the state and if it is so then justice would be delivered properly. The judiciary is the scale through which one can measure the actual development of the state if the judiciary is not independent then it is the first step towards a tyrannical form of government i.e. power is concentrated in a single hand and if it is so then there is a cent percent chance of misuse of power. The doctrine of separation of powers in India has been used as a guiding philosophy to separate the functions of the organs from each other. It has been included in our basic structure doctrine as has been ruled and upheld by the Supreme Court in a number of cases. The Doctrine of separation of power plays a vital role in the creation of a fair government and also fair and proper justice is dispensed by the judiciary as there is independence of judiciary.

### 2. Doctrine of separation of powers

The doctrine of separation of powers formulates each branch of the government that is the legislature, the executive and the judiciary, not to encroach on the sphere of the other. The model was first developed in ancient Greece. The Greek philosopher, Aristotle wrote that the fairest political system would be the one in which power was shared among the monarchy, the aristocracy, and the common people. John Locke described a kind of a more modern proposition: the government should be divided between an executive and a legislative branch. The legislature would be responsible for creating and managing the law itself, while the role of the executive would be to govern the country and implement law. *Charles-Louis de Secondat, Baron de La Brede et de Montesquieu*, a French social and political Philosopher of 18<sup>th</sup> century formulated the doctrine of separation of powers. According to Montesquieu, no one person or body should be vested with all three types of powers. The functions of each

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branch of the government should be divided in such a way that, the legislature should make laws but not to administer or enforce them; the executive must administer the laws made but neither influence the legislature in the making of the laws nor stand in judgment of the same and the judiciary must determine the rights and uphold justice without taking over the functions of law-making or administration.

Montesquieu defined three types of government: republican, monarchical, and despotic. In the first the people is possessed of the supreme power; in a monarchy a single person governs by fixed and established laws; in a despotic government a single person directs everything by his own will and caprice<sup>[1]</sup>. The notion of Separation of Powers could be seen in Montesquieu's greatest work '*De l'esprit des lois*' (The Spirit of Laws) that was published in 1748. It is a comparative study of three types of government: republic, monarchy, and despotism. Montesquieu explores the essentials of good government; compares and contrasts despotism, monarchy, and democracy; and discusses the factors that lead to corruption of governments<sup>[2]</sup>.

Separation of powers is a system of checks and balances, which ensure that powers are not abused. Separation of powers merges into balanced governmental functions of the other sphere. Hence, each branch "checks" the other two branches in some way and also each organ, in some form or the other, is dependent on the other organ which checks and balances it. By dividing the government into three separate branches, it would take the concentrated power away from anyone group by creating a checks and balance system that does not allow any abuse of power by either of the branches. Thus, the fundamental purpose of the separation of powers is to avoid the abuse of power and thereby to protect the rights and liberties of citizens.

### 3. Relevance of separation of powers in India

In India, the doctrine of separation of power cannot be accepted rigidly in its true sense as propounded by Montesquieu. There are certain overlap in the functions of the three organs of the government viz., the legislature, the executive and the judiciary. However, the doctrine plays a pivotal role in the Constitution of the India with the recognition of the system of checks and balances. The framers of the constitution felt that there is a need for dividing these three organs separately that are responsible for the smooth running of a democratic government. The need for separating the judicial and executive powers in India was felt as early as late eighteenth century when the rule of the East India Company became a terror in Bengal owing to the absence of any just and effective judicial system. Company officials plundered India so ruthlessly that the vulgar display of pelf by them back home shocked even their own countrymen. It was then that the British Parliamentarians like Edmund Burke aroused public opinion and the British Parliament passed the Regulating Act in 1773 which aimed at establishing a sound judicial order. Under it, a Supreme Court was established replacing the Mayor's Court<sup>[3]</sup>. The Constitution of India lays down the basic structure of the political system under which the

people are to be governed. The doctrine has been used as guiding values of the constitution.

In *Madras Bar Association v. Union of India*<sup>[4]</sup>, it was reiterated that "under our Constitution we have no rigid separation of powers as in the United States of America, but there is a broad demarcation, though, having regard to the complex nature of governmental functions, certain degree of overlapping is inevitable. The reason for this broad separation of powers is that "the concentration of powers in any one organ may" to quote the words of Chandrachud, J., (as he then was) in *Indira Gandhi case*, 1975 Suppl SCC 1, "by upsetting that fine balance between the three organs, destroy the fundamental premises of a democratic government to which we are pledged".

### 4. Judicial Pronouncements on the doctrine of Separation of Powers in India

In India, the judiciary plays a prime role in maintaining the rule of law. In the vicinity of various judgments set out by the Supreme Court determines the applicability of the doctrine of separation of powers. Nowhere in the constitution there is explicitly stated or embraced about the doctrine of the doctrine of separation of powers. However, the framers of the constitution have separated the three organs of the government, the legislature, the executive and the judiciary, by distributing three different functions to each branch. Nevertheless, these three organs overlap in their functions for the smooth running of a democratic government. Except where the constitution has vested power in a body, the principle that one organ should not perform functions which essentially belong to others is followed. This observation was made by the Supreme Court in the *Re Delhi Laws Act* case<sup>[5]</sup>, wherein, it was held by a majority of 5:2, that, the doctrine of separation of powers is not part and parcel of our Constitution. But, it was also held that except for exceptional circumstances like in Art. 123, Art. 357, it is evident that constitution intends that the powers of legislature shall be exercised exclusively by the Legislature. As *Kania, C.J.*, observed- "Although in the constitution of India there is no express separation of powers, it is clear that a legislature is created by the constitution and detailed provisions are made for making that legislature pass laws". Besides, the Constitution is described as basic law which ordains the fundamentals of its polity and on modify of which all other laws and executive acts of the state are to be tested for their validity and legitimacy. Judiciary is considered as strongest pillar of the democracy. The judiciary occupies the role in reviewing the actions of the legislature and the executive as to whether they have encroached on the rights of the people through arbitrary laws and arbitrary actions or whether they have exceeded the limits set by the constitution. This is where judicial activism comes into play. Therefore, it is the judiciary which alone would be possessed of expertise in this field and secondly, the constitutional and legal protection afforded to the citizen would become illusory, if it were left to the executive to determine the legality of its own action. So also if the legislature makes a law and a dispute arises whether in making the law the legislature has acted outside the area of its legislative competence or the law is violative of the fundamental rights or of any other provisions of the Constitution, its resolution cannot, for the same reasons, be

<sup>1</sup> Brette de la Gressaye J., The standard edition of *De l'Esprit des Loix* (1950)

<sup>2</sup> Charles de Secondat Baron de Montesquieu, *The Spirit of Laws* (Contemporary Issues) (2002)

<sup>3</sup> Sudhanshu Ranjan, Justice, *Judocracy and Democracy in India: Boundaries and Breaches* (2012), pg. 126

<sup>4</sup> (2014) 10 SCC 1

<sup>5</sup> AIR 1951 SC 332

left to the determination of the legislature. The Constitution has, therefore, created an independent machinery for resolving these disputes and this independent machinery is the judiciary which is vested with the power of judicial review to determine the legality of executive action and the validity of legislation passed by the legislature. It is the solemn duty of the judiciary under the Constitution to keep the different organs of the State such as the executive and the legislature within the limits of the power conferred upon them by the Constitution. Such an exercise will be part of the checks and balances measures to maintain the separation of powers and to prevent any encroachment, intentional or unintentional, by either the legislature or by the executive<sup>[6]</sup>. According to the principle of separation of powers, Judiciary is independent and at the same time, it is untouchable by any other sphere. The founding fathers felt its importance and made the provision<sup>7</sup> under the constitution, to keep judiciary separate from the executive. Article 50 of the Constitution expressly provides for separation of judiciary from the executive. This clearly specifies that the Constitution follows separation of powers implicitly. The Supreme Court in the context of doctrine of separation of powers has laid down the importance of judicial independence. In *Sankalchand Himatlal Sheth v. Union of India*<sup>[8]</sup>, held that the provision under Article 50 embodies the social philosophy of the constitution and it intends of the constitution-makers to immunize the judiciary from any form of executive control or interference. In *S.P. Gupta v. Union of India*<sup>[9]</sup>, it was held that one of the principles which run through the entire fabric of the constitution is the judiciary which is entrusted with the task of keeping every organ of the State within the limits of law. Showing the importance of judiciary, Supreme Court in the case of *S.C. Advocates-on-Record Association v. Union of India*<sup>[10]</sup> has also observed: "Under the Constitution, the judiciary is above the administrative executive and any attempt to place it on par with the administrative executive has to be discouraged<sup>[11]</sup>."

In *A. C. Thalwal v. High Court of Himachal Pradesh*<sup>[12]</sup>, it was held that the constitutional scheme aims at securing an independent judiciary which is the bulwark of democracy<sup>[13]</sup>.

There have been profuse landmark judgements that have been uphold the doctrine of separation of powers in India. Firstly, the proposition was expounded by the Supreme Court in *Ram Jaway's Case*<sup>[14]</sup>. The analysis clearly shows that the concept of separation of powers, so far as the Indian Constitution is concerned, reveals and artistic blend and an adroit admixture of judicial, legislative and executive functions. Separation sought to be achieved by Indian Constitution is not in an absolute or literal sense. Despite being evident that the constitution, nowhere expressly bows in line to the concept, albeit it remains an essential framework of the constitutional scheme. Agreeing on this premise, it has also been accorded the status of basic

structure by the Supreme Court<sup>[15]</sup>. The Constitution of India does not contemplate the pure doctrine of separation of powers; however, it follows a system of checks and balances.

Most noteworthy, diverse landmark judgements have considered the separation of powers to be a 'basic structure' doctrine. The "basic features" principle was first propounded in 1964, by Justice Mudholkar J. in his dissent, in the case of *Sajjan Singh v. State of Rajasthan*<sup>[16]</sup>. Mudholkar J. observed that the framers may have intended to give permanency to certain "basic features" such as the three organs of the State, separation of powers etc. He also questioned whether a change in the basic features of the Constitution could be defined as an "amendment" within the meaning of Article 368, or whether it would amount to rewriting the Constitution itself.

In *Chandra Mohan v. State of UP*<sup>[17]</sup>, the Court held that,

"The Indian Constitution, though it does not accept the strict doctrine of separation of powers, provides for an independent judiciary in the States; it constitutes a High Court for each State, prescribes the institutional conditions of service of the Judges thereof, confers extensive jurisdiction on it to issue writs to keep all tribunals, including in appropriate cases the Governments, within bounds and gives to it the power of superintendence over all courts and tribunals in the territory over which it has jurisdiction. But the makers of the Constitution also realised that "it is the Subordinate Judiciary in India who are brought most closely into contact with the people, and it is no less important, perhaps indeed even more important, that their independence should be placed beyond question than in the case of the superior Judges." Presumably to secure the independence of the judiciary from the executive, the Constitution introduced a group of articles in Chapter VI of Part VI under the heading "Subordinate Courts". But at the time the Constitution was made, in most of the States the magistracy was under the direct control of the executive. Indeed it is common knowledge that in pre-independent India, there was a strong agitation that the judiciary should be separated from the executive and that the agitation was based upon the assumption that unless they were separated, the independence of the judiciary at the lower levels would be a mockery. So Article 50 of the Directive Principles of Policy states that the State shall take steps to separate the judiciary from the executive in the public services of the States. Simply stated, it means that there shall be a separate judicial service free from the executive control.

It was in the famous *Golak Nath's case*<sup>[18]</sup> in 1967, where the validity of three constitutional amendments (1<sup>st</sup>, 4<sup>th</sup> and 17<sup>th</sup>) was challenged, that the Supreme Court uphold the provision under Article 368 which put a check on the Parliament's propensity to abridge the fundamental Rights under chapter III of the Constitution. It was further observed that, "the Constitution brings into existence different constitutional entities, namely, the Union, the States and the

<sup>6</sup> Madras Bar Association v. Union of India, (2014) 10 SCC 1

<sup>7</sup> Constitution of India, Art. 50

<sup>8</sup> (1977) 4 SCC 193

<sup>9</sup> AIR 1982 SC 149

<sup>10</sup> AIR 1994 SC 268 at p. 338

<sup>11</sup> Tej Bahadur Singh (1996)

<sup>12</sup> AIR 2000 SC 2732

<sup>13</sup> Dr. More Atul Lalasaheb (2015)

<sup>14</sup> Ram Jawaya v. State of Punjab, AIR 1955 SC 549

<sup>15</sup> Indira Nehru Gandhi v. Raj Narain, (1975) SCC Supp.1

<sup>16</sup> AIR 1965 SC 845

<sup>17</sup> AIR 1966 SC 1987 (AIR p.1993, para 14)

<sup>18</sup> Golaknath v. State of Punjab, 1967 AIR 1643

Union Territories. It creates three major instruments of power, namely, the Legislature, the Executive and the Judiciary. It demarcates their jurisdiction minutely and expects them to exercise their respective powers without overstepping their limits. They should function within the spheres allotted to them. In the *Kesavananda Bharti's case* <sup>[19]</sup> in 1973, the constitutional validity of the twenty-fourth, twenty fifth and twenty ninth amendments was challenged wherein the court held that even though the Parliament is entitled to amend any provision of the constitution it should not tamper with the essential features of the constitution. This is the most significant case, wherein, the separation of powers doctrine was included in the basic structure of the constitution and thus any amendments which gave control of one organ over another would be unconstitutional and provided for the three organs to be completely independent. On a casual glance at the provisions of the Constitution of India, one may be inclined to say that the doctrine of broad division of the power of state has been accepted under the Constitution of India. In *Golaknath v. State of Punjab* <sup>[20]</sup>, Subba Rao, C.J., observed:

“The Constitution brings into existence different constitutional entities, namely, the Union, the States and the Union Territories. It creates three major instruments of power, namely, the Legislature, the Executive and the Judiciary. It demarcates their jurisdiction minutely and expects them to exercise their respective powers without overstepping their limits. They should function within the spheres allotted to them.”

Judiciary's independence being the basic structure of the Constitution cannot be undermined by passing a legislation to render ineffective a judgment or order of the court or asking anybody not to obey the orders of the court. Apex Court in *Municipal Corporation, Hyderabad v. New Shrook Spg and Wvg. Co. Ltd* <sup>[21]</sup> observed that no legislature in this country has the power to ask instrumentalities of the state to disobey or disregard the decisions given by the courts. The question regarding the competence of legislature to set aside the orders of, the court was an assertion of the consideration before the apex court in *Indian Aluminum Co. v. State of Kerala* <sup>[22]</sup>; in this case the state legislature had passed the Act validating the collection of tax, declared earlier by the court to be invalid. Court held that the consistent thread that runs through all the decisions of this court is that the legislature cannot overrule the decision or make a direction as not binding on it but has the power to make the decision ineffective by removing the base on which the decision was rendered, consistent with the law of the Constitution and the legislature must have competence to do the same.

In *Indira Nehru Gandhi v. Raj Narain* <sup>[23]</sup>, Ray C.J., observed that in the Indian Constitution there is separation of powers in broad sense only. Beg, J., has observed that basic structure also embodies the separation of powers doctrine and none of the pillars of the Indian Republic can take over the other functions, even under Article 368. *Chandrachud, J.*, reiterated this view and held that this doctrine is useful as a means of checks and balances in a political setup. For

examples the judiciary should shy away from the politics of the Parliament and the latter should revere the opinion of the Courts <sup>[24]</sup>.

In *Bandhua Mukti Morcha v. Union of India* <sup>[25]</sup>, Pathak J. said:

“The Constitution envisages a broad division of the power of state between the legislature, the executive and the judiciary. Although the division is not precisely demarcated, there is general acknowledgment of its limits. The limits can be gathered from the written text of the Constitution, from conventions and constitutional practice, and from an entire array of judicial decisions <sup>[26]</sup>.”

Essential functions were defined in *Mallikarjuna v. State of Andhra Pradesh* <sup>[27]</sup>, when the Andhra Pradesh Administrative Tribunal directed the State Government “to evolve proper and rational method of determination of seniority among the veterinary surgeons in the matters of promotions to next higher rank of Assistant Director of Veterinary Surgeons”. The Supreme Court quashed the aforesaid direction and observed that the power under Article 309 of the Constitution to frame rules is the legislative power which has to be exercised by the President or the Governor of the State as the case may be. The High Court or Administrative Tribunals cannot issue a mandate to the State Government to legislate on any matter. In this way the principle of restraint prevents any organ of the State from becoming superior to another or others in action. Similarly, in *Supreme Court Employees' Welfare Association v. Union of India* <sup>[28]</sup>, it was held that neither the court can issue a direction to a legislature to enact a particular law nor it can direct an executive authority to enact a law which it has been empowered to do under the delegated legislative authority <sup>[29]</sup>.

The Apex Court comprising 2 Judges, in the case of *P. Kannadasan v. State of Tamil Nadu* <sup>[30]</sup>, inter alia, observed that,

“It must be remembered that our Constitution recognizes and incorporates the doctrine of separation of powers between the three organs of the State, viz., the legislature, the executive and the judiciary. Even though the Constitution has adopted the Parliamentary form of government where the dividing line between the legislature and the executive becomes thin, the doctrine of separation of powers is still valid. Ours is also a federal form of government”.

In *L. Chandra Kumar v. Union of India* <sup>[31]</sup>, the seven-Judge Bench of the Supreme Court referred to the task entrusted to the superior courts in India thus:

“The Judges of the superior courts have been entrusted with the task of upholding the Constitution and to this end, have been conferred the power to interpret it. It is

<sup>19</sup> Kesavananda Bharati v. State of Kerala, AIR 1973 SC 1461

<sup>20</sup> AIR 1967 SC 1643

<sup>21</sup> (1970) 2 SCC 280

<sup>22</sup> AIR 1972 Ker 206

<sup>23</sup> AIR 1975 SC 2299

<sup>24</sup> Kesari U P D, pg. 23-24 (2005)

<sup>25</sup> AIR 1984 SC 802

<sup>26</sup> Dr. Upadhaya J J R, Administrative Law (2006), p 40

<sup>27</sup> AIR 1990 SC 1251

<sup>28</sup> AIR 1990 SC 334

<sup>29</sup> Dr. Upadhaya J.J.R., (2006) p 42

<sup>30</sup> AIR 1996 SC 2560

<sup>31</sup> (1997) 3 SCC 261 (SCC p.301, para 78)



they who have to ensure that the balance of power envisaged by the Constitution is maintained and that the legislature and the executive do not, in the discharge of their functions, transgress constitutional limitations. It is equally their duty to oversee that the judicial decisions rendered by those who man the subordinate courts and tribunals do not fall foul of strict standards of legal correctness and judicial independence.”

In *Jagdambika Pal case* <sup>[32]</sup>, the Allahabad High Court had declared the appointment of Mr. Jagdambika Pal as Chief Minister by the Governor to be illegal. Under direction of the Supreme Court, floor test was held in the Assembly on 26.2.1998 in which the previous Chief Minister Sri. Kalyan Singh proved his majority and was immediately restored, as C.M. This is one of the glaring example of deviations from the constitutional approach of separation of powers <sup>[33]</sup>.

In *State of Bihar v. Bal Mukund* <sup>[34]</sup>, the court held that the doctrine of separation of powers is at the core of the constitutional scheme.

Open confrontation between the legislature and the judiciary began in March 2005, when the Supreme Court in the *Jharkhand assembly case* <sup>[35]</sup>, gave detailed directions on how the House should be conducted <sup>[36]</sup>. The order also directed video-recording of the proceedings of the floor test which amounts to judicial overreach and encroaching the domain of the Speaker or the pro-term Speaker.

In *I.R. Coelho vs. State of Tamil Nadu* <sup>[37]</sup>, the Supreme Court took the help of doctrine of basic structure as propounded in *Kesavananda Bharati case* and said that Ninth Schedule is violative of this doctrine and hence from now on the Ninth Schedule will be amenable to judicial review which also forms part of the basic feature theory. The basic structure theory and the Golden triangle comprising of Arts. 14, 19, and 21, will now be the perspective in analysis of the Ninth Schedule. In a democratic country, goals are uphold in the constitution and accordingly, the state machinery is set-up. And here, it can be seen that constitutional provisions are made to encourage a parliamentary form of government where the theory can't be followed rigidly. The Supreme Court rulings also justify that the alternative system of checks and balances is the requirement, not to run through strict doctrine of separation of powers.

In *Union of India v. R. Gandhi, President, Madras Bar Association* <sup>[38]</sup>, popularly known as the *NCLT case*, the Supreme Court led by Chief Justice *H.L. Dattu* partly, by its order dated 14<sup>th</sup> May 2015, struck down the provisions relating to the new *Companies Act, 2013*, pertaining to the constitution (Technical Member appointment & Selection Committee) of the National Company Law Tribunal (NCLT) and the National Company Law Appellate Tribunal (NCLAT) on the ground that they violated the principles of 'Separation of Powers and Independence of Judiciary' by vesting indispensable judicial functions in a non-judicial body. However, the constitutional validity of NCLT / NCLAT was upheld.

<sup>32</sup> Jagdambika Pal v. Union Of India And Ors., AIR 1998 SC 998

<sup>33</sup> Justice Khan S U, "Constitutional, Civil, Criminal & Revenue Laws", January - March (2016)

<sup>34</sup> AIR 2000 SC 1296

<sup>35</sup> Anil Kumar Jha v. Union of India (2005) 3 SCC 150

<sup>36</sup> Sudhanshu Ranjan, pg. 298 (2016)

<sup>37</sup> AIR 2007 SC 8617

<sup>38</sup> AIR 2015 SC 1571

## 5. Conclusion

The doctrine of separation of powers is the best guardian to protect the government from the tyranny. Being a Parliamentary democratic country, India cannot follow an absolute separation of powers. Though the doctrine of separation of powers is not accepted in its rigidity, but the functional classification of the three organs of the government and the system of checks and balances are followed, which could be witness by the judicial responses in India. The doctrine of separation of powers is one of the elements of basic structure. As against the legislature and the executive authority, checks and balances are exercised by the judiciary. Judiciary is considered as strongest pillar of the democracy. The Supreme Court has affirmed as the most confidential organ of the state and has asserted the every citizen's faith in the judicial system. In the circumstances where the Legislature or Executive fails to perform its constitutional obligation, it is not only the power of the Judiciary, but also its duty to uphold the constitution and compel the other organs the government to discharge their function. The judicial intervention must be in a positive aspect in our constitutional democracy. The judiciary has to see that the Constitution is not violated by any person, body or authority including the legislature or the executive.

## 6. Recommendations

The government has to be protected from arbitrary and tyrannical rule for its smooth administration. The concentration of the powers in one single hand is precisely the definition of despotic government. Hence, it is recommended that the remedy should be found in a separation of governmental powers. The separation has to be made into different 'hands and persons' by dividing the government into three organs, viz., the legislature, the executive and the judiciary. The theory of doctrine of separation of powers is widely regarded as to make the theory of separation of powers a practical reality. All kinds of prejudice must be eradicated and accountability must be guaranteed among the organs. If these organs are accountable then separation of powers will be established and maintained easily. Nevertheless, the government must maintain more respect for judicial decisions. This would elongate in centralizing the idea of the rule of law. The Supreme Court of India should always have the activist approach as a part of its decision-making process, since it has to be an organ of progress and social change. It is the over activism and over enthusiasm (judicial overreach), which cause some problem, and it is this approach which must be re-looked by the judiciary itself, for it is this organ of the government, which is to act most sensibly and rationally above and beyond everything to uphold the constitution, its basic structure (one of which is the 'separation of powers') and its supremacy. Restraint is required against the over-activism, not vis-à-vis normal activism, for judiciary must be active and alter, so as to see that the sanctity of the constitution remains unaffected.

## 7. References

1. Bakshi PM. The Constitution of India, Universal Law Publishing Co. Pvt. Ltd., New Delhi, 2010.
2. Brette de la Gressaye J. The standard edition of *De l'Esprit des Loix*, Translated by Thomas Nugent in F.

- Neumann (eds.), Book II, Chapter 1, Paris, New York, 1950.
3. Charles de Secondat Baron de Montesquieu, the Spirit of Laws (Contemporary Issues, Paper Back Series, Prometheus Books, New York, 2002.
  4. Available at: [books.google.co.in/books/about/The\\_Spirit\\_of\\_Laws.html](http://books.google.co.in/books/about/The_Spirit_of_Laws.html)
  5. Dr. Durga Das Basu. Introduction To The Constitution Of India, 21<sup>st</sup> Edn., LexisNexis, New Delhi, 2014
  6. Dr. More Atul Lalasaheb. An Appraisal of the Judicial System in India: A Critical Study on Judicial Independence vis-a-vis Judicial Accountability, First Edition, Laxmi Book Publication, Maharashtra, 2015.
  7. Sudhanshu Ranjan, Justice, Judocracy and Democracy in India: Boundaries and Breaches, Routledge, Delhi, 2012, 298.
  8. Dr. Upadhaya JJR. Administrative Law Central Law Agency, Allahabad, 2006.
  9. Gwyn WB, The Meaning of The Separation of Powers: An Analysis of the Doctrine from its Origin to the Adoption of the United States Constitution, Tulane University Press, New Orleans, 1965.
  10. Jagdish Swarup, Dr. Singhvi's LM. Revised by Justice G.P. Mathur, Constitution of India, (in) 3<sup>rd</sup> Edn. Modern Law Publications, New Delhi, 2013, 3.
  11. Justice Khan SU. Constitutional, Civil, Criminal & Revenue Laws, Judicial Training & Research Institute, U.P., Lucknow, Quarterly Digest, 2016, XLII  
Available at: [ijtr.nic.in/digestjan-mar2016.pdf](http://ijtr.nic.in/digestjan-mar2016.pdf)
  12. Peter A Gerangelos. The Separation of Powers and Legislative Interference in Judicial Process-Constitutional Principles and Limitations, Hart Publishing, Oxford and Portland, Oregon, 2009.
  13. Tej Bahadur Singh. Principle of Separation of Powers and Concentration of Authority Judicial Training & Research Institute (J.T.R.I.) Journal, U.P., Lucknow, 1996, 45.  
Available at: [www.ijtr.nic.in/articles/art35.pdf](http://www.ijtr.nic.in/articles/art35.pdf)
  14. Vile MJC. Constitutionalism and the Separation of Powers, 2<sup>nd</sup> Edn., Oxford University Press, London, 1967.