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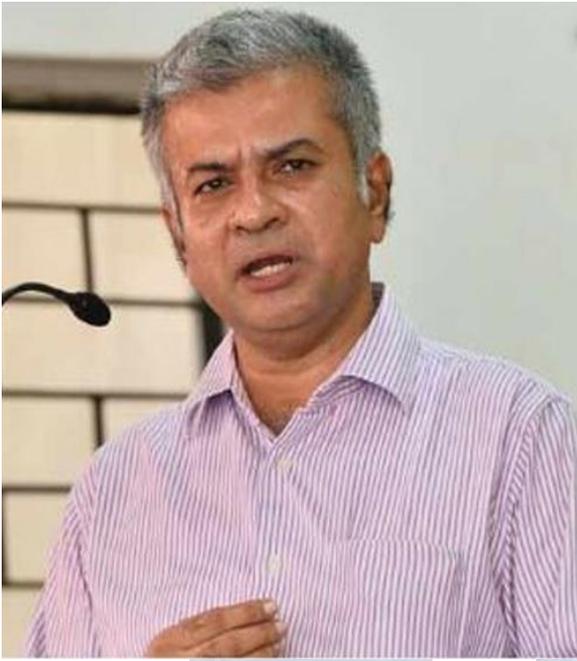
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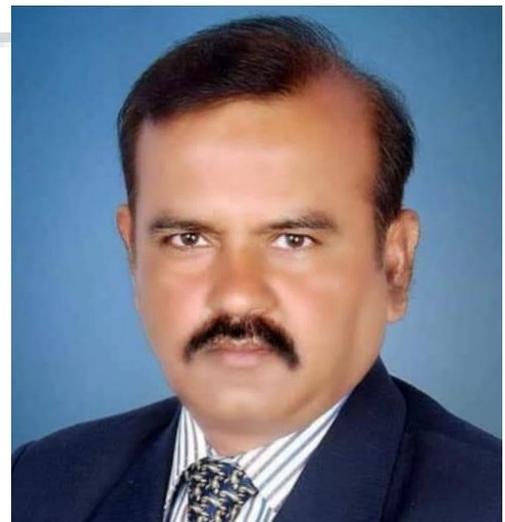


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WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal provide dedicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

# **EXAMINING THE DOCTRINE OF SEPARATION OF POWERS: AN ANALYTICAL STUDY OF OVERLAPPING POWERS OF STATE ORGANS IN INDIA**

AUTHORED BY - DHANAVEL B<sup>1</sup>

## **Abstract:**

Separation of powers between the organs of the state is vital element of democracy. It is the key element that causes the biggest difference between democracy and dictatorship. There is no need for separation of powers under a dictatorship, where all powers are vested in a single person. But, in a democracy, the accumulation of powers with one person or with one body is the first enemy of it. If such happens, there will be no more democracy in the state because the primary nature of the power is to corrupt the person who exercises it. When absolute power is provided to one person or one body, such power corrupts such person or body absolutely. If it happens, there will be chaos in the state. So, the democratic states need the separation of powers for effective governance. Being the largest democratic country in the world, the Separation of powers is inevitable for India. However, the concept of separation of powers in India is not in a strict sense. It is almost a flexible one. Various organs of the state overlap their functions with the functions of other organs in India. Most of the overlapping functions of the organs of the state are allowed by the Indian Laws, so it cannot be termed illegal. Such permission given by the statutes of India is only for the effective and smooth function of the state and to ensure the operation of Democracy in India. Here, in the upcoming words will analyse the concept of separation of powers in the Indian context and look into the practical application of the doctrine of separation of powers in India.

**Keywords:** Separation of Powers, Legislative, Executive, Judiciary, Functional Overlapping, Quasi Powers of Organs.

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## **Concept of Doctrine of Separation of Powers:**

The principle of separation of powers is the most effective safeguard against totalitarianism in state ruling. This principle is a crucial component of the governmental framework. It establishes that each branch of government, which is the legislature, the executive, and the judiciary, should not interfere with the functions of the others. When they are exercising their powers separately, the absolute powers of the state will be prevented from vesting in one body. The fundamental purpose of the separation doctrine is to prevent tyranny by limiting governmental authority and assigning each responsibility to the appropriate branch of government. Lord Atkin claims that power can corrupt the body that exercises it; therefore, absolute powers corrupt absolutely<sup>2</sup>. The concept of separation of powers is the concept of ancient Greece. The Great Greek philosopher Aristotle pointed out that the most effective and reliable political system would involve a distribution of power among the monarchy, the aristocracy, and the democracy.

Political thinker John Locke held that the government should be divided into executive and legislative branches. The legislature would handle the creation and management of laws, while the executive would be tasked with governing the nation and enforcing those laws. Locke's form of separation of powers did not include the role of the judiciary. Looking into the view of A.V. Dicey on the concept of separation of powers. He did not extensively discuss the separation of powers in his classic work, which is 'Introduction to the Study of the Law of the Constitution'. However, he acknowledged the importance of the principle in ensuring the rule of law. Dicey focused more on the rule of law and parliamentary sovereignty, emphasizing judicial independence as crucial to preventing the abuse of power by other branches of government. He noted that by way of rule of law alone, the state can function effectively. He gave more importance to the judiciary for upholding rule of law. Judicial independence serves as the most effective guard against the potential for oppressive power from individuals who seek to operate above the law rather than abide by it.

The Doctrine of Separation of Powers is considered the first political philosophy doctrine articulated to prohibit the concentration of authority within a single governmental department by Montesquieu, in his work, *The Spirit of Laws*, in 1748. The different systems

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<sup>2</sup> Dictionary.com, <https://www.dictionary.com/browse/power-tends-to-corrupt-absolute-power-corrupts-absolutely> (last visited Nov 12, 2025).

of government interested Montesquieu; however, Britain was first among them. He then argued that political liberty would best be secured when legislative, executive, and judicial powers remained separated. This theory assumes that the legislature makes laws, the executive implements them, and the judiciary interprets and resolves disputes under them. The theory is based on the assumption that unchecked power naturally causes threats to individual liberty and democratic governance. It has been marked that when the legislative and executive authorities are held by the same individual or entity, there can be no freedom. Furthermore, liberty cannot exist if the judicial authority is not distinct from the legislative and executive powers. If it were to merge with the legislative authority, the life and freedom of individuals would be vulnerable to arbitrary control, as the judge would effectively become the lawmaker. If it were to combine with the executive authority, the judge could act with coercion and brutality. Everything would be in jeopardy if one person or one body were to wield all three powers<sup>3</sup>.

This doctrine focuses on three major principles: Firstly, the principle of Independence of each branch, which emphasises that the autonomy of each branch guarantees that no single entity holds absolute authority over the mechanisms of governance. Secondly, the principle of non-interference holds that any organs of the state shall take precedence over others because neither should play the critical role of the other, thereby legislatures should not adjudge nor execute. The judiciary also acts in the same way. Thirdly, the principle of checks and balances allows each branch to check the activities of other branches, whether they are doing lawful things or not, and whether they are abusing their powers or not. The concept of separation of powers relied on a judicial system that remained free from any external influences, regardless of their origin, and further assumed that each judge would operate without coercion, including from fellow judges. The same freedom is also available to other wings of the government under this doctrine. The doctrine of separation of powers includes division of essentials of organs, division of functions of organs, division of agencies, division of the body, and most importantly, division of the framework for governing the interactions among them.

The theory advocates rigorous separation of powers whereby all elements are separate from each other. However, in many modern nation-states, such a structure is rarely possible. The majority of the existing democracies, like the United States and India, have developed

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<sup>3</sup> D.D. Basu, Administrative Law 23 (Kamal Law House 2005).

views of the doctrine of separation of powers. They overlap functionally to enable governance, while at the same time checking and balancing against dictatorship.

Montesquieu's concepts significantly impacted constitutional frameworks globally; however, their relevance is frequently contested among scholars. Scholars contend that an absolute separation of powers is impractical, given that governance necessitates both coordination and adaptability. For instance, in India, the executive branch obtains its power from the legislative body, and judicial reviews frequently influence legislative policies. This situation illustrates a balance of power, as opposed to rigid separation, which is consistent with the practicalities of governance. However, even a strict division is impractical under the modern system of nations, where governmental issues are interconnected. Consequently, a differentiation is established between the 'essential' and 'incidental' authorities of a government branch. One branch cannot assert its right to use the powers that fundamentally belong to another branch, but may, without breaching the principle of separation of powers, utilize certain incidental powers of a different branch.

### **Objectives of the separation of powers:**

Various modern governments adopted the principle of separation of powers to achieve the following objectives. Such as,

1. To overcome the functional inconsistency in the State,
2. To overcome the rule of the dictatorship in the state,
3. To achieve the goals of the democracy,
4. To prevent the abuse of the powers of the government,
5. To execute the functions of the government effectively and peacefully,
6. To utilize the state sovereignty over the people without the forceful imposition of it,
7. To overlook the functions of the organs of the state,
8. To achieve the rule of law in the state effectively,
9. To protect the interests and rights of the subjects of the state.

### **Background of the incorporation of the Doctrine in India:**

India incorporated the doctrine of separation of powers in its constitution. The nature and manner of such incorporation can be understood by referring to the incorporation of the separation of powers in the US Constitution. There is a clear separation of powers among the

legislative, executive, and judicial branches in the US Constitution. Section 1 of Article I states that all legislative powers are vested in the Congress, which is composed of the Senate and the House of Representatives. Under this provision, the legislative powers are assured to the legislature alone. Therefore, there is a clear separation of the legislative powers from the executive and judiciary. Likewise, Section 1 of Article II described the powers of the executive given to the President of America as the head of the executive. Under this provision, the executive powers are assured to the organ of the executive alone. Therefore, there is a clear separation of the executive powers from the legislature and judiciary. In the same manner, Section 1 of Article III held that the judicial powers of America are vested with the Supreme Court of America and all other subordinate courts. Under this provision, the judiciary powers are assured to the wing of judiciary alone. Therefore, there is a clear separation of the judiciary powers from the legislature and executive. By looking into the constitution of India, there are no clear provisions for ensuring this kind of absolute separation of powers.

But once, some founding fathers of the Indian Constitution tried to add such a kind provision in the Indian Constitution. But they failed. It started in the debate of the constituent assembly of India. During the debates of the Constituent Assembly, Professor K.T. Shah, a member of the assembly, stressed the importance of introducing an amendment to include a new Article 40-A related to the principle of separation of powers, which states, "*There shall be complete separation of powers as between the principal organs of the State, viz., the Legislative, the Executive, and the Judicial*"<sup>4</sup>. The discussion took place in the constituent assembly regarding it. The view of Prof K.T. Shah was supported by Kazi Syed Karimuddin who was also a member of the constituent assembly. However, this view is opposed by various members of the constituent assembly. Notable Shri K. Hanumanthiya noted that this provision was a violation of the primary thought of the constituent assembly because it was against the vision of a parliamentary form of government. In a parliamentary form of government, the power will be exercised by the collective members of the parliament. A pluralistic approach to the exercise of the powers. But when there is a clear separation of powers, it will hand over all powers to one person, who will be the president. So, there will be a presidential executive supremacy in India. He opposed the idea of separate provision for the separation of powers<sup>5</sup>.

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<sup>4</sup> Constituent Assembly Debates, Vol. No. VII, Sixth Reprint 2014, p. 959, available at [https://eparlib.nic.in/bitstream/123456789/762994/1/cad\\_10-12-1948.pdf](https://eparlib.nic.in/bitstream/123456789/762994/1/cad_10-12-1948.pdf) (last visited Nov 12, 2025).

<sup>5</sup> Id. at 962.

His view was supported by Dr. B.R. Ambedkar<sup>6</sup>.

That is the history behind the absence of a clear provision for the separation of powers in the Indian Constitution. Many of the founding fathers of the Indian Constitution thought there was no need for such a provision in the Constitution. Even though there is no clear provision for separation of powers in the Indian Constitution, the separation of powers is held by the Supreme Court of India in the case of *Kesavananda Bharati v. State of Kerala*<sup>7</sup> as one of the basic structures of the Indian Constitution.

### **Separation of powers in Indian Context:**

The Indian Constitution recognised the concept of the legislature, executive, and judiciary. Several provisions of the Constitution provided powers to those organs. Acknowledging those organs in the Constitution itself denotes Indian Constitution has the concept of separation of powers in it. Articles 245 and 246 provided the law-making powers to the parliament, and further, it has exclusive powers to enact any laws on any subject outside of the state list and the concurrent list<sup>8</sup>. Further, it has the power to amend laws which is previously enacted by it<sup>9</sup>. Similarly, the powers of the union executive are vested in the president. He can exercise it by himself or through subordinate officers<sup>10</sup>. Taking into consideration of judiciary, it has various powers and duties under the Constitution.

A key power of the judiciary is judicial review, which allows the courts to check the constitutionality of legislation enacted by the legislature and actions taken by the executive. According to Article 13, the judiciary can declare laws invalid if they are against fundamental rights or other constitutional provisions.

This provision ensures that both the statutes of the legislative and orders, rules, and regulations of the executive are within constitutional limitations. They must not violate any provisions of the Constitution or statutes. If they do, or if they fail to act within constitutional boundaries, they are not valid. The judiciary of the State is vested with the function of

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<sup>6</sup> Id. at 967,968.

<sup>7</sup> (1973) 4 SCC 225.

<sup>8</sup> INDIA CONST. art. 248.

<sup>9</sup> Id. Art 368.

<sup>10</sup> Id. Art 53.

upholding fundamental rights and constitutional supremacy through powers under Articles 32 and 226 of the Constitution. The judiciary can issue writs, such as habeas corpus, mandamus, prohibition, certiorari, and quo warranto, to protect citizens' fundamental rights. Under Article 131, the judiciary also has original jurisdiction in certain cases. This allows the Apex Court to resolve disputes between states or between a state and the Union. Additionally, the judiciary has appellate jurisdiction over all subordinate courts. People can approach higher courts to challenge lower court decisions. If these decisions are not valid according to the law, the higher courts can set them aside. This system ensures error-free judgments and a uniform delivery of justice nationwide. Another power of the judiciary is advisory jurisdiction under Article 143. Here, the President of India can seek advice from the Supreme Court on important legal or constitutional matters. Furthermore, the judiciary can act against anyone involved in contempt of court. Articles 129 and 215 of the Constitution provide this power.

### **No absolute separation of powers in India:**

In India, there is no absolute separation of powers between the organs of the government. For the purpose of effective governance, the organs of government use the powers of each other's organs. Sometimes, the executive uses the legislative powers to enact a law. Sometimes, it can use the judicial powers to decide administrative matters that are of a judicial nature. Even other organs also use the powers of other organs. Therefore, there is no absolute separation of powers in India. Here, such scenarios are as follows,

### **Functional Overlap of the Legislature While Exercising Executive Functions:**

Although the executive is mainly in charge of appointments, the legislature is essential in endorsing or confirming specific vital governmental officials. For example, the President is part of the parliament, which is the legislature. He can appoint some constitutional authorities, and their appointments can be validated by the legislature. Such as Election Commissioners, the Comptroller and Auditor General (CAG), and other officials of constitutional importance. Thereby granting the legislature a quasi-executive role. Parliamentary committees like the Public Accounts Committee (PAC) and the Estimates Committee also contribute to examining the performance of these officials after their appointments. Commonly appointing authorities to administrative capacities, and supervising and managing their appointments, is the role of the executive. But the legislature exercises such powers in those appointments. So, it is playing

the functions of the executive to some extent.

The constitution of India allows the legislature to do such functions of some executive functions to some extent in that aspect. Importantly, the legislature exercises the quasi-executive function during the impeachment proceedings against the President of India or Judges of the higher judiciary and some other posts. By way of such power, the legislature steps into the function of the executive to investigate the matters associated with the misconduct or incapacity of such officials. Further, the legislature has its powers and rules to control its members such as the executive does with its members. Both Parliament and State Legislatures have the power to expel or suspend members for improprieties, including corruption or breach of parliamentary rules. Parliamentary committees exercise the quasi-executive functions while investigating and monitoring executive activities. Especially, the committees like the Public Accounts Committee, Estimates Committee, and Committee on Public Undertakings supervise the operations of government departments and ministries. Those like functions are the functions of the legislature called quasi-executive functions of the legislature.

### **Functional Overlap of the Legislature While Exercising Judicial Functions:**

Legislature some occasions exercises the power of the judiciary in certain matters. During such functions, the nature of the duty of the legislature towards such matters is in the nature of the judiciary. That is the reason behind some activities of the legislature called quasi-judicial functions of legislature. The legislature holds the authority to impeach the President of India<sup>11</sup> and judges of the Supreme Court<sup>12</sup> and High Courts<sup>13</sup>. These proceedings involve an examination of misconduct, incapacity, proved misbehaviour, or violation of the provisions of the constitution. Both Houses of Parliament are involved in the process, which comprises formulating charges, carrying out investigations, and voting on the final decision.

The proven misbehaviour does not need to be proved before the court; the investigation of the legislature itself needs to prove it before the legislature. Likewise, the legislature conducts an enquiry against its members and punishes them by way of evict them from the houses of parliament. During the course of such an investigation, the legislative authorities

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<sup>11</sup> Id. Art 61.

<sup>12</sup> Id. Art 124(4).

<sup>13</sup> Id. Art 217.

should follow the rule of natural justice<sup>14</sup>. While dealing with privilege matters of parliament, it has the duty to act in the manner of quasi-judicial<sup>15</sup>. Further, the legislature, which the parliament has the power to take action in the contempt cases, same as the judiciary. The rule of law and the rule of natural justice should be followed during such contempt cases. Therefore, the legislature needs to act judicially, which is known as the quasi-judicial functions of the legislature.

### **Functional Overlap of the Executive While Exercising Legislative Functions:**

This is the concept of exercising the power of the legislative by the executive in the form of delegated legislation<sup>16</sup>. This occupies a very important place in the study of administrative law. Due to the increase in the business of the legislature, it does not have sufficient time to discuss minor details and provide all the details. Consequently, it has to confer on the executive the power to make subordinate legislation to supplement the legislature of the parliament. In modern times, due to the increase in the number of functions of the legislature. This role of the executive is inevitable.

Delegated legislation or subordinate legislation may be defined as legislation made by an authority other than the legislature acting under the authority delegated to it by the legislature. The term 'delegated legislation' is taken to mean the exercise of law-making power by the executive under the authority delegated to it by the legislature<sup>17</sup>. Jurist Salmond has classified the legislation into two categories. One is Supreme legislation and the other is subordinate legislation. Supreme legislation is the legislation made by the supreme power in the state.

Subordinate legislation is legislation made by an authority other than the Supreme authority in the state in the exercise of the power delegated to it by the supreme authority. The subordinate legislation is dependent on some superior or Supreme authority for its continued existence and validity. The delegated or subordinate legislation must be distinguished from the executive legislation. Quasi-legislative action has all the characteristics that legislative action possesses. A legislative act is addressed to and sets a standard of conduct for all to whom its

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<sup>14</sup> Kihoto Hollohan vs Zachillhu and Others, 1992 SCR (1) 686.

<sup>15</sup> Pandit M. S. M. Sharma vs Shri Sri Krishna Sinha and Others, 1959 AIR 395.

<sup>16</sup> Dr. Kailesh Rai, Administrative Law 130, (Allahabad Law Agency 2021).

<sup>17</sup> M. P. Jain et al, Principle of Administrative Law 26 (Lexis Nexis 2020).

terms apply<sup>18</sup>. The legislative act is the formation of a general rule of contract without reference to particular cases. Another feature of the legislative function is enacting laws and rules or performance usually operate in the future.

It is to be noted that there are exceptions to those features of the quasi-legislative functions. It is addressed to indicate unnamed and unspecified persons or situations. Sometimes the legislative action is found to be retrospective in operation or particularized. If this statute delegating the law-making power authorizes the delegate to make rules, etc, with retrospective effect, there should be a reasonable and rational justification for applying the rules, etc, retrospectively. Various laws provide this power of quasi-legislative to the executive authorities for the better implementation of the concerned statutes. The clause that exists in the law itself provides this power to them clause titled the power to remove difficulties or the power to make rules, or both provisions. Under this provision, the concerned law empowers the executive to enact rules, orders, and regulations for the effective implementation of the concerned statute. The rules, orders, and regulations are law as per Article 13(3) of the Indian Constitution. So, in this aspect, the executive plays the role of the legislature for a particular purpose.

### **Functional Overlap of the Executive While Exercising Judiciary Functions:**

The quasi-judicial power of the executive enables specific executive authorities to act in the nature of the judiciary while involving themselves in Quasi-Judicial functions. It is a functional overlapping of the executive in exercising judicial functions. These powers allow the executive to settle disputes, provide penalties and punishments, disciplinary actions, or make legally binding decisions by exercising statutory powers that are provided by specific statutes to specific executive authorities. The main aim behind providing such powers to the executive is the speedy disposal of administrative matters which has the nature of the judiciary and reduce the overload of litigation regarding it in traditional court systems. Quasi-judicial entities or officials act as fact-finders and apply legal provisions to particular disputes. For example, tribunals such as the Income Tax Appellate Tribunal and the National Green Tribunal manage cases within specialized legal domains. Likewise, regulatory organizations like SEBI (Securities and Exchange Board of India) and CCI (Competition Commission of India) handle separate and specialized legal domains.

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<sup>18</sup> Columbia Broadcasting System, Inc. v. United States, 316 U.S. 407 (1942).

The executive can get this power through a valid law. The same authorities who acted as the administrative authorities before can exercise judicial powers when they get the power from a valid law. It is observed in the case of *Indian National Congress (I) vs Institute of Social Welfare & Ors*<sup>19</sup>, the apex court observed that the Election Commission can act in a quasi-judicial capacity when deciding on the registration of political parties. At the same time, it has the administrative capacities under the law.

There is a crucial test for distinguishing between an administrative act and a quasi-judicial act. If there is a requirement for the administrative authority to operate in a judicial manner, then it will be considered a quasi-judicial function. However, not all statutes explicitly state the obligation to act in a judicial capacity. Therefore, such an obligation to act judicially must be deduced from the characteristics of the rights involved, the method of resolution, and other related factors. In administrative structures, the disciplinary measures imposed by departmental authorities have a quasi-judicial nature. Conducting investigations in disciplinary actions and enforcing punishments in disciplinary actions are some examples of that kind of functions. It is ruled in the case of *Associated Cement Companies Ltd vs P. N. Sharma and Another*<sup>20</sup>, the Supreme Court held that when matters are decided by the executive authorities, they likely affect the rights of individuals. In such circumstances, the executive or administrative authority should act in the nature of the judiciary, and they are considered as exercising quasi-judicial powers.

Similarly, licensing agencies, like the Regional Transport Authority or municipal government bodies, exercise their authority while addressing complaints, granting licenses, or revoking permits when violations occur. These authorities are governed by the principles of natural justice. So, they need to follow natural justice, especially by providing opportunities for being heard by the parties of the issues. The Supreme Court clarified that the licensing authority under the Central Excise Act exercised quasi-judicial powers when deciding on license cancellations. It emphasized that such decisions must adhere to principles of natural justice<sup>21</sup>. Providing opportunities to be heard is also an important condition for exercising quasi-judicial powers by the executive.

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<sup>19</sup> 2002 (3) SC 465.

<sup>20</sup> 1965 SCR (2) 366.

<sup>21</sup> *Bidi Supply Co vs The Union of India and Others*, 1956 AIR 479.

It is observed in the case of *Nakkuda Ali v Jayaratne*<sup>22</sup>, The licence of the textile dealer was revoked by the Controller of Textiles because he was no longer qualified to operate as a dealer. Prior to the licence cancellation, the dealer did not receive a chance to present his case to the Controller. The Privy Council determined that the decision of the controller to revoke the licence was an administrative action, and therefore, the Controller was not obligated to follow a judicial process. Further, their procedure should be fair and should follow the natural justice principles<sup>23</sup>. The decisions of such authorities while exercising such Quasi-Judicial functions can be subject to judicial review. The courts can review it. If such decisions are against the existing provisions, such will be declared invalid.

The Supreme Court held that administrative tribunals are subjected to judicial review, particularly regarding fundamental rights in the case of *L. Chandra Kumar v. Union of India*<sup>24</sup>. The nature and conditions of the quasi-judicial powers of the executive are somehow similar to the nature of the judiciary. Therefore, it shows, that there is no absolute separation of the functions in the nature of executive and judicial in India.

### **Functional Overlap of the Judiciary While Exercising Legislative Functions:**

The quasi-legislative roles of the judiciary in India are provided by the supremacy of the Constitution and the rule of law. For upholding justice, the courts intervene in the legislative sphere to address gaps, provide clarification, or set up legal structures where legislative provisions are lacking, and even invalidate the laws of the legislature and laws of the executive, which are enacted by the executive while exercising the functions of Quasi-Legislative, if such laws violate the provisions of the constitution. The primary function of the judiciary is to interpret the law and apply the law to specific disputes. But the Constitution of India did not establish the judiciary as the body that only acts based on the statutes of the legislature; it provides the power to the judiciary to forge new weapons for the enforcement of the rights of the subjects of the states<sup>25</sup>. This function of the judiciary is known as judicial activism. One of the primary ways in which the judiciary engages in quasi-legislative activities is through Article 141 of the Constitution.

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<sup>22</sup> [1951] AC 66.

<sup>23</sup> *Maneka Gandhi vs Union of India*, 1978 SCR (2) 621.

<sup>24</sup> 1997 (3) SCC 261.

<sup>25</sup> *Sunil Batra vs Delhi Administration*, 1980 AIR 1579

This article states that the law declared by the Supreme Court is binding on all courts in India. So, the judiciary of India has the power to make laws under the Constitution. which such power the judicial activism is not exercisable in India. Without judicial activism, the existence of the rule of law will be questionable. At various times, the judiciary played this quasi-legislative role. Even the executive requested the judiciary to declare the law to fill the gap between the laws.

A notable example is the *Vishaka v. State of Rajasthan*<sup>26</sup> case, where the government requests the apex court to provide guidelines against sexual harassment in the workplace. The Supreme Court established detailed guidelines and norms for the prevention and penalization of sexual harassment at the workplace. The law, which is declared by it act as the law for that special social issue for 13 years. Later, only the proper legislation was passed, which is the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013.

The judiciary also engages in quasi-legislative activities by issuing frameworks for areas that did not has any law regarding it. An example is the *Laxmi Kant Pandey v. Union of India*<sup>27</sup> case, in which the Supreme Court laid down guidelines for inter-country adoptions for protecting the interests of children from any kind of sufferings. In environmental protection matters, such as the *Taj Mahal Protection Case*<sup>28</sup>, the judiciary has established framework to regulate the industrial activities and control pollution in the surrounding areas of the Taj Trapezium Zone to protect the historical monument from pollution. Those are few examples of the quasi-legislative functions of the judiciary to fill the gap in the existing statutes.

By way of quasi-legislative functions, judiciary provided various new doctrines and evolved already existed concepts of law. By using quasi-legislative powers to effective interpretation of provisions, the judiciary provided the Golden Triangle Principle and the doctrine of fair, just, and reasonable in the case of *Maneka Gandhi v. Union of India*<sup>29</sup>. The judiciary also made way to approach it easier by allowing one person on behalf of other persons, even if he did not have the locus standi, that is the concept of Public Interest Litigation,

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<sup>26</sup> 1997 AIR SCW 3043.

<sup>27</sup> 1984 SCR (2) 795

<sup>28</sup> M.C. Mehta vs. Union of India & Ors, AIR 1997 2 SCC 353.

<sup>29</sup> Supra note 25.

which brings justice to the doorsteps of the poor people and weaker sections. On numerous occasions, the judiciary provides various guidelines, rules, and regulations for fulfilling its role as the guardian of the constitution and fundamental rights. Further, the higher judiciary has rule-making powers under Article 145 and 227 of the Constitution to govern the procedures of the lower courts for the purpose of case management, case filing, and regulating the conduct of the courtroom.

### **Functional Overlap of the Judiciary While Exercising Executive Functions:**

The judiciary exercised its quasi-executive function under Article 235 of the Constitution, which empowers the High Court to oversight the lower courts and ensure they operate efficiently and independently. By this authority, high courts handle judicial appointments, transfers, and promotions. This power protects the judicial autonomy of the courts from executive influence. Because the High Court is the only authority that has the constitutional power to monitor the performance of district and subordinate courts. The judiciary acts as the executive authority in this aspect. Overseeing or supervising the subordinates is the role of the executive because it is commonly the function of the executive. The superior executive authority has the function of overseeing or supervising the functions of the subordinate to it. Similarly, the functions the judiciary exercises under the constitution. By way of this executive role, judicial integrity, autonomy, and independence are preserved well.

Whenever a gap between the functions of executive authorities due to the lack of established law for it. The executive organ of the government provides rules and regulations for managing its own affairs. On many occasions, the judiciary provides the rules and regulations in the field of the procedure of the executive. Notable examples of it are providing the rules regarding the arrest to the police who are coming under the executive wing of the government in the case of *D.K. Basu v. State of West Bengal*<sup>30</sup>. And case which is *Vineet Narain v. Union of India*<sup>31</sup> where the Supreme Court provided the guidelines to ensure the independence of investigative agencies like the CBI and ED, and supervising their operations. By way of providing rules to such bodies, the judiciary acts as the quasi-executive authority to fill the procedural gap in the executive bodies. Sometimes the court itself supervises the real-time application of its judgment, like the executive supervising its order, whether the

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<sup>30</sup> 1997 (1) SCC 416

<sup>31</sup> 1998 AIR SCW 645.

subordinate carries it out or not by subordinate.

## Conclusion:

The doctrine of separation of powers strictly describes that the functions of each government organ should not interfere with the functions of any other organ. However, looking into the application of the separation of powers in India, it does not strictly restrict such interference. The existing laws and constitution allow the overlapping of the functions between them. By way of such overlapping, the democratic government of India runs smoothly and effectively.

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