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ABOUT US

WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal provided 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

HARMONY IN GOVERNANCE: THE INTERPLAY OF LEGISLATURE, EXECUTIVE AND JUDICIARY

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Abstract

This paper examines the importance of harmony among the legislature, executive and judiciary- the three organs of Indian democracy, in ensuring the smooth functioning of the constitutional institutions. For effective governance, it is quintessential that these institutions work in tandem, respecting each other's domains while upholding the Constitution. Through an analysis of the recent case of *State of Tamil Nadu v. The Governor of Tamil Nadu & Anr.*¹, the paper examines the complexities and nuances of inter-institutional relationships, underscores the significance of foundational constitutional principles such as separation of power and check and balance, in maintaining harmony and ensuring constitutional governance.

Introduction

Democracy is the bedrock of modern governance, built on the principles of representation, accountability and the rule of law. Bharat being a democratic country, its Constitution establishes a delicate balance of power between the three organs of the State- the legislature, executive and judiciary- each playing a vital role in ensuring the smooth functioning of the democratic system. For good governance and overall development of a country to its fullest potential, it is crucial that these organs while adhere to the principle of separation of power, function in harmony. This requires that each organ must operate within its designated sphere, exercising its power and performing its functions without encroaching upon the domain of the others, while working collectively towards the common goal of promoting the welfare of its people and upholding the Constitution. In this context, the harmonious functioning of the legislature, executive and the judiciary is essential to ensure that the government is effective, accountable and just.

¹ Writ Petition (Civil) No. 1239 of 2023

However, the recent events, such as the judgment in the case of *State of Tamil Nadu v. The Governor of Tamil Nadu & Anr.*², have raised questions about the limits of judicial activism and the sanctity of the constitutional boundaries. This paper examines the complex dynamics of separation of power, check and balance, and the role of each organ in ensuring harmony in governance.

Governance in India: Organs of State

India has embraced democracy as its preferred form of governance, where the government is truly “of the people, by the people, and for the people³.” This is reflected in the **Preamble of the Constitution**, which resolves to constitute India into a “sovereign, socialist, **democratic**, republic⁴.” In a democratic setup, the State and the government are comprised of three primary organs: the **legislature, executive, and judiciary**, with the media now regarded as the fourth organ/pillar. Each of these organs has distinct responsibilities and plays a vital role in ensuring smooth functioning of the democratic system.

- The legislature is entrusted with the law-making function. It is responsible for formulating and enacting laws that govern the nation.
- The executive implements the laws and policies made by the legislature. It works to ensure their effective execution and administration.
- The judiciary interprets the laws and provide justice to those who have been wronged (aggrieved person). It upholds the rule of law and protects the rights of individuals.

Concept of Separation of Powers

Under the democratic setup of India, power is separated into its different organs, ensuring that no single entity holds absolute power. **Montesquieu**, a prominent French philosopher, is best known for his theory of separation of power. He argued that the concentration of power in one person or group of persons would inevitably lead to tyranny and abuse of power. According to him, the separation of power among the legislative, executive and judiciary would provide a system of checks and balances, ensuring that no one branch could overpower the others. In his view-

“When the legislative and executive powers are united in the same person, or in the same body

² Writ Petition (Civil) No. 1239 of 2023

³ Abraham Lincoln

⁴ Preamble of the Constitution of India, 1950

or Magistrate, there can be no liberty. Again, there is no liberty if the judicial power is not separated from the Legislative and Executive power. Where it joined with the legislative power, the life and liberty of the subject would be exposed to arbitrary control, for the judge would then be the legislator. Where it joined with the executive power, the judge might behave with violence and oppression. There would be an end of everything were the same man or the same body to exercise these three powers...⁵

This theory has been instrumental in shaping the democratic system of many countries, including India. Here it occurs in two ways:

- **Horizontal Separation-** power is distributed among the three primary organs of the State: the legislature, executive and the judiciary. Each organ has distinct responsibilities and functions, preventing any one organ from dominating the others.
- **Vertical Separation-** Power is also distributed among different levels of governments, including the Union government, State government and Local authorities. This ensures that power is decentralized and that each level of government has its own sphere of authority.

This dual separation of power is a fundamental aspect of India's democratic system. It promotes accountability, transparency and good governance. By preventing the concentration of power in a single person/entity, the separation of power ensures that each organ and level of government functions within its designated sphere, protecting the rights of citizens and promoting the overall well-being of the nation.

Hon'ble Supreme Court has also recognised its importance, holding it to be one of the basic structures of the Constitution in the landmark case of **Kesavananda Bharati v. State of Kerala**⁶. Thus, it cannot be amended. By upholding the separation of power as a **basic structure**, the Supreme Court has ensured that India's democratic system remains robust and accountable.

Power and Role of Legislature, Executive and Judiciary in Governance

The three organs of the State have separate powers and play vital roles in governance, each contributing to the effective functioning of India's democratic system. Following powers/roles/functions are assigned specifically to these organs: -

⁵ Montesquieu, *De L' Esprit des lois*, 1748 quoted in Justice D.D. Basu: *Administrative Law*, Edn. 199, p 23.

⁶ 1973 4 SCC 225

- **Legislature-** The legislature is the law-making body of the State, responsible for formulating and enacting laws that govern the nation. Effective governance demands that laws to be dynamic, reflecting the evolving needs and aspirations of society. The legislature's role is to craft laws that address the pressing issues of time, and to amend or repeal existing laws, if required. By doing so, it ensures that the legal framework remains relevant and responsive to the needs of society. Additionally, the legislature holds the executive accountable, provides a platform for representation and debate, and ensures that the government remains responsive to the needs of citizens.
- **Executive-** The executive implements the laws and policies made by the legislature, and is responsible for maintaining law and order in the society, collecting taxes, and delivering public services. For governance to be in harmony, it is essential that the executive implements the laws enacted by the legislature with due diligence and commitment. The effectiveness of a law depends not only on its formulation but also on its implementation. Therefore, the Executive must respect the laws made by the legislature and implement them in a manner that is true to their spirit and intent. This requires deep understanding of laws and policies, as well as a commitment to uphold the rule of law.
- **Judiciary-** The judiciary interprets the laws and ensures that they are in conformity with the Constitution. Courts in India presume that the laws made by the legislature are constitutional, unless contrary is proved. It demonstrates the respect of judiciary towards other organs of the State, which is essential for maintaining harmony among them. However, the judiciary also has the critical function of holding a check on legislative and executive actions. If a law is found to be unconstitutional, the judiciary has the power to declare it void by using **Article 13** of the Constitution. Through the power of judicial review, the judiciary reviews legislative, executive, judicial, and quasi-judicial decisions to ensure that they are in accordance with the Constitution. Its role is to provide justice to the aggrieved persons, hold the executive and legislature accountable for their actions, and protect the fundamental and other rights of people in India.

Importance of Harmonious Governance

In a democratic setup like in India, the harmonious functioning and interplay of the legislature, executive and the judiciary is crucial for ensuring the smooth operation of constitutional

institutions. When these institutions work in tandem, respecting each other's domain and roles, it fosters an environment of stability, predictability and accountability. As enshrined in **Article 50⁷** of the Constitution, separation of judiciary from the executive is a fundamental principle, aimed at ensuring the independence of judiciary, thereby supporting the principle of separation of power.

The harmonious governance enables the effective implementation of laws, policies and programs, ultimately benefiting the citizens and promoting national development. Conversely, discord among these institutions can lead to constitutional impasses, undermine public trust and hinder the nation's progress. Therefore, maintaining harmony among different organs of the State is essential for upholding the Constitution and ensuring the well-being of individuals. The interplay among these three organs (now media also) is crucial in promoting harmony in governance. When each organ functions within its designated sphere and respects the boundaries of the others, the democratic system functions effectively, and the rights of citizens are protected. However, when there is an imbalance or encroachment, it can lead to conflicts and undermine the rule of law. Therefore, understanding the roles and responsibilities of each organ is essential in promoting good governance and ensuring that the democratic system functions in harmony.

Challenges to Harmonious Governance

Despite the importance of harmony among the legislature, executive and judiciary, several challenges can disrupt the balance and hinder effective governance. Some of the major challenges include:

- **Overreach of Power-** When one organ of the State oversteps its constitutional boundaries and encroaches on the domain of another organ, it can lead to conflicts and undermine the rule of law.
- **Lack of Accountability-** If any of the organs of the State fails to hold itself accountable and/or shift the accountability on others, it can lead to breakdown in the system of check and balance, and undermines the trust of citizens in the government. The Emergency of 1975 in the country is a classic example where the executive's abuse of power led to the suspension of fundamental rights and undermined the rule of law.

⁷ Article 50- The State shall take steps to separate the judiciary from the executive in the public services of the State.

- **Judicial Activism v. Judicial Restraint-** The judiciary's role in governance can and very often be a subject of debate, with some arguing that it should adopt a more activist approach to ensure justice, while others believe that it should exercise restraint and avoid overstepping its bounds.

Later part of this paper will discuss this point in detail with the help of a recent Supreme Court's judgment in the case of *State of Tamil Nadu v. The Governor of Tamil Nadu & Anr.*⁸.

- **Political Interference-** Political interference in the functioning of the judiciary or executive can undermine the independence and impartiality of these organs, and lead to a breakdown in the system of governance.
- **Lack of Transparency and Accountability-** Lack of transparency and accountability in the functioning of the government can lead to corruption, abuse of power, and undermine the trust of citizens in the government. The Right to Information Act, 2005⁹ has been a significant step towards promoting transparency and accountability in governance, but its implementation has been marred by challenges and criticism.

These major challenges highlight the importance of ensuring that each organ of the State functions within its designated domain and respects the boundaries of the others. By promoting transparency, accountability, and respect for the Constitution, we can work towards ensuring harmonious governance and protecting the rights of individuals.

Instance of Separation of Power and Judicial Overreach

The case of *State of Tamil Nadu v. The Governor of Tamil Nadu & Anr.*¹⁰ has sparked intense debate currently in the country about the separation of power and the role of judiciary in governance. At its core, the case raises questions about the extent of Governor's discretionary powers under **Articles 200** and **201** of the Constitution, the limit of judicial intervention, and the delicate balance among legislature, executive and the judiciary.

As former Chief Justice of Bharat **N.V. Ramana** aptly observed, "Lakshman Rekha drawn by the Constitution is sacrosanct¹¹", these words resonate deeply in the context of India's parliamentary democracy, where the delicate balance of power among the legislature,

⁸ Writ Petition (Civil) No. 1239 of 2023

⁹ Act No. 22 of 2005

¹⁰ Writ Petition (Civil) No. 1239 of 2023

¹¹ <https://www.deccanchronicle.com/nation/current-affairs/271121/cji-justice-isnt-responsibility-of-judiciary-alone.html> (last visited June 7, 2025)

executive, and the judiciary is crucial to the well-functioning of the State. In this context, the following view of former Justice **Markandey Katju**¹² needs special mention who observed- “...Under the Constitution, the legislature, the executive and the judiciary have their own broad spheres of operation. It is, therefore, important that these three organs of the State do not encroach upon the domain of another and confine themselves to their own, otherwise the delicate balance in the Constitution will be upset...The judiciary must therefore exercise self-restraint and eschew the temptation to act as super legislature...”

The above view of the former Justice Katju is very pertinent in the present scenario of the country especially after the Hon’ble Supreme Court’s judgment in the case of **State of Tamil Nadu v. The Governor of Tamil Nadu & Another**¹³. After this judgment, debate over separation of power, check and balance, judicial activism and judicial overreach has started once again. The **Vice-President Jagdeep Dhankhar** recently remarked about the judiciary acting as “super Parliament” and firing “nuclear missiles” at democratic forces¹⁴. Several other well-known personalities are making critical remarks on this judgment, which, according to them, disturbed or has the potential to disturb the balance of separation of power and harmony in governance.

Brief Facts of the Case- The judgment in this case stemmed from the fact that the Governor of Tamil Nadu had delayed, withhold or refused assent to several Bills passed by State legislature, effectively stalling the legislative will.

Judgment in Brief- The Supreme Court in this judgment held that the action of the Tamil Nadu Governor Dr. R.N. Ravi withholding assent on ten Bills, the oldest of them pending since January 2020, and reserving them to the President after they were re-enacted by the State Legislature, is illegal and erroneous in law and liable to be set aside. The Court also held that the ten Bills would be deemed to have received the assent of the Governor when they were presented in the second round after they were passed again by the State Assembly. The Court also fixed certain timelines for granting assent to a Bill by the Governor and President, on reservation of a Bill to him.

¹² In Minor Priyadarshini case [2005 (3) CTC 449]; <https://core.ac.uk/download/pdf/112282.pdf> (last visited June 7, 2025)

¹³ Writ Petition (Civil) No. 1239 of 2023

¹⁴ <https://www.indiatoday.in/india/law-news/story/vice-president-jagdeep-dhankar-ignites-row-over-judicial-activism-versus-overreach-after-supreme-court-tamil-nadu-governor-judgment-2709337-2025-04-18> (last visited June 7, 2025)

Points in support of the judgment- Section of the society who support the judgment in this case are saying that judiciary in this case, has very well exercised its power of check and balance and by fixing timeline for the Governor and the President, it has ensured that these constitutional functionaries be remain accountable for their work and don't sit over the bills unnecessarily. According to them, this judgment is a good example of judicial activism.

Points/Question raised against the judgment- Sections of society who criticise this judgment as of now, are raising/may raise following pertinent questions with their justification on them- **Firstly**, the allegation of the Governor's inaction, omission, delay, and failure in assenting Bills under Article 200 or 201 of the Constitution, was raised by the State of Tamil Nadu before the Supreme Court by filing a writ petition under Article 32.

Writ petitions are typically filed under this Article when there is a violation of "fundamental rights" and these rights are claimed against the "State" (as defined under Article 12 of the Constitution), which includes the President, Governor, and State Government, among others. It is argued that a **writ petition** under Article 32 may not be the most appropriate remedy in this case¹⁵, given that the parties to the dispute are themselves organs of the "State" (within the meaning of Article 12 of the Constitution), rather than individuals alleging violation of their fundamental rights against the "State". It is argued that filing writ petition under Article 32 in this case is akin to one branch of the "State" litigating against the another, rather than the accepted practice of citizens or non-citizens seeking enforcement of their fundamental rights against the "State".

Critics¹⁶ also point out that, even if one considers that the State Government was representing the people of Tamil Nadu before the Supreme Court, invoking the jurisdiction under Article 32 by the Supreme Court still seems unjustified as this Article comes into play only when there is a violation of fundamental rights. However, the State of Tamil Nadu filed the writ petition for alleged inaction, omission, delay, and failure by the Governor and the President, as the case may be, in granting assent to the Bills under Article 200 and 201, and not for violation of fundamental rights. Its plea that Governor's inaction violates fundamental rights of the

¹⁵ <https://organiser.org/2025/05/03/290143/bharat/tamil-nadu-bill-case-deemed-assent-and-constitutional-democracy/> (last visited June 7, 2025)

¹⁶ <https://organiser.org/2025/05/03/290143/bharat/tamil-nadu-bill-case-deemed-assent-and-constitutional-democracy/> (last visited June 7, 2025)

residents of Tamil Nadu to be regulated by the State-made laws, is not convincing especially after giving a closer look at the contents of the Bill related to making the Chief Minister the ex-officio Chancellor of the State universities¹⁷ as it does not even remotely violate the fundamental rights of the people of Tamil Nadu.

In such a scenario, it could be argued that the State might have been better advised to invoke the jurisdiction of Article 226 of the Constitution and approach the High Court¹⁸, which can issue writs and other orders not only for violation of fundamental rights but also “for any other purpose”. Alternatively, if the State Government wanted to approach the Supreme Court directly then it should have come through Article 131¹⁹, which gives original jurisdiction to the Supreme Court to hear cases involving disputes between two or more States or between State(s) and Union, or between one and other branches of the government.

Secondly, the judgment has also sparked debate about the composition of the bench that heard and decided the case.

Critics might question how a case involving interpretation of the Constitution was heard and decided by a two-judge bench (namely- Justice J.B. Pardiwala and Justice R. Mahadevan), rather than a **Constitutional Bench** comprising a minimum of five judges, as mandated by Article 145(3) of the Constitution. This departure from the usual practice could have implications for the precedential value of the judgment and its potential impact on constitutional jurisprudence.

Thirdly, and perhaps the most glaring aspect of the judgment, from the perspective of separation of power, harmony in governance and encroaching the specified domain, is the Supreme Court’s decision to “deem” the ten Bills as having received assent, and thereby making them laws.

Enacting laws is the core function of the legislature, while giving or withholding assent is an

¹⁷ <https://organiser.org/2025/05/22/293566/bharat/restoring-the-constitutional-balance-presidential-powers-vs-judicial-overreach/> (last visited June 6, 2025)

¹⁸ <https://organiser.org/2025/05/03/290143/bharat/tamil-nadu-bill-case-deemed-assent-and-constitutional-democracy/> (last visited June 7, 2025)

¹⁹ <https://organiser.org/2025/05/22/293566/bharat/restoring-the-constitutional-balance-presidential-powers-vs-judicial-overreach/> (last visited June 6, 2025)

executive function vested in the President or Governor. By stepping in to grant approval through judicial order, the Court arguably blurred these distinct functions of the different organs of the State. The judgment effectively made the significance of the Governor, and even the President, redundant in the legislative process, **raising concerns about the erosion of the constitutional roles of these offices**. Generally, if a Governor unjustifiably withholds assent, the practical remedy lies in the political realm²⁰- the Chief Minister and the council of ministers could create pressure through public opinion, or in extreme cases, the Governor could be replaced by the Union. Alternatively, the State Government could wait for the end of the Governor's term, allowing the issue to resolve itself through the natural course of constitutional processes. By judicial intervention in granting **"deemed assent"** to the Bills and making them laws, the Court may have altered the traditional dynamics of such disputes, potentially upsetting the balance of power between the constitutional functionaries.

Fourthly, the way in which **Article 142** of the Constitution (which allows the Supreme Court to pass orders for doing complete justice) is used in this case.

After nullifying the Governor's and the President's actions in withholding and reserving Bills, the Court should have simply directed them give assent to those Bills. Instead, the Court used Article 142 to "deem" that the Bills had already received assent, holding that the ten Bills are deemed to have been assented to by the Governor on the date they were presented to him after being reconsidered (i.e. on 18 November 2023). This exercise of power is rare and has significant implications²¹.

In an alternative approach, **writ of mandamus** could have been issued, directing the Governor to pass the Bills by giving his assent, rather than the exercise of powers under Article 142, which should be exercised to do "complete justice" when there is no alternative provision of law to address a compelling situation and given that the Constitution itself provides a remedy in the form of a writ of mandamus to compel the government to perform its legal duties, issuing such a writ might have been a more appropriate course of action.

²⁰ RR Singh, The Long Arm of Article 142: Judicial Innovation or Constitutional Overreach? Critical Analysis of Tamil Nadu vs Governor Case;

<https://lawtrend.in/supreme-court-judicial-activism-overreach-separation-of-power/> (last visited June 6, 2025)

²¹ RR Singh, The Long Arm of Article 142: Judicial Innovation or Constitutional Overreach? Critical Analysis of Tamil Nadu vs Governor Case;

<https://lawtrend.in/supreme-court-judicial-activism-overreach-separation-of-power/> (last visited June 6, 2025)

It is argued that by voiding the President's rejection of Bills, the Supreme Court has effectively **entered into the Union Executive's constitutional role**. Under Article 201 of the Constitution, the President's assent or dissent/refusal is the final step for reserved Bills. By overturning the President's decision and essentially declaring that those decisions "do not survive", the Court positioned itself above the highest executive authority. This aspect of the judgment has disturbed many, including those who otherwise supports and favours judicial review and judicial activism. Notably, the President acts on the aid and advice of the Union's council of ministers (Article 74), which means that the Central Government's 'will' was effectively negated by the Court's order in this case, raising concerns about the limits of judicial power.

Sixthly, the Supreme Court's prescription of specific **timelines** for the Governor and the President (constitutional functionaries) to act under Article 200 and 201.

By doing so, the critics argue that the Court effectively **amended** the Constitution by judicial fiat. The Constitution itself left the matter of timeframes, open, which could be interpreted as deliberate flexibility. However, the Supreme Court felt compelled to step in with what it termed "determinable judicial standard(s)" for reasonable time. It raises questions about the Court's role in filling constitutional gaps and whether such intervention might be seen as an interpretation to the provisions of the Constitution or an encroachment on the constitutional framework.

From the above discussion on the judgment in the case of *State of Tamil Nadu v. The Governor of Tamil Nadu & Anr.*²², it can be concluded that this case serves as a pertinent example of how the separation of power of different organs of the State can be perceived as being violated, leading to debates about **judicial activism**²³ and **judicial overreach**²⁴. This case highlights the complexities and challenges that arise when different organs of the State interpret their constitutional roles differently. The consequential disturbance in the harmony of governance is evident from the reactions of high-ranking officials, including the Vice President Jagdeep

²² Writ Petition (Civil) No. 1239 of 2023

²³ Black's Law Dictionary defines judicial activism as: "a philosophy of judicial decision-making whereby judges allow their personal views about public policy, among other factors, to guide their decisions, usually with the suggestion that adherents of this philosophy tend to find constitutional violations and are willing to ignore precedent".

²⁴ Judicial overreach refers to situations where courts exceed their constitutional limits and encroach upon the legislative or executive domains.; <https://lawbhoomi.com/what-is-judicial-overreach/> (last visited June 7, 2025)

Dhankhar's remarks.²⁵ **President Droupadi Murmu** has also raised fourteen questions²⁶ from the Hon'ble Supreme Court through Reference under **Article 143** of the Constitution. Ultimately, this case underscores the importance of maintaining a delicate balance among legislature, executive and the judiciary, to ensure the smooth functioning of constitutional institutions in harmony and preservation of democratic governance.

Conclusion

To sum up, the discussion on harmony in governance and the separation of powers highlights some complexities and challenges (which arise sometimes) in maintaining a balance among the legislature, executive and judiciary. Through the lens critically analyse the case of State of Tamil Nadu v. The Governor of Tamil Nadu & Anr.²⁷ and the ongoing debates on this recent judgment, we can see how differing interpretations of constitutional roles can lead to debates about judicial activism and overreach. This analysis underscores the significance of foundational principles of Constitution like- separation of power and check and balance, which are vital to India's democratic framework. It also illuminates the nuances and challenges that can arise sometimes in upholding these principles, as illustrated by the Tamil Nadu case.

Ultimately, the key to effective governance lies in each organ of the State respecting the others' domains, while upholding the Constitution, thereby ensuring the smooth functioning of democratic institutions and rule of law. By understanding these dynamics, we can better appreciate the importance of harmony in governance and the need for constitutional institutions to work in tandem, which they generally do.

²⁵ Addressing the sixth batch of Rajya Sabha interns, Dhankhar said "India was never meant to have a democracy where judges function as lawmakers, the Executive, and even as a "super Parliament". He called Article 142 "a nuclear missile against democratic forces". He also criticised its frequent use by stating how it is "available to the judiciary 24x7" .;

<https://www.indiatoday.in/india/law-news/story/vice-president-jagdeep-dhankar-ignites-row-over-judicial-activism-versus-overreach-after-supreme-court-tamil-nadu-governor-judgment-2709337-2025-04-18> (last visited June 7, 2025)

²⁶ <https://www.scobserver.in/journal/does-the-president-reference-raise-questions-which-the-supreme-court-did-not-answer-earlier-tamil-nadu-governor/> (last visited June 7, 2025)

²⁷ Writ Petition (Civil) No. 1239 of 2023